Claim No: QB-2022-001236

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ROYAL COURTS OF JUSTICE

In the matter of an application for an injunction under s.1, Localism Act 2011, s.222, Local Government Act 1972, s.130, Highways Act 1980 and section 17 of the Crime and Disorder Act 1998.

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

and

(2) THOMAS BARBER
(3) MICHELLE CADET-ROSE
(4) TIMOTHY HEWES
(5) JOHN HOWLETT
(6) JOHN JORDAN
(7) CARMEN LEAN
(8) ALYSON LEE
(9) STEPHEN PRITCHARD
(10) AMY PRITCHARD
(11) PAUL RAITHBY
(14) JOHN SMITH
(15) BEN TAYLOR
(17) ANTHONY WHITEHOUSE
(19) 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
(20) JOHN JORDAN
AND 108 OTHERS LISTED AT APPENDIX A

Defendant

SUPPLEMENTARY BUNDLE

Tab	Document	Date	Pages
A. Proposed Amendment to "Persons Unknown"			
1.	The Claimant's proposed amendments to the 19th Defendant.	Undated	5-7
B. Skeleton Arguments for Previous Hearings			
2.	Final Responsive Submission Following Hearing, on Behalf of Ms Jessica Branch and Mr Jake Handling	07.05.2022	8-10
3.	Claimant's Response to The Applicants' Additional Written Submissions	06.05.2022	11-14
4.	Supplementary Note following Hearing, on Behalf of Ms Jessica Branch and Mr Jake Handling	06.05.2022	15-17
5.	Supplementary Skeleton Argument on Behalf of Ms Jessica Branch and Mr Jake Handling for Return Hearing.	04.05.2022	18-28
6.	Skeleton Argument on Behalf of the Claimant for Return Hearing	03.05.2022	29-44
7.	Skeleton Argument on Behalf of Ms Branch (later adopted by Jake Handling) for Return Hearing.	27.04.2022	45-72
8.	Skeleton Argument on Behalf of the Claimant for First Hearing.	13.04.2022	73-90
C. Judgments following Applications to Commit			
9.	*North Warwickshire Borough Council -v- Litten and others* [2022] EWHC 2777 (KB)	27/09/2022	91-108
10.	*North Warwickshire Borough Council -v- Onley and others* [2022] EWHC 2541 (KB)	23/09/2022	109-122
11.	*North Warwickshire Borough Council -v- Bramfitt and others* [2022] EWHC 2540 (KB)	23/09/2022	123-133
12.	*North Warwickshire Borough Council -v- White and others* [2022] EWHC 2538 (KB)	22/09/2022	134-145
13.	*North Warwickshire Borough Council -v- Wittingham and others* [2022] EWHC 2539 (KB)	22/09/2022	146-157

14.	*North Warwickshire Borough Council -v- Shatford and others* [2022] EWHC 2537 (KB)	21/09/2022	158-165
15.	*North Warwickshire Borough Council -v- Shatford and others* [2022] EWHC 2569 (KB)	21/09/2022	166-176
16.	*North Warwickshire Borough Council -v- Shatford and others* [2022] EWHC 2570 (KB)	21/09/2022	177-185
17.	*North Warwickshire Borough Council -v- Hoyland and others* [2022] EWHC 2568 (KB)	20/09/2022	186-196
18.	*North Warwickshire Borough Council -v- Williams and others* [2022] EWHC 2566 (KB)	20/09/2022	197-206
19.	*North Warwickshire Borough Council -v- Hekt and another* [2022] EWHC 2567 (KB)	20/09/2022	207-216
20.	*North Warwickshire Borough Council -v- Aylett and others* [2022] EWHC 2458 (KB)	12/09/2022	217-247
21.	*North Warwickshire Borough Council -v- Lindsell* [2022] EWHC 1323 (QB)	19/05/2022	248-250
22.	*North Warwickshire Borough Council -v- White* [2022] EWHC 1322 (QB)	19/05/2022	251-253
23.	*North Warwickshire Borough Council -v- McFadden & Hewes* [2022] EWHC 1326 (QB)	19/05/2022	254-257
24.	*North Warwickshire Borough Council -v- Morgan* [2022] EWHC 1331 (QB)	19/05/2022	258-260
25.	*North Warwickshire Borough Council -v- Charlesworth* [2022] EWHC 1464 (QB)	18/05/2022	261-272
26.	*North Warwickshire Borough Council -v- Naidu* [2022] EWHC 1462 (QB)	17/05/2022	273-277
27.	*North Warwickshire Borough Council -v- Howlett* [2022] EWHC 1463 (QB)	17/05/2022	278-282
28.	*North Warwickshire Borough Council -v- Coleman and Johnson* [2022] EWHC 1459 (QB)	12/05/2022	283-287
29.	*North Warwickshire Borough Council -v- Brocklebank and Pritchard* [2022] EWHC 1461 (QB)	12/05/2022	288-294

30.	*North Warwickshire Borough Council -v- De Abreu and Lee* [2022] EWHC 1460 (QB)	12/05/2022	295-300
31.	*North Warwickshire Borough Council -v- Nixon and Reid* [2022] EWHC 1517 (QB)	11/05/2022	301-306
32.	*North Warwickshire Borough Council -v- Mitchell* [2022] EWHC 1518 (QB)	11/05/2022	307-311
33.	*North Warwickshire Borough Council -v- Benn* [2022] EWHC 1457 (QB)	11/05/2022	312-317
34.	*North Warwickshire Borough Council -v- Milner-Edwards* [2022] EWHC 1458 (QB)	11/05/2022	318-323
35.	*North Warwickshire Borough Council -v- Berry and Shah* [2022] EWHC 1485 (QB)	10/05/2022	224 - 327
36.	*North Warwickshire Borough Council -v- Reding and Rennie-Nash* [2022] EWHC 1483 (QB)	10/05/2022	328-332
37.	*North Warwickshire Borough Council -v- Pride and Harrison* [2022] EWHC 1484 (QB)	10/05/2022	333-337

Claim No: QB-2022-001236

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ROYAL COURTS OF JUSTICE

In the matter of an application for an injunction under s.1, Localism Act 2011, s.222, Local Government Act 1972, s.130, Highways Act 1980 and section 17 of the Crime and Disorder Act 1998.

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

and

(1) NO LONGER PURSUED
(2) THOMAS BARBER
(3) MICHELLE CADET-ROSE
(4) TIM HEWES
(5) JOHN HOWLETT
(6) JOHN JORDAN
(7) CARMEN LEAN
(8) ALISON LEE
(9) AMY PRITCHARD
(10) STEPHEN PRITCHARD
(11) PAUL RAITHBY
(12) NO LONGER PURSUED
(13) NO LONGER PURSUED
(14) JOHN SMITH
(15) BEN TAYLOR
(16) NO LONGER PURSUED
(17) ANTHONY WHITEHOUSE
(18) NO LONGER PURSUED
(19) 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
(20) JOHN JORDAN
AND 108 ADDITIONAL NAMED DEFENDANTS

Defendants

CLAIMANT'S PROPOSED AMENDMENTS TO 19TH DEFENDANT

(19A) Persons Unknown who, or who intend to, participate in protests against the production and/or use and/or the grant of licences to extract fossil fuels, within the site known as Kingsbury Oil Terminal, Tamworth B78 2HA (the "Terminal").

(19B) Persons Unknown who, or who intend to, participate in protests against the production and/or use and/or the grant of licences to extract fossil fuels, in the locality of the Terminal and who, in connection with any such protest, do, or intend to do, or instruct assist or encourage any other person to do, any of the following:

(a) enter or attempt to enter the Terminal;

(b) congregate at any entrance to the Terminal;

(c) obstruct any entrance to the Terminal;

(d) climb on to or otherwise damage or interfere with any vehicle or any object on land (including buildings, structures, caravans, trees and rocks);

(e) damage any land including (but not limited to) roads, buildings, structures or trees on that land, or any pipes or equipment serving the Terminal on or beneath that land;

(f) affix themselves to any other person or object or land (including roads, structures, buildings, caravans, trees or rocks);

(g) erect any structure;

(h) abandon any vehicle which blocks any road or impedes the passage of any other vehicle on a road or access to the Terminal;

(i) dig any holes in or tunnel under (or use or occupy existing holes in or tunnels under) land, including roads; or

(j) abseil from bridges or from any other building, structure or tree on land.

(19C) Persons Unknown who, or who intend to, organise, publicise or promote any protest against the production and/or use and/or the grant of licences to extract fossil fuels within the Terminal.

(19D) Persons Unknown who, or who intend to, organise, publicise or promote any protest against the production and/or use and/or the grant of licences to extract fossil fuels in the locality of the Terminal at which they intend or foresee or ought to

foresee that any of the acts described as part of the description of Defendant 19B will be carried out.

IN THE HIGH COURT OF JUSTICE (QBD)
Claim no.: QB-2022-001236

BIRMINGHAM DISTRICT REGISTRY

Between

(1) NORTH WARWICKSHIRE BOROUGH COUNCIL **Claimants**

and

(1)-(18) DAVID BALDWIN AND 17 OTHER NAMED DEFENDANTS
(19) PERSONS UNKNOWN

Defendants

FINAL RESPONSIVE SUBMISSION FOLLOWING HEARING, ON BEHALF OF Ms JESSICA BRANCH AND Mr JAKE HANDLING

1. The court has said that the Opponents could have the last word. This note is in response to the Claimant's note sent, after the end of the working week, at 20:15 on 6th May.

2. The simple reality is that injunctions in support of the criminal law are exceptional, and it must be that they can only enjoin criminal conduct. This goes to the court's *jurisdiction* (Zain). Since it is necessary for there to be a proper cause of action in order for the court to grant relief, it simply cannot be the case that injunctions in support of the criminal law can be granted without reference to actual crimes.

3. The second of the three conditions identified by Bingham LJ in Bovis (authorities page 520) is that there must be "certainly something *more than* mere *infringement* of the criminal law." It must, therefore, be that crimes are being committed and the injunction is addressed to those crimes.

4. Thus, contrary to the analysis in paragraphs 3- 4 of the Claimant's Note of 6th May, it is not the Objectors who need to provide authority for the proposition that an injunction in support of the criminal law can only be addressed to criminal offences. The position is that the Claimant has provided no authority of a case in

which an injunction was made under section 222 where the prohibitions did not involve criminal conduct, nor can it point to any case in which a judge has held expressly and after argument that section 222 extends more widely than conduct that is not criminal.

5. The point raised on behalf of the objectors does not appear to have been taken either in Zain, which is obiter dictum and where there is no injunction available for this court's examination, or Afsar , or in Sharif.

6. In the latter case, the prohibited conduct *was* criminal. The discrete acts prohibited in paragraph 2 of the Sharif injunction (authorities 1126) and which the Claimant seeks to reproduce at paragraph 7 of the note are all criminal conduct: even sounding one's horn unnecessarily is a criminal offence, and it is a crime to use the horn on an urban (30 mph limit road) between 11:30 p.m. and 7 a.m. unless in danger: rule 112 Highway Code.

7. In Afsar, the point was not taken (just as it was not, somewhat shamefacedly for that, taken in the instant case until after the hearing!) There was also cogent evidence about the effect of the treatment on the staff at the school, which conduct did amount to crimes, under the Protection from Harassment Act and section 5 (and even section 4) Public Order Act 1986: see paragraphs 71-73, authorities 221. Warby J expressly found that this could be harassment in his later judgment considering the undertaking in damages, at paragraph 5 (3), authorities 227.

8. It should also be borne in mind that in Afsar, there was no power of arrest.

9. Paragraph 12 of the Claimant's note is not responsive to the note filed yesterday, but paragraph 13 must be wrong. It is the Claimant that has applied for, without notice or usual proper service, orders that it says are justified. Those affected are entitled to respond to that which the Claimant has applied. It is not for the Claimant to ask the court fundamentally to change the terms of the order that it has obtained if the court considers that such injunction either cannot, or should not, be granted. It is not a "novel suggestion that injunctions that could otherwise be granted" must be refused on the basis of the terms sought. On the contrary, that is a common basis for refusal of injunctions: if the terms sought are not justified in law or offend against the principles by which coercive orders of this kind, an injunction (a discretionary remedy) should be refused.

10. In passing, the court will note that if the Claimant is right that Warby J in Afsar did grant an injunction under section 222, he nevertheless thought it appropriate for an undertaking in damages to be given: see authorities page 226. The matters at sub- paragraphs (4)- (6) of paragraph 5 (authorities p. 227) are of relevance in this case. It remains the case that although the Claimant has said that it *could* offer an undertaking in damages, the position is that it still has not. Unless and until it actual proffers, either through counsel clearly and unequivocally or by some other means, an undertaking appropriate to the losses of *all* of its self- defined defendants, then it is inappropriate for the court to maintain or re- grant any injunction.

Stephen Simblet QC

Garden Court Chambers
7/05/22

Claim No: QB-2022-001236

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

B E T W E E N

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

and

DAVID BALDWIN and 18 OTHERS

Defendants

CLAIMANT'S RESPONSE TO THE APPLICANTS' ADDITIONAL WRITTEN SUBMISSIONS

INTRODUCTION

1. This is the Claimant's response to the further written submission produced on behalf of the Applicants this morning. While it is not disputed that the Applicants are entitled to the last word on their application, that does not of course entitle them to save up points until after the Claimant has made submissions so as to deprive the Claimant of any right to respond.

2. In that vein, the Claimant notes that the Applicants' counsel's submissions on the effect of *Shafi* in closing yesterday, which were not foreshadowed in his opening submissions, must be seen in light of the Court of Appeal's treatment of that case in subsequent cases, including *Birmingham CC v James* (Authorities Bundle p.229), and *Birmingham City Council v Sharif* (Authorities Bundle p.1124).

TERMS OF s.222 INJUNCTIONS

3. The Claimant rejects the contention that a local authority can only seek relief in an injunction to support the criminal law, or to restrain a public nuisance, by way of prohibitions limited to conduct constituting one or more criminal offences.

4. The Applicants provide no authority for this proposition; the mere fact that in *B&Q* and *Bovis*, the local authorities sought and were granted relief to prohibit breach of a specific provision (of the Shops Act or of a local authority notice) does not make those cases authority for the proposition that relief could not have been sought in any other terms.

5. There are many other examples of cases in which the Court has made Orders containing prohibitions of a similar nature to those sought and imposed in the present case. Examples within the Authorities Bundle include *Zain* (Authorities Bundle p.917) and *Sharif* (p.1124)

6. In *Zain*, the defendant was accused of associating with known drug-dealers on a housing estate and having been found in possession of drugs and arrested on suspicion of dealing drugs (Judgment of Schiemann LJ, at [1]). The terms of the injunction sought, on the grounds of both public nuisance and support for the criminal law, were to prevent the defendant from entering the housing estate rather than to prohibit him from dealing drugs. Although the Court of Appeal was not, in the event, called upon to decide whether to make an injunction, given that the defendant had been sentenced to a term of youth custody, there is no hint in the judgment of Schiemann LJ (see *e.g.* at [1], [2]. [6] and [13]), with whom Keene LJ and Mance LJ agreed, that the terms of the order sought would have impermissible.

7. Likewise, in *Sharif,* street-cruising had become a widespread problem and the Court granted an injunction prohibiting the Defendants from participating in such an event whether as a driver or as a passenger. Street-cruises were defined to include the following acts, which if undertaken as part of a cruise were prohibited by the Order. Some of these constituted inherently criminal acts (such as supplying or using illegal drugs) but the majority of the prohibited conduct was not synonymous with any criminal offence:

(i) driving or riding at excessive speed, or otherwise dangerously;
(ii) driving or riding in convoy
(iii) racing against other motor-vehicles;
(iv) performing stunts in or on motor-vehicles;
(v) sounding horns or playing radios;
(vi) dropping litter;
(vii) supplying or using illegal drugs;
(viii) urinating in public;
(ix) shouting or swearing at, or abusing, threatening or otherwise intimidating another person;
(x) obstruction of any other road-user.

8. In *Afsar* (Authorities Bundle at p.199), Warby J set out the original injunction granted *ex parte* at [5], and the amendments he made when regranting it, at [75]. Although certain prohibitions were altered or deleted in the interests of clarity, his order included an exclusion zone, a prohibition on defendants approaching teachers or witnesses and the use of social media for commenting about teachers. None of those prohibition concerned conduct that was inherently criminal. The persons unknown orders in that case were made pursuant to s.222 (see Warby J at [6]).

9. If the Applicant's argument is correct, not only could no exclusion zone ever be granted, whether the basis of the application were to restrain a public nuisance or to support the criminal law (see As' Supplementary Note, para.12).

10. The reasons for prohibiting acts which are not in themselves criminal offences in an application made in support of the criminal law are that:

(i) prohibitions on the commission of criminal offences are likely to be insufficiently clear to the people at whom the prohibition is directed; it is unlikely that people will immediately be aware of the elements of the offence of aggravated trespass, or criminal damage, or even public nuisance.

(ii) the non-criminal acts prohibited are those that form constituent elements of the criminal or nuisance conduct disclosed by the evidence in the case.

11. Thus, in the present case, the Defendants have been injuncted from digging holes because evidence demonstrates that that is how they have

attempted to undermine and so damage the highway. The Defendants have been prohibited from abseiling and climbing onto structures at the Terminal because that the evidence shows that that is how that they have committed, or attempted to commit, aggravated trespass.

12. Likewise, it is entirely legitimate to prohibit the Defendants from committing acts which taken together or individually have resulted in the public nuisance alleged, as a result of which the residents of Kingsbury and beyond, and those whose business takes them to the Terminal, have been put at risk of a major incident at the Terminal and of significant harm.

13. Even if, which is rejected for the reasons set out above, there is any merit to the Applicants' argument, the Claimant submits that the obvious remedy would be to amend the terms of the Order so as to prohibit such matters as the Court considers may appropriately be included within an injunction. It is a novel suggestion that injunctions that could otherwise be granted on acceptable terms must be refused on the basis of the terms sought.

CONCLUSION

14. For the above reasons, the Claimant invites the Court to reject the Applicants' supplementary argument.

Jonathan Manning
Charlotte Crocombe
6 May 2022

4-5 Gray's Inn Square
London, WC1R 5AH

IN THE HIGH COURT OF JUSTICE (QBD)
Claim no.: QB-2022-001236

BIRMINGHAM DISTRICT REGISTRY

Between

(1) NORTH WARWICKSHIRE BOROUGH COUNCIL **Claimants**

and

(1)-(18) DAVID BALDWIN AND 17 OTHER NAMED DEFENDANTS
(19) PERSONS UNKNOWN

Defendants

SUPPLEMENTARY NOTE FOLLOWING HEARING, ON BEHALF OF Ms JESSICA BRANCH AND Mr JAKE HANDLING

1. With apologies to all concerned for the disruption, but, before judgment has been considered, an additional and, it is submitted, important point needs to be raised.

2. The point has already been made that there is not one named Defendant (either in the Particulars of Claim or the evidence) said to have committed any of the alleged torts, or as is relevant for this part of the submission, caused a public nuisance or committed a crime. It is also the case that there is no one individual said to have done those, or sufficiently likely to commit such conduct in the future for an injunction to be granted.

3. What was not addressed in submissions at the hearing yesterday is how the actual prohibitions sought in paragraph 1 (b) relate to the substantive causes of action in public nuisance and enforcement of the criminal law.

4. In relation to the latter, it must be right that an local authority can ONLY act to enforce the criminal law if the conduct sought to be enjoined is a criminal offence.

5. In B &Q, the actual criminal offence being committed was under section 59 of the Shops Act 1950, see B & Q, authorities page 1176, or 769H of the report. The substance of the injunction itself is described at 76g-H, authorities 1163. It was in terms directly related to the ambit of the substantive criminal offence.

6. In City of London v Bovis the injunction is set out on page 505. The criminal offence being prevented by injunction was contravention of a notice served by the local authority under section 60 of the Control of Pollution Act. The crime was to act in breach of the notice which had been duly served: see section 60 (8), set out at the bottom of page 511 authorities bundle. In Bovis, the notice is set out on page 507 of the authorities, and the injunction at page 505. The injunction was co- extensive with the terms of the notice. Accordingly, the injunction did no more than prevent the commission of the specific criminal offence created by breach of the notice.

7. Thus, in what is recognised in B & Q and Bovis to be a wholly exceptional situation, the injunctions granted related directly to the commission of a specific crime by that specific defendant.

8. It MUST be the case that for an injunction to be granted in support of the criminal law, that the behaviour prohibited must constitute an actual criminal offence. To hold otherwise would be to confer on the local authority a general power to go round creating crimes in its area, created only by injunctive relief from the court. It would be in breach of Article 7 ECHR, and allow some bureaucrat to invent localised, and unpublicised crimes. It would also plainly offend the rule of law.

9. It is therefore necessary to look at the terms of the injunction sought and how those relate to the substantive causes of action. The Opponents had, in theirfirst skeleton argument, made some general observations about the specifics of the prohibitions. Those observations can be supplemented by the observation that those matters are not in themselves, criminal. The Claimant has made no effort in paragraph 1 b of the injunction to state what *actual* criminal offences are being committed and, in any event, most if not all of the behaviour committed could be said to be a crime. For example, it is not a crime to enter the terminal.

10. The prohibitions sought are thus completely different from the specific criminal offences prohibited by the injunctions in the earlier cases. Accordingly, this basis of the application must fail.

11. Similarly, and additional to the general points addressed in the hearing, the actual prohibitions do not relate to conduct which is, actually, a public nuisance.

Digging a hole is not a public nuisance. The Claimants therefore face a similar problem in relation to these.

12. This is not just a problem that can be addressed by redrafting the terms. This issue goes right to the heart of the basis upon which relief is sought.

Stephen Simblet QC

Garden Court Chambers
6/05/22

IN THE HIGH COURT OF JUSTICE (QBD)
Claim no.: QB-2022-001236

BIRMINGHAM DISTRICT REGISTRY

Between

(1) NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimants

and

(1)-(18) DAVID BALDWIN AND 17 OTHER NAMED DEFENDANTS
(19) PERSONS UNKNOWN

Defendants

SKELETON ARGUMENT ON BEHALF OF MS JESSICA BRANCH and Mr JAKE HANDLING

---

1. This skeleton argument is served following receipt of the Claimant's Reply Skeleton Argument, and by way of supplement to the skeleton argument served on behalf of Ms Branch last week.

2. The court acceded to the Claimant's application to adjourn the hearing of the return date, pending further submissions.

3. Save in relation to one issue, Ms Branch and Mr Handling (who shall be referred to in this skeleton argument as "the Opponents") maintain the submissions that were made in the lengthy document served on behalf of Ms Branch last week. They will supplement those points with further submissions.

4. The court is reminded of the point made last week in oral submissions but not put in the written document, that its powers here are not as some sort of local sub-division of the Administrative Court, but dealing with private rights. The local authority litigates as a private litigant, and although (as is discussed below) there

are some aspects of the claim that it can pursue when other private litigants could not, its pursuit of those provides it with no less responsibility than other litigants have. It is acting pursuant to its litigation choices, and NOT in pursuant of any statutory power or obligation beyond that which the private citizen possesses.

5. The one submission from which the Opponents wish to resile is the contention that the local authority would need to prove special damage to bring a claim in public nuisance. On review of the authorities, and also those authorities concerning section 222 Local Government Act 1972, the Claimant appears to be right in making the submission that, at least in theory, a local authority can bring a claim in public nuisance without alleging special damage. Cases such as Nottingham City Council v Zain [2001] EWCA Civ 1248 and B &Q would seem to support that proposition.

6. Nevertheless, the fact that a local authority can, in certain circumstances, decide to bring a claim for an injunction relying on the tort of public nuisance does not mean that it has any sort of a case here, nor that injunctive relief is appropriate. There are formidable obstacles in the local authority's way, and not all of those have been properly considered.

7. Furthermore, the local authority appears to have changed position very significantly and recognised (3rd statement of Steven Maxey, paragraph 12) that the injunction that it had persuaded the court to grant wrongly prohibited lawful and reasonable protest and thus a lawful and reasonable use of the public highway and can no longer stand.

8. One point that has not so far been made by the Opponents, perhaps distracted by the way the local authority had set out its stall, comes about from the local authority not identifying proper defendants. In the cases where local authorities have used section 222 (or in earlier times, as discussed in Zain, the Attorney-General brought proceedings) there was a clearly identifiable alleged tortfeasor, and a clearly identified claim in public nuisance against *that* tortfeasor. The local authority in Zain (where the court did not in fact make the injunction) alleged that one person, Matthew Zain, was guilty of public nuisance because he was using the public highway to enter a housing estate and deal drugs. The local authority did not, at the time of the appeal, seek an injunction against Master Zain because

he had been dealt with by the criminal courts and received a significant custodial sentence, which, by its nature, removed the risk that he would deal drugs. The appeal therefore thus proceeded on the narrow point, which was whether a local authority was permitted to use section 222 to bring a claim in public nuisance. What Zain did NOT do was decide that the local authority had, either in law or on the facts, established a claim to an injunction against that defendant in public nuisance.

9. In Stoke on Trent BC v B &Q [1984] AC 754, the local authority, which, as is relevant, had a *duty* to enforce those provisions of the Shops Act 1950 preventing Sunday trading, was permitted to rely on section 222 to bring proceedings. However, four points should be observed about that decision:

(I) it was the local authority, and nobody else, that had the responsibility to enforce the provisions of the Shops Act 1950;

(II) the local authority had made several complaints and given several warnings to the particular subject of the proceedings, B & Q, and B & Q had continued to flout the law in what was found to be a deliberate and flagrant way;

(III) and this is very important in the instant case, there was an identified tortfeasor, with a fully disclosed case against that tortfeasor. The local authority was not seeking to aggregate the criminal acts of a number of one people into one case;

(IV) it was only if the court could find deliberate and flagrant flouting of the law, and also that this was an exceptional remedy, and only available if the local authority had shown that it had exhausted all other remedies: see Lord Templeman at 776 and 777.

10. It is thus an insuperable problem for any claim relying on section 222 that:

(I) the local authority does not have the responsibility to enforce the private rights of others- which the court knows are, in any event, the subject of separate injunction proceedings;

(II) there is not one individual that can be said to be continually flouting the law. This is not like the Stoke branch of B & Q showing, by its behaviour (as found to be so in the case) that it has, and will continue to break the law;

(III) there is not one act of one individual that can be proven sufficient to bring a claim in public nuisance. For an injunction to be granted to prevent a public nuisance, or for the tort to be made out, there needs to be an identifiable tortfeasor who is *continuing* to act in that way, and where the claimant can show that the conduct will continue unless restrained by injunction. The evidence in this case falls well short.

11. In fact, the Claimant does not have any case against anyone. The evidence does not disclose a viable claim in public nuisance against one individual. Rather, the Claimant has identified various things that *different* people are alleged to have done, and said that this means that there is a case in public nuisance. That is completely fallacious. Where is the evidence that any one defendant has committed and continues to commit a public nuisance? There is none. Instead, what the Claimants seek to do is to allege that unidentified people either have done or might do unidentified things that might constitute a breach of the criminal law, so that this amounts to a public nuisance. That is conceptually and evidentially insufficient.

12. The Claimants misunderstand the circumstances in which a "persons unknown" injunction can be obtained. A "persons unknown" injunction can only be obtained where the Claimant can show that there is a person who either has committed a tort and cannot be identified or might commit a tort and would be identifiable at the point that they committed it, and where it is necessary for there to be an injunction to prevent it, and also that an injunction can be drawn up that can and will be enforced against that person. It is not permissible to have an entirely chimerical or illusory tortfeasor. The Claimant cannot bring a claim against fresh air. The Claimant cannot bring a claim against the bogeyman. The Claimant must show a completed case, on evidence, against an actual or potential defendant. That it has failed to do. On this part of the submission, the Claimant is in either the same, or worse, position as the Claimants in Boyd v INEOS [2019] 4 WLR. On analysis, they could not show a case sufficient to bind persons unknown in torts of wrongful interference with business or public nuisance, and the Court of Appeal decided to discharge the injunctions. Similarly, the Court of Appeal in that case decided that a temporal and geographical limit on the injunction was necessary, and without it, an injunction should not be maintained.

13. The Claimant also faces formidable other hurdles in relation to the discretion that it seeks from the court. Some of these are hinted at in B & Q, or in the successor case (or "leading case" as it was described by the Court of Appeal in Birmingham City Council v Shafi [2009] 1 WLR 1961), City of London Corporation v Bovis [1992] 3 All ER 697. In their judgment, Sir Anthony Clarke MR and Rix LJ approved (paragraph 31) Bingham LJ's reasoning in relation to the pre-conditions for grant of an injunction to enforce the criminal law. They decided to refuse an injunction in that case, notwithstanding that there was one identified defendant, who had had a chance to contest the circumstances.

14. This leads to another objection to the Claimant's injunction application. The courts will not normally grant injunctions to local authorities if there are other means of them achieving their objectives. In Shafi, the court refused an injunction because it considered that the proper means of achieving that objective would be to apply for an ASBO.

15. In addition to ASBOs, local authorities also have other relevant powers. One of those is referred to by Mr Maxton at paragraph 25, namely powers to apply for public space protection orders. Such orders can, potentially, be of very wide scope. They have been used successfully by local authorities in tackling concerns about protest, and the legitimacy of so doing by the Court of Appeal. In Dulgheriu v London Borough of Ealing [2019] EWCA Civ 1490, a case that the Claimant might have drawn to this court's attention, the Court of Appeal confirmed that such orders can be used to regulate protest. The court (which included the Master of the Rolls) dismissed an appeal against a PSPO which had been obtained to deal with problems of demonstrators protesting outside an abortion clinic and, it appears, also seeking to deter people from obtaining medical treatment or being dissuaded from their pregnancy choices. It must be the case that there was some urgency around the situation there, not least since some of the visitors to the clinic would have been pregnant and there would come a time at which abortion was no longer appropriate.

16. It is therefore hard to see how the reasons put forward by Mr Maxton in paragraph 24, page 95 of the return bundle can be decisive. Essentially, Mr Maxton is, as no more than an officer in a small local authority, asking the Court to over- ride what Parliament has decided should be the pre- conditions before prohibitions on the

use of public spaces are imposed, or the sanctions that Parliament considers appropriate for breach. That is far from sufficient.

17. Mr Maxton also provides an incomplete assessment of how the problem might be tackled. The conduct that is addressed in paragraph 1b of the injunction includes conduct that could be in breach of the criminal law, and potentially serious offences such as aggravated trespass, criminal damage and other offences. The penalty for conviction of those offences includes a sentence of imprisonment. Furthermore, where an individual is suspected of commission of such offence, or even, if thought to be about to commit such offence, s/he can be arrested by any police officer pursuant to the powers in section 24 PACE.

18. The local authority's approach is misconceived, and also inconsistent with authority. In the earlier Skeleton Argument submitted on behalf of Ms Branch, the submission was made that this injunction offends the rule of law. In addition to the points made about its disproportionate effect and its uncertainty, it also offends the rule of law in that the opinions of Mr Maxton are elevated above the decisions taken by Parliament. In L v Chief Constable of Merseyside [2006] 1 WLR 375, the Court of Appeal (including the then Master of the Rolls, Lord Dyson), held that the police had acted unlawfully when they had used section 46 of the Children Act 1989 to remove a child from his home because they were concerned about cogent (and correct) evidence that their blind father was regularly driving them long distances in his car. Despite holding (paragraph 30) that there was nothing in the language of the Act that compelled the conclusion that the section 46 power could not be invoked when an emergency protection order was in force, he stated the "trite law" (paragraph 33) that public powers must be exercised in accordance with the purpose of the statute, and that since Parliament had (also paragraph 33), "provided a detailed and carefully structured scheme for the removal of children in such circumstances" that it was wrong for a police officer who knew that an EPO was in force to remove a child unless there were "compelling reasons" to do so. Parliament had provided a, "valuable safeguard" of court approval in EPOs and (paragraph 38), "the statutory scheme clearly accords primacy" to that procedure.

19. That rationale applies in the instant case. Obviously, there is not a PSPO yet in place, but there could be steps taken to progress it. Where the Claimant puts

forward the contention that a very exceptional course be taken, namely to grant an injunction. The fact that Parliament has provided other means by which the Claimant's objectives might be attained is highly relevant. That also accords with the rationale of the Court of Appeal's decision in Shafi.

20. It is again important to address the point that the Claimant seeks discretionary relief and in circumstances where the court is aware of the importance of the right to protest. That importance militates against pre- emptive action, save in the clearest of circumstances. In R (Laporte) v Chief Constable of Gloucestershire [2007] 2 AC 105, the House of Lords held that the police had acted unlawfully when they had intercepted coaches conveying protestors from London to a demonstration at a military base at Fairford, then required the coaches to turn around from a motorway services and take all passengers back to London. Lord Bingham gave the principal speech. He set out the common law powers relating to detention to prevent a breach of the peace (paragraph 29- 33), and the necessity test applying before detention is permitted, and set out how the ECHR rights to freedom of expression and freedom of association fit into English law (paragraphs 34- 37). He concluded (paragraphs 39, 43, 45, 56) that the Chief Constable had acted unlawfully. At paragraph 52, Lord Bingham stated that "article 10 and 11 rights are fundamental rights, to be protected as such. Any prior restraint on their exercise must be scrutinised with particular care." Or, as Lord Carswell said at paragraph 115, "prior restraint (pre- emptive action) needs the fullest justification". The police, and courts below, had gone wrong and the claimant protestor succeeded in her claim.

21. The court will note that the restrictions had been unlawful even though Lord Bingham was prepared to accept (paragraph 55) that some on the coaches "might wish to cause damage and injury", the fact was that the location of any potential disorder was known and could and should be left to the control of police officers in attendance at the scene. This meant that it had been "wholly disproportionate" to restrict the claimant's rights under Article 10/11 merely because she was in the company of others who might breach the peace: see paragraph 55.

22. Laporte represents a decision, at the highest level, supportive of the principle that protest, even disruptive protest is lawful, and the courts cannot prevent it unless there is a clear necessity to do so.

23. This analysis is also supported by the decision of Nicklin J at first instance in Canada Goose v Persons Unknown [2019] EWHC 2459 (QB), at 100- 104, especially at 103.

24. The injunction as applied for and as it stands fails to differentiate properly between lawful protest and unlawful protest. For example, the injunction as granted prevents lawful protest on the highway. It has a chilling effect and is unacceptably broad.

25. It is important at this point also to return to the "persons unknown" aspect of this. Every claimant for an injunction must be able to pursue a claim against a defendant. It is not possible to conjure up a purely hypothetical defendant, or appropriate to aggregate alleged tortious conduct by separate individuals into a campaign of unlawful conduct by one. It was the same branch of B & Q in Stoke-on- Trent that opened each Sunday in breach of the law. The local authority would not have got an injunction if, say, one hardware store opened one Sunday, another a different Sunday, a candlestick maker's another day. The court does not act against a chimera.

26. It is clear, from Ineos in the Court of Appeal and London Borough of Barking & Dagenham in the Court of Appeal that there are circumstances in which people can be given notice of, and become bound by, an injunction by doing an act. Most notably, that is moving onto land subject to an injunction (or, on logical analysis, coming into possession of the unpublished *Harry Potter* manuscript). In those circumstances, there will be a clear means of communicating the prohibited act, which (in Gammell and other trespass cases) is quite a simple prohibition: don't come here. The prohibitions in this injunction are far from straightforward to communicate and explain to those affected by them, and it is very difficult to regard publication of a notice, or putting something on the council's website, as anything that an ordinary member of the public, indeed, even a protestor, would encounter.

27. What is submitted by the local authority in its skeleton argument at paragraph 51 should be accentuate, rather than ameliorate, the court's concerns. Bringing the "existence of the claim and the existence and terms of the Injunction to the attention of those who were **likely** [my emphasis] to be affected by it" just will

not do. The Claimant ought to be satisfying the court that everyone affected has had proper notice. The local authority has provided extremely limited evidence of service, and does not seem to have done more than seek to put up signs (those potentially being in breach of normal planning laws), and with no indication of what the signs say, and posting forms more than two weeks after the injunction was obtained, and over a Bank Holiday.

28. That means that the further mischief in this case of the power of arrest is far too uncertain for the court properly to regulate. Essentially, the citizen is put at risk of arbitrary arrest. Conduct that may normally be lawful is criminalised. Also, to the extent that some conduct (e.g. some of the things in 1b) are already criminal offences, there is no additional public purpose in the injunction or its power of arrest, since people can appropriately be arrested and exposed to penalty for those offences. All that the power of arrest does here is introduce uncertainty to an area where the courts require certainty. The dictum of Balcombe LJ in Court of Appeal decision in Lawrence David v Ashton (4th July 1988) has been followed for many years:

"I have always understood it to be a cardinal rule that any injunction must be capable of being framed with sufficient precision so as to enable a person injuncted to know what he is to be prevented from doing. After all, he is a risk of being committed for contempt if he breaks an order of the court."

29. Where there is a power of arrest, the same principles must apply in relation to the matter being brought to the respondent's notice. This case is fundamentally different from the paradigm case for a power of arrest, which is that the court supports the vulnerable person to be protected from abuse by backing up the injunction it has granted against her identified and named assailant by a power of arrest. There may also be circumstances in which a local authority acting to prevent violent gangs by injunctions requires that those associated be arrested.

30. That is very very far from the situation here. The availability to the local authority of a power of arrest on an injunction that it obtained without the court hearing from anyone is not a reason for the local authority having an injunction. Indeed, this is exactly the sort of case in which a power of arrest should not be made, which is because the injunction is so wide- ranging and uncertain as to who it

binds and in what circumstances. It is also highly relevant that there are a number of discrete criminal offences for which those acting in breach of the law can be arrested.

31. Similarly, the fact that the court knows that the private rights of the actual owners of the land and operators of the terminal, Valero Energy, are protected by an injunction almost co- extensive with what the local authority has here. It is hard to reconcile this with the exceptional nature of a claim brought on the Claimant's legal basis for doing so.

32. It is also right to come back on the submissions about there being no undertaking in damages. The Claimant has sought to address this in the latest skeleton argument, having not raised it with the court at the ex parte hearing at which it obtained the injunction (a point of non- disclosure that may be relevant to whether the court should impose sanctions). The submission in paragraph 48 of the Claimant's skeleton is accepted, so far as it goes, but this somewhat begs the question. The Sinaloa Gold case concerned an application for a freezing order made by the Financial Services Authority under section 380 of the Financial Services and Markets Act 2000. It is important to note that the application was brought under the same legislation under which the FSA was established and, by section 2, given particular statutory DUTIES (now replaced by the regulatory regime introduced in the Financial Services Act 2012). Accordingly, and importantly, when the FSA made that application, it was acting pursuant to its statutory duties. Nevertheless the Supreme Court did not hold that there is no blanket and universal exception from an authority providing an undertaking in damages. Lord Mance (with whom the other members of the Supreme Court agreed) stated (at paragraph 42) that there might be legitimate concerns to a, "**regulator** [my emphasis] worried about risk and resource implications."

33. That is a completely distinct position from the position of the local authority in this case. North Warwickshire Borough Council has CHOSEN to embark upon litigation, where it is acting pursuant to its duties (and has to rely on a general *vires* provision in section 222. The very fact that the local authority is not acting pursuant to a clear duty and chooses to litigate raises fundamentally different concerns, and it is only right that a court asked to make an order affecting an indeterminate class of people should be satisfied that this local authority (unlike

Northamptonshire County Council or the London Borough of Croydon) would be able to make good any financial consequences of its action. The submission the Claimant makes at paragraph 50 (iv) is of concern. Further, there is nothing in the contention that there is no remedy for breach of unlawful *administrative* action, as here, the local authority is not acting as an administrative body, but is choosing to litigate as a private litigant with the same rights and responsibilities as anyone else. Just as it would be liable in damages if its bus- driver negligently knocked over a pedestrian, its intervention in this case is not in the nature of an administrative act.

34. Alternatively, it might be said that the very fact that the local authority treats this as an administrative exercise in which it will resist liability in damages in circumstances where another litigant would be liable is, of itself, yet another reason to allow the exceptional course considered in B & Q and Bovis to result in an injunction.

35. The Defendant respectfully asks that the court discharge the interim injunction in accordance with the submissions above.

Stephen Simblet QC

Garden Court Chambers
4 May 2022

Claim No: QB-2022-001236

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

B E T W E E N

In the matter of an application for an injunction under s.1, Localism Act 2011, s.222, Local Government Act 1972, s.130, Highways Act 1980 and section 17 of the Crime and Disorder Act 1998.

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

and

(1) DAVID BALDWIN
(2) THOMAS BARBER
(3) MICHELLE CADET-ROSE
(4) TIM HEWES
(5) JOHN HOWLETT
(6) JOHN JORDAN
(7) CARMEN LEAN
(8) ALISON LEE
(9) AMY PRITCHARD
(10) STEPHEN PRITCHARD
(11) PAUL RAITHBY
(12) HOLLY ROTHWELL
(13) ELIZABETH SMAIL
(14) JOHN SMITH
(15) BEN TAYLOR
(16) JANE THEWLIS
(17) ANTHONY WHITEHOUSE
(18) ANDREW WORSLEY
(19) 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

Defendants

SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT
For hearing 05 May 2022

INTRODUCTION

1. This skeleton argument is the Claimant's response to the skeleton argument on behalf of Jessica Branch (a non-party), dated 27 April 2022, which is also relied on by Jake Handling (together the "Applicants"). The matters raised in that skeleton will be responded to in the following order.

(i) The current position at the terminal and proposed variation
(ii) Causes of action
(iii) Definition of Persons Unknown/need for a claim form
(iv) Terms of the Injunction and attachment of power of arrest (including any chilling effect)
(v) Obligations on seeking without notice relief
(vi) Undertakings in damages
(vii) Service

THE CURRENT POSITION AT THE TERMINAL

2. Before addressing the issues referred to above, the Claimant will update the court as to events at the Terminal since the Injunction and power of arrest (the "Injunction") were granted on 14 April 2022. After a period of continuing unlawful and dangerous behaviour by protestors, there has more recently been a marked decline in kinds of unlawful behaviour that formed the basis for the claim. In particular, the events of 22-23 April 2022 involving Mr Handling and Mr Smith were the last occasion on which the boundaries of the Terminal were breached. The last time the entrances to the terminal were obstructed was on 26 April 2022. The claimant is not aware of tunnelling activity or other conduct breaching para.1(b) of the Injunction since that date.

3. Notably, since 26 April and over the recent bank holiday weekend, those protestors that have attended the Terminal have behaved in a manner that was peaceful and unlawful only in that it took place within the buffer zone provided for by para.1(a) of the Injunction. As the Court is aware, this was not the kind of protest that the Injunction ever sought to prevent. The buffer zone was sought, on 14 April, as a means of protecting against unlawful entry into the Kingsbury Oil Terminal (the "Terminal").

4. Given that the effect of the Injunction to date appears to have been to create an ambience where protest within the buffer zone is now lawful and peaceful, and given that the Claimant's intention has never been to stifle or restrict lawful protest, the Claimant proposes at the return date (assuming that nothing to change the position occurs before then) to apply to vary the Injunction so as to remove the para.1(a) prohibitions.

5. This position has arisen entirely as a result of the current circumstances described in the second witness statement of Steven Maxey, dated 3 May 2022, which the Claimant has quite properly kept under review since the Injunction was granted. The Claimant intends to continue to keep the position under review, however, and will if it considers it necessary in the future, apply to the court to reinstate such prohibitions.

6. The Claimant rejects the arguments contained in the skeleton on behalf of Ms Branch/Mr Smith with which the remainder of this skeleton argument now deals.

CAUSES OF ACTION

Section 222 Local Government Act 1972

7. The Applicants contend that s.222, Local Government Act 1972 (the "1972 Act") does not constitute a cause of action in and of itself. They refer to the judgment of Sir Anthony Clarke and Rix LJ in *Birmingham City Council v Shafi* [2009] 1 WLR 1961 at [23]-[24], in which the procedural nature of the provision was discussed.

8. While it is not controversial that s.222 does not provide a cause of action, it does afford local authorities a right to seek relief to protect public

rights which previously required the consent of central government (*i.e.* by way of a relator action brought in the Attorney-General's name and with his/her consent see *Solihull MBC v Maxfern* [1977] 1 WLR 127 (ChD)).

9. In a relator action, it was not necessary for the Attorney-General to prove special damage (see *Hampshire CC v Shonleigh Nominees Ltd* [1971] 1 WLR 865 at 872D) and nor is this necessary in a claim under s.222. In *B&Q*, Lord Templeman said, at p.774G:

> "In proceedings instituted to promote or protect the interests of inhabitants generally, special damages are irrelevant and were therefore not mentioned in section 222."

10. Since the enactment of s.222, therefore, the position of the Attorney-General and the local authority have been synonymous.

11. The conferment of power in a local authority to vindicate public rights is the clear effect of allowing claims to be brought in the name of the authority itself without reference to the Attorney-General. It puts authorities on a different basis from private litigants. Thus, injunctions:

> (i) may be sought in support of the criminal law, where criminal penalties are, or are likely to be inadequate (such as in the Shops Act cases *e.g. Stoke on Trent CC v B&Q Retail* [1984] A.C. 754 and *City of London v Bovis Construction Limited* [1992] 3 All ER 697);
>
> (ii) may be sought to restrain nuisances without proof of special damage (*B&Q* at p.773; *Nottingham City Council v Zain* [2001] EWCA Civ 1248, at [9]) and without giving an undertaking in damages (*Kirklees BC v Wickes Building Supplies*; *Afsar*);
>
> (iii) are supported by ancillary statutory provisions such as the power to seek a power of arrest (s.27, Police and Justice Act 2006).

Public nuisance

12. The two bases for seeking injunctions outlined above, have on numerous occasions been accepted by the Courts as valid uses of s.222 powers. So far as public nuisance is concerned, the authoritative definition of Romer L.J. in *Att-Gen v PYA Quarries Ltd* [1957] Q.B. 169 at 184 does not require such nuisance to be committed on private property:

> "It is…clear, in my opinion, that *any* nuisance is 'public' which materially affects the reasonable comfort and convenience of life of a

class of Her Majesty's subjects. The sphere of the nuisance may be described generally as 'the neighbourhood'; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected for an injunction to issue." (Emphasis added.)

13. It is no part of that definition that the activities said to constitute the nuisance must take place on public land. *Tongue* is not authority for any such proposition, nor for the proposition that an injunction cannot protect private land at the instance of the local authority.

14. In *Zain*, Schiemann LJ adopted the above definition and upheld the power of the authority to seek an injunction to restrain such a nuisance. He said, at [9]:

> "Not everyone however is entitled to sue in respect of a public nuisance. Private individuals can only do so if they have been caused special damage. Traditionally the action has been brought by the Attorney-General, either of his own motion, or, as was the situation in the *PYA* case, on the relation of someone else such as a local authority. In *Solihull MBC v Maxfern Ltd* [1977] 127, Oliver J. considered the history of the legislative predecessors of section 222 and concluded that the effect of section 222 is to enable a local authority, if it thinks it expedient for the promotion or protection of the interests of the inhabitants of their area, to do that which previously it could not do, namely to sue in its own name without invoking the assistance of the Attorney-General, to prevent a public nuisance… …I respectfully agree with Oliver J.'s conclusion…".

Injunctions in support of the criminal law

15. An injunction in support of the criminal law is, likewise, an available remedy under s.222. In *Bovis*, the Court of Appeal enunciated, at p.269, the guiding principles in such to injunctions, as follows.

> (1) that the jurisdiction is to be invoked and exercised exceptionally and with great caution;

(2) that there must certainly be something more than mere infringement of the criminal law before the assistance of civil proceedings can be invoked and accorded for the protection or promotion of the interests of the inhabitants of the area;
(3) that the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will be effective to restrain them.

16. It is of note that *Shafi* was not decided on the basis of the nature of s.222. The Court of Appeal did not doubt the authority's power to seek an injunction nor the court's jurisdiction to grant one. The sole basis for its decision (as to which it has been repeatedly distinguished and confined to its own facts) related to the nature of an alternative statutory remedy which the court considered should, as a matter of discretion and save in exceptional cases, require Claimants to use instead of applying under s.222. As noted in *Sharif v Birmingham CC* [2020] EWCA Civ 1488, at [37], this was acknowledged to be a departure from what they accepted to be the general principles laid down in *B&Q* and *Bovis*.

17. In the present case:
(i) the injunction was sought on the bases of both public nuisance and to support the criminal law (see Particulars of Claim, paras 29 and 31);
(ii) there was evidence that the police had been unable to contain the unlawful conduct of protestors by the use of the criminal law;
(iii) there was also evidence that the conduct of the protestors amounted to a public nuisance as defined in *PYA*.

18. Moreover, there was ample material on which the Court could properly conclude that interim relief was appropriate and proportionate. Protestors including the Defendants had conducted a sustained campaign of criminal and tortious behaviour within the vicinity of the Terminal since 31 March/1 April 2022. The behaviour included breaking into the Terminal, climbing onto storage tanks containing unleaded petrol, diesel, and fuel additives, locking onto storage tanks containing the same, interfering with oil tankers, and

attempting to tunnel under roads. A significant police operation was deployed to the Terminal, and over 180 arrests were made. However, the continuous nature of the protest, and the limits of the criminal law for offences such as aggravated trespass and obstruction of the highway meant that the criminal law was ineffective; the Defendants would simply return back to the site once they were released under investigation and the financial penalties for such offences were not a deterrent.

Section 130(2) and (5) Highways Act

19. These statutory provisions likewise entitled the authority to take steps to protect the public's rights in relation to highways in its area. As the Court of Appeal held in *Zain*, at [16]:

> "I do not consider that s.130(5) in any way diminishes the power which had been conferred by section 222 of the Local Government Act… It does not purport to have that effect. Indeed the opening words of section 130 point in the opposite direction. Furthermore the preconditions which must be fulfilled in relation to the use of the section 222 power that the authority deem that use to be expedient for the promotion or protection of the interests of the inhabitants of their area do not need to be fulfilled in relation to the use of the powers conferred by section 130. These are imperfectly overlapping sections and it is not permissible to read down s.222 by reference to s.130(5) of the later Act."

THE DESCRIPTION OF PERSONS UNKNOWN

20. The Applicants argue that the 19th Defendant, Persons Unknown, must be defined by reference to their conduct which is alleged to be unlawful. They rely on *Canada Goose v Persons Unknown* [2020] EWCA Civ 303 at [82], contending that that passage withstands the later decision of the Court of Appeal in *Barking and Dagenham LB & others v Persons Unknown* [2022] EWCA Civ 13, in which the Court held that *Canada Goose* had been wrongly decided in numerous respects as to the ability to seek injunctive relief against persons unknown.

21. This analysis is not accepted. The fact that the Court of Appeal, in *Barking*, did not specifically identify para.[82] in *Canada Goose* as erroneous does not mean that that passage escapes the overall rulings or logic of the *Barking* decision.

22. In particular, the Court of Appeal did not require persons unknown to be defined by reference to wrongful acts already undertaken. For example, it held that:

> (i) the Courts should not "seek to close the categories of case in which a final injunction against all the world might be shown to be appropriate" (at [71]);
>
> (ii) "[s]ection 37 [Senior Courts Act 1981] is a broad provision providing expressly that 'the High Court may by order (whether interlocutory or final) grant an injunction … in all cases in which it appears to the court to be just and convenient to do so'. The courts should not cut down the breadth of that provision by imposing limitations which may tie a future court's hands in types of case that cannot now be predicted" (at [72]);
>
> (iii) "ss.37 and 187B impose the same procedural limitations on applications for injunctions of this kind. In either case, the applicant must describe any persons unknown in the claim form by reference to photographs, things belonging to them or any other evidence, and that description must be sufficiently clear to enable persons unknown to be served with the proceedings, whilst acknowledging that the court retains the power in appropriate cases to dispense with service or to permit service by an alternative method or at an alternative place" (at [117]);
>
> (iv) "…it is extremely undesirable for the court to lay down limitations on the scope of as broad and important a statutory provision as section 37. … Persons unknown injunctions have been granted in cases of unauthorised encampment and may be appropriate in some protester cases as is demonstrated by the authorities I have already referred to. I would not want to lay down any further limitations. …" (at [120]); and
>
> (v) "the courts cannot and should not limit in advance the types of injunctions that may in future cases be held appropriate to make under section 37 of the Senior Courts Act 1981 against the whole world" (at [121]).

23. Indeed, it is submitted that the approach suggested by the Court in *Canada Goose* was predicated on the view of the Court that injunctions would only be available against persons unknown if by the time of the grant of the

injunction, those persons had committed unlawful acts. That approach is not sustainable after *Barking*.

24. In the present case, the Claimant considered that the need to satisfy the requirements of para.[120] of the *Barking* judgment, *i.e.* those of comprehensibility, coupled with the fact that newcomers to the protests who would be subject to the injunction would not yet have committed any acts, lawful or unlawful, and may therefore be misled by a description referring only to unlawful acts (especially in relation to activities in the buffer zone). The Claimant therefore submits that the description used was lawful and appropriate.

Claim Form

25. These proceedings are Part 8 claims. Particulars of Claim are therefore not required, but were drafted in the present case because the Claimant considered that there needed to be a comprehensive statement of its case in order to aid understanding by those who may be affected by the claim.

26. Under Part 8, an injunction claim brought under a statutory provision can be (and frequently is) issued using Form N16A without a separate claim form. This is what the Claimant sought to do but it is accepted that, looking at the claim again, in fact an N244 was used. Nonetheless, the Court accepted and issued the claim and the proceedings are on foot. The error in using the wrong form was unintentional and has caused no prejudice. By CPR rule 3.10:

> "Where there has been an error of procedure such as a failure to comply with a rule or practice direction –
>
> (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
>
> (b) the court may make an order to remedy the error."

27. The Claimant is willing to file and serve a claim form in form N208, and/or an application form in form N16A should the court so require. In the circumstances, it is submitted that it would be unjust and disproportionate for the Court to invalidate any step taken in the proceedings simply for the ue of the wrong form.

THE TERMS OF THE INJUNCTION AND POWER OF ARREST

28. It is neither novel, nor controversial, for a court to grant an injunction restraining entirely lawful conduct if it is necessary to ensure justice in the particular case (see *Hubbard v Pitt* [1976] 1 QB 142 at 190, see the Claimant's first skeleton at para.11 where *Cuadrilla Bowland v Persons Unknown* [2020] EWCA Civ 9, *per* Leggatt LJ at [50] is cited).

29. From 06 April 2022 until 26 April 2022 (after the grant of the injunction), the conduct of the Defendants at the Terminal regularly involved gaining access to the Terminal, locking on to vehicles and storage tanks, climbing on pipework containing thousands of litres of flammable liquid and gases, using mobile phones in dangerous and potentially explosive environments, attempting to undermine the highway and other like activities.

30. The Claimant therefore sought to restrain the Defendants from protesting within 5 meters of the Terminal for reasons akin to those referred to in *Burris v Azadani* [1995] 1 WLR 1372, namely that it was clear that if the Defendants were to approach the vicinity of the Terminal, they would succumb to the temptation to enter it and the risks associated with protestors within the Terminal were such that there was no other proportionate means of protecting the Claimant's rights. Sir Thomas Bingham MR said, at 1377F-G

> "It would not seem to me to be a valid objection to the making of an "exclusion zone" order that the conduct to be restrained is not in itself tortious or otherwise unlawful if such an order is reasonably regarded as necessary for protection of a plaintiff's legitimate interest …".

31. He added, at 1380H-1381B:

> "Ordinarily, the victim will be adequately protected by an injunction which restrains the tort which has been or is likely to be committed, whether trespass to the person or to land, interference with goods, harassment, intimidation or as the case may be. But it may be clear on the facts that if the defendant approaches the vicinity of the plaintiff's home he will succumb to the temptation to enter it, or to abuse or harass the plaintiff; or that he may loiter outside the house, watching and besetting it, in a manner which might be highly stressful and disturbing to a plaintiff. In such a situation the court may properly judge that in the plaintiff's interest — and also, but indirectly, the defendant's — a wider measure of restraint is called for."

32. In this regard, *Hubbard* and *Burris* were expressly approved by the Court of Appeal in *Canada Goose* at [78].

33. The attachment of a power of arrest was the subject of considerable judicial scrutiny at the hearing on 14 April 2022. The learned Judge concluded, and was entitled to do so, that the risk of harm from protestors entering the Terminal and undermining the highway amounted to a significant risk of harm for the purposes of s.27, Police and Justice Act 2006, and justified the attachment of a power of arrest.

Chilling effect

34. It is submitted that there is nothing vague about the terms of the Injunction and no reason why there should be any inappropriate chilling effect. The terms were carefully worded so as to prohibit certain types of conduct (not including peaceful protest) and include a small buffer zone for *Burris* reasons. There was nothing disproportionate about the making or the terms of the Injunction.

35. Indeed, the fact that protestors have come to protest peacefully, and that this has led the Claimant to propose a variation to the Injunction so as to permit such protests by the removal of the buffer zone, demonstrates that the Claimant is receptive to the rights of the Defendants so long as they act lawfully.

OBLIGATIONS IN WITHOUT NOTICE HEARINGS

36. It is not accepted that the Claimant has breached any of the requirements for claimants seeking without notice interim relief, as alleged by the Applicants.

Supply of documents to Ms Branch

37. In the letter of 22 April 2022 from Ms Branch's solicitors, it was made quite clear that she neither was a member of the class described as the 19th Defendant, nor did she have any intention of protesting at the Terminal. She objected to being made a defendant but simply sought to understand the basis on which the Injunction was made.

38. As such, the Claimant took the view that Ms Branch was a non-party and was not a person affected by the Injunction in the sense referred to in its para.5. She gave no indication at all that she wished to make any representations. Moreover, a person making representations would normally be expected to become a party (See White Book Vol 1, para.40.9.1).

39. It was only in their second letter dated 26 April 2022, that the solicitors suggested that Ms Branch may wish to make representations, following which the relevant documents sought were provided within 24 hours.

Note of hearing

40. It is not disputed that Claimants seeking ex-parte relief must provide a detailed note of the hearing to all *parties* affected by the grant of relief. The rule, as explained in *Interoute Telecommunications (UK) Ltd. v Fashion Gossip Ltd. & Ors* (1999) WL 982430 is that this note should be prepared "*as soon as practicable after the hearing is over"*.

41. In the present case:

(i) The Claimant produced the Note of Hearing, from detailed notes taken during the hearing, as quickly as was practicable (given, in particular, the level of enforcement activity that was necessary up to 27 April 2022) and, in any event, prior to the return date.

(ii) Until 26 April, no Defendant had contacted the Claimant indicating that they proposed to make any representations at the return date.

(iii) The Claimant was not provided by the police with the contact details of the named Defendants until 26 April 2022.

(iv) In the *Interoute* sense of the words, Ms Branch was neither a party nor was she affected by the grant of relief.

Putting the defendant's likely arguments

42. It is not accepted that the Claimant failed to acquaint the Court with the counter-arguments to those it was putting forward. The requirement to do so does not mean that Claimants are obliged to raise everything that any defendant could conceivably want to say. Nor is there any obligation to include a section in the skeleton argument entitled "What the Defendants might say" so long as the substance of the defence case is put before the Court.

43. It is submitted that the substance of the case against the grant of an injunction was put, as evidenced in the skeleton argument and Note of Hearing. It is submitted that the essential elements that needed to be referred to concerned the particular importance that the court needed to give to the right to protest, the need to protest at the location relevant to the protest itself, the fact that even violent behaviour might be argued to be a form of expression, the specific requirements of s.12, Human Rights Act 1998 (including the question of urgency (*Birmingham CC v Afsar* [2019] EWHC 1560 (QB)) as a reason for without notice relief) and, in these circumstances, the case of *DPP v Ziegler* [2021] 3 WLR 179 (SC) and related authorities.

Discharge of/remaking of injunction

44. It is submitted that none of the reasons put forward by the Applicants would justify the discharge of the Injunction.

45. Even if the Court disagrees with that argument, however, and concludes that the Claimant has failed properly to discharge its obligations, the Court has an inherent jurisdiction to remake any injunction that it discharges. The test for doing so is contained in *Thames Cleaning and Support Services Ltd v United Voices of the World* [2016] EWHC 1310 (QB) *per* Warby J (as he then was) at [46]:

> "First, has the claimant demonstrated that it would probably succeed at a trial in showing a risk, justifying an injunction, that unless restrained the defendant will cause protest or demonstration which is unlawful, and actionable at the suit of the claimant? Secondly, if so, can an injunction be framed which serves to restrain the encouragement of unlawful conduct, without straying into improper restraint of lawful protest?"

46. The Claimant submits that the answer to both questions is "yes". The evidence is such that the Claimant is likely to succeed in trial in showing a risk justifying an injunction. It is clear that the actions of the protestors which led the court to grant the Injunction in the first place, could have a catastrophic impact on the persons living and working in North Warwickshire should the worst happen and an disaster occur causing potentially huge damage across a wide area, including injury or even death and wide-scale pollution to the environment.

UNDERTAKING IN DAMAGES

47. It was submitted on behalf of the Applicants, in oral argument at the hearing on 28 April 2022, that the Claimant ought to have offered (and the Court ought to have required) an undertaking in damages at the without notice hearing.

48. The general rule is that undertakings in damages are not usually required where a case is brought by a local authority acting in the public interest to enforce the law: see *FSA v Sinaloa Gold plc & others* [2013] UKSC 11 at [20]-[41]. In particular, as Lord Mance observed, at [31], this is because:

> "[d]ifferent considerations arise in relation to law enforcement action, where a public authority is seeking to enforce the law in the interests of the public generally, often in pursuance of a public duty to do so, and enjoys only the resources which have been assigned to it for its functions. Other than in cases of misfeasance in public office, which require malice, and cases of breach of the Convention rights within section 6(1) of the Human Rights Act 1998, it remains the case that English law does not confer a general remedy for loss suffered by administrative law action. That is so, even though it involves breach of a public law duty. In the present context, the fact that an injunction is discharged, or that the court concludes after hearing extended argument that it ought not in the first place to have been granted, by no means signifies that there was any breach of duty on the public authority's part in seeking it."

49. In *Afsar*, at [3], Warby J stated that an undertaking may be required of central or local government bodies, or other public bodies. But this should not be done as a matter of course. The propriety of requiring such an undertaking should be considered in the light of the particular circumstances of the case, and what the Court considers fair in those circumstances. The Judge referred specifically to *Sinaloa* at [31], and the factor of general importance that in general – with few exceptions – English law does not confer a remedy for loss caused by administrative law action, the exceptions being misfeasance in public office breach of the Convention rights, within s 6(1) of the HRA. Other considerations included whether the authority is acting pursuant to a statutory duty in seeking relief; the fact that the authority is only accorded limited resources to fulfil its functions; whether some other person or body would be

able to, and would, act if the authority did not; and the undesirability of dissuading or deterring a public authority from acting in the public interest.

50. In the present case, even though breaches of Convention rights can sound in damages, the Claimant submits that no undertaking in damages should be required by the court, for the following main reasons:

(i) its duty to protect the rights and interests of its inhabitants, and its functions concerned with reducing disorder and crime (s.17, Crime and Disorder Act 1998) are at the centre of its reason for bringing of this claim;

(ii) it is acting in the interests of the public at large, namely all those persons working and living within its borough who are put at risk by the Defendants' activities;

(iii) while some individuals concerned could bring – and indeed have brought – their own private law action, *e.g. Valero* and *Shell*, this does not include all those inhabitants of the borough likely to be put at risk by the actions of the Defendants. They cannot seek an injunction in support of the criminal law or indeed on the grounds of public nuisance (without proof of special damage) so as to protect the borough (as distinct from their own individual land);

(iv) the Claimant only has the resources that it is allocated by central government (together with those raised by council tax) for the undertaking of all its functions;

(v) were the police wrongfully to arrest an individual protestor, causing loss or damage, that would not be a situation in which any undertaking would bite as such damage would not have been caused by the wrongful grant of the Injunction, nor would it have anything to do with the question of whether the Injunction should or should not have been granted. It would be an entirely independent and intervening act by a third party, *i.e.* the police, that could be and would have to be pursued against them.

SERVICE

51. The means of service approved by the Court in this case were suggested in order to bring the existence of the claim and the existence and terms of the Injunction to the attention of those who were likely to be affected by it. That means the people at the Terminal seeking to participate in or organise or

encourage others to participate in the protests. The signs notified those present as to the location of the court documents and the existence of the Injunction. Moreover, police informed all protestors of the Injunction and even read its terms, allowing time for those protestors in breach to remove themselves or cease their activities constituting breach, before making any arrests.

52. There is no basis for asserting that the information did not come to the attention of those likely to be affected. The third statement of Steven Maxey gives further details as to the reasons why service in the particular alternative form approved was requested. Moreover, the police evidence in the committal proceedings is that those affected were well aware of the injunction and were deliberately in breach.

53. Moreover, letters have now been sent to each of the named Defendants. The Claimant is willing to consider additional methods of alternative service should the Court consider it appropriate to do so.

CONCLUSION

54. For all of the above reasons, the Claimant respectfully requests the Court to vary the Injunction (and power of arrest) in the form proposed by the Claimant and to continue it until the hearing of the claim.

Jonathan Manning
Charlotte Crocombe
3 May 2022

4-5 Gray's Inn Square
London, WC1R 5AH.

IN THE HIGH COURT OF JUSTICE (QBD)
Claim no.: QB-2022-001236

BIRMINGHAM DISTRICT REGISTRY

Between

(1) NORTH WARWICKSHIRE BOROUGH COUNCIL **Claimants**

and

(1)-(18) DAVID BALDWIN AND 17 OTHER NAMED DEFENDANTS
(19) PERSONS UNKNOWN

Defendants

SKELETON ARGUMENT ON BEHALF OF MS JESSICA BRANCH

INTRODUCTION

1. This skeleton argument is being prepared under great pressure of time, and without some of the materials that the Claimant ought, if seeking wide- ranging relief against an indeterminate class of persons, have provided. At the time of filing this skeleton argument, the afternoon before the return date, the Claimants have, presumably deliberately, refused to supply information that is required when any ex parte order is made. That makes addressing some of the arguments harder, and will be the basis for a submission that this, of itself, ought to disentitle the Claimants from having an injunction of this type.

2. The fundamental problem here is that the injunction granted is so uncertain in its scope as to offend the rule of law. One particularly pernicious aspect of it is the power of arrest, which removes the court's role in holding and deciding on committal proceedings for breach before liberty is taken away. The power of arrest can be exercised if a police officer reasonably suspects a breach. While there may be circumstances in which named defendants who have been properly

served with proceedings and had their opportunity to contest the making of an injunction can see a court supporting its injunction with a power of arrest, that is far from the case here.

3. None of the people named on the proceedings have been served at all. Furthermore, and dangerously, the injunction extends to persons unknown who have not been served, such people can be arrested and detained for doing entirely lawful acts when they had no prior notice of the prohibition on acting in such a way. This negates the rule of law, and is consistent with the actions of a police state rather than a liberal democracy in which the right to protest is enshrined by statute.

4. The court will be supplied by a statement on behalf of Ms Branch made by Ms Alice Hardy, her solicitor. That will set out some of the factual material on the Claimant's refusal to supply necessary information to the very many people affected by the injunction.

5. Ms Branch is not a named defendant. She is someone (as is, potentially anyone) who might be affected by the order and wishes to make representations about it. She is a supporter of Extinction Rebellion, but has not protested at any of the sites in North Warwickshire. She would like protests against oil companies to be effective, and does not want lawful protest to be quelled by unfair and oppressive injunctive relief. She does not apply to become a defendant, and nor should she need to do that in order for these submissions and this application to be considered.

6. This skeleton argument sets out objections to the Interim Injunction sought by the Claimants in the application dated 13.04.22 and granted at a without notice hearing on 14.04.22.

7. Ms Branch's position is that this injunction should not have been granted, and having been granted, can no longer remain in place. This is in part due to the failures of the Claimants to comply with what the law requires of them when obtaining discretionary orders from the court on a without notice basis. In summary, Ms Branch makes submissions on the following matters:

   i) Failure to comply with obligations on Claimants seeking *ex parte* relief

   ii) There is no cause of action on which the injunction may be granted

iii) There is no basis on which the Claimant is entitled to a power of arrest, specifically the injunction was not made for the benefit of a person suffering nuisance or annoyance

iv) The definition of 'Persons Unknown' is overly broad and does not comply with *Canada Goose* requirements;

v) The service provisions are inadequate;

vi) The terms impose blanket prohibitions on demonstrations on the public highway within the exclusion zone constituting a disproportionate interference with the Articles 10 and 11 ECHR (*Ziegler v DPP* [2021] UKSC 23); and

vii) The chilling effect of the order.

CHRONOLOGY

8. The following chronology has been extracted from the papers to assist the Court:

13.04.22	Claimant applies for injunction with power of arrest on an urgent *ex parte* basis.
14.04.22	Hearing before Mr Justice Sweeny via MS Teams. Interim injunction made.
28.04.22	Return date.

GENERAL LEGAL FRAMEWORK:

9. The general legal framework in relation to both injunctions and Articles 10 and 11 ECHR is set out below.

Injunctions

10. At paragraph 82 of *Canada Goose Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303, [2020] 1 WLR 2802, building on *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471 and *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, the Court of Appeal laid down a series of "procedural guidelines applicable for proceedings for interim relief

against "persons unknown" in protestor cases like the present case". These were as follows (emphasis added):

> (1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".
>
> (2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.
>
> (3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.
>
> (4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as "persons unknown", must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.
>
> (5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.
>
> (6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.
>
> (7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application.

11. None of the above was disapproved of in *London Borough of Barking and Dagenham v Persons Unknown* [2022] EWCA Civ 13.

Articles 10 and 11 ECHR

12. Articles 10 and 11 of the European Convention on Human Rights state:

> Article 10 – Freedom of expression
>
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
>
> Article 11 – Freedom of assembly and association
>
> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

13. Articles 10 and 11 together protect the right to protest.

14. The Supreme Court recently considered the application of Articles 10 and 11 ECHR in relation to obstructive protests on the highway in the case of DPP v *Ziegler* [2021] UKSC 23. Of particular note are the Supreme Court's findings that:

    i) "intentional action by protesters to disrupt by obstructing others enjoys the guarantees of articles 10 and 11" [70];

    ii) no restrictions may be placed on the enjoyment of Articles 10 and 11 rights "except "such as are prescribed by law and are necessary in a democratic society"" [57];

iii) "[a]rrest, prosecution, conviction, and sentence are all "restrictions" within both articles" (ibid.) and there is "a separate evaluation of proportionality in respect of each restriction" (para 67);

iv) each of those restrictions will only be "necessary in a democratic society" if it is proportionate ([57]);

v) the "determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case" [59];

vi) "deliberate obstructive conduct which has a more than de minimis impact on others still requires careful evaluation in determining proportionality" [67];

vii) "both disruption and whether it is intentional are relevant factors in relation to an evaluation of proportionality" [70];

viii) however, "there should be a certain degree of tolerance to disruption to ordinary life, including disruption of traffic, caused by the exercise of the right to freedom of expression or freedom of peaceful assembly" [68];

15. The Supreme Court in *Ziegler* set out *"various factors applicable to the evaluation of proportionality"* at [72-78]. However, the Court underscored that *"it is important to recognise that not all of them will be relevant to every conceivable situation"* and that, moreover, *"the examination of the factors must be open textured without being given any pre-ordained weight"* [71].

16. The non-exhaustive list of factors *"normally to be taken into account in an evaluation of proportionality"* [72], include:

i) the extent to which the continuation of the protest would breach domestic law [72] and [77];

ii) the importance of the precise location to the protesters [72], it being recognised that *"the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of article 11"* (*Sáska v Hungary* (Application No 58050/08) at [21], as cited in *Ziegler* at [76];

iii) the duration of the protest [72];

iv) the degree to which the protesters occupy the land [72];

v) the *"extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public"* (*ibid.*);

vi) whether the views giving rise to the protest relate to *"very important issues"* and whether they are *"views which many would see as being of considerable breadth, depth and relevance"* (*ibid.*);

vii) whether the protesters *"believed in the views they were expressing"* (*ibid.*);

viii) the availability of alternative routes to that obstructed [74];

ix) whether the obstruction was targeted at the object of the protest [75];

17. The present claim clearly engages the Article 10 and 11 rights of any person planning a protest that is subject to the injunction even if such a protest is deliberately disruptive to traffic to some degree.

FAILURE TO COMPLY WITH OBLIGATIONS ON THOSE SEEKING EX PARTE RELIEF

18. It is well established that anyone who seeks a "without notice" is under particular responsibilities. Those include supplying a detailed note of judgment and a skeleton argument to anyone affected, including non- parties. There is clear authority for that: see *Interoute Telecommunications v Fashion Gossip Ltd* (1999) WL 982430 and *Thane v Tomlinson*, in which Court of Appeal said Neuberger J had been wrong not to discharge the injunction granted.

19. In this case, Ms Branch's representatives have asked to see the materials. The Claimant refused to supply the information, as Ms Hardy's statement explains. Accordingly, the Claimant has refused to do what the rules, and simple justice, require of it. That is a reason for discharging the injunction even if it might otherwise have been supportable.

20. In *CEF Holdings v Mundey* [2012] EWHC 1524, Silber J set out a useful and comprehensive discussion of what he called "The Full and Frank Disclosure Issue" at paragraphs 174 of his judgment and following. The case is cited here

not because it is the most authoritative case on the point, but because it reviews and analyses much of the learning on this subject. Silber J said:

> "175. One of the most basic principles of English law is the golden rule that when a party makes an application for injunctive relief on a without notice basis, it has a duty to investigate facts and legal issues fairly so as to present the evidence and submissions to the court in the knowledge that the judge does not have the benefit of submissions on factual and legal issues from the party sought to be restrained.
>
> 176. This obligation has been explained on many occasions, and it extends to both factual and legal issues, because as Bingham L.J. (as he then was) said in **Siporex Trade S.A v Comdel Commodities Ltd** [1986] 2 Lloyd's Rep 428,437 an applicant for such relief must:**-**
>
> > *"identify the crucial points for and against the application, and not rely on general statements, and the mere exhibiting of numerous documents … He must disclose all facts which reasonably could or would be taken into account by the judge in deciding whether to grant the application. It is no excuse for an applicant to say that he was not aware of the importance of matters he has omitted to state. If the duty of full and fair disclosure is not observed the court may discharge the injunction even if after full inquiry the view is taken that the order made was just and convenient and would probably have been made even if there had been full disclosure."*
>
> 177. Mummery LJ also summarised the position in **Memory Corporation Plc v Sidhu (No 2)** [2000] 1 WLR 1443 at 1459 H to 1460 B:-
>
> > *"It cannot be emphasised too strongly that at an urgent without notice hearing for a freezing order, as well as for a search order or any other form of interim injunction, there is a high duty to make full, fair and accurate disclosure of material information to the court and to draw the court's attention to significant factual, legal and procedural aspects of the case. It is the particular duty of the advocate to see that the correct legal procedures and forms are used; that a written skeleton argument and a properly drafted order are prepared by him personally and lodged with the court before the oral hearing; and that at the hearing the court's attention is drawn by him to unusual features of the evidence adduced, to the applicable law and to the formalities and procedure to be observed."*

21. Hughes LJ said in relation to the comparable duty of a prosecutor on a without notice application in the case of **In Re Stanford International Ltd** [2010] 3 WLR 941 "*191… In effect a prosecutor seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the defendant or a third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is precisely what he must tell*". That is precisely what

those acting for CEF should have done certainly in relation to what Bingham LJ described as *"the crucial points*".

22. The Particulars of Claim and bundle represent the Claimant's best case for the injunction. They do not explain to anyone what arguments there were for, OR AGAINST, the grant of the injunction. The Claimant's skeleton argument was a vital document, as is the note of judgment. The refusal to supply these is egregious and merits the sanction of the ex parte injunction being discharged.

23. The reason for this is that the court, and just as importantly, the parties, cannot be confident that the Claimant has complied with the obligation imposed on it to place material before the judge that militates against, as well as in favour, of the grant of the injunction. In *R (Golfrate Property Management) v Crown Court at Southwark*, the dictum of Hughes LJ in *Re Stanford International Ltd* [2011] Ch 33, a case concerning a restraint order, was set out, and approved, by Lord Thomas LCJ, at paragraph 24, and in these terms:

> "It is not limited to an obligation not to misrepresent. It consists in a duty to consider what any other interested person would, if present, wish to adduce by way of fact, or to say in answer to the application, and to place that material before the judge. ….
>
> The fact that the initial application is likely to be forced into a busy list, with very limited time for the judge to deal with it, is a yet further reason for the obligation of disclosure to be taken very seriously. In effect a prosecutor seeking an *ex parte* order must put on his defence hat and ask himself what, if he were representing the defendant or a third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge. This application is a clear example of the duty either being ignored, or at least simply not being understood."

24. This is a suitably onerous obligation:

> '…there is a very heavy duty placed on the [applicant] to ensure that what is placed before the judge is clear and comprehensive so that the judge can rely on it and form his judgment on the basis of a presentation in which he has complete trust and confidence as to its accuracy and completeness': R (Rawlinson and Hunter Trustees) v Central Criminal Court, [2013] 1 WLR 1634, per judgment of President of QBD, at paragraph 88

25. That failure to comply with the obligation is, of itself, a reason to discharge the injunction, is supported by authority: see *OJSC Ank Yugraneft* [2008] EWHC 2614 (Ch), where Christopher Clarke J said, at paragraph 104:

> "The obligation of full disclosure, an obligation owed to the Court itself, exists in order to secure the integrity of the Court's process and to protect the interests of those potentially affected by whatever order the Court is invited to make. The Court's ability to set its order aside, and to refuse to renew it, is the sanction by which that obligation is enforced and others are deterred from breaking it. Such is the importance of the duty that, in the event of any substantial breach, the Court strongly inclines towards setting its order aside and not renewing it, so as to deprive the defaulting party of any advantage that the order may have given him. This is particularly so in the case of freezing and seizure orders."

26. What has not been provided to Ms Branch and her solicitors does not allow them to see what the court was told. The request for this information was clear. The refusal to provide it was deliberate and contumacious.

27. This refusal does not arise out of the ignorance of the claimants' legal representatives. They have experienced and expert counsel, who is well aware of the responsibilities placed on those who seek ex parte orders, and ex parte orders without notice: see the decision of Warby J in *Birmingham City Council v Afsar and others* [2019] EWHC 1560.

28. A refusal to provide the necessary information to someone requiring it so that they can be heard on the injunction should place the Claimants in the same position as if non- disclosure had been found. Anyone who wants it is entitled to a copy of the judgment and skeleton argument, since how else can they exercise their rights under the liberty to apply to decide whether or not to challenge the injunction?

BASIS OF CLAIMS

29. To date no claim form has been provided to the Defendant.

30. The Particulars of Claim set out the following basis for the claims

    i) Section 222 of the Local Government Act 1972

    ii) Section 111 of the Local Government Act 1972

    iii) Section 130s (2) and (5) of the Highways Act 1980

    iv) Section 1 of the Localism Act 2011

    v) Section 17 of the Crime and Disorder Act 1998

31. The Particulars of Claim also state:

> "The Defendants attend the Terminal at all hours of the day and night with the aim of causing serious disruption to its operations. In doing so, they are engaging in tortious and criminal behaviour which is both anti-social and dangerous and which amounts to a public nuisance." (POCs at [16])

32. A "Human Rights Act Assessment" (interim Application Bundle pp122-132) states:

> "**What is the legal basis for restricting the engaged Convention Rights by the action proposed?**
>
> Section 222 of the Local Government Act 1972, section 130 of the highways Act 1980, s.1 Localism Act 2011 and section 17 of the Crime and Disorder Act 1998"

33. No further details of the basis of the claim are provided.

34. The legal limits of the purported basis of claims are set out below.

Section 222 Local Government Act 1972

35. Section 222 Local Government Act 1972 states:

> **222.— Power of local authorities to prosecute or defend legal proceedings.**
>
> (1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—
>
> (a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and
>
> (b) they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment.

36. As the title to the section states, it provides a power to bring legal proceedings: it provides a basis for standing, it does not constitute a cause of action in and of itself. Per Sir Anthony Clarke and Rix LJ in *Birmingham City Council v Shafi* [2009] 1 WLR 1961:

> 23. At common law a local council could not bring an action for interference with public rights unless it had itself suffered special damage peculiar to itself. Proceedings for the enforcement of public rights could only be brought by the Attorney General, either acting ex officio or through a private citizen known as a "relator" who was authorised to bring proceedings on behalf of the Attorney General and in his name: see Stoke-

> on-Trent City Council v B & Q (Retail) Ltd [1984] AC 754 , 770–771, per Lord Templeman. The purpose of section 222, as was recognised by the House of Lords in that case, was to enable local authorities in such cases to bring and defend proceedings in their own names without the involvement of the Attorney General. Accordingly, in their skeleton argument for this appeal Mr Manning and Mr Bates were right to recognise that the power vested in local authorities by section 222 of the 1972 Act reflects the power available to the Attorney General at common law to bring proceedings in support of public rights. It is necessary, therefore, to have regard to the nature and extent of that power in order to determine whether this is a case in which the court can properly grant an injunction at the suit of a local authority under that section.
>
> 24. It is thus common ground that section 222 does not give councils substantive powers. It is simply a procedural section which gives them powers formerly vested only in the Attorney General…

37. The Claimant appears to assert that s222 grants a substantive right to an injunction provided they show that the relief would be *"expedient for the promotion or protection of the interests of the inhabitants of their area"*. This is wrong, as confirmed in *Worcestershire County Council v Tongue* [2004] EWCA Civ 140 at §§30-32 and 35. Section 222 simply allows local authorities to seek an injunction where previously they would have had to rely on the Attorney General to bring the proceedings. It cannot in itself be the source of any substantive power to grant an exceptional form of relief.

Section 111 Local Government Act 1972

38. Section 111 Local Government Act 1972 states:

> **111.— Subsidiary powers of local authorities.**
>
> (1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

39. As with Section 222, this provides a power to take action, but does not constitute a cause of action in and of itself.

Section 130s (2) and (5) of the Highways Act 1980

40. Section 130s (2) and (5) of the Highways Act 1980 state:

130.— Protection of public rights.

(2) Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.

(5) Without prejudice to their powers under section 222 of the Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.

41. Subsection 130(5) is a standing provision.

42. On its face, Section 130(2) appears also to be a standing provision and in any event imposes a basis of claim only in relation to the rights of the public to use highways for which the Claimant is not the highway authority.

Section 1 Localism Act 2011

43. Section 1 of the Localism Act 2011 states:

1 Local authority's general power of competence

(1) A local authority has power to do anything that individuals generally may do.

44. Insofar as it applies to the conduct of litigation, this is a standing provision and not a basis of claim.

Section 17 of the Crime and Disorder Act 1998

45. Section 17 of the Crime and Disorder Act 1998 states:

17.— Duty to consider crime and disorder implications.

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent—

(a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); …

46. This imposes a statutory duty on local authorities but does not provide a basis of claim.

Public Nuisance

47. In contrast to the provisions above, there is a tort of public nuisance, and in certain circumstances, claimants can bring claims in that tort. As stated in Clerk and Lindsell on Torts (23rd ed):

> A public nuisance is a criminal offence:
>
> > "A person is guilty of a public nuisance ..., who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property, morals, or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects."
>
> It is sufficient if it materially affects the reasonable comfort and convenience of a class of Her Majesty's subjects who come within the sphere or neighbourhood of its operation; it may affect some to a greater extent than others; it is not necessary to prove that every member of the class has been injuriously affected, and it is a question of fact whether the number of persons affected is sufficiently large to attract the description "public" to the nuisance. It is only a civil wrong and actionable as such when a private individual has suffered particular damage over and above the general inconvenience and injury suffered by the public, for example through the obstruction of a highway." (at [19-03])

48. For a claim to be brought in public nuisance relating to an obstruction on the highway there is a requirement to prove special damage which must be 'other than and beyond the general inconvenience' and 'direct and substantial' particular damage is caused. As stated in Clerk and Lindsell on Torts:

> "It is a public nuisance to obstruct or hinder the free passage of the public along the highway by land or water. A private individual has a right of action in respect of a public nuisance if he can prove that he has sustained particular damage other than and beyond the general inconvenience and injury suffered by the public, and that the particular damage which he has sustained is direct and substantial." (at [19-181], emphasis added)

49. What is clear is that for an action to constitute a public nuisance it must affect the public at large, and any claimant must prove *particular damage over and above that suffered by anyone else*. The local authority has NOT suffered such damage at all. In fact, the local authority has not, itself, suffered any loss or damage. Indeed, that is made clear by the Claimant's own formulation of its claim. An action which only has direct impact on a limited number of private oil companies does not constitute a public nuisance actionable by the Claimant.

Limitations on the claims relied on

50. An analysis of the claims above shows that:

    i) The Claimant has no basis for any claim that arises out of actions on outside the public highway; and,

    ii) Insofar as claims are based on actions relating to presence on the public highway, it should be noted that this requires the defendants' use of the highway to be unreasonable.

51. The public have a right of reasonable use of the highway which may include protest (*DPP v Jones* [1999] 2 AC 240). This is so even when protests deliberately obstruct other road users. Ultimately, the issue is one of the proportionality of interference with rights protected under ECHR 10 and 11 when prohibiting such protest (see the High Court decision in *DPP v Ziegler* [2019] EWHC 71 (Admin)). The Supreme Court in *DPP v Ziegler* [2021] UKSC 23 emphasised the fact specific nature of the assessment of proportionality. Similarly, the Court of Appeal in *INEOS* stated:

> "the concept of 'unreasonably' obstructing the highway is not susceptible of advance definition… that is a question of fact and degree that can only be assessed in an actual situation and not in advance" (at 40]).

52. Clearly it cannot be asserted any form of obstructive protest on the highway will constitute a public nuisance without regard to the extent of the impact of the obstruction.

53. In any event, whilst there is evidence of obstruction to tankers belonging to the private companies operating the Kingsbury Oil Terminal, there is no sufficient basis to establish a claim in public nuisance.

SCOPE OF INJUNCTION

54. The affected land is defined in relation to a map.

55. There is one public highway which crosses the land. The remainder of the land appears to be privately owned. Whatever the extent of highways over the land to which the public have a right of use, the majority of the land covered by the injunction does not form part of a highway.

56. The scope of the injunction therefore covers land a significant portion of which is not part of a highway. That is NOT land over which the local authority is entitled to exercise any legal rights. It is NOT land, or an area, that is properly the subject of a claim in public nuisance.

DEFINITION OF PERSONS UNKNOWN

57. The Claimants seek an interim injunction against persons unknown defined as:

> (19) 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

58. It is clear that the definition of Persons Unknown is extremely wide. It does not correspond to the alleged tortious conduct or the acts prohibited under the injunction itself. It covers a person who encourages any form of protest against fossil fuels in the locality of the Kingsbury Oil Terminal.

59. It is here that the problems over the non- service of an individual are particularly pertinent. There has been (and is still: the parties are appealing to the Supreme Court) a conflict in the authorities as to whether it is anything other than wholly exception to bring and maintain proceedings against "persons unknown" for any period of time. The recent decision of the Court of Appeal in *LB Barking & Dagenham v Persons Unknown* said so in terms.

60. The key point about the injunctions under consideration in that case was that they were injunctions preventing trespass to land. The court allowed, on the authority of *South Cambridgeshire District Council v. Gammell* [2005] EWCA Civ 1429, where the Court of Appeal had explained that, where an injunction was made against 'Persons Unknown' restraining certain behaviour, a person became a party to the litigation, and stood in breach of the injunction, once they behaved in the offending way. Whether they were at risk of committal for the breach depended on whether they were aware of the injunction when they committed the breach.

61. In *Gammell*, not only was there a statutory provision permitting proceedings to be maintained against "persons unknown", but it was possible to provide notice

to those affected in the same way as notice is often given in possession proceedings involving squatters, namely by putting notices up on the land. If someone went onto the land past such a notice, then, in the same way as someone who wrongfully parks on private land, the court might conclude that they knew of the terms of the order and were bound by it.

62. The Court of Appeal in *Barking* stated that it had obtained great assistance from the decision in *Boyd v INEOS* [2019] EWCA Civ 515, [2019] 4 WLR 100. It is notable that in that case, the ONLY injunctions that were permitted to stand (and only on an interim basis, pending remission to the court as to whether they were justified) were the injunctions restraining unlawful trespass to land and private nuisance to land. Injunctions purportedly restraining "persons unknown" from committing public nuisance and causing loss by unlawful means were held to be too vague and uncertain to stand.

63. It is notable that the injunctions here not only are brought in the tort of public nuisance against persons unknown, but are brought in circumstances where those persons have not been served and cannot be served.

64. It is entirely misconceived to say, as Mr Maxey has at paragraph 22 of his witness statement, that because he thinks there might be difficulties in bringing committal proceedings, that a power of arrest is justified. This is to put the cart before the horse. What Mr Maxey sought, and the Claimant sought, and the court granted, was massive powers permitting arrest of persons attending a particular place, without any prior notification of this being prohibited until a police officer decides to arrest them for conduct that would not be, and is not, an offence. This submission can be made because if the conduct were criminal , then the police could arrest for it.

Need to prove unlawful conduct

65. The definition of Persons Unknown in the present claims fails to be defined in relation to conduct which is alleged to be unlawful and does not meet the requirements set out in *Canada Goose*. Even if it were limited to protests that caused some interference with access to the terminal, given the guidance in *Ziegler*, not every protest which (even deliberately) causes interference with access to the terminal for a short period will be unlawful.

66. However it is framed, the definition covers lawful conduct as well as unlawful conduct.

Legal requirements:

67. There is an important distinction between the requirements applicable to the definition of persons unknown in an interim injunction and the terms which may be applied. The definition of persons unknown must be "defined by reference to conduct which is alleged to be unlawful"; whereas the terms that may be included in an injunction which "may include lawful conduct if and only if there is no other proportionate means of protecting the claimant's rights".

68. This distinction is captured in the requirements set out in *Canada Goose* (CA) where the Court of Appeal stated:

> 82. Building on *Cameron* and the *Ineos* requirements, it is now possible to set out the following procedural guidelines applicable to proceedings for interim relief against "persons unknown" in protester cases like the present one:
>
> (1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".
>
> (2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.
>
> (3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief.
>
> …
>
> (5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.
>
> …

69. It is clear from Clause (2) that the definition of persons unknown (when seeking to capture newcomers) must capture those who have committed tortious acts. When someone falls within that definition then, by virtue of Clause (5), they may be restrained from both tortious and lawful conduct (if the latter is necessary to protect the claimant's rights). What the definition of persons unknown must not do is prohibit those who do nothing unlawful from acts which are similarly not unlawful. That is prohibited on principle.

Clause (2)

70. The requirements on the definition of persons unknown in (1) and (2) above come from *Cameron*. The issuing and service of a claim form is a pre-requisite of making any person subject to the Court's jurisdiction. Without a valid underlying claim against a defendant no injunction can be granted. This applies as much to persons unknown as to named defendants.

71. An injunction against a named defendant can only be granted either to prevent a tort that has already been committed or, on a precautionary (*quia timet*) basis, to prevent a tort that is threatened. The same applies to persons unknown. It is therefore necessary to establish a viable claim (or threatened tort) against such persons in order to obtain injunctive relief. As Nicklin J states in *LB Barking and Dagenham*:

> "In cases where a claimant wishes to bring a claim against defendants who are (or include) 'Persons Unknown', then an interim injunction can be granted where the evidence demonstrates actual or threatened commission of a tort or other civil wrong by the 'Persons Unknown'." (at [189])

72. When persons unknown are defined by reference to unlawful activity then no issue arises because by definition all those falling with the scope of persons unknown will have committed a tort. The same does not hold if the definition of persons unknown covers entirely lawful activity unrelated to any torts threatened by others.

73. The way clause (2) in *Canada Goose* has been phrased is therefore not accidental. Persons unknown must be defined by reference to unlawful conduct.

Clause (5)

74. That "the prohibited acts" in (5) refers to the terms of the injunction and not the definition of persons unknown is supported by the genesis of this principle in the recent caselaw.

75. In *Ineos* (CA) the Court of Appeal set out the following requirements on persons unknown injunctions (at 34, emphasis added):

> "(1) there must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief;
>
> (2) it is impossible to name the persons who are likely to commit the tort unless restrained;
>
> (3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;
>
> (4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct;
>
> (5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and (6) the injunction should have clear geographical and temporal limits."

76. The fourth *Ineos* requirement clearly relates to the terms of the injunction and not the definition of persons unknown.

77. In *Cuadrilla*, the Court of Appeal said the following regarding clause (4) relating to terms not prohibiting lawful conduct:

> "78. It is open to us, as suggested by the Court of Appeal in *Cuadrilla* , to qualify the fourth *Ineos* requirement in the light of *Hubbard* and *Burris* , as neither of those cases was cited in *Ineos*. Although neither of those cases concerned a claim against "persons unknown", or section 12(3) of the HRA or Articles 10 and 11 of the ECHR , *Hubbard* did concern competing considerations of the right of the defendants to peaceful assembly and protest, on the one hand, and the private property rights of the plaintiffs, on the other hand. We consider that, since an interim injunction can be granted in appropriate circumstances against "persons unknown" who are Newcomers and wish to join an ongoing protest, it is in principle open to the court in appropriate circumstances to limit even lawful activity. We have had the benefit of submissions from Ms Wilkinson on this issue. She submits that a potential gloss to the fourth *Ineos* requirement might be that the court may prohibit lawful conduct where there is no other proportionate means of protecting the claimant's rights. We agree with that submission, and hold that the fourth *Ineos* requirement should be qualified in that way."

78. It is therefore clear that in *Cuadrilla* the court was amending the requirement that the terms of an injunction prohibit unlawful conduct and not the conditions applicable to the definition of persons unknown.

79. This interpretation is adopted by Nicklin J in *London Borough of Barking and Dagenham v Persons Unknown* [2021] EWHC 1201 (QB) where he refers to the "terms" of the injunction satisfying the Canada Goose requirements (5) to (7) (at [248]).

80. This requirement again accords with principle. A person who has committed an unlawful act, or who threatens to do so, can be restrained from lawful conduct if that is necessary to protect the Claimant. The commission or threat of the unlawful act can justify the proportionate restriction on that individual's rights. There is no corresponding justification for a restriction on the rights of a person who neither does an unlawful act, nor threatens to do so.

Conclusion

81. There is hence a distinction in principle between the definition of persons unknown -which must correspond to the conduct which is alleged to be unlawful- and the terms of the injunction -which can prohibit lawful and unlawful conduct. A person who commits or threatens an unlawful act may be prohibited from future lawful as well as unlawful conduct. However, an injunction cannot be used to prevent those who have neither done anything wrong, nor threatened to do so, from carrying out entirely lawful conduct.

Submissions on the substantive tort

82. It is submitted that the definition of Persons Unknown in the present case fails to meet the requirements from *Canada Goose* and related cases in that is not defined by reference to the allegedly unlawful conduct.

83. In any event, it is clear that the definition of persons unknown in the present injunction is so wide that is covers persons entirely unrelated to the previous protests who have not previously protested in an unlawful manner and who do not threaten to do so. Nevertheless the present injunction prevents such persons from what would otherwise be entirely lawful conduct. The present injunction is therefore flawed in its approach to persons unknown.

SERVICE

Legal framework

84. In *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471 Lord Sumption stated:

> "… Justice in legal proceedings must be available to both sides. It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard. The principle is perhaps self-evident. " (at [17])
>
> "In my opinion, subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant. " (at [21], emphasis added)

85. Similar requirements were included in the Court of Appeal judgment in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303:

> "(1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".

Proposed Service Requirements in Draft Order

86. The provisions for service injunction are set out in Schedule 2:

> Schedule 2
>
> 1. Service of this Claim Form and this Order shall be effected by:
>
> (i) placing signs informing people of
>
> (a) this Claim
>
> (b) this Order and power of arrest, and the area in which they have effect and
>
> (c) where they can obtain copies of the Claim Form, Order and power of arrest, and the supporting documents used to obtain this Order.

in prominent locations along the boundary of the buffer zone referred to at para.1 of this Order and particularly outside the Terminal and at the junctions of roads leading into the zone.

(ii) placing a copy prominently at the entrances to the Terminal;

(iii) posting a copy of the documents referred to at para.1(i)(c) above Order on its website, and publicising it using the Claimant's facebook page and twitter account, and posting on other relevant social media sites including local police social media accounts, and/or,

(iv) any other like manner as the Claimant may decide to use in order to bring the Claim Form and this Order and power of arrest to the attention of the Defendants and any other persons likely to be affected.

Submissions

87. Given the wide scope of the definition of Persons Unknown, the steps above are clearly insufficient to bring the order to the attention of those affected by it. In fact, it is likely that this is deliberately so, so as to minimise the number of people that are aware of the injunction.

88. Moreover, the drafting of the service provisions -using the words 'and/or'- allow for service by any of the means in (i) to (iv) above individually. It cannot be proper to allow the Claimants the discretion in (iv) to decide how to bring the proceedings to the attention of those affected without prior endorsement of the court.

89. In any event, no evidence has been provided to Ms Branch or her advisors that anyone AT ALL has been properly served.

90. It is not proper to ask a court to determine an application for an injunction when those seeking it have not served those that it affects nor explained their failure to do this.

TERMS OF INJUNCTION

Legal Framework

91. General principles of proportionality require that an injunction is targeted as closely as practicable on the conduct which constitutes the tortious behaviour. The terms of an order may only prohibit otherwise lawful conduct beyond the scope of the strict tort where it is necessary "in order to provide effective

protection of the rights of the claimant in the particular case" (*Cuadrilla Bowland v Lawrie* [2020] EWCA Civ 9 at [50]) and "there is no other proportionate means of protecting the claimants' rights" (see *Canada Goose* at 78 and 82(5)). Clearly the extent to which an order prohibits lawful conduct must be kept to a minimum.

92. The terms of an injunction muse not be unduly vague. In *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 the Court of Appeal stated:

> **"**There are at least three different ways in which the terms of an injunction may be unclear. One is that a term may be ambiguous, in that the words used have more than one meaning. Another is that a term may be vague in so far as there are borderline cases to which it is inherently uncertain whether the term applies. Except where quantitative measurements can be used, some degree of imprecision is inevitable. But the wording of an injunction is unacceptably vague to the extent that there is no way of telling with confidence what will count as falling within its scope and what will not. Evaluative language is often open to this objection. For example, a prohibition against "unreasonably" obstructing the highway is vague because there is room for differences of opinion about what is an unreasonable obstruction and no determinate or incontestable standard by which to decide whether particular conduct constitutes a breach. Language which does not involve a value judgment may also be unduly vague. An example would be an injunction which prohibited particular conduct within a "short" distance of a location (such as the Site Entrance in this case). Without a more precise definition, there is no way of ascertaining what distance does or does not count as "short"." (at [57])

93. Even where the strict terms of an order are limited, consideration must be given to any 'chilling effect' that the injunction has beyond conduct falling directly within its terms. This is particularly so for injunctions that are vague or broadly drawn (see *INEOS v Boyd* [2020] EWCA Civ 515 at [40]). The temporary nature of an order may still be disproportionate when the chilling effect is considered (see *Christian Democratic People's Party v Moldova* (2007) 45 EHRR 13).

Terms of Order

94. The Order prohibits:

> 1. 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.

(b) in connection with any such protest anywhere in the locality of the Terminal perform any of the following acts:

(i) entering or attempting to enter the Terminal

(ii) congregating or encouraging or arranging for another person to congregate at any entrance to the Terminal

(iii) obstructing any entrance to the Terminal

(iv) climbing on to or otherwise damaging or interfering with any vehicle, or any object on land (including buildings, structures, caravans, trees and rocks)

(v) damaging any land including (but not limited to) roads, buildings, structures or trees on that land, or any pipes or equipment serving the Terminal on or beneath that land

(vi) affixing themselves to any other person or object or land (including roads, structures, buildings, caravans, trees or rocks)

(vii) erecting any structure

(viii) abandoning any vehicle which blocks any road or impedes the passage any other vehicle on a road or access to the Terminal

(ix) digging any holes in or tunnelling under (or using or occupying existing tunnels under) land, including roads;

(x) abseiling from bridges or from any other building, structure or tree on land or

(xi) instructing, assisting, or encouraging any other person to do any act prohibited by paragraphs (b)(i)-(x) of this Order.

95. These are addressed in turn.

(a) Forbidden from organising or participating in any protest within the buffer zone

96. This term imposes a blanket prohibition on any protest of any form within the buffer zone.

i) It prohibits a single individual standing on the side of the public highway passing through the buffer zone in a manner which does not impede access to the terminal in any way;

ii) It prohibits a march by a group of concerned campaigners along the highway through the buffer zone which caused some consequential slowing of traffic.

97. Activities such as the above are clearly not unlawful.

98. When combined with the definition of persons unknown the injunction seeks to prohibit entirely lawful activity by persons who have not committed any tort or criminal offence. It restricts their right to Freedom of Expression and Assembly protected under Articles 10 and 11 ECHR in a wholly disproportionate manner.

99. The prohibitions under Paragraph (b) are addressed below:

(i) entering the terminal

It is unclear on what basis the Claimants are entitled to a claim in relation to this activity. The Claimants do not have the right to bring a claim in trespass. Insofar as there are roads in the Terminal which fall within s130(2) HA 1980 the simple presence on such roads is not unlawful.

(ii) congregating at any entrance to the terminal

The basis of any claim by the Claimant covering this activity is unclear. In any event, congregating at an entrance is not in itself unlawful.

(iii) obstructing any entrance to the Terminal

The basis of any claim by the Claimant covering this activity is unclear.

(iv) climbing on to or otherwise damaging or interfering with any vehicle, or any object on land (including buildings, structures, caravans, trees and rocks)

The basis of any claim by the Claimant covering this activity is unclear. In any event, climbing trees and rocks is not generally unlawful.

(v) damaging any land including (but not limited to) roads, buildings, structures or trees on that land, or any pipes or equipment serving the Terminal on or beneath that land

Insofar as this does not apply to highways, the basis of any claim by the Claimant is unclear.

(vi) affixing themselves to any other person or object or land (including roads, structures, buildings, caravans, trees or rocks)

Insofar as this does not apply to highways, the basis of any claim by the Claimant is unclear.

(vii) erecting any structure

The basis of any claim by the Claimant covering this activity is unclear.

In any event, climbing trees and rocks is not generally unlawful.

(viii) abandoning any vehicle which blocks any road or impedes the passage any other vehicle on a road or access to the Terminal

Insofar as this does not apply to highways, the basis of any claim by the Claimant is unclear.

(ix) digging any holes in or tunnelling under (or using or occupying existing tunnels under) land, including roads;

Insofar as this does not apply to highways, the basis of any claim by the Claimant is unclear.

(x) abseiling from bridges or from any other building, structure or tree on land or

The basis of any claim by the Claimant is unclear.

100. As the above examples demonstrate, the Order appears to prohibit conduct which is not unlawful and is a clear exercise of Article 10 and 11 rights. There is no basis under which the order permits protests which have only a small impact on the flow of traffic. The Order imposes blanket prohibitions on protests of any form. The effect of the order extends considerably beyond tortious conduct and any claim which the local authority may bring the impact on Article 10 and 11 rights is therefore disproportionate.

101. There are also concerns about the clarity of the proposed order. Such a lack of clarity brings with it a 'chilling effect' which may found a separate ground of challenge to the order.

CONCLUSION

102. It is submitted that the present orders display many of the flaws identified in *Canada Goose*, as the Court of Appeal stated:

> "…Canada Goose's problem is that it seeks to invoke the civil jurisdiction f the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protestors. It wishes to use remedies in private litigation in effect to prevent what it sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protestors…." [at 93]

103. The Defendant respectfully asks that the court discharge the interim injunction in accordance with the submissions above.

Stephen Simblet QC

Owen Greenhall

Garden Court Chambers

27.04.22

Claim No: QB-2022-001236

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

In the matter of an application for an injunction under s.1, Localism Act 2011, s.222, Local Government Act 1972, s.130, Highways Act 1980 and section 17 of the Crime and Disorder Act 1998.

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

and

(1) DAVID BALDWIN
(2) THOMAS BARBER
(3) MICHELLE CADET-ROSE
(4) TIM HEWES
(5) JOHN HOWLETT
(6) JOHN JORDAN
(7) CARMEN LEAN
(8) ALISON LEE
(9) AMY PRITCHARD
(10) STEPHEN PRITCHARD
(11) PAUL RAITHBY
(12) HOLLY ROTHWELL
(13) ELIZABETH SMAIL
(14) JOHN SMITH
(15) BEN TAYLOR
(16) JANE THEWLIS
(17) ANTHONY WHITEHOUSE
(18) ANDREW WORSLEY
(19) 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

Defendant

SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT

INTRODUCTION AND BACKGROUND

1. This application is made by North Warwickshire Borough Council (the "authority") for an injunction to prevent the Defendants from continuing to protest in the immediate locality of Kingsbury Oil Terminal ("the Terminal"), due to the disorder, nuisance, and criminality that has characterised the protests at the Terminal since 01 April 2022.

2. The names of most of the Defendants are not known to the authority. The named First to Eighteenth Defendants have been identified by officers of Warwickshire Police in their witness statements provided in support of this action, but at least 100 additional arrests have been made. The authority believe that Warwickshire Police will share the names and contact details of all those who have been arrested so that they can be added to the proceedings as named Defendants, and served, in advance of the return date to be listed.

LAW

Powers of the Authority to Seek Injunctive Relief

3. The authority has various statutory powers to seek injunctive relief. The most commonly used in this context is s.222(1), Local Government Act 1972, which provides as follows:

> "(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—
>
> (a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and
>
> (b) they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment."

4. Section 27, Police and Justice Act 2006 provides power for the court to attach a power of arrest to certain injunctions made under s.222, 1972 Act.

"(1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants of their area).
"(2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.
"(3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either–

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection.

(4) Where a power of arrest is attached to any provision of an injunction under subsection (2), a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of that provision.
(5)…"

Other powers

5. The authority submits that it also has other powers to seek an injunction, for example, s.1, Localism Act 2011, by virtue of which an authority has power to do anything that individuals, with full capacity, generally may do, in any way whatever and unlimited by the existence of any other power of the authority which to any extent overlaps the general power.

6. Further, by section 130(2) Highways Act 1980, the Claimant may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority.

7. By section 17 of the Crime and Disorder Act 1998, the Claimant is under a statutory duty to exercise its various functions with due regard to the

likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area.

Injunctions against persons unknown

8. In *Bloomsbury Publishing Group v News Group and others* [2003] EWHC 1205(Ch); [2003] 1 WLR 1633, the Vice-Chancellor held that injunctive relief could be sought against unnamed defendants, provided that they were sufficiently identified by description in the claim so as to show who is included and who is not (see his Judgment at [19]-[22]).

9. In *Boyd v Ineos Upstream Limited* [2019] EWCA Civ 515, the Court of Appeal considered the grant of injunctions against unknown protesters against fracking. Longmore LJ held that there is no conceptual or legal prohibition on suing persons unknown who are not currently in existence but will come into existence when they commit the prohibited tort, although a court should be inherently cautious about granting injunctions against unknown persons since the reach of such an injunction is necessarily difficult to assess in advance (at [30]-[31]).

10. Longmore LJ framed certain "tentative" requirements for the grant of an order against persons unknown at [34].

> "1) there must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief;
> "2) it is impossible to name the persons who are likely to commit the tort unless restrained;
> "3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;
> "4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct;
> "5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and
> "6) the injunction should have clear geographical and temporal limits."

11. In *Cuadrilla Bowland v Persons Unknown* [2020] EWCA Civ 9, Leggatt LJ at [50], caveated Longmore LJ's 4th requirement on the basis that although it was desirable that the terms of an injunction should correspond to the threatened tort and not be so wide that they prohibit lawful conduct, this was not an absolute rule. Although the court must be careful not to impose an injunction in wider terms than necessary to do justice, it is entitled to restrain conduct not in itself tortious or otherwise unlawful if satisfied that such a restriction is necessary to afford effective protection to the rights of the claimant in a particular case. The Court did not consider whether it made a difference that an injunction was sought against persons unknown, as that issue did not arise in *Cuadrilla* itself.

12. In *Barking & Dagenham LBC v Persons Unknown* [2022] EWCA Civ 13, the Court of Appeal held as follows.

(i) It is extremely undesirable for the court to lay down limitations on the scope of as broad and important a statutory provision as section 37 (*per* Sir Geoffrey Vos MR at [72], [120]).

(ii) *South Cambridgeshire BC v Gammell* [2006] 1 WLR 658, CA, is authority for the proposition that where a persons unknown injunction is made, whether an interim or final order, a newcomer who breaches its provisions knowing of them becomes a party to the proceedings at that stage and can apply for the injunction to be discharged (*per* Sir Geoffrey Vos MR at [30], [82]).

(iii) This route to having the injunction reconsidered adequately protects the rights of such newcomer defendants as the Court retains jurisdiction and supervision of such proceedings until the injunction comes to an end (at [92]).

(iv) One of the premises of *Gammell* was that injunctions generally could be validly granted against newcomers in unauthorised encampment cases (at [99]).

(v) Likewise, in *Ineos* (above) the Court of Appeal held that there was no conceptual or legal prohibition on suing persons unknown who were

not currently in existence but would come into existence when the committed the prohibited tort (at [94]).

(vi) There is no reason why the court cannot devise procedures, when making longer term "persons unknown" injunctions, to deal with the situation in which persons violate the injunction and makes themselves new parties, and then apply to set aside the injunction originally violated, as happened in *Gammell* itself (at [82]).

(vii) The Supreme Court decision in *Cameron v Liverpool Victoria Insurance Co* [2019] UKSC 6 did not deal with these principles (as they were not relevant to the case) and did not disapprove them (at [35]).

13. The Court declined to follow the principles in relation to injunctions against persons unknown which had been developed by the Court of Appeal and Nicklin J in *Canada Goose v Persons Unknown* [2020] EWCA Civ 202 at [89]-[92] and by Nicklin J in the *Barking & Dagenham* case at first instance ([2021] EWHC 1201 (QB)). It held that injunctions were available against persons unknown, even where such persons are "newcomers" *i.e.* where they have not committed any of the prohibited conduct and have not been served with proceedings at the time that a final injunction is granted or when they are alleged to have acted in a prohibited way. *Canada Goose* was therefore wrongly decided in that respect.

Expedient

14. The s.222 power is available where the authority considers that it is expedient to exercise it for the promotion or protection of the interests of the inhabitants of its area. In *Stoke on Trent BC v B & Q Retail* [1984] 1 Ch 1, CA, Lawton LJ construed this condition broadly, at p.23A/C (on which issue the House of Lords made no comment).

> "They must safeguard their resources and avoid the waste of their ratepayers' money. It is in everyone's interest, and particularly so in urban areas, that a local authority should do what it can within its powers to establish and maintain an ambience of a law-abiding community; and what should be done for this purpose is for the local

authority to decide. Members of the public should be confident that the local authority will do all it can to ensure that they will not be sold unwholesome food or given false measure, that goods will not be sold with false trade descriptions, that property will not be used in breach of the planning legislation and that shops will be open on days and at hours regulated by the Shops Act 1950. In my judgment a local authority is entitled to use its powers for all these purposes."

Human Rights Act 1998, sch.1

15. Articles 10 and 11 of the European Convention on Human Rights are engaged in this case.

Article 10 – Right to Freedom of Expression

16. Article 10 provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. …
> "2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of…public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others…"

17. In *R (Gaunt) v Office of Communications (Liberty intervening)* [2011] EWCA Civ 692, at [33] Lord Neuberger of Abbotsbury MR referred to the Opinion of Lord Hope in *R v Shayler* [2003] AC 247, at [59]-[61]:

> "33 Later in his opinion, at paras 59-61, Lord Hope explained "the process of analysis" which had to be carried out when considering whether a limitation on freedom of expression is justified on the ground of "pressing social need". First, the state must show that "the objective

> which is sought to be achieved…is sufficiently important to justify limiting the fundamental right". Secondly, it must show that "the means chosen to limit that right are rational, fair and not arbitrary". Thirdly, it must establish that "the means used impair the right as minimally as is reasonably possible". As he went on to say, "it is not enough to assert that the decision that was taken was a reasonable one", and "a close and penetrating examination of the factual justification for the restriction is needed"."

18. For the reasons set out below, it is submitted that the injunction sought in this case satisfies the requirements of Lord Hope's analysis.

Article 11 – Freedom of Peaceful Assembly

19. Article 11 provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others…
> "2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of… public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others…".

20. The right protected by Art.11 is of peaceful assembly, not of any assembly even if causing a public nuisance or other public order disturbance.

Without Notice Injunctions affecting Freedom of Speech

21. Section 12, Human Rights Act 1998 provides, so far as material, as follows.

> "(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

"(2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

"(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

"(4) …

"(5) In this section—

'court' includes a tribunal; and

'relief' includes any remedy or order (other than in criminal proceedings)."

SUBMISSIONS

22. For the reasons set out above, and in the evidence filed in support of these claims, the authority seeks an Injunction and power of arrest in the terms sought.

The Urgent, Without Notice, Application

23. The authority is making this application at this time, and without having given notice to the Defendants in the first instance, for the following reasons:

(i) The authority first received notice that these protests were going to take place on 1 April 2022, since then the protests have grown in both size and severity:

(a) Between 1 and 5 April 2022, protestors were arriving in groups of approximately 40. They glued themselves to the road servicing the main entrance to the Terminal, and then climbed aboard oil tankers that were forced to a halt.

(b) By 7 April 2022, protestors had broken into the Terminal compound and locked themselves onto large fuel storage tanks, some of which were insecure. Whilst within the compound, the protestors were using their mobile phones to document their activities on social media. As a result of this protest, a large policing operation was initiated, utilising a variety of specialist teams and working alongside staff from the Terminal and the fire service to remove the protestors safely.

(c) It was only at this turn of events, which caused the Claimant very serious concerns about risk of oil igniting and causing a major emergency potentially affecting its entire area, that it decided to seek an injunction in pursuance of its statutory functions. At that stage, it had no details of the identity of any protestor.

(d) On 9 April 2022, protestors deposited a caravan on to the side of the road on Piccadilly Way, which is a road to the south of the Terminal. 20 Defendants glued themselves to the sides and top of the caravan, whilst further Defendants attempted to dig a tunnel under the road via a false floor inside the caravan in order to prevent oil tankers from leaving the Terminal.

(ii) Because of this escalating conduct, the Claimant considers that some urgent action needs to be taken before the Easter Bank Holidays, when protestors are likely to attend the site in greater numbers.

(iii) The Terminal has storage capacity of around 405 million litres of flammable liquids, including unleaded petrol, diesel, and fuel additives. Controlled items, such as mobile phones, cigarettes, lighters, paging units, and matches, are prohibited within its perimeter due to the potential presence of explosive atmospheres, and it is served by pipelines that run beneath Piccadilly Way. As such, the current and

anticipated conduct of the Defendants poses a major fire/explosion risk. The Claimant therefore fears that the reckless activities of the Defendants poses a serious and imminent threat to public safety and the environment.

(iv) Whilst the Claimant received the names of the first eighteen Defendants on the evening of 12 April 2022, in witness statements exhibited to the Statement of ACC Smith, the Claimant has not yet received from the police any contact details for them despite requesting those details on 13 April 2022, when its intention was to give informal notice of today's hearing.

(v) Nonetheless, the risk to life posed by the activities is too great to delay until those details can be obtained. In the circumstances, the Claimant has taken such steps as are available to it to notify the Defendants, and there is are compelling reasons, for the purposes of Section 12(2), why an order should be granted without the Defendants having been notified.

(vi) Although, in *Bimringham City Council v Afsar and Persons Unknown* [2019] EWHC 1560 (QB), Warby J (as he then was) said this, at [53]:

> "Urgency can only be a compelling reason for applying without notice if there is simply no time at all in which to give notice. Modern methods of communication mean that will rarely, if ever, be the case, and it was not the position here. You do not justify applying in secret by showing that your case has merit, or by saying that the relief sought is limited in scope and time, and will have only limited impact on the respondents…"

the context for that case was very different in that the Claimant authority had contact details for the named defendants but took the view that that the urgency of the matter was sufficient meet the requirements of with s.12(2)(b). Warby J was not addressing a case where the

Claimant had no means of contacting the defendants but which was urgent.

Human Rights

24. It is accepted that the people affected by the proposed Order have Convention rights.

25. In *National Highways Limited v. Persons Unknown* [2021] EWHC 3081 (QB), Lavender J refused to set aside an injunction forbidding individuals associated with Insulate Britain from blocking, slowing down, obstructing or otherwise interfering with the flow of traffic on, or access to, the strategic road network, in reliance on the Supreme Court's decision in *DPP v Ziegler* [2021] 3 WLR 179.

26. In *Ziegler,* the Supreme Court considered the extent to which a protest which involved obstructing the highway may be lawful by reasons of articles 10 and 11 of the European Convention on Human Rights. At [58], Lords Hamblen and Stephens JJSC agreed that the issues which arise under articles 10 and 11 require consideration of the following five questions:

> "(1) Is what the defendant did in exercise of one of the rights in articles 10 or 11?
> "(2) If so, is there an interference by a public authority with that right?
> "(3) If there is an interference, is it "prescribed by law"?
> "(4) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of article 10 or article 11, for example the protection of the rights of others?
> "(5) If so, is the interference 'necessary in a democratic society' to achieve that legitimate aim?"

27. In relation to the last question, the Supreme Court relied on eight factors that they considered relevant. These are quoted in summary in *Highways Limited v. Persons Unknown* as follows:

(1) The peaceful nature of the protest

(2) The fact that the defendants' action did not give rise, either directly or indirectly to any form of disorder.

(3) The fact that the defendants did not commit any criminal offences other than obstructing the highway.

(4) The fact that the defendant's actions were carefully targeted and were aimed only at obstructing vehicles heading to the arms fair.

(5) The fact that the protest related to a "matter of general concern".

(6) The limited duration of the protest.

(7) The absence of any complaint about the defendants' conduct.

(8) The defendants' longstanding commitment to opposing the arms trade.

Are the Defendant's exercising their Rights?

28. By participating in protests, the Defendants are exercising their rights to freedom of expression in article 10. Although the Claimant disputes that they are exercising rights to *peaceful* assembly for the purposes of article 11, it proceeds at this stage on the basis that it is at least arguable that they are exercising such rights.

Does the Authority Seek to interfere with those Rights?

29. The application for, and the grant of, an injunction to (a) create a small buffer zone around the Terminal where protests may not take place, and (b) restrain the unlawful methods currently used by the Defendants to protest outside this buffer zone would be an interference with those rights by a public authority.

Is the Interference Prescribed by Law?

30. That interference is "prescribed by law", namely section 37 of the Senior Courts Act 1981 and the cases which have decided how the discretion to grant an interim *quia timet* injunction should be exercised, together with section 222(1), Local Government Act 1972, section 130 of the Highways Act 1980, section 1 of the Localism Act 2011, and section 17 of the Crime and Disorder Act 1998.

Is the Interference in Pursuit of a Legitimate Aim?

31. The interference is also in pursuit of legitimate aims, namely to ensure the safe operation of the Terminal, and to protect public safety, the prevention of disorder and crime, the protection of health, and the protection of the rights and freedoms of others, as well as prevention of serious environmental damage, which aims are currently compromised by the dangerous and anti-social behaviour and public nuisance arising from the protests.

Is the Interference Necessary in a Democratic Society?

32. The protests have not been peaceful, rather the protestors have engaged in unlawful direct action to prevent the lawful activity of the Terminal and its distribution partners.

33. The protests have also been characterised by disorder, protestors have forced entry to the Terminal, scattered, locked onto structures containing significant quantities of flammable liquids, and used their mobile phones whilst potentially exposed to explosive atmospheres. They have not complied with the requests of the police, but forced police officers, the fire brigade and workers at the Terminal to put their own lives at risk to enforce their removal.

34. Protestors have committed offences beyond simply obstructing the highway. They have trespassed onto the Terminal, and they have interfered with vehicles containing flammable liquids. Significant numbers of protestors have been arrested on most days since the 1 April 2022 for offences carried out during the protests. These offences include aggravated trespass, offences under Trade Union and Labour Relations (Consolidation) Act 1992, vehicle interference and criminal damage and going equipped to cause criminal damage.

35. Even if it is the protestors' intention to blockade only vehicles attending the Terminal, their actions have had, and threaten to have, a significant impact on all those in the locality. For example, on 5 April 2022, the resulting tailbacks reached as far as the M42. Furthermore, the risk generated by the protestors

both accessing the Terminal and attempting to dig close to pipes servicing the Terminal threatens the lives of those in the immediate locality, and the environment for miles around.

36. It is accepted that the protests relate to a "matter of general concern".

37. The protests are many in number, disorganised, and not limited in duration. The disruption that they have caused to the Terminal, users of Piccadilly Way and Trinity Rise, and Warwickshire Police, over the last 14 days, is unlawful and considerable.

38. An injunction in similar terms to the that sought by the Claimant was obtained by Valero on 21 March 2022 in respect of that part of the Terminal occupied by it, but not including the whole site or the highways affect ted and without a power of arrest which is not available to them. Neither this Order not the actions of Warwickshire Police in carrying out numerous arrests at the protests for suspected criminal offences, has had any effect. In many cases, those arrested have participated in further protests and have been arrested again. The risk posed is now so serious that no lesser measure is appropriate.

39. It is for all the reasons stated at paragraphs 32-38 above, that the Claimant submits that in the circumstances, the restrictions it seeks are necessary in a democratic society.

Is the Interference Proportionate?

40. The current activities at the Terminal are unacceptable and create a highly significant public safety and environmental risk, including by unauthorised and unsupervised (and potentially hostile) access being gained to a site with 400m litres of inflammable material, by undermining the foundations of the highway and by the other activities which have caused a danger to road-users, staff at the terminal, tanker drivers and other workers attending the terminal, and other local people. The Claimant submits that this aim is sufficiently important to justify interference with the Defendant's rights under Article 10 & 11 ECHR.

41. There is a need to re-establish a law-abiding environment at the Terminal, and protect health, public safety and the rights and freedoms of the community, and of those who wish to protest lawfully. By restricting Defendants' protest to peaceful activities conducted a safe distance from the Terminal, the Claimant seeks to remove the immediate risk posed, whilst also Allowing the continuation of lawful protest.

42. There are no more restrictive alternative means available to the Claimant. As explained above, Valero's Order and the Police attempts to keep matter within reasonable limits by their almost daily attendance, has had no effect. Furthermore, alternative orders (such as a Public Space Protection Order) carry procedural requirements that are too lengthy given the imminence of the danger posed, and provide a penalty for breach too small to be an effective deterrent. Accordingly, an injunction with a power of arrest is the only remaining means available of restraining the conduct complained of.

43. It is submitted that the terms of the injunction sought do strike a fair balance between the rights of the protestors and the rights and interests of the community; the terms are specifically designed to allow the continuation of lawful protest while restricting only the nuisance and anti-social behaviour referred to above. The order will be sought for a period of 2 years, with a review after 12 months, which is considered proportionate, especially since the activities aimed at are only consisting of anti-social behaviour and a public nuisance.

Power of Arrest

44. A power of arrest is also sought in order to provide an effective means of enforcement for the injunctions, if granted, as the paper committal procedure is lengthy and would result in the protests continuing to risk fire and explosion while it was undertaken. Moreover, without being able to identify the names of the protestors and to locate them, paper applications for committal are likely to be impossible to prosecute.

45. The authority submits that the conduct complained of includes, and the prohibitions in the injunction sought relate to, a significant risk of harm to local residents, members of the public, staff working within the Terminal, the authority's and police officers, bailiffs etc, so that it is necessary for a power of arrest pursuant to s.27, Police and Justice Act 2006 to attach to paragraph 1 of the Injunction.

Discretion

46. The authority submits that it is appropriate and expedient for the promotion and protection of the interests of the inhabitants of their area, and in the exercise of the Court's discretion that the defendants be restrained, by way of injunction, from committing tortious and criminal acts and, in particular acts amounting to a public nuisance and to deliberate and flagrant breaches of the criminal law (and which use of the criminal law is unable to prevent), and health and safety regulations.

47. Specifically, the authority considers that it is in the interests of the inhabitants of the Kingsbury:

(i) that the authority endeavours to establish and maintain a law-abiding community;

(ii) that local residents, workers within the Terminal, the emergency services and others working to control the protests, local businesses and members of the public (and the protestors themselves) are protected from the serious and specific threats to their safety, health, property and peaceful existence presented by the reckless actions of the protestors; and

(iii) that the staff within, and attending to, the Terminal should be able to conduct their lawful commercial activities without facing the nuisance described in the witness statements and without disruption as described in the witness statements.

48. For all of the above reasons, the Court is respectfully requested to grant the authority's application.

Jonathan Manning
Charlotte Crocombe
14 April 2022

4-5 Gray's Inn Square
LKondon WC1R 5AH,

Neutral Citation Number: [2022] EWHC 2777 (KB)

Case No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Tuesday, 27 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) EL LITTEN
(2) CHARLOTTE KIRIN
(3) TEZ BURNS
(4) MICHELLE CHARLESWORTH
(5) SHEILA SHATFORD
(6) MARY ADAMS

Respondents

MR MANNING and **MS CROCOMBE** appeared on behalf of the Applicant
The Respondents appeared in person

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

LIABILITY JUDGMENT

1. JUDGE KELLY: This is an ex tempore judgment following the trial of an application by the claimant, North Warwickshire Borough Council, to commit El Litten, Charlotte Kirin, Michelle Charlesworth, Tez Burns, Sheila Shatford and Mary Adams for contempt of court.

2. The claimant is represented by Mr Manning and Ms Crocombe of counsel. All the defendants act in person. Each has been repeatedly advised during these proceedings that they are entitled to seek legal advice and representation, but each wished to proceed without legal representation. Each has undertaken their own advocacy during the course of the trial.

Background

3. Kingsbury Oil Terminal is a large inland oil terminal located near Tamworth in Warwickshire. In the spring of 2022, various protests took place at the site against the production and use of fossil fuels, leading the claimant to apply for an interim injunction to protect the terminal. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. None of the six defendants before the court today were named defendants. The "persons unknown" were defined as being those "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…" Pursuant to section 27 of the Police and Justice Act 2006, a power of arrest was attached to the injunction.

4. On 5 May 2022 an on notice hearing took place before Sweeting J. Some of the named defendants were represented at that hearing. Sweeting J amended the interim order of 14 April and removed what had been described as a 5 metre buffer zone around the perimeter of the terminal site. That variation was drawn into an order dated 6 May 2022. Sweeting J reserved judgment in relation to the remaining issues that had been raised at the hearing. That reserved judgment has not yet been handed down. For the purpose of this judgment I will refer to the order of 6 May 2022 simply as "the injunction".

5. The injunction has a penal notice attached in the usual terms. Paragraphs 1(a) and 1(b) of the order prohibit certain conduct. By paragraph 1(a):

> "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 the order at Schedule 1."

6. The map attached at Schedule 1 has a red boundary line running largely round the perimeter of the oil terminal adjacent to Trinity Road and on an additional site adjacent to Piccadilly Way. The area falling within the red line includes a private access road leading to the entrance of the oil terminals.

7. By paragraph 1(b) of the injunction:

> "The defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):
>
> …
>
> 1(b) In connection with any such protest anywhere in the locality of the Terminal performing any of the following acts:
>
> …
>
> (iii) obstructing of any entrance to the Terminal.
>
> …
> (xi) instructing, assisting, encouraging any other person to do any act prohibited by paragraphs (b)(i)-(x) of this Order."

8. By paragraph 3 of the injunction the order and power of arrest shall continue until the hearing of the claim unless previously varied or discharged by further order of the court. The order has not been subsequently varied or discharged. Indeed, as I have already indicated, the reserved judgment from the hearing on 5 May has not yet been handed down.

9. Paragraph 5 of the injunction gives the claimant permission to serve the claim form and supporting documents and the order and power of arrest by alternative methods specified at Schedule 2. Paragraph 1 of Schedule 2 states:

> "Service of the claim form and this order shall be effected by:
>
> (i) placing signs informing people of:
> a. This claim,
> b. This order and power of arrest, and the area in which they have effect and
> c. Where they can obtain copies of the claim form, order and power of arrest, and supporting documents used to obtain this order
>
> in prominent locations along the boundary of the buffer zone referred to at para. 1 of this order and particularly outside the terminal and at the junctions of roads leading into the zone.
>
> (ii) Placing a copy prominently at the entrances to the terminal.

(iii) Posting a copy of the documents referred to at para. 1(i)(c) above order on its website and publicising it using the claimant's Facebook page and Twitter account, and posting it on other relevant social including local police social media accounts, and/or

(iv) any other manner as the claimant may decide to use to bring the claim form and this order and power of arrest to the attention of the defendants and other persons likely to be affected."

10. It is not in dispute that on 14 September 2022 the six defendants, along with 45 others, were arrested on a private access road leading to the terminal, just off Trinity Way. All 51 of the defendants were produced before the court on 15 September when their cases were adjourned to various dates last week when more court time was available to progress the cases and to allow time for the defendants to obtain legal advice and representation. At the hearing on 15 September all 51 defendants were remanded in custody because they each adopted the same position, namely that they did not accept the authority of the court and each indicated that, if bailed, they would breach the injunction and not voluntarily return to court. Last week, 45 of the defendants admitted contempt. One defendant's case was further adjourned to allow further time for him to obtain legal advice. The remaining six defendants before the court today did not admit the alleged breach and thus a trial has taken place today.

11. On 15 September 2022 the claimant provided each defendant with written particulars of the alleged contempt together with details of theirs rights as summarised in CPR 81.4(2). There are four allegations but all arise out of the same facts:

> "1. Participating in a protest at the terminal, and within the boundaries of the area demarcated in Schedule 1, against the production or use of fossil fuels, contrary to paragraph 1(a).
> 2. Encouraging others to participate in the protest at the terminal, and within the boundaries of the area demarcated in schedule 1, against the production and use of fossil fuels, contrary to paragraph 1(a).
> 3. Obstructing an entrance to the terminal, within the locality of the terminal and in connection with the protest against the production or use of fossil fuels, contrary to paragraph 1(b)(iii).
> 4. Instructing, assisting or encouraging each other to obstruct an entrance to the terminal within the locality of the terminal and in connection with a protest against the production and use of fossil fuels, contrary paragraph 1(b)(xi)."

12. During the course of the trial the claimant indicated it did not wish to proceed with the second allegation of breach and thus I will not consider allegation 2 further.

13. Prior to today, the defendants had made no admissions to the allegations. However, in giving oral evidence, each of them has largely accepted the claimant's factual case. I therefore proceed on the basis that each defendant to puts the claimant to proof. Furthermore, the defendants submit that the court should not enforce the injunction on the basis that it is an unjust order made in breach of their Article 10 and 11 rights or otherwise not to be enforced in light of the climate emergency that each has described in their evidence.

Legal Principles

14. These are contempt proceedings and therefore I remind myself that the burden of proof rests upon the claimant to prove its case to the criminal standard of proof, namely beyond reasonable doubt. In other words, I must be sure that the claimant has proved its case.

15. A number of courts have considered the correct approach to take to contempt proceedings. I am mindful of the guidance given by the Divisional Court in *National Highways Limited v Buse* [2021] EWHC 3404. That again was a case which dealt with contempt proceedings in the context of a protest. At paragraphs 23 and 24 of the judgment, it was held as follows:

> "23. In order to establish a contempt of court the claimant must make the court sure that the defendants: (1) knew of the order; (2) committed acts which breached the order; and (3) knew that they were doing acts which breached the order, see *Varma v Atkinson* [2020] EWCA Civ 1602."
>
> 24. Although articles 10 and 11 of the European Convention on Human Rights and Fundamental Freedoms, to which domestic effect was given by the Human Rights Act 1998, are engaged, this is not relevant to the issue of whether the protestors acted in breach of the order. This is because when imposing the order the judge will have taken into accounts the rights of the protestors to protest, and balanced those interests against the rights of others in deciding whether to make the order, breach of which has penal consequences."

The evidence

16. The claimant relies on four witnesses. Mr Clive Tobin, the claimant's head of legal services and three police officers, Trainee Detective Constable Miles, PC Rowton and PC Dunn. Earlier in the proceedings I gave permission for the claimant to rely on witness statement rather than affidavit evidence. Each of the four witnesses has given oral evidence today. I have also seen video footage taken from body worn cameras of PC Rowton and PC Dunn.

17. Mr Tobin's written evidence sets out the steps he took to ensure that service of the order was effected by the alternative means specified in the order by Sweeting J. He described placing laminated copies of the order and power of arrest in the vicinity of the site at 11 different occasions on 24 August 2022 and placing 16 A2 size laminated notices around the site on 26 August. He then detailed the steps he took on 2 September when he returned to the site with more durable copies of signage again providing details of the claim, the injunction, the power of arrest and where copies of the claim form could be obtained. He exhibited to his written evidence a number of photographs and details of the GPS coordinates as to where he placed the various copies. The claimant also relies on a certificate of service detailing the circumstances in which the injunction was served via the claimant's website and various social media accounts. Ms Shatford was the only

defendant to cross examine Mr Tobin. She sought clarification from Mr Tobin as to whether a grass verge was included in the area covered by the injunction. Mr Tobin stated that the private road was covered but there was an area of grass to the right of the entrance that fell outside the red boundary line.

18. Trainee Detective Constable Miles then gave evidence. The police officer's written statement exhibited copies of photographs and video footage that she had accessed from Just Stop Oil's website and social media platforms. Extracts of the video were played in court and which showed footage of a large number of protesters sitting in the roadway blocking the entrance to the oil terminal. An individual is heard to provide a commentary on one of the videos including reference to hearing hoots of support from some passing motorists and negative responses from other motorists. She was not cross-examined.

19. In his written evidence, PC Rowton explained that he attended the terminal site at about 3.30 in the afternoon on 14 September and saw multiple people sitting across the entrance to the oil terminal holding banners and wearing high viz jackets. He states he was the officer who arrested Tez Burns and then, later in time, Sheila Shatford, El Litten, Mary Adams and Charlotte Kirin. He exhibited his body worn camera footage showing the arrests. In his oral evidence he explained that the time shown on the body worn camera video footage was one hour behind the actual time.

20. Ms Adams cross-examined PC Rowton. The officer accepted that he had no previous experience in policing climate protests. He explained that police dog units had been called by the superintendent who had told any available police officer to attend the incident. The dogs were not there because there was any particular resistance from the protestors. He explained that the public roads in the vicinity had been closed for reasons of safety of the officers and of the protestors. Ms Shatford cross-examined PC Rowton about what, if any training, he had received as to policing environmental activism. The officer stated that stated that, as part of his officer safety training, he had been taught how to deal with groups and the five-step appeal process to adopt. He accepted he had not received specific training regarding environmental activism.

21. PC Dunn was the final police witness. In his written evidence he stated that he had arrived on site at about 12 noon by which point the protestors were sitting in the junction at the entrance to the oil terminal stopping people entering and exiting via car. He described seeing several banners with "Just Stop Oil" wording and a number of the protestors wearing orange bibs, again with the Just Stop Oil logo. He gave evidence that one site worker had told the protestors that they had a medical appointment around 2.30 and had asked Michelle Charlesworth whether they would move to facilitate the vehicle but that she had refused to allow the worked to leave in their vehicle. PC Dunn later arrested Michelle Charlesworth. Ms Charlesworth cross-examined PC Dunn. He stated that he had been an officer for some three-and-a-half years and had policed climate protests on one previous occasion. He accepted that the protest was entirely passive. He explained that he had not received any information or training about climate emergency in his capacity as a police officer.

22. In the course of their oral evidence, each of the police officer witnesses confirmed the location of the protest on the private access road by reference to the injunction plan. The location identified by each fell within the red boundary line referred to in the injunction.

23. The court heard oral evidence from each of the six defendants. Self-evidently, some of the defendants gave evidence before their co-defendants. The defendants indicated that, in addition to relying on their own evidence, in general each also adopts the evidence of their co-defendants.

24. Tez Burns was the first defendant to give evidence. She was frank with the court and accepted that she had broken the injunction when obstructing the oil terminal on 14 September. She gave a very eloquent explanation as why she had chosen to join the action on that day borne, in particular, out of her concern over government plans to drill more holes for the extraction of fossil fuels. She spoke at some length to a letter published by OnePointFive Degrees and signed by some 150 solicitors and barristers urging that climate conscious actions be taken by lawyers. She stated that she was not a criminal but was driven by what she thought was right. In cross-examination, Tez Burns was taken through the various allegations of breach and she accepted, very frankly, that she was involved in Just Stop Oil protests against the production and use of fossil fuels inside the red boundary line. She admitted she was obstructing an entrance to the terminal and that the volume of individuals participating in the protest meant that together they blocked road. She also accepted that the police had read the injunction to them and given them the chance to move but she chose not to.

25. Michelle Charlesworth adopted the evidence of Tez Burns and later asked to adopt the evidence of co-defendants who gave evidence after her. Ms Charlesworth made admissions as to her involvement in the protest on 14 September against the production and use of fossil fuels. She did not accept that she had encouraged the others and stated that all of the protestors involved on that day were there of their own volition and did not require the encouragement of any co-member of Just Stop Oil. Ms Charlesworth accepted that she was now before the court for a third breach of the injunction and also had an earlier finding of contempt in the face of the court for gluing herself to the dock. She admitted that she had told the site worker that the protestors would not move to allow him to leave in his vehicle for his medical appointment. She however explained that it had been made clear to him that he could leave on foot. She stated that the protestors would have been happy to pay for a taxi or that his employer could have found a way to assist. She stated that, whilst their policy was not to move, they would have done if there had been an ambulance with lights flashing or similar emergency situation.

26. Mary Adams also adopted the evidence of Tez Burns and again made admissions as to her activity on that day putting her in breach of the injunction. She told the court that she takes the view that the injunction prohibits her rights under Articles 10 and 11 whilst protecting the rights of the fossil fuels industry. Ms Adams gave a very eloquent explanation as to her rationale for acting in the way that she did and detailed a number of examples of recent climate emergencies. She urged the court not find the defendants in contempt of court, citing circumstances in which history has shown that laws can change according to changing societal values. In cross-examination she, in common with earlier defendants, accepted that she had been within the red boundary line, obstructing the entrance to the terminal, as part of a protest against the production and use of fossil fuels.

27. Sheila Shatford adopted the evidence of Tez Burns and Mary Adams. She told the court that she had retired two years ago after working for 50 years as a nurse and had not taken

the decision to protest lightly. She explained that her actions were motivated by climate crisis which was already affecting the world. Ms Shatford explained that she felt she had a moral duty to speak up. Whilst she accepted that their actions would have caused temporary but frustrating disruption and costs to public services, she considered those insignificant compared to the mass extinction. In cross-examination she too accepted that she had been involved in the protest against the production and use of fossil fuels within the red boundary line and that she was obstructing the entrance to the terminal.

28. Charlotte Kirin also adopted the evidence given by her co-defendants. She too acknowledged that she had been part of the protest at Kingsbury on 14 September explaining that she had done so to prevent greater harm. In cross-examination, she too admitted breach of the injunction.

29. The court finally heard evidence from El Litten. El Litten adopted the previous defendants' evidence and gave an eloquent explanation as to the reasons for acting borne of concern as to the crises that were hitting the planet on a global scale. El considered that the courts and judiciary should be holding the government to account. El Litten indicated they were not asking for leniency personally. In cross-examination, El Litten, as with the other defendants, admitted taking part in the protest within the boundary line, obstructing the entrance to the terminal, whilst being aware of the injunction.

Findings of Fact

30. The defendants do not challenge the claimant's factual case. Each has admitted that they were involved in the protest on 14 September 2022 against the production and use of fossil fuels and that, by doing so, were within the red boundary line and blocked the entrance to the oil terminal. Taken together with the evidence from the police officers, including the body worn camera footage, I am satisfied that the claimant has proved its factual case namely that each of the defendants was protesting within the red boundary line marked on the map at Schedule 1 to the injunction, that that protest was in relation to the production and/or use of fossil fuels and it blocked or obstructed the entrance to the oil terminal. By acting in such a large group, each individual protestor assisted others to achieve the aim of blocking the whole road leading to the entrance to the terminal.

Analysis

31. It is trite law that an injunction must be served in order for it to be enforced by way of committal for contempt unless service has been dispensed with. This is not a case in which service has been dispensed with. Having heard from and read the evidence of Mr Tobin, I am satisfied that the injunction was served by the alternative methods specified by Sweeting J. In the latter part of August 2022 and early September 2022 multiple signs highlighting the injunction were placed around the perimeter of the site, at the entrance to the site and at junctions of roads leading to the entrance to the oil terminal. Furthermore, I accept the certificates of service that evidence the publication of the injunction by digital means on 10 May 2022 and again by providing links on 23 August. Moreover, each of the defendants admit that they were already aware that the injunction was in force when undertaking the protest.

32. I turn to the particulars of alleged breach. The first allegation is that the defendants breached paragraph 1(a) of the injunction by participating in a relevant protest within the boundary of the area demarcated on Schedule 1. It will be apparent from the findings of fact I have made that each of the defendant's conduct on 14 September puts them in breach of paragraph 1(a). The same is also true as to the allegation that those actions amount to a breach of paragraph 1(b)(iii) in that the protest obstructed an entrance to the terminal. I am further satisfied that the defendants' actions, acting in unison to block the road, amounts to a breach of paragraph 1(b)(xi). It required more than one individual to achieve the blocking of the entire width of access road and each assisted the other in that aim.

33. I turn to the defendants' submission that the court should not use this as an opportunity to make findings of contempt, notwithstanding that the claimant has proved the individual elements of breach. Each of the defendants have addressed the court extensively as to their views on the climate emergency. It is generally acknowledged in society that there are very legitimate environmental concerns. It is also recognised that individuals are entitled to qualified (rather than absolute) rights to freedom of speech, to freedom of assembly and to protest, but that those rights have to be exercised within the rule of law. The injunction granted by Sweeting J was an order made by a court of competent jurisdiction. When Sweeting J imposed the order, due consideration will have been given to the defendants' Article 10 and Article 11 rights. In other words, the decision to grant the injunction balanced the interests of those seeking to protest with the rights of others affected by their conduct. As per the decision of the Divisional Court in *National Highways Limited v Buse* case, although Articles 10 and 11 are engaged in this contempt application, they are not relevant to the question of determination of breach because those consideration were already factored in when the interim injunction was made. I therefore reject the defendants' submission that their assertion that the injunction infringes their Article 10 and 11 rights amounts to a defence to the contempt proceedings.

34. The injunction remains in force but is an interim order only. At some point in the future there will be a final hearing. The defendants will have the opportunity, should they so wish, to attend the final hearing and make submissions as to their concerns as to Article 10 or Article 11 issues and the appropriateness of a final injunction. The claimant has indicated that each of these defendants is to be added to the substantive proceedings as named defendants.

35. In those circumstances, I conclude that the claimant has established to the necessary criminal standard of proof that the applications for committal for contempt against each of the defendants have been proved. Each defendant is found to be in breach of paragraphs 1(a), 1(b)(iii) and 1(b)(xi) of the order.

36. A transcript of this judgment on liability will need to be obtained at public expense on an expedited basis and published on the judiciary website. I will hear from the claimant and each of the defendants before determining the appropriate penalties for contempt.

[THE COURT HEARD SUBMISSIONS FROM THE PARTIES]

37. El Litten, Charlotte Kirin, Michelle Charlesworth, Tez Burns, Sheila Shatford and Mary Adams , it falls for the court to determine the appropriate sanction in light of the finding that each of you is in contempt of court arising out of your involvement in the protest on 14 September 2022.

38. I have already set out the background to the case, your actions and my findings in my earlier judgment on liability.

39. The claimant has prepared a sentencing note to assist the court with the approach to take in relation to the imposition of sanction for contempt. I largely agree with the approach advocated for by the claimant. These contempts of court are civil not criminal matters. The finding of contempt will not appear on any criminal record. There is, however, a penal element to the imposition of a sanction. When determining the appropriate penalty for a contempt of contempt, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

40. The Sentencing Council produce guidelines for use in criminal cases. They do not produce guidelines for civil cases. However, the Court of Appeal, in a number of cases, including *Amicus Horizon v Thorley* [2012] EWCA Civ 817 has endorsed the use of the Sentencing Council guidelines in the civil courts by analogy. The appropriate guideline is that for breach of a criminal behaviour order. It is not however a complete analogy. Breach of a criminal behaviour order in the criminal courts attracts a maximum sentence of 5 years' imprisonment whereas the maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. I am also mindful that the injunction is not an antisocial behaviour injunction of the kind that is made under the Antisocial Behaviour Crime and Policing Act. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.

41. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. They were also prepared in respect of breaches of anti-social behaviour injunctions rather than in respect of breaches of protestor injunctions. I therefore adopt the criminal guideline as the best analogy.

42. The claimant referred in its opening to the Court of Appeal decision in *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I referred in my liability judgment to *National Highways Limited v Buse* [2021] EWHC 3404 (QB). In

both of those cases the court looked at the approach to be adopted when dealing with sanctions for contempt of court in protestor cases.

43. None of the defendants have legal representation today. Had you had been represented, I have no doubt that your legal representatives would have urged the court to adopt the guidance in *Cuadrilla Bowland* and have reminded the court that it should usually be reluctant to make an order for immediate imprisonment when a protestor acting for conscientious reasons first comes before the court. In *Cuadrilla Bowland,* Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

44. I accept that all of six of you acted for conscientious reasons and that this was a wholly peaceful protest. At paragraph 98 of *Cuadrilla Bowland* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

45. I turn to the Definitive Guideline for breach of a criminal behaviour order. The claimant submits that all of these defendants, bar Michelle Charlesworth, fall into culpability category B, being a deliberate breach. I agree with that classification. The breach by each of the said five defendants was deliberate.

46. Ms Charlesworth, however, is in a different position. Ms Charlesworth, this now your third contempt arising from breach of the injunction with earlier contempt of court occurring on 27 April 2022 and 4 May 2022. There is an additional contempt within these proceedings when you glued yourself to the dock of the court on 5 May 2022. For those earlier three matters, you received a sentence of 33 days' immediate imprisonment which took account of the equivalent of 30 days' spent on remand in custody. Four matters of contempt within a period of five months moves your case into culpability category A as your actions are persistent.

47. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to exit the site using the access road you were blocking to attend a medical appointment.

48. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

49. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

50. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.

51. If this matter were in the criminal courts, the guideline would suggest the following sentences for all defendants save Ms Charlesworth,. A category 1 harm, culpability B matter would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B

case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody.

52. Ms Charlesworth is in a different position. A category 1 harm, culpability A offence in the criminal courts would have a starting point sentence of 2 years' custody, with a range of 1 to 4 years' custody. A category 2 harm, culpability A matter, would have a starting point of 1 year's custody with a range of a high level community order to 2 years' custody.

53. The penalties for contempt of court have to be reduced to reflect the lower maximum term of imprisonment in the civil court. The court has to take into account any aggravating or mitigating circumstances for each defendant. That requires individual consideration of each defendant's case.

54. I deal firstly with Ms Charlesworth's position. The three previous contempt of court matter are not taken into account as an aggravating factor because they have already been taken into account when determining the category of culpability. Ms Charlesworth does, however, have relevant previous convictions. In April 2022 she received an eight-week term of imprisonment, suspended for a period of 12 months, plus unpaid work in respect of a conviction for public nuisance. The suspended sentence element was thus still operational at the date of the contempt on 14 September 2022. She also has 2 further convictions for public nuisance as to which similar concurrent sentences were passed. In addition, she has a conviction for obstructing the highway as to which no separate penalty was passed. All the offences relate to protest activity occurring in the Autumn of 2021. The criminal convictions are an aggravating factor dictating some upward movement from the starting point.

55. Ms Charlesworth's personal circumstances are, however, very sympathetic. Prior to March 2022 she had a lengthy, highly respectable career in which she made valuable contributions to society. She had worked in a variety of human resource roles, in the domestic violence sector, in homelessness hostels, and in managerial positions in the various third sector organisations. She has co-founded a climate change emergency charity and is still heavily involved in that. I take her personal mitigation into account.

56. Tez Burns has two previous convictions from June 2022 for obstructing the highway for which she was fined. The offences themselves date to 2021. Ms Burns was not the subject of any suspended sentence or period of conditional discharge at the date of the contempt. In common with the approach I have taken in other cases of contempt arising out of this protest, I do not propose to take the two offences, which resulted in fines only, into account as an aggravating factor. Ms Burns also has good personal mitigation. Whilst she is not in employment at the moment, she is heavily involved in voluntary work with a charity and has taken significant steps to overcome previous battles with alcohol addiction to achieve degree level academic qualifications. As with all of these defendants, she was motivated on grounds of social conscious.

57. Mary Adams has two previous convictions in 2022 for obstructing a highway, again dating back to protest activity in 2021. She was fined for both matters. In common with the approach adopted in respect of Tez Burns and other co-defendants, I do not propose

to treat the two convictions as an aggravating matter. Ms Adams was in longstanding employment before she retired in 2014 and is now involved in a small charity supporting small environmental projects.

58. Sheila Shatford is of positive good character with has no previous convictions or cautions. She is retired, having worked as a nurse for approximately 50 years. Whilst she is in receipt of a private and state pension, she is of relatively modest income having a mortgage which will not be repaid until she is aged 75.

59. Charlotte Kirin is also of positive good character with no previous convictions or cautions. She is a qualified social worker and had worked in that role for some 20 years before leaving her job only recently as a result of a protest activity.

60. El Litten has a single previous conviction from May 2022 for obstructing the highway in the Autumn of 2021. The conviction resulted in a financial penalty. As with other defendants in a like position, I do not propose to take the single criminal conviction resulting in a fine into account as an aggravating factor.

61. El Litten has been very frank with the court and disclosed that she has been before the civil courts for breaching other civil injunctions, including the National Highways injunction. Whilst El Litten is to be commended for her frankness, I conclude it would not be appropriate to take her previous admitted contempt of court arising in other civil matters into account as an aggravating factor. Unlike in the case of criminal convictions and cautions, this court is not assisted by any national database of individual's previous findings of contempt of court. I do not therefore have details as to the previous findings of contempt, dates thereof or what sanctions were imposed. The details provided by Ms Litten are vague and unparticularised. In addition, I know nothing as to whether any of the other 50 defendants appearing in respect of the protest on 14 September also have previous findings of contempt. There is a risk of disparity if I approach El Litten's case in a manner different to others that may too have findings of contempt in other claims. Whilst the civil courts would be very much assisted by a national database of previous civil breaches, on this occasion I am not persuaded it is appropriate to take El Litten's past admitted contempt into account as an aggravating factor.

62. El Litten describes being employed one day per week and undertaking some freelance work for the reminder of time, producing a modest but not substantial income.

63. I turn to the cases of Ms Burns, Ms Adams, Ms Shatford, Ms Kirin and Ms Litten. In my judgment, the contempt of court arising out of each of your involvement in the protest on 14 September 2022 is so serious that only a custodial sentence is appropriate. The starting point for each of you, taking into account each of your personal circumstances, is one of 56 days' imprisonment. I will return to the issue of whether that sentence can be suspended in due course.

64. Unlike the co-defendants that appeared before the court last week and who made admissions, you are not entitled to any credit for an admission as your cases each required a trial.

65. In fixing the term of imprisonment in the civil courts, the court has to take into account any time that has been spent in custody on remand and deduct it from the term. You have each spent 13 days in custody. That equates to a sentence of 26 days. Therefore, the term of 56 days needs to be reduced by 26 days giving a term of 30 days' imprisonment.

66. I bear in mind the guidance in *Cuadrilla Bowland* and in *National Highways v Buse*. These are your first breaches of this injunction and your actions arose from civil disobedience. I am persuaded that it is appropriate in each of your cases to suspend the term of imprisonment on condition of compliance for a period of two years from today with the terms of any interim or final injunction order made in the claim in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022 but if that order was subsequently varied, it would be the form of any varied order with which you must comply. I make it clear, if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment would be implemented and you will be dealt with separately in relation to any future contempt.

67. I turn to the case of Michelle Charlesworth. In my judgment the contempt of court, being the fourth contempt in these proceedings, is so serious that only a custodial sentence is appropriate. Taking into account the higher categorisation of culpability and your aggravating and mitigating circumstances I have already referred to, a starting point sentence of 154 days' imprisonment is appropriate. As with the other defendants, I deduct 26 days to reflect the 13 days you have already spent in custody on remand. That reduces the term to 128 days' imprisonment.

68. I have considered the guidance in *Cuadrilla v Bowland* and *National Highways v Buse*. I have also taken into account the definitive guideline on the imposition of community and custodial sentences. Ms Charlesworth, you have a very poor history of compliance with this order having been before the court now on three occasions for contempt within the last five months and once in relation to contempt in the face of the court in the context of these proceedings. Against that background, I am not persuaded it is appropriate for the court to suspend and thus the 128 days will be an immediate term of imprisonment.

69. Although the defendants feel very strongly about the injunction, it does not prevent the conducting of protests, even in the locality of the terminal. There is an area which falls outside the red boundary line immediately adjacent to the entrance to the terminal where the protest on 14 September occurred. Protests can take place outside the red boundary line so long as they do not otherwise contravene paragraph 1(b) of the order. However, as has been said repeatedly by more senior courts than this, in a democratic society it is the duty of responsible citizens to obey the law and rights of others, even where those laws are contrary to their moral convictions.

70. The claimant has made an application for each defendant to pay a contribution to its costs. It quantifies that contribution as £320.77 each in respect of the hearings up to and including the directions hearings last week, and a further £1,095 each in relation to the costs of the trial.

71. The general rule in civil litigation is that the successful party is entitled to its costs from the unsuccessful party unless the court orders otherwise. The claimant has proved its case and is the successful party. In principle, the defendants will each pay a contribution to the claimant's costs.

72. At hearings last week, I deemed the sum of £320.77 a proportionate sum for the work up to and including the second hearing. As to the costs of the trial, the claimant's figure includes the costs for half a day's attendance yesterday. Yesterday was listed as the first day of trial but it could not proceed due to the prison failing to produce Charlotte Kirin. Neither the claimant nor defendants were at fault for the non-production of Ms Kirin. The defendants' failure to make admissions required a trial of these matters and one which was listed for two days. The vicissitudes of litigation are such that it is appropriate for those costs to fall at the door of the defendants who required the trial to be listed.

73. I am persuaded that the overall sums sought by the claimant I respect of the trial are proportionate and indeed relatively modest for litigation of this nature. I therefore summarily assess each defendant's contribution to the trial costs in the sum of £1,095. Adding the costs from last week gives rise to a total of £1,415.77 per defendant. As to payment of that sum, each defendant's financial circumstances have to be taken into account.

74. Tez Burns is in receipt of Universal Credit and of extremely limited means. Ms Burns shall pay the costs by instalments of £10 a month, the first payment to be made by 27 October 2022 and thereafter by the 27th of each month until the balance is discharged.

75. Michelle Charlesworth is of limited means having left her employment in March. However, she lives with her husband in a property subject to a mortgage. In Ms Charlesworth's case the instalments will be £50 a month. In light of the immediate custodial sentence, the first payment of £50 will not be due until 30 November 2022 and thereafter by the 30th of each month

76. Mary Adams is retired and derives her income from rental income and certain investments. She is in a better financial position than the other defendants and shall pay the £1,415.77 as a lump sum by 31 October 2022.

77. Sheila Shatford is a retired nurse and in receipt of a combination of private and state pension income. She does, however, still have a mortgage liability which will not be redeemed until she is aged 75. Ms Shatford will pay by instalments of £50 per month, again with the first payment by 27 October 2022 and thereafter by 27th of each month.

78. Charlotte Kirin is currently not in employment and is hoping that she will be able to obtain some work in the near future. She believes any income will be much reduced from that she received when a full-time social worker. She has a mortgage liability and lives alone with no savings. Ms Kirin will pay by instalments of £25 per month, the first payment by 27 October 2022 and thereafter by the 27th of each month.

79. El Litten has income of approximately £1,000 a month from a combination of employment for one day a week and some freelance work. She too is of modest means. El Litten will pay by instalments of £25 per month, the first payment by 27 October 2022 and thereafter by the 27th of each month.

80. Each defendant has a right to appeal the orders for committal. Any appeal must be made to the Court of Appeal Civil Division within 21 days of today.

81. As with the judgment on liability, a transcript of this judgment shall also be obtained at public expense and published in due course on the Judiciary website.

82. I thank each of the defendants for the dignified way in which they have conducted themselves throughout the trial. I was aware that each wanted to have their voice heard and their conduct ensured that the case proceeded without disruption such that all could participate.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2541 (KB)

Case No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Friday, 23 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) NICHOLAS ONLEY
(2) PETER LAY
(3) SIMON MILNER-EDWARDS
(4) CHRISTIAN MURRAY-LESLIE
(5) MICHELLE CADET-ROSE
(6) VICTORIA LINDSELL
(7) MARGARET REID

Defendants

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

.

A P P E A R A N C E S

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department) appeared on behalf of the Claimant
THE FIRST DEFENDANT appeared in Person.
MS OBORNE appeared on behalf of the Second, Third and Seventh Defendants.
THE FOURTH DEFENDANT appeared in Person
THE FIFTH DEFENDANT appeared in Person
THE SIXTH DEFENDANT appeared in Person

---

1. JUDGE KELLY: Nicholas Onley, Peter Lay, Simon Milner-Edwards, Christian Murray-Leslie, Michelle Cadet-Rose, Victoria Lindsell and Margaret Reid, you each appear before the court having admitted breaching the terms of an interim injunction granted by Mr Justice Sweeting on 14 April 2022, as varied by his order dated 6 May 2022.

2. Mr Lay, Mr Milner-Edwards and Ms Reid, you are all represented by Ms Oborne of counsel although each of you, at your request, have also addressed the court in person. Mr Onley, Mr Murray-Leslie, Ms Cadet-Rose and Ms Lindsell, you each appeared as litigants in person. You were advised at the hearing last week and again today of your entitlement to legal advice and representation but you each wish to proceed in person.

3. On 15 September 2022 the claimant provided you with written particulars of the alleged contempt said to have occurred on 14 September 2022. You have each made admissions in accordance with the allegations in that document. These are civil not criminal proceedings. However, because they are contempt proceedings, the claimant nonetheless has to prove its case to the criminal standard of proof, namely beyond reasonable doubt. In light of the admissions each of you have made, and having read the evidence served by the claimant, I am satisfied that each of you is in breach of the injunction in the way the claimant describes.

Background

4. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. Ms Cadet-Rose was a named defendant but the other defendants were not. Persons unknown were defined as those who were:

> "… 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 the injunction.

5. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.

(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

6. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

> "(iii) obstructing of any entrance to the terminal; …
>
> (xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order."

7. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

8. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

9. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

10. The claimant relies on various certificates of service within the papers. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. Whilst it appears that the claimant did not undertake all the required steps of alternative service promptly after the hearing on 5 May, the claimant did remedy the service position by competing steps between 23 August and 2 September 2022. The requisite service had therefore been completed in advance of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022. On 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September the claimant completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

11. On 14 September 2022 you were seven of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest, but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat

down across the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

12. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress. The police attended and asked you to move, warning that you were in breach of a High Court injunction and that you would be arrested if you chose not to comply. You refused to move and from 3.50 pm onwards the police began the very considerable task of arresting all 51 of you.

The approach to determining the appropriate penalty

13. You each accept that your conduct puts you in breach of paragraph 1(a), 1(b)(iii) and 1(b)(xi) of the injunction. The claimant has prepared a sentencing note to assist the court in determining the appropriate penalty. Ms Oborne has handed in a copy of *National Highways Limited v Buse & others* [2021] EWHC 3404 (QB). I largely agree with the approaches adopted by both counsel in their submissions as to the correct approach to the determination of the sanction for contempt.

14. In determining the appropriate penalty for a civil contempt of court, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

15. The Sentencing Council produce Definitive Guidelines to assist judges sentencing in the Criminal Courts. They do not produce any similar guidance for use by the civil courts when dealing with contempt of court. However, the Court of Appeal in a number of cases, including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 but also in *National Highways Ltd v Buse* and *Cuadrilla Bowland Ltd & Ors v Persons Unknown* [2020] EWCA Civ 9, endorses reference by civil courts to the Sentencing Council Guidelines when dealing with contempt. The guidelines can only be used by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. The analogy is not therefore a complete one and the suggested criminal sentences will need to be scaled down to some extent.

16. The claimant refers in its sentencing note to the Civil Justice Council report of July 2020 and its draft guidelines for dealing with contempt of court arising from breaches of injunctions granted under the Anti-Social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, reflect the lower range of penalties in the civil courts. The guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

17. Counsel for the claimant has properly drawn the court's attention to *Cuadrilla Bowland Ltd v Persons Unknown* when Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

18. The court accepts that your actions on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

19. Ms Oborne referred to the judgment of Dingemans LJ in *National Highways Ltd v Buse*. The approach to determining the sanction for contempt of court is considered at paragraphs 27 to 31. The approach is consistent with the aforementioned guidance in *Cuadrilla Bowland Ltd & Ors* and is one I adopt in this case.

20. I turn to the Sentencing Council Guideline for breach of a criminal behaviour order. There are three categories of culpability. Category A includes a very serious or persistent breach. Culpability B is a deliberate breach, falling between A and C. Culpability C is

a minor breach or a breach just short of reasonable excuse. Each defendant's case has to be considered separately.

21. Mr Milner-Edwards and Ms Reid, you each appear before the court for what is your fourth breach of the injunction within a five-month period. Your conduct amounts to persistence breach of the injunction and falls within culpability category A. Mr Onley, Mr Lay, Mr Muray-Leslie and Ms Cadet-Rose, this is your first breach of the injunction. Ms Lindsell, this is your second breach. Each of your cases falls within culpability category B, being a deliberate breach.

22. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to leave the site to attend a medical appointment.

23. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

24. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

25. In my judgment, the impact on policing resources arising from the timing and scale of this protest results in the harm in this case falling above category 2, albeit not squarely within category 1. Category 1 is a breach that causes very serious harm or distress or a breach that demonstrates a continuing risk of serious criminal and/or antisocial behaviour. I therefore propose to proceed on the basis that the case falls between category 1 and 2.

26. As to Mr Milner-Edwards' and Ms Reid's cases, a category 1 harm, culpability A matter in the criminal courts has a starting point sentence of two years' imprisonment, with a range of one to four years' custody. A category 2 harm, culpability A matter would have a starting point of one years' imprisonment with a range of a high level community order to two years' custody.

27. As relevant to the remaining five defendants, a category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

28. In each of your cases, the court takes into account any aggravating and mitigating factors. That requires each of your cases to be considered separately.

29. Mr Onley, you have no previous convictions or cautions and are therefore of positively good character. This is your first breach. You have told the court you are of limited means and undertake voluntary work and run a food bank. Your income is said to be only £50 per week.

30. Mr Lay, you too have no previous convictions or cautions and are before the court for your first time for breach of the injunction. It is said on your behalf that you have found the experience of being remanded in custody very sobering. You are unemployed, not in receipt of State benefits and have very modest saving of some £600.

31. Mr Milner-Edwards, you are now before the court for your fourth breach of the injunction. I do not take that into account as an aggravating factor, because the question of persistence has already been accounted for when determining the category of culpability and I want to avoid double-counting. Your position is however aggravated by your previous criminal convictions. Your have three convictions for obstructing the highway on different dates in 2022, with the offences themselves dating to the autumn of 2021. You were fined for each. You also have a conviction from May 2022 for failure to surrender. I am told that all the convictions arise from your protest activity. You have informed the court that you are a 65 year old retired musician. Through your counsel you say that you have had a very challenging time in custody and have said you have no intention to further breach the order.

32. Mr Murray-Leslie, you are before the court in respect of your first breach of the injunction. Mr Manning informed the court that you had two previous convictions. One from 16 April 2022 for aggravated trespass, for which you received a 12-month conditional discharge and a second from 17 June 2022 for obstructing the highway, for which you were fined. There is some doubt as to whether the first of those convictions still stands. Mr Murray-Leslie informed the court that he received notification by letter earlier this month to the effect that the conviction from April 2022 was being quashed and that there was to be a hearing on 12 September 2022 where that would be dealt with in his absence. I bear in mind these are contempt proceedings and attendant standard of proof. Given the uncertainty, I am not going to take the conviction for aggravated trespass into account. The only relevant conviction is thus one for obstructing the highway which was disposed of by way of a fine. In circumstances where there is a single conviction and Mr Murray-Leslie was not subject of the operational period of either a conditional discharge or a period of suspended imprisonment at the time of this breach, I am not going to treat that single conviction as an aggravating factor. Mr Murray-Leslie has told the court that he is a 78 year old retired consultant in rehabilitative medicine, who has now become involved in climate protesting. He has clearly made a very significant contribution to society throughout his lengthy career.

33. Michelle Cadet-Rose, you also appear before the court in respect of your first breach of the injunction. You have no previous convictions or cautions and I take that into account. You tis therefore entitled for that mitigating factor to be taken into account. You also refer to your time spent on remand as being a difficult experience. You are now aged 65 and are in receipt of only a very modest income having taken early retirement at age 55.

34. Victoria Lindsell, you are before the court in respect of a second breach of the injunction. I did not take the repetition of breach into account when determining the category of culpability and therefore it is treated as an aggravating factor. Your case is also aggravated by three previous criminal convictions from May 2022 for obstructing the highway, for which you were fined. You are now aged 67 and has also found time in custody to be a sobering experience.

35. Margaret Reid, this is your fourth breach of the injunction. As with Mr Milner-Edwards, I do not take that into account as a further aggravating factor given its consideration when determining the category of culpability. You have no previous convictions or cautions. You are now aged 51 and, as with your co-defendants, have otherwise lived a lifestyle by which you contribute to society in a meaningful way.

36. Taking the aggravating and mitigating factors into account, the contempt of court arising from each of your involvement in this large-scale protest on 14 September 2022 is so serious that only a custodial sentence is appropriate.

37. As to Mr Onley, Mr Lay, Mr Murray-Leslie and Ms Cadet-Rose, this a first contempt for each and each is of good character or being treated as such. The starting point sentence for each of you is one of 56 days' imprisonment. You are each entitled to a one-third discount to reflect your admission at the earliest reasonable opportunity. Rounding down

in your favour reduces the term to 37 days. You have all spent a period of nine days in custody, one day following your arrests on 14 September and eight days from remand on 15 September to today. The irony is that the claimant did not oppose bail in the case of any individual for whom this was a first breach. However, at the hearings last week you each informed the court that you did not respect the authority of the court and, if bailed, would not voluntarily return to court and would breach the breach the injunction. It was against that background that each found themselves remanded in custody. Nine days in custody are the equivalent of an 18-day sentence. Unlike with criminal sentences, the prison service cannot adjust the period in custody to reflect time spent on remand. I therefore reduce the term of 37 days by 18 days spent on remand resulting in a term of imprisonment of 19 days. Mr Onley, Mr Lay, Mr Murray-Leslie and Ms Cadet-Rose are before the court for the first time for breach of this injunction. I bear in mind the guidance in *Cuadrilla Bowland Ltd & Ors*, and in *National Highways Ltd* as to whether a term of imprisonment should be suspended. In circumstances where these are first breaches and ones of civil disobedience, I have little difficulty in concluding that it is appropriate to suspend each of your sentences.

38. As to Ms Lindsell, this is your second contempt and your position is aggravated by three previous convictions. I adopt a starting point of 70 days' imprisonment in your case. Applying a one-third discount for your early admission, reduces that to 46 days, less the equivalent of 18 days on remand further reduces the sentence to one of 28 days' imprisonment. In your case Ms Lindsell this is a second breach and therefore gives the court far more pause for thought as to whether it is appropriate to suspend. With some reservations, I am prepared to give you the benefit of the doubt on this occasion and also suspend your sentence.

39. Each of the five sentences will be suspended for two years from today on condition of compliance with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022 but if that order is subsequently varied, it would be the form of any varied order with which you must comply.

40. I turn to the cases of Mr Milner-Edwards and Ms Reid. Both fall into the highest category of culpability given the persistence of breach. There is a distinction to be drawn between the two defendants. Ms Reid, you have no previous convictions. Mr Milner-Edwards, you have three relevant previous convictions for obstructing highway and one conviction for failure to surrender.

41. Mr Milner-Edwards, in your case the sentence starting point is 154 days' imprisonment. Applying a one-third discount for your admission at the earliest opportunity reduces the term to 102. Less the time spent on remand reduces the term to 85 days.

42. Ms Reid, in your case the sentence starting point reflecting your lack of previous criminal convictions is 140 days' imprisonment. The one-third discount for your early admission

reduces that to 93 days, less the equivalent of eighteen days on remand results in a term of 75 days imprisonment.

43. As to both Mr Milner-Edwards and Ms Reid, I have considered whether it is appropriate to suspend the sentences. It is not. For both of you this is your fourth breach of the injunction within a five-month period.

44. As Mr Manning for the claimant made clear when he opened the case, the injunction does not prevent you from conducting all protests, even immediately outside the terminal. You have a copy of the injunction order and plan within the evidence. Mr Manning highlighted an area immediately outside the entrance to the terminal which is not within the red boundary. Subject to your actions not otherwise falling foul of paragraph 1(b) of the injunction order, individuals can protest in that area. I do however remind you that in a democratic society, it is the duty of responsible citizens to obey the law and respect the rights of others, even where other people's lawful activities are contrary to your moral convictions.

45. The claimant has applied for each defendant to pay a contribution to its costs. The general rule in civil litigation is that the successful party is entitled to its costs from the unsuccessful party, but the court may make a different order. In circumstances where Mr Milner-Edwards and Ms Reid will be serving immediate custodial sentences, I am going to depart from the general rule and not order them to pay a contribution to the claimant's costs. I am however going to order each of the other five defendants to pay a contribution to the claimant's costs. Earlier today, I determined that the overall figure sought by the claimant is proportionate and, indeed very modest sum compared to the true cost to the claimant of dealing with these contempt proceedings. Each of Mr Onley, Mr Lay, Mr Murray-Leslie, Ms Cadet-Rose and Ms Lindsell shall pay a contribution to the claimant's costs in the sum of £412.46.

46. Having taken into account the defendants' differing financial circumstances:

    a. Mr Onley, Mr Lay shall pay by instalments of £10 a month. I accept each is of very limited means. The first payment to be made by 4.00 pm on 23 October 2022, and at a rate of £10 per month until the balance is discharged.

    b. Mr Murray-Leslie, Ms Cadet-Rose and Ms Lindsell are of sufficient means that each shall pay in full by 4.00 pm on 31 October 2022.

47. You each have a right to appeal the orders of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. I transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

48. Those five defendants who are subject to suspended sentences will be released from court as soon as the custodians have processed the necessary paperwork, subject to you not being wanted in custody on any other criminal or civil matter.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2540 (KB)

Case No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Friday, 23 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) KATE BRAMFITT
(2) JANINE EAGLING
(3) JULIA MERCER
(4) THERESA NORTON
(5) JADE CALLAND

Defendants

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

.

A P P E A R A N C E S

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department) appeared on behalf of the Claimant
MS OBORNE appeared on behalf of the First Defendant
THE SECOND DEFENDANT appeared in Person
THE THIRD DEFENDANT appeared in Person
THE FOURTH DEFENDANT appeared in Person
THE FIFTH DEFENDANT appeared in Person

---

1. JUDGE KELLY: Kate Bramfitt, Janine Eagling, Julia Mercer, Theresa Norton and Jade Calland you each appear before the court having admitted a breach of the interim injunction granted by Mr Justice Sweeting on 14 April, as amended by his order dated 6 May.

2. Ms Bramfitt is represented by Ms O'Born of counsel. The remaining four defendants appear as in person. At the initial appearance last week and again at the start of today's hearing, all the defendants were informed of their entitlement to seek legal advice and representation. Save for Ms Bramfitt, you have all indicated that you want to proceed without legal representation or advice.

3. On 15 September 2022 the claimant provided you with written particulars of the alleged contempt said to have occurred on 14 September 2022. You have each made admissions in accordance with the allegations in that document. These are civil not criminal proceedings. However, because they are contempt proceedings, the claimant nonetheless has to prove its case to the criminal standard of proof, namely beyond reasonable doubt. In light of the admissions each of you have made, and having read the evidence served by the claimant, I am satisfied that each of you is in breach of the injunction in the way the claimant describes.

Background

4. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. You were not named defendants. Persons unknown were defined as those who were:

> "… 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 the injunction.

5. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.

(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

6. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

> "(iii) obstructing of any entrance to the terminal; …
>
> (xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order."

7. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

8. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

9. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

10. The claimant relies on various certificates of service within the papers. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. Whilst it appears that the claimant did not undertake all the required steps of alternative service promptly after the hearing on 5 May, the claimant did remedy the service position by competing steps between 23 August and 2 September 2022. The requisite service had therefore been completed in advance of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022. On 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September the claimant completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

11. On 14 September 2022 you were five of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across

the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

12. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress. The police attended and asked you to move, warning that you were in breach of a High Court injunction and that you would be arrested if you chose not to comply. You refused to move and from 3.50 pm onwards the police began the very considerable task of arresting all 51 of you.

The approach to determining the appropriate penalty

13. You each accept that your conduct puts you in breach of paragraph 1(a), 1(b)(iii) and 1(b)(xi) of the injunction. The claimant has prepared a sentencing note to assist the court in determining the appropriate penalty. Ms Oborne, on behalf of Ms Bramfitt, has handed in a copy of *National Highways Limited v Buse & others* [2021] EWHC 3404 (QB). I largely agree with the approaches adopted by both counsel in their submissions as to the correct approach to the determination of the sanction for contempt.

14. In determining the appropriate penalty for a civil contempt of court, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

15. The Sentencing Council produce Definitive Guidelines to assist judges sentencing in the Criminal Courts. They do not produce any similar guidance for use by the civil courts when dealing with contempt of court. However, the Court of Appeal in a number of cases, including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 but also in *National Highways Ltd v Buse* and *Cuadrilla Bowland Ltd & Ors v Persons Unknown* [2020] EWCA Civ 9, endorses reference by civil courts to the Sentencing Council Guidelines when dealing with contempt. The guidelines can only be used by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. The analogy is not therefore a complete one and the suggested criminal sentences will need to be scaled down to some extent.

16. The claimant refers in its sentencing note to the Civil Justice Council report of July 2020 and its draft guidelines for dealing with contempt of court arising from breaches of injunctions granted under the Anti-Social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, reflect the lower range of penalties in the civil courts. The guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

17. Counsel for the claimant has properly drawn the court's attention to *Cuadrilla Bowland Ltd v Persons Unknown* when Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

18. The court accepts that your actions on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

19. Counsel for Ms Bramfitt referred to the judgment of Dingemans LJ in *National Highways Ltd v Buse*. The approach to determining the sanction for contempt of court is considered at paragraphs 27 to 31. The approach is consistent with the aforementioned guidance in *Cuadrilla Bowland Ltd & Ors* and is one I adopt in this case.

20. Turning to the Sentencing Council Guideline for breach of a criminal behaviour order. In my judgment, this case falls within culpability category B, that is a deliberate breach falling between the highest and lowest categories of culpability. Each of you made a

deliberate decision to go to Kingsbury Oil Terminal and obstruct the access road, knowing such actions were prohibited by the injunction.

21. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to leave the site to attend a medical appointment.

22. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

23. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

24. In my judgment, the impact on policing resources arising from the timing and scale of this protest results in the harm in this case falling above category 2, albeit not squarely within category 1. Category 1 is a breach that causes very serious harm or distress or a breach that demonstrates a continuing risk of serious criminal and/or antisocial behaviour. I therefore propose to proceed on the basis that the case falls between category 1 and 2.

25. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

26. I have to consider any aggravating and mitigating factors in each of your cases. As to previous criminal convictions or cautions:

    a. Ms Mercer, you have one relevant conviction for public nuisance from 29 April 2022 when you were sentenced to twelve weeks' imprisonment, suspended for twelve months. The operational period of the suspended sentence was therefore live when the contempt occurred on 14 September 2022.

    b. Ms Eagling, you have two relevant previous convictions. One dated 17 May 2022 for obstructing the highway, for which she was fined. A second dated 19 May 2022, for a public assembly offence for which there was a six-month conditional discharge. The operation period of the conditional discharge was therefore live when events occurred on 14 September took place within the period of conditional discharge.

    c. In both Ms Mercer's and Ms Eagling's cases, the contempt of court is aggravated by their relevant previous convictions. The remaining three defendants have no previous convictions and/or cautions and that is taken into account in mitigation.

27. I have heard from all five of the defendants in person. Although Ms Bramfitt also has the benefit of counsel, she too wished to address the court in mitigation. This is a first breach of the injunction for each of you. Each of you has spoken passionately about your reasons for protesting. I accept that each of you all acted on grounds of social conscience, rather than wishing to deliberately cause disruption to the local community in Warwickshire and beyond. I also accept that, save for your protest activity, each of you are generally law-abiding citizens who make very valid contributions to society. I have taken into account the character references supplied by Ms Norton and Ms Eagling.

28. Taking into account those aggravating features as far as Ms Mercer and Ms Eagling are concerned, and the mitigating features in respect of you all, the contempt of court arising from your involvement is this large -scale protest on 14 September 2022 is so serious that only a custodial sentence is appropriate.

29. Before I turn to the question of credit for your admission and effect of time spent on remand, the sentence starting point as far as Ms Eagling and Ms Mercer is concerned is one of 63 days' imprisonment. As far as Ms Bramfitt, Ms Norton and Ms Calland are concerned, the starting point is one of 56 days' imprisonment. Each of you admitted the contempt at the earliest reasonable opportunity. You are entitled to a one-third reduction

under the applicable Sentencing Council Guideline. That reduces the 63-day terms to 42 days and the 56-day terms to 37 days, rounding down in your favour.

30. You have all spent a period of nine days on remand in custody. One day in custody following your arrest on 14 September and a further eight days from 15 September through to today's hearing. It is unfortunate you have spent time in custody, but you are each the author of your own misfortune in that regard. The claimant did not oppose bail in the case of any defendant who was before the court on a first breach but, at the first hearing, you each informed the court that, if bailed, you would not abide by the terms of the injunction and would not voluntarily return to court. Unlike in the criminal court, the prison service cannot adjust the term served to reflect time spent on remand. Nine days on remand is the equivalent of an eighteen-day sentence. The term in respect of Ms Eagling and Ms Mercer is therefore reduced from 42 days to 24 days' imprisonment. In Ms Bramfitt, Ms Norton and Ms Calland's cases, the terms are reduced from 37 days to 19 days' imprisonment.

31. I bear in mind the guidance in *Cuadrilla Bowland Ltd & Ors*, and in *National Highways Ltd* as to whether a term of imprisonment should be suspended. In all of your cases, this is the first breach of the injunction. In those circumstances, I have little difficulty in concluding that it is appropriate to suspend each of those sentences. In each of your cases, terms of imprisonment will be suspended on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022 but if that order is subsequently varied, it would be the form of any varied order with which you must comply. I remind you of the words of Leggatt LJ in *Cuadrilla Bowland Ltd & Ors*. If you do not comply with the condition of suspension, you must expect that an order for imprisonment will be implemented.

32. As Mr Manning for the claimant made clear when he opened the case, the injunction does not prevent you from conducting all protests, even immediately outside the terminal. You have a copy of the injunction order and plan within the evidence. Mr Manning highlighted an area immediately outside the entrance to the terminal which is not within the red boundary. Subject to your actions not otherwise falling foul of paragraph 1(b) of the injunction order, individuals can protest in that area.

33. The claimant has applied for a contribution towards its costs from each defendant and has served a schedule of costs. The contribution sought from each defendant is £412.46 being the claimant's total costs divided between all the defendants. I have seen similar schedules of costs in other like cases earlier this week. The sum sought by the claimant is proportionate. The general rule in civil litigation is that the successful party is entitled to its costs from the unsuccessful party, but the court may make a different order. The claimant has succeeded in establishing the contempt and it entitled to its costs as a matter of principle.

34. Each defendant has told the court something of their financial circumstances and the orders for payment will reflect their means. In your case, Ms Mercer, you have modest savings and will pay the £412.46 in full by 31 October 2022. The remaining defendants have lesser means and will pay by instalments. As far as Ms Eagling and Ms Norton are concerned, payment of the £412.46 each shall be by instalments of £25 per month, first payment by 23 October 2022 and thereafter by the 23rd of each month. As far as Ms Bramfitt and Ms Calland are concerned, payment of the £412.46 will be payable by lower instalments of £10 per month as you are each in receipt of state benefits. Again, the first payment by 23 October 2022, and thereafter by the 23rd of each month.

35. You have a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. I transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

36. Subject to you not having any outstanding criminal or civil matters that require ongoing detention in custody, once the paperwork has been drawn up and the custodians have processed the same, you will be released from this court building today.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2538 (KB)

Case No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Thursday, 22 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) WILLIAM WHITE
(2) TIMOTHY HEWES
(3) KAI SPRINGORUM
(4) JONATHAN COLEMAN
(5) MARCUS BAILIE
(6) VIVIENNE SHAH

Defendants

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including

representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

.

A P P E A R A N C E S

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department) appeared on behalf of the Claimant
THE FIRST DEFENDANT appeared in Person.
THE SECOND DEFENDANT appeared in Person
THE THIRD DEFENDANT appeared in Person
THE FOURTH DEFENDANT appeared in Person
THE FIFTH DEFENDANT appeared in Person
THE SIXTH DEFENDANT appeared in Person

---

1. JUDGE KELLY: William White, Timothy Hewes, Kai Springorum, Jonathan Coleman, Marcus Bailie and Vivian Shah, you each appear before the court having admitted breach of an interim injunction granted by Sweeting J on 14 April 2022, as varied by order dated 6 May 2022.

2. Following your arrests on 14 September 2022, you each appeared before the court on 15 September 2022. At that first hearing you were advised of your entitlement to legal representation and advice and the claimant provided you with written particulars of the alleged contempt. Each of you indicated that you did not want to obtain legal representation and have maintained that position today. I have therefore heard from each of you in person.

3. Mr White, Mr Springorum, Mr Coleman, Mr Bailie and Ms Shah admit breaching paragraph 1(a) and paragraph 1(b)(iii) of the injunction but were unwilling to admit allegations that involved encouraging others. Those admissions are acceptable to the claimant who does not seek to pursue the remaining allegations. Mr Hewes has admitted the particulars of breach in full as alleged by the claimant. All defendants accept materially similar conduct and the technical difference in the admissions will make no difference to the appropriate penalty.

4. In contempt proceedings in the civil court, the claimant has to prove the contempt to the criminal standard of proof, namely beyond reasonable doubt. In light of the admissions made and having read the claimant's evidence, I am so satisfied.

Background

5. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. Mr Hewes is a named defendant, the others were not. Persons unknown were defined as those who were:

> "… 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 the injunction.

6. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.
(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

7. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

> "(iii) obstructing of any entrance to the terminal; …
>
> (xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order."

8. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

9. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

10. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

11. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. The claimant took a variety of steps, not all of them immediately after the hearing in May but had nonetheless completed service before the date of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022 but did not immediately comply with the other requirements as to alternative service. However, on 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

12. On 14 September 2022 you were six of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the

red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

13. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress.

14. Vast numbers of police officers attended in light of the number of protestors in situ. They asked you each to leave, you were polite, but made it clear that you were not prepared to be move voluntarily. From about 3.50pm, the police began the considerable task of arresting all fifty-one of you.

The approach to determining the appropriate penalty

15. The claimant has prepared a sentencing note and I largely agree with the approach advocated. When determining the appropriate penalty for a contempt of contempt, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

16. Those of you that have been before this court before will already be aware that the Sentencing Council produce guidelines to assist the criminal courts when sentencing. They do not produce guidelines for use when determining the appropriate penalty for contempt in the civil courts. However, the Court of Appeal, in a number of cases including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 has indicated that the definitive guideline can be used in the civil courts by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. I am also mindful this is not a true antisocial behaviour injunction of the kind that is made under the Antisocial Behaviour Crime and Policing Act in the Civil Courts. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.

17. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

18. The claimant has quite fairly referred the court to the decision of the Court of Appeal case of *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I have no doubt that had each of you been legally represented, your advocate would have relied upon the guidance in that case to support a submission for clemency. Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

19. The court accepts the actions of all six of you on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

20. I turn to the Definitive Guideline for breach of a criminal behaviour order. Each of you have made your positions plain, namely that you made a deliberate decision to go to Kingsbury Oil Terminal on that day to protest. Your actions fall into culpability category B, failing between culpability A, which is a very serious or persistent breach and culpability C, which is a minor breach.

21. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to exit the site using the access road you were blocking to attend a medical appointment.

22. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

23. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

24. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.

25. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of

12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

26. The court has to consider any aggravating and mitigating factors. Previous criminal convictions are a statutory aggravating factor. Mr Hewes has 5 criminal convictions from 2022, all of which relate to protest activity occurring on various dates in late 2021. The convictions include one dated 7 June 2022, a hearing which post-dated Mr Hewes' last appearance before this court for breaching the injunction. On 7 June 2022 Mr Hewes was convicted of public nuisance and sentenced to twelve weeks' imprisonment, suspended for 12 months. It therefore follows that Mr Hewes was subject to the suspended sentence when he committed the contempt on 14 September 2022. Mr Hewes' convictions do aggravate the seriousness of his position. The remaining five defendants have either a single relevant previous conviction or no previous convictions or cautions at all, and I propose to treat the remainder of the defendants on the basis that they are of good character as far as criminal matters are concerned.

27. In some of the defendants' cases, their position is aggravated by virtue of having appeared before this court earlier this year in breach of the injunction. This is the second breach of the injunction as far as Mr Hewes, Mr White, Mr Coleman and Ms Shah are concerned.

28. I have heard what each have you have said in mitigation and I accept each of you acted as you did for conscientious reasons. All the defendants live otherwise law-abiding lives. Mr White, Mr Hewes and Mr Coleman are longstanding members of clergy. Ms Shah is a retired social worker and nurse. Mr Bailie and Mr Springorum equally are educated and articulate individuals.

29. Taking into account the Definitive Guideline by analogy and the aggravating and mitigating features, the contempt of court in each of your cases is so serious that it crosses the custody threshold. As to Mr Bailie and Spingorum, a penalty of 56 days' imprisonment is appropriate. As to Mr White, Mr Coleman and Ms Shah, there is upward movement to reflect that this is a second breach of the injunction and the appropriate penalty is 63 days' imprisonment. As to Mr Hewes, there is further upward movement to 70 days' imprisonment reflecting the previous criminal convictions and previous breach of the injunction.

30. You have each admitted the breach at the first reasonable opportunity. The Sentencing Council Guideline provides for the maximum one-third reduction from any sentence to reflect a guilty plea at the earliest opportunity. I apply that by analogy. The 56-day terms are reduced to 37 days, the 63-day terms to 42 days and the 70-day term to 46 days.

31. In fixing the term of imprisonment, I have to take account of any time that you have spent on remand. Unlike in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take account of time spent on remand. You have each been in custody for a total period of 8 days, 1 day following your arrest on 14 September 2022

and a further 7 days following your remand in custody on 15 September 2022. That is the equivalent of a 16-day sentence and needs to be deducted from the terms. As such, the terms of imprisonment are as follows:

a. Mr Bailie and Mr Springorum: 21 days

b. Mr White, Mr Coleman, Ms Shah: 26 days

c. Mr Hewes: 30 days.

32. I then consider whether those sentences can be suspended. I bear in mind the guidance of the Court of Appeal in *Cuadrilla Bowland* and your motivation. As far as Mr Bailie and Mr Springorum are concerned, each are before this court on a first breach of the injunction. In each of their cases, I have no difficulty in accepting that it is appropriate that those sentences be suspended. I will revert to the conditions of suspension in due course.

33. As far as Mr White, Mr Coleman, Ms Shah and Mr Hewes are concerned, each of you are before the court for a second time for contempt of court arising out of a breach of the injunction. You were all given the benefit of the doubt on the last occasion, when no custodial penalty was imposed. I have given careful thought as to whether it is appropriate to suspend on a second breach. I am just about persuaded it is appropriate to suspend in circumstances where this if your first custodial sentence for contempt. Therefore, the sentences of all six defendants will be suspended, on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022. I remind you that it you fail to comply with the terms of the suspension, you must expect that the order for imprisonment will be implemented and you will be dealt with separately in relation to any future contempt.

34. Whilst each of you is aggrieved by the existence of the injunction, I remind you that it does not prohibit all protest activity, even in the locality of the terminal. Mr Manning referred in opening to the map attached to the order showing the red boundary line. There is a significant area of land by the terminal entrance and adjacent to the private road upon which you were protesting, which falls outside the red boundary line and where you are free to protest so long as you do not otherwise breach paragraph 1(b) of the order.

35. The claimant seeks that each of the six defendants make a contribution to its costs. The general rule in civil litigation is that the successful party is entitled to its costs from the unsuccessful party, but the court may make another order. The claimant has been successful in bringing these contempt proceedings. As a matter of principle, the defendants are to pay the claimant's costs.

36. I have had sight of the claimant's cost schedule. The 51 defendants arrested on 14 September are spread over 4 days of hearings this week. The figure sought by the claimant reflects its costs for the appearance on 15 September plus today's hearing divided by the number of defendants appearing today. The total costs per day have changed depending on which solicitor attended. Prior to today, the claimant only sought to include the cost of one barrister attending in circumstances where two counsel have been present throughout the week. The attendance of two counsel is proportionate. All defendants are in custody, the vast majority act in person having refused legal representation and counsel are having to constantly draft orders dealing with disposals of the cases as well as conducting the advocacy. The fact that the claimant failed to include the second cost of counsel in the cost schedule prepared in respect of earlier hearing this week is their misfortune but not a reason to deprive them of the costs of both counsel attending today. I therefore summarily assess the contribution each defendant must make to the claimant's costs in the sum of £412.46.

37. I have heard from the defendants as to their means. Mr Bailie, Mr White and Mr Hewes have the means to make payment in full by 31 October 2022. Mr Coleman, Ms Shah and Mr Spingorum are of far more limited means and shall pay by instalments of £25 per month, the first payment payable by 22 October 2022 and thereafter by the 22nd of each month.

38. Each of the defendants has a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. I transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

39. The effect of the suspended sentence is that you will each be released from custody today, subject the custodians processing the paperwork and you not being required in custody on any other unrelated matter.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2539 (KB)

No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Thursday, 22 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) EDRED WHITTINGHAM
(2) MEREDITH WILLIAMS
(3) STEPHEN JARVIS
(4) CHARLES LAURIE
(5) CAROLINE CATTERMOLE
(6) DANIEL SHAW

Defendants

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department) appeared on behalf of the Claimant
MR WHITTINGHAM, MR WILLIAMS, MR JARVIS, MR LAURIE, MS CATTERMOLE and MR SHAW appeared in person

---

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. JUDGE KELLY: Edred Whittingham, Meredith Williams, Stephen Jarvis, Charles Laurie, Caroline Cattermole and Daniel Shaw, you each appear before the court having admitted breach of an interim injunction granted by Sweeting J on 14 April 2022, as varied by order dated 6 May 2022.

2. Following your arrests on 14 September 2022, you each appeared before the court on 15 September 2022. At that first hearing you were advised of your entitlement to legal representation and advice and the claimant provided you with written particulars of the alleged contempt. Each of you indicated that you did not want to obtain legal representation and have maintained that position today. I have therefore heard from each of you in person.

3. You each admit breaching paragraph 1(a) and 1(b)(iii) of the interim injunction on 14 September 2022. The claimant has indicated that it does not wish to pursue to trial the allegations in relation to encouraging or assisting other individuals.

4. In contempt proceedings in the civil court, the claimant has to prove the contempt to the criminal standard of proof, namely beyond reasonable doubt. In light of the admissions made and having read the claimant's evidence, I am so satisfied.

Background

5. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. None of you were named defendants. Persons unknown were defined as those who were:

> "… 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 the injunction.

6. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.

Epiq Europe Ltd, Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
www.epiqglobal.com/en-gb/

(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

7. There then follows 11 sub-paragraphs defining prohibited activities. That relevant to the matter before the court today is: "(iii) obstructing of any entrance to the terminal;"

8. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

9. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

10. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

11. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. The claimant took a variety of steps, not all of them immediately after the hearing in May but had nonetheless completed service before the date of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022 but did not immediately comply with the other requirements as to alternative service. However, on 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

12. On 14 September 2022 you were six of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

13. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress.

14. Vast numbers of police officers attended in light of the number of protestors in situ. They asked you each to leave, you were polite, but made it clear that you were not prepared to be move voluntarily. From about 3.50pm, the police began the considerable task of arresting all fifty-one of you.

The approach to determining the appropriate penalty

15. When determining the appropriate penalty for a contempt of contempt, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

16. The claimant referred in opening to the Sentencing Council Guidelines. The guidelines are prepared for use in the criminal courts, not the civil courts. However, the Court of Appeal, in a number of cases including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817, has indicated that the definitive guideline can be used in the civil courts by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. I am also mindful this is not a true antisocial behaviour injunction of the kind that is made under the Antisocial Behaviour Crime and Policing Act in the Civil Courts. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.

17. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

18. The claimant has quite fairly referred the court to the decision of the Court of Appeal case of *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I have no doubt that had each of you been legally represented, your advocate would have relied upon the guidance in that case to support a submission for clemency. Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

19. The court accepts the actions of all six of you on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

20. I turn to the Definitive Guideline for breach of a criminal behaviour order. In my judgment each of your cases falls within culpability category B, being deliberate breaches. Each of you knew full well what you were doing and that it would put you in breach of the injunction.

21. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to exit the site using the access road you were blocking to attend a medical appointment.

22. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

23. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

24. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.

25. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

26. I turn to consider any aggravating factors. Previous convictions are a statutory aggravating factor. Mr Williams has three convictions in 2022, all arising from protest activity in 2021. At the time of the contempt on 14 September, Mr Williams was subject to the operational period of suspended sentences imposed in April and May 2022 for offences public nuisance.

27. As to mitigation, the remaining defendants have no previous convictions or cautions and are treated as being of good character. All six defendants appear before this court in respect of their first breach of the injunction. I accept that all acted out of reasons of social conscience. Mr Laurie, Ms Cattermole, Mr Shaw, Mr Williams and Mr Jarvis all have impressive work histories and Mr Whittingham is a student. Other that your protest

activity, you live generally law-abiding lives and make very valid contributions to society.

28. Taking into account the Definitive Guideline by analogy and the aggravating and mitigating features, the contempt of court in each of your cases is so serious that it crosses the custody threshold. As to all defendants save for Mr Williams, a penalty of 56 days' imprisonment is appropriate. As to Mr Williams, there is upward movement to reflect the criminal convictions and appropriate penalty is 63 days' imprisonment.

29. All of you have made an admissions at the earliest reasonable opportunity. The Sentencing Council Guideline provides for a one-third reduction from any sentence to reflect a guilty plea at the earliest opportunity. I apply that by analogy. The 56-day terms are reduced to 37 days and the 63-day term to 42 days.

30. In fixing the term of imprisonment, I have to take account of any time that you have spent on remand. Unlike in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take account of time spent on remand. You have each been in custody for a total period of 8 days, 1 day following your arrest on 14 September 2022 and a further 7 days following your remand in custody on 15 September 2022. The irony is that the claimant did not oppose bail for any defendant facing a first-time breach. The court would have been prepared to grant those individuals but for the stance each of you took, namely that you did not accept the authority of the court and, if bailed, stated you would breach the injunction and would not voluntarily attend the next hearing. The period of 8 days on remand is the equivalent of a 16-day sentence and needs to be deducted from the terms. As such, the term of imprisonment in respect of Mr Williams is reduced to 26 days and in respect of the other five defendants to 21 days.

31. I then consider whether the sentences can be suspended. I bear in mind the guidance of the Court of Appeal in *Cuadrilla Bowland*, your motivation and that this is your first breach of the injunction. I am satisfied that it is appropriate to suspend each of your terms of imprisonment. In each of your cases, the terms of imprisonment will be suspended on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022. I make it clear, if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment would be implemented and you will be dealt with separately in relation to any future contempt.

32. As Mr Manning made clear when he opened the case, the injunction does not prevent you from conducting protests, even immediately outside the terminal. You have a copy of the injunction order and plan within the evidence. Mr Manning highlighted an area immediately outside the entrance to the terminal which is not within the red boundary. Subject to your actions not otherwise falling foul of paragraph 1(b) of the order, individuals can protest in that area. As Leggatt LJ made clear in *Cuadrilla Bowland*, in

a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others even when those laws are contrary to your own moral convictions.

33. The claimant seeks that each of the three defendants make a contribution to its costs in the sum of £412.46. The general rule is that the successful party is entitled to its costs although the court may make a different order. The claimant has succeeded in proving the contempt, and it is appropriate therefore that you make contribution to those costs. Earlier today, in the context of other similar cases, I determined that the overall figure the claimant was seeking was reasonable and proportionate for the work undertaken.

34. I am therefore going to order that each of you make that contribution of £412.46 to the claimant's costs. You have each told me something of your financial means.

35. Mr Jarvis, Mr Williams and Mr Laurie, you have each indicated you have the means to pay in a lump sum and I order payment in full by 31 October 2022. Ms Cattermole is on a limited pension and Mr Whittingham is a student, both are of very limited means. You will each pay by instalments of £25 per month, first payment to be paid by 22 October 2022 and thereafter by 22nd of each month until the full balance is discharged. Mr Shaw, you have some modest savings and are more likely to be back in paid employment that Ms Cattermole or Mr Whittingham. Whilst you shall be permitted to pay by instalments, it will be at the higher rate of £50 per month, first payment by 22 October 2022, and thereafter by 22nd of each month.

36. Each of the defendants has a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. I transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

37. The effect of the suspended sentences are that you will be released from custody today, subject the custodians processing the paperwork and you not being required in custody on any other unrelated matter.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2537 (KB)

Case No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Wednesday, 21 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

1) SHEILA SHATFORD
(2) TEZ BURNS
(3) CHARLOTTE KIRIN
(4) MARY ADAMS
(5) JERARD LATIMER
(6) DARCY MITCHELL
(7) GEORGE OAKENFOLD
(8) MICHELLE CHARLESWORTH
(9) ANTHONY WHITEHOUSE
(10) CHLOE NALDRETT
(11) HOLLY EXLEY
(12) SARAH BENN
(13) STEPHEN GINGELL
(14) RICHARD MORGAN

Defendants

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

A P P E A R A N C E S

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department) appeared on behalf of the Claimant
SHEILA SHATFORD appeared in Person.
TEZ BURNS appeared in Person
CHARLOTTE KIRIN appeared in Person
MARY ADAMS appeared in Person
JERARD LATIMER appeared in Person
DARCY MITCHELL appeared in Person
GEORGE OAKENFOLD appeared in Person
MICHELLE CHARLESWORTH appeared in Person
ANTHONY WHITEHOUSE appeared in Person
CHLOE NALDRETT appeared in Person
HOLLY EXLEY appeared in Person
SARAH BENN appeared in Person
STEPHEN GINGELL appeared in Person
RICHARD MORGAN appeared in Person

---

1. JUDGE KELLY: The cases of Sheila Shatford, Charlotte Kirin and Mary Adams cannot be concluded today. Ms Shatford and Ms Adams were only served with the evidence at Court today as it appears that the prison did not pass on the documents served by the claimant. Both defendants request further time to consider the evidence and their cases will be adjourned to Friday, 23 September. Ms Kirin has indicated she denies the allegation of contempt. Her case will be listed for trial on 26 September 2022 at 10.30 am.

2. It falls to the court to determine the remand position regarding each of the three aforementioned defendants pending the next hearings. Each of the defendants has been remanded in custody since the last hearing on 15 September. At that hearing, each of them adopted a mirror position and stated that they did not recognise the authority of the court and, if released, would breach the injunction and would not voluntarily return to court. They have each reiterated that position today. Therefore, whilst there is presumption of bail, given their stated positions there is clearly a significant risk that each would breach the injunction and/or fail to surrender to the adjourned hearing date. Ms Shatford and Ms Adams will be further remanded in custody to be produced on 23 September and Ms Kirin to 26 September 2022.

MS SHATFORD, MS ADAMS AND MS KIRIN LEAVE COURT

3. Stephen Gingell, Richard Morgan and Holly Exley, you each appear before the court having admitted breach of the injunction granted by Sweeting J on 14 April 2022, as varied by order dated 6 May 2022.

4. Following your arrest on 14 September 2022, you were produced before the court on 15 September. At that first hearing you were advised of your entitlement to legal representation and advice and the claimant provided you with written particulars of the alleged contempt. Each of you indicated that you did not want to obtain legal representation and have maintained that position today. I have therefore heard from each of you in person. You have each informed the court that you admit the breaching the injunction, as alleged by the claimant, on 14 September 2022.

5. These are civil, not criminal, proceedings. However, as contempt proceedings the court has to be satisfied to the criminal standard of proof, that is beyond reasonable doubt. In light of your admissions and having read the police witness evidence, I am so satisfied.

Background

6. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. Mr Gingell, Mr Morgan and Ms Exley were not named defendants. Persons unknown were defined as those who were:

> "… 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 the injunction.

7. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.
> (b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

8. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

> "(iii) obstructing of any entrance to the terminal; …
>
> (xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order."

9. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

10. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

11. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

12. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. The claimant took a variety of steps, not all of them immediately after the hearing in May but had nonetheless completed service before the date of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022 but did not immediately comply with the other requirements as to alternative service. However, on 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On

24 August 2022, 26 August 2022 and 2 September completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

13. On 14 September 2022 you were three of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

14. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress. Mr Gingell told the court that he believes there was another entrance on the other side of the terminal site and, for the purpose of his exercise, I assume that is correct.

15. Vast numbers of police officers attended in light of the number of protestors in situ. They asked you each to leave, you were polite, but made it clear that you were not prepared to be move voluntarily. From about 3.50pm, the police began the considerable task of arresting all fifty-one of you.

<u>The approach to determining the appropriate penalty</u>

16. The court has to determine the appropriate penalty for your admitted breaches of paragraphs 1(a), 1(b)(iii) and 1(b)(ix) of the injunction. I largely agree with the legal framework put forward by the claimant in its sentencing note. When determining the appropriate penalty for a contempt of contempt, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

17. The Sentencing Council do not produce guidelines in respect of contempt of court arising from the breach of a civil injunction. However, the Court of Appeal, in a number of cases including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 has indicated that the definitive guideline can be used in the civil courts by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The

criminal courts also have a variety of community orders available to it which this court does not. I am also mindful this is not a true antisocial behaviour injunction of the kind that is made under the Antisocial Behaviour Crime and Policing Act in the Civil Courts. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.

18. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

19. The claimant has quite fairly referred the court to the decision of the Court of Appeal case of *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I have no doubt that had each of you been legally represented, your advocate would have relied upon the guidance in that case to support a submission for clemency. Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

20. The court accepts the actions of all three of you on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

21. I turn to the Definitive Guideline for breach of a criminal behaviour order. Your actions on 14 September were deliberate and fall into category B culpability.

22. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to exit the site using the access road you were blocking to attend a medical appointment.

23. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

24. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

25. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.

26. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years'

custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

27. There are no aggravating factors in any of your cases. Each of you has no previous criminal convictions or cautions and this is your first breach of this injunction. You have each addressed the court and I accept that each of you acted on grounds of social conscious and you believe that your actions were justified by the concerns you have as to climate change. Each of you live otherwise law-abiding lives and are currently or are usually in gainful employment.

28. Taking into account the Definitive Guideline by analogy and aggravating and mitigating features, the contempt of court is so serious that it crosses the custody threshold. A sentence, before consideration of your admissions and time spend on remand, of 56 days' imprisonment is appropriate.

29. You have each admitted the breach at the first reasonable opportunity. The Sentencing Council Guideline provides for the maximum one-third reduction from any sentence to reflect a guilty plea at the earliest opportunity. I apply that by analogy and reduce the 56 days to 37 days, rounding down in your favour.

30. In fixing the term of imprisonment, I have to take account of any time that you have spent on remand. Unlike in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take account of time spent on remand. You have each been in custody for a total period of 7 days, 1 day following your arrest on 14 September 2022 and a further 6 days following your remand in custody on 15 September 2022. That is the equivalent of a 14-day sentence. The term therefore further reduces to 23 days' imprisonment.

31. I then consider whether the sentences can be suspended. I bear in mind the guidance of the Court of Appeal in *Cuadrilla Bowland*, your motivation and that this is your first breach of the injunction. I am satisfied that it is appropriate to suspend each of your terms of imprisonment. In each of your cases, the 23 day term of imprisonment will be suspended on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022. I make it clear, if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment would be implemented and you will be dealt with separately in relation to any future contempt.

32. As Mr Manning made clear when he opened the case, the injunction does not prevent you from conducting protests, even immediately outside the terminal. You have a copy of the injunction order and plan within the evidence. Mr Manning highlighted an area immediately outside the entrance to the terminal which is not within the red boundary. Subject to your actions not otherwise falling foul of paragraph 1(b) of the order, individuals can protest in that area. As Leggatt LJ made clear in *Cuadrilla Bowland*, in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others even when those laws are contrary to your own moral convictions.

33. The claimant seeks that each of the three defendants make a contribution to its costs in the sum of £320.77. The general rule is that the successful party is entitled to its costs although the court may make a different order. The claimant has succeeded in proving the contempt, and it is appropriate therefore that you make contribution to those costs. Earlier today, in the context of other similar cases, I determined that the overall figure the claimant was seeking was reasonable and proportionate for the work undertaken.

34. At one stage, counsel for the clamant submitted that that Mr Morgan should pay a slightly higher figure on the basis that he should have been produced from custody yesterday when, for various reasons including the attendance of a more senior solicitor, the claimant's costs were higher. In circumstances where it was not the fault of Mr Morgan that he was not produced and he has therefore spent an extra night in custody, I propose to order him to pay the same figure of £320.77.

35. As to the payment of that sum, Ms Exley and Mr Gingell have told the court they have saving or can otherwise pay £320.77 in a lump sum. Each shall therefore pay the claimant a contribution to its costs in the sum of £320.77 by 31 October 2022. Mr Morgan has told the court is of more limited means and is currently looking for new employment albeit he has a job interview next week. Mr Morgan shall pay the same contribution to the claimant's costs but by instalments of £25 a month, the first payment by 21 October and by 25th of each month thereafter until the balance has been discharged.

36. Each of the three defendants has a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. I transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

37. The effect of the suspended sentence is that you will be released from custody today, subject the custodians processing the paperwork and you not being required in custody on any other unrelated matter.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2569 (KB)

Case No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Wednesday, 21 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

1) SHEILA SHATFORD
(2) TEZ BURNS
(3) CHARLOTTE KIRIN
(4) MARY ADAMS
(5) JERARD LATIMER
(6) DARCY MITCHELL
(7) GEORGE OAKENFOLD
(8) MICHELLE CHARLESWORTH
(9) ANTHONY WHITEHOUSE
(10) CHLOE NALDRETT
(11) HOLLY EXLEY
(12) SARAH BENN
(13) STEPHEN GINGELL
(14) RICHARD MORGAN

Defendants

APPROVED JUDGMENT

A P P E A R A N C E S

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department) appeared on behalf of the Claimant
SHEILA SHATFORD appeared in Person.

TEZ BURNS appeared in Person
CHARLOTTE KIRIN appeared in Person
MARY ADAMS appeared in Person
JERARD LATIMER appeared in Person
DARCY MITCHELL appeared in Person
GEORGE OAKENFOLD appeared in Person
MICHELLE CHARLESWORTH appeared in Person
ANTHONY WHITEHOUSE appeared in Person
CHLOE NALDRETT appeared in Person
HOLLY EXLEY appeared in Person
SARAH BENN appeared in Person
STEPHEN GINGELL appeared in Person
RICHARD MORGAN appeared in Person

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. JUDGE KELLY: Darcy Mitchell, George Oakenfold, Anthony Whitehouse, Chloe Naldrett and Jerard Latimer, you each appear before the court today having admitted breach of an interim injunction granted by Sweeting J on 14 April 2022, as varied by his order dated 6 May 2022.

2. At the first hearing on 15 September 2022, you were advised of your entitlement to seek legal advice and representation in these contempt proceedings. Each of you informed the court on that occasion that did not want to obtain legal advice and wanted to conduct your own advocacy. You again confirmed that position today. You each therefore appear in person and I have heard each of you speak very eloquently as to your individual positions.

3. On 15 September 2022 the claimant provided each of you written particulars of the alleged contempt and has thereafter served the written witness evidence upon which it relies. Each of you has admitted the breaches as alleged by the claimant, save for Mr Whitehouse, who has made a more limited admission as to paragraph 1(a) and 1(b)(iii) of the injunction only. That more limited admission is acceptable to the claimant and it does not wish to pursue the further allegation. The claimant's position is unsurprising as the facts pertaining to each of your involvement in protest activity on 14 September 2022 is materially identical.

4. These are civil, not criminal, proceedings. However, as contempt proceedings the court has to be satisfied to the criminal standard of proof, that is beyond reasonable doubt. In light of your admissions and having read the police witness evidence, I am so satisfied.

Background

5. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. Mr Whitehouse was a named defendants, the other defendants before the court at this hearing were not. Persons unknown were defined as those who were:

> "… 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 the injunction.

6. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.
(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

7. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

> "(iii) obstructing of any entrance to the terminal; …
>
> (xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order."

8. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

9. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

10. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

11. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. The claimant took a variety of steps, not all of them immediately after the hearing in May but had nonetheless completed service before the date of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022 but did not immediately comply with the other requirements as to alternative service. However, on 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

12. On 14 September 2022 you were five of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the

red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

13. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress.

14. Vast numbers of police officers attended in light of the number of protestors in situ. They asked you each to leave, you were polite, but made it clear that you were not prepared to be move voluntarily. From about 3.50pm, the police began the considerable task of arresting all fifty-one of you.

15. Your conduct puts you in breach of paragraph 1(a) and 1(b)(iii) of the injunction. All of the defendants, bar Mr Whitehouse, also admit breach of paragraph 1(b)(xi) of the injunction. The distinction between the admissions makes no difference to the overall penalty as actions of each defendant were essentially the same.

The approach to determining penalty

16. The claimant provided a sentencing note. I largely agree with the approach the claimant's advocate adopted.

17. When determining the appropriate penalty for a contempt of contempt, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

18. The Sentencing Council do not produce guidelines in respect of contempt of court arising from the breach of a civil injunction. However, the Court of Appeal, in a number of cases including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 has indicated that the definitive guideline can be used in the civil courts by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal

courts also have a variety of community orders available to it which this court does not. I am also mindful this is not a true antisocial behaviour injunction of the kind that is made under the Antisocial Behaviour Crime and Policing Act in the Civil Courts. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.

19. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

20. The claimant has quite fairly referred the court to the decision of the Court of Appeal case of *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I have no doubt that had each of you been legally represented, your advocate would have relied upon the guidance in that case to support a submission for clemency. Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

21. The court accepts the actions of all five of you on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

22. I turn to the Definitive Guideline for breach of a criminal behaviour order as the best analogy. Your actions on 14 September were deliberate and fall into category B culpability. Each of you has stated in express terms that you were aware of the injunction and deliberately acted in the knowledge that you would be in breach of its terms.

23. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to exit the site using the access road you were blocking to attend a medical appointment.

24. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

25. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

26. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore

proceed on the basis that harm is to be assessed falling between category 1 and category 2.

27. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

28. The court as to consider any aggravating or mitigating factors in each of your cases.

29. Mr Mitchell has one previous conviction from May 2022 for obstructing the free passage of the highway. Mr Whitehouse has one previous conviction from July 2022 for criminal damage. Mr Latimer has two previous convictions for public nuisance and obstructing the free passage of the highway dating to events in 2021. Mr Latimer was not however the subject of the operational period of any suspended sentence or conditional discharge at the time of the contempt. Unlike other co-defendants in these proceedings, none of you have three or more convictions. I propose to treat the three of you as of good character for the purpose of assessing the appropriate penalty.

30. As to mitigation, Mr Oakenfold and Ms Naldrett have no previous criminal convictions or cautions. Mr Oakenfold, Mr Whitehouse and Mr Latimer are all in their 70s and retired. Ms Naldrett and Mr Mitchell are both in their 40s. Ms Naldrett is a highly educated theatre producer supporting her 2 children under the age of 18. Mr Mitchell is not working and dependant on his wife's salary. Other than your recent protest activity bringing you into conflict with the law, each of you has hitherto led otherwise law-abiding lives and contributed to society in positive ways. Each of you has informed the court that you acted on grounds of moral conscience and felt compelled to act as you did when your other efforts to address climate change had failed.

31. Taking into account the Definitive Guideline by analogy and aggravating and mitigating features, the contempt of court is so serious that it crosses the custody threshold. A penalty, before consideration of your admissions and time spend on remand, of 56 days' imprisonment is appropriate.

32. You have each admitted the breach at the first reasonable opportunity. The Sentencing Council Guideline provides for the maximum one-third reduction from any sentence to reflect a guilty plea at the earliest opportunity. I apply that by analogy and reduce the 56 days to 37 days, rounding down in your favour.

33. In fixing the term of imprisonment, the civil court has to take account of any time that you have spent on remand. Unlike in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take account of time spent on remand. You have each been in custody for a total period of 7 days, 1 day following your arrest on 14 September 2022 and a further 6 days following your remand in custody on

15 September 2022. That is the equivalent of a 14-day sentence. The term therefore further reduces to 23 days' imprisonment.

34. I then consider whether the sentences can be suspended. I bear in mind the guidance of the Court of Appeal in *Cuadrilla Bowland*, your motivation and that this is your first breach of the injunction. I am satisfied that it is appropriate to suspend each of your terms of imprisonment. In each of your cases, the 23-day term of imprisonment will be suspended on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022. I make it clear, if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment would be implemented and you will be dealt with separately in relation to any future contempt.

35. As Mr Manning made clear when he opened the case, the injunction does not prevent you from conducting protests, even immediately outside the terminal. You have a copy of the injunction order and plan within the evidence. Mr Manning highlighted an area immediately outside the entrance to the terminal which is not within the red boundary. Subject to your actions not otherwise falling foul of paragraph 1(b) of the order, individuals can protest in that area. As Leggatt LJ made clear in *Cuadrilla Bowland*, in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others even when those laws are contrary to your own moral convictions.

36. The claimant has made an application that each of you pay a contribution to its costs. The general rule is that the successful party is entitled to its costs although the court may make a different order. The claimant has succeeded in proving the contempt, and it is appropriate therefore that you make contribution to those costs. The claimant has prepared a schedule of costs. Other than removing the costs associated with the solicitor attending a hearing yesterday in which you were not involved, I am satisfied that claimant's stated costs are proportionate. That results in a figure of £320.77 for each defendant whose case is dealt with today.

37. You have each provided the court with some information as to your means. Mr Oakenfold, Mr Whitehouse and Mr Latimer are all retired and in receipt of modest pensions such that they would have significant difficulty paying £320.77 as a lump sum. Each of those three defendants shall pay a contribution to the claimant's costs in the sum of £320.77 by instalments of £25 a month, the first payment to be made by 21 October 2022 and thereafter by 21st of each month until the total sum is discharged. Mr Mitchell and Ms Naldrett are in stronger financial positions and each shall pay the claimant the sum of £320.77 I full by 31 October 2022.

38. Each defendant has a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. A transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2570

Case No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Wednesday, 21 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

1) SHEILA SHATFORD
(2) TEZ BURNS
(3) CHARLOTTE KIRIN
(4) MARY ADAMS
(5) JERARD LATIMER
(6) DARCY MITCHELL
(7) GEORGE OAKENFOLD
(8) MICHELLE CHARLESWORTH
(9) ANTHONY WHITEHOUSE
(10) CHLOE NALDRETT
(11) HOLLY EXLEY
(12) SARAH BENN
(13) STEPHEN GINGELL
(14) RICHARD MORGAN

Defendants

APPEARANCES

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department) appeared on behalf of the Claimant
SHEILA SHATFORD appeared in Person.
TEZ BURNS appeared in Person
CHARLOTTE KIRIN appeared in Person
MARY ADAMS appeared in Person

JERARD LATIMER appeared in Person
DARCY MITCHELL appeared in Person
GEORGE OAKENFOLD appeared in Person
MICHELLE CHARLESWORTH appeared in Person
ANTHONY WHITEHOUSE appeared in Person
CHLOE NALDRETT appeared in Person
HOLLY EXLEY appeared in Person
SARAH BENN appeared in Person
STEPHEN GINGELL appeared in Person
RICHARD MORGAN appeared in Person

JUDGMENT
(Approved)

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

1. JUDGE KELLY: Sarah Benn, you before the court having admitted breach of the injunction granted by Sweeting J on 14 April 2022, as varied by order dated 6 May 2022.

2. At the first hearing on 15 September 2022 you were advised of your entitlement to seek legal advice and representation in these contempt proceedings. You were again reminded of that entitlement today. You have clearly indicated that you want to proceed with the matter without the benefit of legal advice or representation.

3. At the last hearing, the claimant provided you with written particulars of the alleged contempt. You have made a full admission in accordance with that document. These are civil not criminal proceedings. However, as contempt proceedings the claimant has to prove any allegation of contempt to the criminal standard of proof, namely beyond reasonable doubt. In light of your admission, and having read the claimant's witness evidence in writing, I am so satisfied.

Background

4. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. You were not a named defendant. Persons unknown were defined as those who were:

> "… 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 the injunction.

5. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.
> (b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

6. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

"(iii) obstructing of any entrance to the terminal; …

(xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order."

7. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

8. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

9. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

10. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. The claimant took a variety of steps, not all of them immediately after the hearing in May but had nonetheless completed service before the date of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022 but did not immediately comply with the other requirements as to alternative service. However, on 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

11. On 14 September 2022 you were one of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

12. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress.

13. Vast numbers of police officers attended in light of the number of protestors in situ. They asked you each to leave, you were polite, but made it clear that you were not prepared to be move voluntarily. From about 3.50pm, the police began the considerable task of arresting all fifty-one of you.

The approach to determining the appropriate penalty

14. The court has to determine the appropriate penalty for your admitted breaches of paragraphs 1(a), 1(b)(iii) and 1(b)(ix) of the injunction. I largely agree with the legal framework put forward by the claimant in its sentencing note. When determining the appropriate penalty for a contempt of contempt, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

15. The Sentencing Council do not produce guidelines in respect of contempt of court arising from the breach of a civil injunction. However, the Court of Appeal, in a number of cases including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 has indicated that the definitive guideline can be used in the civil courts by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. I am also mindful this is not a true antisocial behaviour injunction of the kind that is made under the Antisocial Behaviour Crime and Policing Act in the Civil Courts. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.

16. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

17. The claimant has quite fairly referred the court to the decision of the Court of Appeal case of *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I have no doubt that had each of you been legally represented, your advocate would have relied upon the guidance in that case to support a submission for clemency. Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

18. The court accepts that your actions on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

19. I turn to the Definitive Guideline for breach of a criminal behaviour order. Your actions on 14 September were deliberate and fall into category B culpability. I have considered whether your actions, which amount to a third breach of the injunction within a period of less than five months, amount to persistence of breach such that the contempt falls to be considered as a culpability A matter. I am persuaded it can fall into the lower category B, albeit the previous two contempt matters will be treated as aggravating factors.

20. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact.

There is however evidence that one worker was stopped from using their vehicle to exit the site using the access road you were blocking to attend a medical appointment.

21. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

22. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

23. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.

24. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

25. The court has to consider any aggravating or mitigating features. This is your third breach of the injunction. You were before this court in respect of breaches on 26 April 2022 and 4 May 2022. You admitted those breaches and no order was made thereon as you had already spent eight days in custody. But for the time in custody, you would have received a financial penalty on that occasion. The previous contempts aggravate your case.

26. As to mitigation, you have no previous criminal convictions or cautions. When addressing the court in mitigation, you did not put any relevant material before the court other than to say you were acting on grounds of social conscience. You told the court

that you not prepared to discuss your means or background as you considered it demeaning.

27. Taking into account the Definitive Guideline by analogy and aggravating and mitigating features, the contempt of court is so serious that it crosses the custody threshold. A penalty, before consideration of your admissions and time spend on remand, of 70 days' imprisonment is appropriate. The duration of the term reflects that your position is aggravated by your previous two breaches of the injunction.

28. You have admitted the contempt at the first reasonable opportunity. The Sentencing Council Guideline provides for the maximum one-third reduction from any sentence to reflect a guilty plea at the earliest opportunity. I apply that by analogy and reduce the 70 days to 46 days, rounding down in your favour.

29. In fixing the term of imprisonment, I have to take account of any time that you have spent on remand. Unlike in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take account of time spent on remand. You have each been in custody for a total period of 7 days, 1 day following your arrest on 14 September 2022 and a further 6 days following your remand in custody on 15 September 2022. That is the equivalent of a 14-day sentence. The term therefore further reduces the term to 32 days.

30. I turn to the question of whether it is appropriate to suspend the sentence. I bear in mind the guidance in *Cuadrilla Bowland* as to the approach to be taken in cases of civil disobedience amounting to contempt of court. I also bear in mind the Sentencing Council guideline on the Imposition of Community and Custodial Sentences. You have a history of poor compliance with this injunction order, having been before the court for two breaches in the past, within the last five months. In the course of your submissions today, you have made it clear you offer no apology and will continue to take action. Against that background, I am not persuaded it is appropriate to suspend the sentence. The appropriate punishment can only be achieved by an immediate custodial sentence. You continue to show blatant disregard for the injunction and therefore the rule of law. You will therefore serve an immediate term of imprisonment of 32 days. I am not going to make an order as to costs given the immediate custodial sentence.

31. Ms Benn has a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. A transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge

Neutral Citation Number: [2022] EWHC 2568 (KB)

Case No: QB-2022-BHM-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Tuesday, 20 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) ERIC HOYLAND
(2) CATHERINE RENNIE-NASH
(3) RAJAN NAIDU
(4) PETER MORGAN

Defendants

MR MANNING and MS CROCOMBE appeared on behalf of the Claimant
MR E HOYLAND appeared in person
MS C RENNIE-NASH appeared in person
MR R NAIDU appeared in person
MR P MORGAN appeared in person

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. JUDGE KELLY: Eric Hoyland, Catherine Rennie-Nash, Rajan Naidu and Peter Morgan, you each appear before the court in respect of an admitted breach of an interim injunction granted by Sweeting J on 14 April 2022, as varied by order dated 6 May 2022.

2. You were advised at the first hearing on 15 September 2022 that you were entitled to legal advice and representation in these contempt proceedings. You each told the court that you did not want to be represented and have repeated that position again today. You each therefore appear in person.

3. On 15 September 2022 the claimant provided you each with written particulars of the alleged contempt. You have each informed the court today that you admit that you were in breach of the injunction on 14 September 2022 as alleged. Bearing in mind that the claimant's evidence was served after the first hearing but before today, I take your admissions as being ones made at the earliest reasonable opportunity.

4. On an application for committal for contempt, the court has to be satisfied that the claimant has proved its case to the criminal standard, namely beyond reasonable doubt. In light of the admissions that you have made to the court and having read the claimant's evidence, I am so satisfied. The court has to determine the appropriate penalty for the contempt.

Background

5. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. You were not named defendants. Persons unknown were defined as those who were:

> "… 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 the injunction.

6. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.

(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

7. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

"(iii) obstructing of any entrance to the terminal; …

(xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order."

8. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

9. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

10. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

11. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. The claimant took a variety of steps, not all of them immediately after the hearing in May but had nonetheless completed service before the date of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022 but did not immediately comply with the other requirements as to alternative service. However, on 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

12. On 14 September 2022 you were four of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

13. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress. The police attended and asked you to move, warning that you would be arrested if you chose not to comply. You refused to move and from 3.50 pm onwards the police began the very considerable task of arresting all 51 of you.

14. This court has to determine the appropriate penalty for your admitted breaches of paragraphs 1(a), 1(b)(iii) and 1(b)(xi) of the injunction. In my judgment, the fact that three separate limbs of the injunction were breached makes no difference to the appropriate penalty as they all arise from the same facts, namely your involvement in the protest which blocked the access road to the terminal.

The approach to determining the appropriate penalty

15. In determining the appropriate penalty for a civil contempt of court, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

16. The Sentencing Council do not produce guidelines in respect of contempt of court arising from the breach of a civil injunction. However, the Court of Appeal, in a number of cases including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 has indicated that the definitive guideline can be used in the civil courts by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.

17. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

18. The claimant has quite fairly referred the court to the decision of the Court of Appeal case of *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I

have no doubt that had each of you been legally represented, your advocate would have relied upon the guidance in that case to support a submission for clemency. Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

19. The court accepts that your actions on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

20. I turn to the Sentencing Guideline for breach of a criminal behaviour order. Your actions on 14 September 2022 fall within culpability category B. These were deliberate breaches falling between the highest and lowest categories of culpability. I did consider whether Mr Naidu's case falls to be assessed as a persistent breach, putting it into the highest category of culpability. This is his third breach of the injunction within a 5-month period. I am just about persuaded that his case can be treated as culpability B but with the earlier breaches taken into account as an aggravating factor.

21. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their

business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to leave the site to attend a medical appointment.

22. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

23. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

24. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.

25. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

26. I turn to consider the aggravating and mitigating factors in each of your cases.

27. Mr Hoyland, this is your first breach of the injunction. You have no previous criminal convictions or cautions. There are thus no obvious aggravating factors in your case. I accept, as I do in relation to all of the defendants, that you acted for reasons of social conscience and you told the court you felt you had no other way to make your voice heard.

28. Ms Rennie-Nash, your case is aggravated by the fact that this is your second breach of the injunction. You committed an earlier contempt by virtue of your involvement in a protest on 26 April 2022. You have no criminal previous convictions or cautions and therefore no other aggravating factors. You too acted for reasons of social conscience.

29. Mr Morgan, you too are before the court in respect of a second contempt having been before the court earlier this year in respect of a protest occurring on 12 May 2022. Your position is further aggravated by relevant criminal convictions. You have two convictions in May 2022 for obstructing the highway and a further three convictions in June 2022 for the same offence. All related to protest activity which took place in 2021. You too acted for reasons of social conscience.

30. Mr Naidu, you are before the court in respect of a third contempt. You had already breached the injunction on 27 April 2022 and 12 May 2022. On those occasions no order was made on the contempts because you had served six days in custody. You do however have no previous criminal convictions or cautions and there are no other aggravating factors. I accept you too acted on grounds of social conscience.

31. In my judgment, the contempt before the court in each of your cases is so serious that only a custodial sentence is appropriate. Before consideration of any reduction for your early admissions and to reflect time spent on remand, the starting point sentences are as follows:

    a. Mr Hoyland, a term of 56 days' imprisonment.

    b. Ms Rennie-Nash, a term of 63 days' imprisonment. This term reflects that it is your second breach of this injunction.

    c. Mr Morgan, a term of 70 days' imprisonment. This term reflects that this is your second breach and also your previous convictions.

    d. Mr Naidu, a term of 70 days' imprisonment. This term reflects that this is your third breach of the injunction.

32. Each of you have admitted your contempt at the earliest reasonable opportunity and you are entitled to a one-third reduction pursuant to the Sentencing Council guideline. Where a figure is not equally divisible, I have rounded down in your favour. The credit for the early admission reduces Mr Hoyland's 56 days to 37 days, Ms Rennie-Nash's 63 days to 42 days and Mr Naidu's and Mr Morgan's terms from 70 days to 46 days

33. Unlike in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take account of time spent on remand. I therefore need to deduct that from the penalties today. You have each been in custody for 6 days, 1 day following your arrest on 14 September 2022 and a further 5 days following your remand in custody on 15 September 2022. That is the equivalent of a 12-day sentence. Deducting 12 days from each sentence gives the following terms of imprisonment: Mr Hoyland 25 days, Ms Rennie-Nash 30 days and Mr Naidu and Mr Morgan 34 days.

34. I turn to consider the question of suspension and the guidance in *Cuadrilla Bowland* as to the approach to be taken in protestor cases. Mr Hoyland, in your case this is your first breach of the injunction and I am persuaded it is appropriate to suspend the sentence on terms which I will come back to.

35. Ms Rennie-Nash you are before the court for a second instance of contempt arising from your breach of the injunction. You have already been given the benefit of the doubt when you first appeared before the court earlier this year and were fined. However, I am mindful that this is your first custodial sentence and I am persuaded to give you a further opportunity to demonstrate your compliance with the court's orders. Your sentence too will be suspended on terms I will come to in a moment.

36. Mr Peter Morgan. You too are before this court for a second time and your position is aggravated by your previous convictions. However, as with Ms Rennie-Nash, on this second contempt I am persuaded to give you the benefit of the doubt and also suspend your sentence.

37. In each of Mr Hoyland, Ms Rennie-Nash and Mr Morgan's cases, the terms of imprisonment shall be suspended on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022. I make it clear, if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment would be implemented and you will be dealt with separately in relation to any future contempt.

38. Mr Naidu, you are in a different position. You have now come before the court in relation to your third breach of this injunction within a period of some five months. On the previous two occasions, the court imposed no order because of the time you had spent in custody. It was spelt out to you when you were dealt with previously that the court expected you to comply and that any future breaches would be treated very seriously. Your third appearance in such a short period of time suggests you have no intention of abiding by the terms of the order. The need to ensure future compliance with the court's order means that there is a need for sentencing to have a deterrent effect. I do not consider it appropriate to suspend the sentence in your case given your repeated contempt. In your case, the terms of 34 days' imprisonment will be immediate.

39. The claimant seeks a contribution to its costs from each defendant in the sum of £412.46. The general rule is that the successful party is entitled to its costs from the unsuccessful party but the court may make a different order. There is no reason to depart from the general principle in the cases of Mr Hoyland, Ms Rennie-Nash and Mr Morgan. Mr Naidu is however in a different position as he will be serving an immediate custodial sentence. I propose to depart from the general rule in his case in light of his immediate incarceration and limited state pension means. At a hearing earlier today, I have already determined that the overall sum claimed by the claimant is proportionate.

40. Mr Hoyland and Ms Rennie-Nash have a relatively modest income, largely dependent on state pensions, and will each be ordered to pay a contribution to the claimant's costs

in the sum of £412.46 by instalments of £25 per month. The first payment to be paid by 20 October 2022 and thereafter by 20th of each month thereafter until the total sum is paid. Mr Morgan's case he accepts that he has significant savings and has his own house such that he can pay the contribution in one lump sum. Mr Morgan shall therefore pay the claimant's costs in the sum of £412.46 by 31 October 2022.

41. You have a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. I transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2566 (KB)

Case No: QB-2022-BHM-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Tuesday, 20 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) PAMELA WILLIAMS
(2)) SUSAN HAMPTON
(3) SUSAN SIDEY

Defendants

MR MANNING and MS CROCOMBE appeared on behalf of the Claimant
The Defendants appeared in person

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. JUDGE KELLY: Pamela Williams, Susan Hampton, Susan Sidey, you each appear before the court in respect of an admitted breach of the interim injunction granted by Sweeting J 14 April 2022, as varied by his order dated 6 May 2022.

2. Each of you indicated at the first hearing on 15 September that you did not want legal representation, despite having been told that you have an entitlement to seek legal advice and representation in contempt proceedings. All three of you have confirmed again today that you want to proceed without any legal representation. I have heard from you each in person.

3. On 15 September 2022 the claimant provided you each with written particulars of the alleged contempt. You have each informed the court today that you admit breaching the injunction. Pamela Williams and Susan Hampton, you each admit the case as alleged by the claimant, namely breaching paragraphs 1(a), 1(b) (iii) and 1(b)(xi) of the injunction. As far as Susan Sidey is concerned, you admit a breach of paragraph 1(a) and 1(b)(iii) but not a breach of (xi) of the order. That admission is acceptable to the claimant. The factual particulars of each defendants' conduct is near identical. Whilst there is a technical distinction as to the limbs of the order breached, in practical terms Ms Sidey's conduct is the same as your co-defendants.

Background

4. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. You were not named defendants. Persons unknown were defined as those who were:

> "… 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 the injunction.

5. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.

(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

6. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

> "(iii) obstructing of any entrance to the terminal; …
>
> (xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order."

7. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

8. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

9. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

10. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. The claimant took a variety of steps, not all of them immediately after the hearing in May, but it had nonetheless completed service before the date of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022 but did not immediately comply with the other requirements as to alternative service. However, on 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

11. On 14 September 2022 you were three of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across

the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

12. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress. The police attended and asked you to move, warning that you would be arrested if you chose not to comply. You refused to move and from 3.50 pm onwards the police began the very considerable task of arresting all 51 of you.

13. On an application for committal for contempt, the court has to be satisfied that the claimant has proved its case to the criminal standard, namely beyond reasonable doubt. In light of the admissions that you have made to the court and having read the claimant's evidence, I am so satisfied. The conduct of all three of you amounts to a breach of paragraph 1(a) and 1(b)(iii) of the injunction, and additionally, paragraph 1(b)(xi) as far as Pamela Williams and Susan Hampton are concerned. The court has to determine the appropriate penalty for the contempt.

The approach to determining the appropriate penalty

14. The claimant has prepared a sentencing note setting out its suggested approach to determing the appropriate sanction. I largely agree with the approach advocated. In determining the appropriate penalty for a civil contempt of court, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

15. The Sentencing Council do not produce guidelines in respect of contempt of court arising from the breach of a civil injunction. However, the Court of Appeal, in a number of cases including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 has indicated that the definitive guideline can be used in the civil courts by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.

16. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

17. The claimant has quite fairly referred the court to the decision of the Court of Appeal case of *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I have no doubt that had each of you been legally represented, your advocate would have relied upon the guidance in that case to support a submission for clemency. Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

18. The court accepts that your actions on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

19. Turning to the Definitive Guideline for breach of a criminal behaviour order, the court has to assess the culpability and harm occasioned by the contempt. In my judgment each case falls within culpability category B, being a deliberate breach falling between A and C.

20. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm

falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to leave the site to attend a medical appointment.

21. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

22. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

23. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.

24. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years'

custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

25. The court than has to consider any aggravating and mitigating factors in each of your cases. Pamela Williams and Susan Sidey, you each have one previous criminal conviction. In Ms Sidey's case an offence of failing to comply with conditions imposed on public assembly dating to 2019. In Ms Sidey's case, a conviction earlier in 2022 for obstructing the highway. Given each of you has only a single conviction, and neither was the subject of the operational period of any conditional discharge or suspended sentence at the material time, I am not going to view that as an aggravating factor.

26. As to mitigation, Susan Hampton has no previous convictions or cautions. I accept that each of you acted on grounds of moral conscience and felt you had no alternative but to act as you did. believe very strongly in the aims that you are trying to achieve. Each of you has made very significant contributions to society. Ms Williams is a former teacher then farmer and now retired but involved in charitable work. Ms Sidey is a former civil servant. Ms Hampton is a former teacher, then author and speaker in schools and now retired.

27. In my judgment, the contempt before the court is so serious that only a custodial sentence is appropriate in each of your cases. The appropriate term of imprisonment is 56 days' taking into account the aggravating and mitigating features. Each of you admitted the contempt at the earliest opportunity and you are entitled to a one-third credit pursuant to the Sentencing Council Guideline. Rounding down in your favour, reduces the term to one of 37 days' imprisonment.

28. In fixing the term of imprisonment, I have to take account of any time that you have spent on remand. Unlike in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take account of time spent on remand. You have each been in custody for a total period of 6 days, 1 day following your arrest on 14 September 2022 and a further 5 days following your remand in custody on 15 September 2022. That is the equivalent of a 12-day sentence. The term therefore further reduces to 25 days' imprisonment.

29. I turn to the question of whether the terms of imprisonment can be suspended. I bear in mind the guidance in *Cuadrilla Bowland* and, in particular, that this is the first breach of this injunction for each of you. I am persuaded that it is appropriate to suspend each of your terms of imprisonment. The 25-day terms of imprisonment will be suspended on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022. I make it clear, if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment would be implemented and you will be dealt with separately in relation to any future contempt.

30. As Mr Manning made clear when he opened the case, the injunction does not prevent you from conducting protests, even immediately outside the terminal. You have a copy of the injunction order and plan within the evidence. Mr Manning highlighted an area immediately outside the entrance to the terminal which is not within the red boundary. Subject to your actions not otherwise falling foul of paragraph 1(b) of the order, individuals can protest in that area. As Leggatt LJ made clear in *Cuadrilla Bowland*, in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others even when those laws are contrary to your own moral convictions.

31. The claimant applies for a contribution to its costs in the sum of £412.46 per defendant, being 1/13th of the total costs to reflect the 13 defendants listed for hearing today. A schedule of costs has been prepared. The general rule is that the successful party is entitled to their costs from the unsuccessful party but the court may make a different order. There is no reason to depart from the general principle in this case. Having considered the claimant's costs schedule, the total cost incurred is proportionate and the costs will be assessed as drawn. Each defendant will therefore pay a contribution of £412.46 to the claimant's costs.

32. I have heard what you all have to say about your financial circumstances and it is apparent that all of you have modest pension income. Each of you will be permitted to pay the claimant the sum of £412.46 by instalments of £25 per month, first payment by 20 October 2022 and thereafter by instalments of £25 per month by 20th of each month until the outstanding sum is discharged.

33. You have a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. I transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2567 (KB)

Case No: QB-2022-BHM-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Tuesday, 20 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) DIANE HEKT
(2) RUTH JARMAN

Defendants

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department) appeared on behalf of the Claimant
MS D HEKT appeared in person
MR R JARMAN appeared in person

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. JUDGE KELLY: Ruth Jarman and Diane Hekt, you each appear before the court today in respect of an admitted breach of the injunction granted by Sweeting J on 14 April 2022, as varied by order dated 6 May 2022.

2. You were each informed at the hearing last week and again today that you are entitled to legal advice and representation and reasonable time to prepare your case. Ms Jarman you have maintained that you do not want any legal representation. Ms Hekt, you told the court earlier today that you wanted Birds solicitors to represent you. Your case was put back for enquiries to be made with the firm of solicitors. They have stated that they cannot attend court today. You have been given the opportunity for your case to be adjourned but have indicated that you nonetheless want to proceed in person today.

3. On 15 September 2022 the claimant provided you each with written particulars of the alleged contempt. You have each informed the court today that you admit that you were in breach of the injunction on 14 September 2022 as alleged. Bearing in mind that the claimant's evidence was served after the first hearing but before today, I take your admissions as being ones made at the earliest reasonable opportunity.

4. On an application for committal for contempt, the court has to be satisfied that the claimant has proved its case to the criminal standard, namely beyond reasonable doubt. In light of the admissions that you have made to the court and having read the claimant's evidence, I am so satisfied. The court has to determine the appropriate penalty for the contempt.

Background

5. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. You were not named defendants. Persons unknown were defined as those who were:

> "… 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 the injunction.

6. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

> "(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.

(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

7. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

> "(iii) obstructing of any entrance to the terminal; …
>
> (xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order."

8. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.

9. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.

10. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.

11. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. The claimant took a variety of steps, not all of them immediately after the hearing in May but had nonetheless completed service before the date of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022 but did not immediately comply with the other requirements as to alternative service. However, on 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.

12. On 14 September 2022 you were two of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

13. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress. The police attended and asked you to move, warning that you would be arrested if you chose not to comply. You refused to move and from 3.50 pm onwards the police began the very considerable task of arresting all 51 of you.

14. This court has to determine the appropriate penalty for your admitted breaches of paragraphs 1(a), 1(b)(iii) and 1(b)(xi) of the injunction. In my judgment, the fact that three separate limbs of the injunction were breached makes no difference to the appropriate penalty as they all arise from the same facts, namely your involvement in the protest which blocked the access road to the terminal.

The approach to determining the appropriate penalty

15. The claimant has prepared a sentencing note for today's hearing. I largely agree with the approach advocated in that document.

16. In determining the appropriate penalty for a civil contempt of court, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

17. The Sentencing Council do not produce guidelines in respect of contempt of court arising from the breach of a civil injunction. However, the Court of Appeal, in a number of cases including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 has indicated that the definitive guideline can be used in the civil courts by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.

18. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.

19. The claimant has quite fairly referred the court to the decision of the Court of Appeal case of *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I have no doubt that had each of you been legally represented, your advocate would have relied upon the guidance in that case to support a submission for clemency. Leggatt LJ considered the approach to sentencing protestors:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

20. The court accepts the actions of you both on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

> "These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

21. I turn to the Sentencing Council guideline for breach of a criminal behaviour order. I am satisfied your actions fall within category B culpability. Your actions were deliberate; when protesting you knew what you were doing and that it was in breach of the injunction.

22. When determining the category of harm, the guideline requires consideration of the "harm that has been caused or was at risk of being caused." The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking

of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to leave the site to attend a medical appointment.

23. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.

24. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.

25. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.

26. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.

27. I turn to consider any aggravating and mitigating factors. Diane Hekt, there are no aggravating factors in your case. Ruth Jarman, you have three previous criminal convictions for wilfully obstructing the highway, all from earlier in 2022. Previous criminal convictions is a statutory aggravating factor and dictates upward movement in your case.

28. I have heard what you say in mitigation and have taken that into account. Diane Hekt, you are of previous good character. It is the first breach of the injunction for both of you. I accept that both of you acted for reasons of social conscience and that each of you are otherwise thoroughly worthwhile individuals who have contributed to society over many

years. You both told the court that you had resorted to civil disobedience out of frustration that your previous campaigning activity had achieved that which you wanted. Diane Hekt you tell me you are now 68 years old, retired with four grandchildren and living off a state pension. Ruth Jarman, you are now 59 years old and work two part-time jobs.

29. In my judgment, the contempt before the court is so serious that only a custodial sentence is appropriate. Ruth Jarman, the appropriate term of imprisonment in your case is one of 63 days. Diane Hekt, in your case the appropriate term is one of 56 days' imprisonment. Each of you admitted the contempt at the earliest opportunity and you are entitled to a one-third credit pursuant to the Sentencing Council Guideline. Rounding down in your favour, reduces the term in Ms Jarman's case to 42 days and in Ms Hekt's case to 37 days.

30. I then deduct the time that you have spent on remand in custody. Unlike when dealing with a sentence in the criminal courts, the prison service cannot adjust a civil sanction to reflect time spent on remand. Each of you has spent 6 days in custody, 1 day when you were first arrested, and 5 days following the first hearing. That is the equivalent of a 12-day sentence. Ms Jarman, your term is thus reduced from 42 days to 30 days' imprisonment. In your case, Ms Hekt, it is reduced from 37 days to 25 days' imprisonment.

31. I bear in mind the guidance in *Cuadrilla Bowland* as to the approach to be taken to suspension, particularly in circumstances where you are before the court in relation to a first breach of the injunction. I am persuaded that it is appropriate to suspend each of your terms of imprisonment. In both your cases, the 25-day term of imprisonment will be suspended on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022. I make it clear, if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment would be implemented and you will be dealt with separately in relation to any future contempt.

32. As Mr Manning made clear when he opened the case, the injunction does not prevent you from conducting protests, even immediately outside the terminal. You have a copy of the injunction order and plan within the evidence. Mr Manning highlighted an area immediately outside the entrance to the terminal which is not within the red boundary. Subject to your actions not otherwise falling foul of paragraph 1(b) of the order, individuals can protest in that area. The injunction sought to balance the right to protest with the rights of the occupants of Warwickshire to go about their lives without interruption.

33. The claimant has made an application for you to each pay a contribution to costs. The general rule is that the successful party is entitled to its costs from the unsuccessful party but the court may make a different order. There is no reason to depart from the general principle in this case. The claimant has established that you are each in contempt and is entitled to its costs. In cases of your co-defendants listed earlier today, I have satisfied

myself that the claimant's schedule of costs is proportionate. You will each pay a contribution to the claimant's costs in the sum of £412.46.

34. Ms Hekt, you have informed the court that your sole income is a state pension and cannot pay the costs immediately without facing significant hardship. You will pay the sum of £412.46 by instalments of £25 per month. The first payment to be by 20 October 2022 and thereafter by 20th of each month until the sum has been discharged.

35. Ms Jarman, you have informed the court that your gross income is in the region of £25,000 per annum. You have more income than Ms Hekt but I again accept that you would find it difficult to make payment in full within a month. You too will be permitted to pay by instalments but at the higher monthly rate of £50 a month. Again, the first payment by 20 October 2022 and thereafter monthly by the 20th of each month.

36. You have a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. I transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

Neutral Citation Number: [2022] EWHC 2458 (KB)

Case No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Monday, 12 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) STEPHANIE AYLETT
(2) CALLUM GOODE
(3) JOHN JORDAN

Defendants

MS C CROCOMBE appeared on behalf of the Claimant
MR FRASER appeared on behalf of the Defendants (1) and (2)
MR JORDAN appeared in person

Trial dates: 6th, 7th and 12th September 2022

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd,
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

JUDGE KELLY:

APPROVED JUDGMENT ON LIABILITY

1. This is an extempore judgment following the trial of an application by the claimant, North Warwickshire Borough Council, to commit Stephanie Aylett, Callum Goode and John Jordan for contempt of the court.

2. The claimant is represented by Ms Crocombe of counsel. The first and second defendants, Stephanie Aylett and Callum Goode, are represented by Mr Fraser of counsel. On the first day of the trial, the third defendant, John Jordan, was also represented by Mr Fraser however Mr Jordan dispensed with Mr Fraser's services on the second morning of trial. By that stage, all the evidence had been heard bar that of Mr Jordan. Mr Jordan has thereafter conducted his own advocacy but retains solicitors on record. I note his solicitor is present in court today.

3. I have received a helpful skeleton argument from counsel for the first and second defendants and copy authorities from both counsel.

Background

4. Kingsbury Oil Terminal is a large inland oil terminal located near Tamworth in Warwickshire. In the Spring of 2022, various protests against the production and use of fossil fuels took place at and in the vicinity of the terminal. That led to the claimant applying for an interim injunction to protect the site.

5. On 14 April 2022, Sweeting J granted an interim without-notice injunction against various named defendants and Persons Unknown. The sixth named defendant to the substantive proceedings was a John Jordan, albeit there is some uncertainty as to whether that John Jordan is the same John Jordan that appears before the court today. It matters not given the definition of Persons Unknown as those "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."

6. On 5 May 2022, an on-notice hearing took place before Sweeting J. Some of the named defendants were represented although none of the defendants before the court today were at or represented at that hearing. Sweeting J amended clause 1(a) of the interim injunction and reserved judgment as to the remainder of the issues raised at that hearing. The reserved judgment has not yet been handed down.

7. The variation to the interim injunction was incorporated into an order dated 6 May 2022. For the purposes of this judgment, I will refer to the order of 6 May 2022 as "the injunction." The injunction has a penal notice attached in a standard form wording. 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."

8. The plan at Schedule 1 is drawn to a scale of 1 to 5,000. The edging in red largely follows the perimeter boundary of the areas known as Kingsbury Oil Terminal. The original without-notice interim order of 14 April 2022 also had a plan attached at Schedule 1 but it was at a scale of 1 to 10,000, and therefore a larger geographical area was depicted on the page.

9. By paragraph 1(b) of the injunction:

> "The defendants shall not (whether by themselves or by instructing, encouraging or allowing any other person):
> "(b) in connection with any such protest anywhere in the locality of the Terminal perform any of the following acts..."

10. There then follows a series of 11 subparagraphs defining specified prohibited activities. Of those relevant to these proceedings:

    a. At paragraph (ix): "digging any holes in or tunnelling under (or using or occupying existing tunnels under) land including roads."

    b. At paragraph (xi): "instructing, assisting, encouraging or allowing any other person to do any act prohibited by paragraphs (b)(i) to (x) of this order."

11. The word "locality" is not defined within the body of the injunction.

12. Paragraph 2 of the injunction attaches a power of arrest to paragraphs 1(a) and 1(b) aforementioned, pursuant to s.27 of the Police and Justice Act 2006. Paragraph 3 provides:

> "This order and power of arrest shall continue until the hearing of the claim unless previously varied or discharged by further order of the court."

13. By paragraph 5 of the injunction, the judge gave permission for the claimant to serve the claim form, supporting documents, the order and power of arrest by alternative methods specified at schedule 2 to the order. Reservice of the claim form and supporting documents were dispensed with but not service of the injunction and power of arrest. Paragraph 1 of schedule 2 to the injunction details the alternative service methods:

> "Service of the claim form and this order shall be effected by
> (i) placing signs informing people of
> (a) this claim,
> (b) this order and power of arrest, and the area in which they have effect and
> (c) where they can obtain copies of the claim form, order and power of arrest and the supporting documents used to obtain this order
> in prominent locations along the boundary of the buffer zone referred to at paragraph 1 of this order and particularly outside the terminal and at the junctions of roads leading into the zone,
>
> (ii) placing a copy prominently at the entrances to the Terminal;
>
> (iii) posting a copy of the documents referred to at para. 1(i)(c) above order on its website, and publicising it using the claimant's Facebook page and Twitter accounts, and posting it on other relevant social media sites including local police social media accounts,
>
> and/or
>
> (iv) any other like manner as the claimant may decide to use in order to bring the claim form and this order and power of arrest to the attention of the defendants and other persons likely to be affected."

14. It is not in dispute that on 24 August 2022 the defendants were arrested for criminal matters on exiting a tunnel they had been occupying. The tunnel had been dug alongside and partly under Piccadilly Way in Kingsbury, Warwickshire. Piccadilly Way is a public highway to the south of Kingsbury Oil Terminal. The defendants were taken to Nuneaton police station. Later in the day on 24 August, the police exercised the power of arrest attached to the injunction and arrested each for alleged breach. On 25 August 2022 the defendants were produced before this court and the case adjourned for the defendants to obtain legal representation. Each of them was bailed. At that first hearing on 25 August, the claimant provided each the defendant with written particulars of the alleged contempt together with details of their rights as summarised in CPR 81.4(2).

Particulars of Alleged Contempt

15. I turn to those written allegations of contempt. The claimant's schedule of allegations reads as follows:

> "1. On 24 August 2022, the defendants dug and occupied a hole roughly 5 and a half feet in depth and running alongside and under Piccadilly Way ("the hole"). For the safety of the public and defendants, Warwickshire Police closed the road.
> "2. At 16:42 Clive Tobin, the claimant's Head of Legal Services, attended the hole and personally served two copies of the claim form, supporting evidence, the order of Mr Justice Sweeting dated 6 May 2022 and accompanying power of arrest on the defendants.
> "3. At 19:00 the defendants decided to leave the tunnel but they failed to do so until 21:25.
> "4. By virtue of the action detailed at paragraphs 1 to 3 above, the defendants breached the injunction dated 14 April 2022 as amended and extended by order of Sweeting J dated 6 May 2022 ("the injunction") by committing the following acts within the locality of the terminal and in connection with the protest against the production or uses fossil fuels:
>
> 4.1. Digging a hole in, and tunnelling under, land contrary to paragraph 1(b)(ix),
> "4.2. Occupying a hole in, and tunnelling under, land contrary to paragraph 1(b)(ix),
> "4.3. Instructing, assisting, or encouraging each other to do the aforementioned acts prohibited by the injunction contrary to paragraph 1(b)(xi)."

The issues

16. The defendants put the claimant to proof on all aspects of its case. Each defendants' case falls to be considered separately on the evidence. The following issues require consideration:

1. Can the claimant prove that a given defendant was served with the injunction?
2. On the proper interpretation of the injunction, what conduct is prohibited by clauses 1(b)(ix) and 1(b)(xi)?
3. Did a given defendant dig and/or occupy a hole running alongside and under Piccadilly Way?
4. Did a given defendant's actions occur in the locality of the terminal?
5. Were a given defendant's actions in connection with a protest against the production or use of fossil fuels?

The parties' positions

17. The claimant's position is as follows.:
    a. The defendants were validly served with the injunction when Mr Clive Tobin effected personal service at 16:42 on 24 August 2022. In the alternative, the claimant relies on clause 1(iv) of schedule 2 of the injunction, which permitted service by any other like manner as the claimant may decide to use.
    b. On a proper construction of paragraph 1(b) of the injunction, there is no requirement that relevant protest activity be taking place within the boundary of the terminal edged in red before any liability under paragraph 1(b) can arise.
    c. All the defendants dug and occupied a hole in connection with a protest against the production or use of fossil fuels.
    d. On a proper construction of paragraph 1(b), the locality extends to the location of the tunnel occupied by the defendants and is not referable to a smaller geographical area depicted on the plan at schedule 1 to the injunction.

18. The defendants' position is as follows:
    a. The first and second defendants were not personally served with the injunction so as to be bound by it. The third defendant puts the claimant to proof as to personal service.
    b. It is not open for the claimants to rely on paragraph 1(iv) of schedule 2 to satisfy the court as to alternative service when they failed to avail themselves as to the other provisions as to alternative service at paragraphs 1(i) to 1(iii) of schedule 2.
    c. Paragraph 1(b) of the injunction is reasonably susceptible to at least two different meanings and, as such, the meaning more favourable to the defendants should be adopted. The two different interpretations contended for by the defendants are as follows.
        i. Firstly, a person will be in breach if they perform any of the acts at 1(b)(i) to (xi) in connection with a protest in the locality of the terminal.
        ii. Alternatively, a person will only be in breach if a protest is taking place within the areas the boundaries of which are edged in red on the map, and a person, in connection with that protest within the boundary, engages in an act prohibited by (b)(i) to (b)(xi) anywhere in the locality.
    d. The meaning of the word "locality" does not extend to the location of the tunnel.

19. The defendants put the claimant to proof generally as to their actions on 24 August. The third defendant acting in person adopts the submissions of law made by Mr Fraser on behalf of the co-defendants.

The legal principles

20. These are contempt proceedings and, as such, the burden of proof rests upon the claimant to prove the alleged breaches to the criminal standard, namely beyond reasonable doubt. In other words, the court must be sure.

21. A useful summary as to the requirements of service in the context of contempt proceedings is found in Arlidge, Eady & Smith on Contempt (5th edition) at paragraph 12-41:

> "It is also necessary where committal is sought to establish service of any order which is alleged to have been disobeyed by leaving a copy with the person to be served. The importance of personal service of the order is to enable the person bound by the order, and who is alleged to be in contempt, to know what conduct would amount to a breach and such notice is required to be proved beyond reasonable doubt. It seems, however, it is no excuse that a party who has been served with the relevant document failed to read it…In an appropriate case, the court may dispense with personal service altogether and grant permission for service to be effected by one or other of these means."

22. The notion of what amounts to personal service was considered in *Tseitline v Mikhelson* [2015] EWHC 3065 by Phillips J who, at paragraph 14 of the judgment, referred to *Kenneth Allison v AE Limehouse & Co* [1992] 2 AC 105, where:

> " 14.... the House of Lords considered what was meant by 'leaving a document with the person to be served', being the equivalent (and effectively identical) requirement for personal service in the former RSC (Order 65 r 2). Lord Bridge of Harwich stated, at p. 113E:
>
> > "'There is abundant authority for the proposition that personal service requires that the document be handed to the person to be served or, if he will not accept it, that he be told what the document contains and the document be left with or near him.'
>
> 15. At paragraph 124C Lord Goff of Chieveley stated as follows:
>
> > "'Prime facie, the process server must hand the relevant document to the person upon whom it has to be served. The only concession to practicality is that, if that person will not accept the document, the process server may tell him what the document contains and leave it with him or near him.'"

23. Phillips J continued at paragraph 34:

> "In my judgment it is plain from these authorities (and from the special nature and role of personal service discussed above) that the process of leaving a document with the intended recipient must result in them acquiring knowledge that it is a legal requirement which requires their attention in connection with proceedings. Whilst this is expressed as requiring that the intended recipient be 'told' the nature of the document, the focus is on the knowledge of the recipient, not the process by which it is acquired. Whilst in most cases knowledge of the nature of the document will be found to have been imparted by a simple explanation, it is clear that it can … also readily be inferred from pre-existing knowledge, prior dealings or from conduct at the time of or after service, including conduct in evading service: see *Barclays Bank of Switzerland v Hahn* [1989] 1 WLR 506 at 512A."

24. The law relating to personal service of a claim form was considered by HHJ Pearce in *Gorbachev v Guriev* [2019] EWHC 2684 at paragraph 27:

> "The relevant law on the personal service of a claim form can be summarised as follows.
> (i) CPR 6.3(1) provides for service of a claim form by various means, including 'personal service in accordance with rule 6.5.'
> (ii) CPR 6.5(3) provides that 'a claim form is served personally on an individual by leaving it with that individual ... '
> (iii) Service on an agent would not be good personal service -- see for example *Morby v Gate Gourmet Luxembourg IV Sarl* [2016] EWHC 74.
> (iv) In what has been described as a 'concession to practicality', if the person upon whom service is being attempted will not accept the document, service can be effected either by handing the document to the person (what is often called a 'limb 1' case) or by telling the person who the document contains and leaving the document with or near the person (a 'limb 2' case) -- see *Kenneth Allison Limited v AE Limehouse & Co* [1991] 3 WLR 671.
> (v) Knowledge of what the documents contain for this purpose is acquired by it being brought to the intended recipient's attention 'that it is a legal document which requires his attention in connection with proceedings' -- see Hoffmann LJ in *Walters v Whitelock*, unreported, 19 August 1994, cited by Phillips J in *Tsietline v Mikhelson* [2015] EWHC 3065 (Comm).
> (vi) 'The focus is on the knowledge of the recipient, not the process by which it is acquired' -- per Phillips J in *Tseitline*.
> (vii) Once the intended recipient has 'a sufficient degree of possession of the document to exercise dominion over it for any period of time however brief, the document has been "left with him" in the sense intended by the Rule' -- see Waite LJ in *Nottingham Building Society v Peter Bennet & Co*, The Times, 26 February 1997 cited by Phillips J in *Tsietline.*

(viii) If the intended recipient has gained possession within the meaning referred to in the previous subparagraph, it makes no difference that the person seeking to effect service may subsequently remove the document, for example because the intended recipient has not taken the document and has walked away from them - see Phillips J in *Tseitline*.
(ix) The burden is on the claimant to show a good arguable case that service was effected on the defendant – see for example in *Tseitline.*
(x) Where an issue of fact arises as to whether there is such a good arguable case, the court must take a view on the evidence if it can reliably do so (*Goldman Sachs International v Novo Banco SA* [2018] UKSC 34).
(xi) If the court is not able to make a reliable assessment of an issue on the evidence available, it is sufficient for the claimant to show a plausible evidential basis on the issue ... "

25. *Gorbachev v Guriev* involved the service of a claim form. In the context of service of an injunction for the purposes of a contempt application, rather than service of a claim form, I remind myself that the claimant must prove service to the criminal standard of proof.

26. The parties agree that the applicable principles in a contempt application were summarised by Males J, as he then was, in *Sheffield City Council v Teal* [2017] EWHC 2692:

> "… 1. The burden of proof is on the council to show the defendants have intentionally committed acts which are contrary to the order.
>
> 2. This must be proved to the criminal standard.
>
> 3. The conduct prohibited must be clearly stayed stated in the order.
>
> 4. If the order is reasonably susceptible to more than one meaning, the meaning favourable to the defendant should be adopted."

27. The fourth of those principles was considered by Moore-Bick LJ in the *Commission for Equality and Human Rights v Griffin* [2010] EWHC 3343 at paragraph 22:

> "In construing the judge's order it must be borne in mind that it was contemplated from the outset that if the court were to grant any injunction the order would be supported by a penal notice to enable it to be enforced, if necessary, by coercive measures, in particular the committal to prison of the three defendants and any other members of the BNP on whom it might have been served. In such cases it is vital that those to whom the order is addressed are able to understand clearly what they are or are not to do, and if there is any uncertainty in its meaning, the order should be construed in a meaning that is less, rather than more, onerous to them. In

Redwing Limited v Redwing Forest Products Limited [1947] 64 RPC 67 the court was concerned with an alleged breach of an undertaking given by the defendant not to advertise or offer for sale any products as 'Redwing' products so as to be liable to lead to the belief that they were the plaintiff's. Jenkins J held that there was no breach of the undertaking unless the manner of advertising or offer were such as to lead to such a belief. He said at page 71:

> "' ... a defendant cannot be committed for contempt on the ground that upon one of two possible constructions of an undertaking being given he has broken his undertaking. For the purposes of relief of this character, I think the undertaking must be clear and the breach must be clear beyond all question.'"

The evidence

The Claimant's evidence

28. The claimant relies on the following witness evidence:

    a. Clive Tobin, the claimant's head of legal services,

    b. Stephen Maxey, the claimant's chief executive,

    c. PC Bradley, a police officer on site to monitor the tunnel.

    d. PC Bristow, a police officer who produces extracts from the police STORM incident recording system.

29. I previously gave permission for the claimant to rely on witness statement rather than affidavit evidence. PC Bristow's evidence was before the court in agreed written form. Video footage taken from the body worn cameras of PC Bradley and PC Hope have been exhibited and agreed extracts played as part of the claimant's evidence. The claimant's remaining witnesses attended court to give oral evidence.

    Clive Tobin

30. Mr Clive Tobin has produced two witness statements. In his first statement, he described arriving on site at approximately 4.30pm on 24 August 2022. Paragraph 6 of his statement read as follows:

> "A number of other police officers were present close to the entrance to the tunnel. As I approached, I saw a male within the tunnel who I now know to be John Jordan, the third defendant referred to, although at the time he referred to himself as Sean. I could also see a female who was slightly further inside the tunnel than Mr Jordan and who I now know should be Stephanie Aylett, the first defendant. I engaged in conversation

with Mr Jordan and explained that the order was in force and prohibited certain activity in the locality of the oil terminal. I then handed Mr Jordan and Ms Aylett copies of the order dated 6 May 2022, the accompanying power of arrest, the application documents and supporting evidence. These were handed to them shortly after 4.40 pm and were placed in blue tinted transparent folders."

31. Mr Tobin's written evidence exhibited a What3words location map for the entrance to the tunnel. He explained that the tunnel was approximately 400 metres from the oil terminal with the total terminal site being approximately 1800 metres by 1600 metres.

32. In cross-examination, Mr Tobin was asked about the certificate of service that he had prepared, dated 25 August 2022. By the certificate, Mr Tobin certified the date of service as 24 August 2022 answered the question "How did you serve the documents?" in the following way: "by personally handing it to or leaving it with at 16.42…" He provided the additional narrative: "by handing two copies to the defendants at the entrance to a tunnel on Piccadilly Way, Kingsbury, Warwickshire." By the certificate, Mr Tobin certified that John Jordan, Stephanie Aylett and Callum Goode had been served.

33. In cross-examination Mr Tobin confirmed that he handed two copies of the documents to Mr Jordan and that Mr Jordan had handed one copy to Ms Aylett. Mr Tobin described having one set of the papers in his hand, a second copy in his rucksack, but not having any further copies with him. He told the court he had provided Mr Jordan with an explanation as to the scope of injunction and had asked Mr Jordan if he had any colleagues down there with him. Mr Tobin agreed the video footage showed Mr Jordan replying "multiple" in response to the question as to whether there were colleagues in the tunnel with him. He accepted that he had not handed copies of the documents directly to anybody else occupying the tunnel other than Mr Jordan.

34. Mr Tobin was asked questions about his line of sight from his position standing at ground level above the down-shaft to the tunnel. He said that he could see into the front part of the tunnel and saw Ms Aylett's head come out. He agreed that he did not speak to anybody else inside the tunnel. He stated that he handed the documents to Mr Jordan who then passed them back to Ms Aylett. He maintained his view differed from that seen on the body worn footage of the police officer. He explained seeing Mr Jordan holding one copy higher up and passing the other copy down. He accepted that he had not seen or spoken to Callum Goode.

35. The police video footage from 16:47 to 16:49 was replayed to Mr Tobin. Mr Tobin accepted that he couldn't see anyone other than Mr Jordan on the video but explained that his view differed from the video and he was not completely static. He maintained that from where he was standing, it had looked like Mr Jordan was lowering the documents down to someone else, who had in turn taken them. He accepted that he had not seen a hand take the documents from Mr Jordan.

Stephen Maxey

36. In his written evidence Stephen Maxey provided details of his knowledge of the defendants' links to Just Stop Oil and of its aims to stop the use and production of fossil fuels. He exhibited a Just Stop Oil Twitter post from 25 August that referred to the defendants being supporters of Just Stop Oil. He also exhibited a Just Stop Oil post of the same date publicising a number of people tunnelling in protest against the use of oil. This included video stills of Ms Aylett and Mr Jordan. He further exhibited a copy of a Twitter video of Ms Aylett, taken whilst in the tunnel. The video was played to the court. Mr Maxey noted that when the defendants were first produced in court on 25 August 2022, a number of supporters attending including one with a Just Stop Oil high visibility jacket. There was limited cross-examination of Mr Maxey. He accepted that the mere presence of a supporter wearing a Just Stop Oil jacket did not mean he could explain precisely what the defendants' relationship was with that organisation although he noted that there had been some interaction between the supporters and the defendants.

PC Bradley

37. PC Bradley was present by the tunnel on the day that the defendants exited and were arrested. She adopted the evidence given by her colleague, PC Hope, who was on leave when the trial took place. PC Bradley described being crewed with PC Hope to attend Kingsbury Oil Terminal and tasked to monitor the hole. She described Mr Jordan being visible by the entrance and being aware that others were inside the tunnel but could not be seen. She recalled that the defendants made the decision to leave the tunnel at about 1900 hours but requested time to leave and eventually left at about 2125 hours. The officer described Mr Jordan exiting the hole first, then Ms Aylett and finally Callum Goode, whereupon all the defendants were arrested for criminal damage. PC Bradley was involved in searching Ms Aylett and transporting her to custody. PC Bradley described the custody officer asking PC Hope what Ms Aylett had been arrested for, to which Ms Aylett had replied, "I haven't damaged anything. I just dug a hole." PC Bradley stated that that was recorded in her pocket book, but Ms Aylett refused to sign the entry.

38. PC Bradley in cross-examination confirmed that she and PC Hope had been part of a team that had relieved the previous shift of police officers. She accepted that Mr Jordan had told her shift that he ready to come out of the hole and had indicated he liked PC Hope, so they would come out for him but had not liked the previous shift of officers. PC Bradley agreed that the defendants had cooperated and that the police had allowed the defendants to pass their belongings up and out of the hole and to leave at their own pace. PC Bradley explained that the police officers on site were not trained to go underground and, as the defendants were engaging, the police strategy was to continue with that engagement and allow the defendants to come out in their own time. She accepted that the police had not insisted that the defendants hurry up. PC Bradley agreed that she had a lengthy conversation with Ms Aylett in the police car and there were instances when questions were asked where Ms Aylett spoke of her motivation.

39. The claimant played video footage from the body worn cameras of PC Hope and PC Bradley. It is agreed that the time shown on the video is one hour behind the actual time, the equipment having not been adjusted for British Summer Time.

40. The key features from PC Hope's footage are as follows.

    a. Starting at 1646 hours, Mr Tobin can be seen standing at ground level above the down-shaft of the hole talking to Mr Jordan, who is standing in the down-shaft. It is raining quite heavily. Mr Tobin can be heard to refer to the injunction being in force and explaining that it covers the terminal and the locality. Mr Tobin can be seen to ask Mr Jordan if he has any colleagues down there with him to which Mr Jordan replies, "Yes, multiple." Mr Jordan is heard to say that the injunction had been deemed unlawful by a High Court Judge. In response, Mr Tobin is heard to explain that only the buffer zone had been removed and the remainder of the injunction remained in force. Mr Tobin is seen to hand two wallets of documents to Mr Jordan. Mr Jordan then appears to put them down to the front of his leg using his left hand.

    b. The next relevant extract is timed at just after 1900 hours. Over the next hour or so there are a number of exchanges between the police and Mr Jordan. The conversation includes a discussion about the occupants passing out their personal belongings. Mr Jordan is seen to pass out items of rubbish and commenting that it may take some time because they had a lot of stuff in the tunnel.

    c. Shortly before 2000 hours, the police are heard to say that the road will not be reopened until this had all been sorted out. Shortly thereafter Mr Jordan passes a shovel out of the hole. He then comments: "This is the better one" and a second shovel is handed out.

41. PC Bradley's footage commences at the same time as that of PC Hope and adds very little to his footage. Her footage does however also cover the period just before 2130 hours when the defendants had just left the tunnel. Her video footage continues in the police car that transported Ms Aylett to Nuneaton police station. During the journey, Ms Aylett is heard to refer to having caught a drill in her trouser a few days ago injuring her skin. Mr Aylett described her injury occurring maybe a week ago but that it did not hurt now unless she touched it.

<u>The Defendants' evidence</u>

42. Each of the Defendants had been advised of their right to silence, their entitlement but not obligation to give evidence and their right against self-incrimination. None of the defendants produced written witness statements or affidavits but each of them elected to give oral evidence.

Stephanie Aylett

43. Ms Aylett accepted that she had been in the tunnel on 24 August 2022. She described her motivation and her view that her previous efforts to campaign for timely restructuring from fossil fuels to renewable energy were not working. She had previously signed petitions, been on marches and written to MPs but remained very concerned about the death of the human race and the diminishing window within which a restructure to renewals was required. It was clear from her evidence that she was passionate in her view that the government is inextricably linked to the fossil fuel industry and is not doing enough. Ms Aylett accepted that she supported Just Stop Oil tweets that demanded the government immediately halt all new licences for fossil fuels.

44. Ms Aylett told that court that when she went into the tunnel, she was not aware there was any injunction in place covering the area in which she was protesting. She maintained that she first received a copy of the injunction when she was produced in court on 25 August 2022.

45. She explained that she had now seen the police footage and was now aware that Mr Tobin had given Mr Jordan documents but was not aware of that at the time. She maintained that no documents had been passed to her from anyone above ground or by Mr Jordan. She said that at the time she could not hear much of what was going on and sitting 3 to 4 metres from the entrance. Ms Aylett described Callum Goode being behind her and further into the tunnel. She described being aware of lots of different people coming to visit the tunnel including the police, someone from the council and the firemen but that, whilst she could hear a lot of what of what Mr Jordan said from the down-shaft, she struggled to hear what was being said by those above ground. She accepted that she had heard the word "injunction" from Mr Jordan which had worried her quite a lot. She described Mr Jordan thereafter coming back into the tunnel and it raining heavily. Ms Aylett told the court that she had a brief conversation with Mr Jordan about Mr Tobin's visit, but Mr Jordan told her that the injunction proposed in April had been deemed unlawful at a hearing around the end of April or May. She described the conversation then moving quickly on to other more important matters, in particular the fact that it was raining, that a big crack had opened in the tunnel, the risk the tunnel may flood or collapse, and her fear that if the road reopened, an accident may occur. Ms Aylett stated her decision to leave the tunnel reflected those concerns and was not based on her knowledge that an injunction existed. When she left the tunnel, Ms Aylett described seeing two blue plastic folders at the bottom of the down-shaft and asking "what's that" before she left.

46. In cross-examination, Ms Aylett agreed that the tunnel was located adjacent to and under Piccadilly Road but disputed the What3words location that was given in the police statement. She refused to answer questions as to whether she had been involved in digging the tunnel. She accepted that there were shovels in the tunnel and that she had told the police that she had been injured in the hole by a drill.

47. Ms Aylett was cross-examined as to the circumstances of Mr Tobin's visit to the tunnel. She maintained the account given in examination-in-chief, namely that when Mr Jordan was standing up in the down-shaft she could hear some of what he was saying but it was difficult, and she could not hear what Mr Tobin had had been saying. The video footage timed at 1647 hours was replayed to her. She accepted she could be heard on the video saying, "it was changed" shortly after Mr Jordan mentioned the word "injunction". Ms Aylett stated that her understanding was, as she had said in chief, that the injunction had been deemed unlawful and reduced to just the boundary of the terminal.

48. As to her actions, she told the court she was seeking to send a message to the government and to the fossil fuel industries with one of her aims being to force the closure of the road to prevent oil tankers filling up at the terminal. She accepted that she had been arrested on at least three occasions at protests over the last year, including at a protest at JP Morgan's premises in October 2021, in Greater Manchester in November 2021 and in Essex in April 2022. She agreed that she appeared on the video footage in Just Stop Oil's tweet.

49. Ms Aylett told the court the timing of the decision to leave the tunnel was based in part because they liked the current team of police officers that were manning the hole but had had difficulties with the earlier officers. She accepted that she could be heard on video discussing deleting various items from her phone before exiting but could not remember what she had deleted.

Callum Goode

50. The court was informed that Callum Goode's preferred pronouns are they/them and this judgment adopts those pronouns.

51. Callum Goode agreed with Aylett's explanation as to their motivation for occupying the tunnel. They confirmed that they were in support of the Just Stop Oil demands. Callum Goode explained that they were unaware, when entering the tunnel, that any injunction was in place at all and had not seen any paperwork before being produced in court.

52. Callum Goode drew a helpful sketch plan of the internal dimensions of the tunnel. They described a vertical down-shaft, the tunnel then proceeding 3 to 4 metres horizontally before a further drop of about 1 metre, at which point the tunnel curved round and continued horizontally. Callum described being at the far end of the tunnel, a horizontal distance of about 6 to 7 metres away from the entrance into the down-shaft. Callum described there being very little space to move around and, at most, being able to move half a metre from their position at very end of the tunnel.

53. Callum Goode told the court that they could not hear outside conversation and struggled to hear even that which Mr Jordan was saying when standing in the down-shaft. They accepted that they had heard Ms Aylett mention something about an injunction to Mr

Jordan. In cross examination, Callum Goode accepted that, immediately after Mr Tobin left, there had been a brief discussion about the injunction and about it being ruled illegal. Callum said, "To be honest, the information about the road being reopened was relayed immediately after that, and that seemed to be much more pressing." They described their concern about Ms Aylet's fear and about the cracking and rain.

54. Callum Goode confirmed their support for Just Stop Oil.

55. Callum confirmed that they were not communicating with the police and that was left to Mr Jordan. Callum stated that Mr Jordan had not brought the injunction papers to their attention and only seeing the blue wallets of documents as they exited the tunnel.

56. Callum Goode accepted that they had been arrested at protests previously including in April 2022 in Surrey. They also accepted that having been released on bail on 25 August 2022, they had been arrested in Essex and having spent a night in custody.

John Jordan

57. Mr Jordan gave evidence as a litigant in person. He confirmed that although his name is John Jordan, he is known by the first name Sean. Mr Jordan told the court he had taken action in Kingsbury in April 2022 and that he stood by those actions. He stated that his understanding was that the injunction that had been granted in April had been deemed to be unlawful. Mr Jordan told the court that when the injunction had first been granted in April, there had been copies of the order displayed very clearly around the site, on roundabouts, with the police officers and, as he put it, "basically everywhere". He said that by August there was nothing to inform them that the surrounding area was within a zone covered by the injunction and he was therefore unaware when he entered the tunnel that an injunction covering that land.

58. Mr Jordan explained that he tended to sit in the mouth of the tunnel and communicated with any visitors. He described Stephanie Aylett being 3 to 4 metres behind him and Callum Goode being behind her. Mr Jordan accepted that Mr Tobin had handed him two plastic folders whereupon he kneeled and put the documents on the floor. She denied handing any documents to Ms Aylett. Mr Jordan described it raining very heavily at that time and that the police had taken away their tarpaulin. He therefore placed the blue plastic wallets at an angle on the floor of the down-shaft to try to drain water away from the tunnel.

59. Mr Jordan stated that whilst in the tunnel, he could feel the vibration of police vehicles passing over and that the group were concerned about tankers and the risk of cracks forming. He stated that he had informed the police at around 7 pm that they would come out of the tunnel and the police had wanted the protesters to help with taking their belongings out of the tunnel.

60. Mr Jordan answered “no comment” to questions in cross-examination about his involvement in digging the tunnel, handing out shovels and pickaxes and about the other defendants' actions in tunnelling. He did, however, then answer the majority of the remaining lines of cross-examination.

61. Mr Jordan accepted that he was the person who had been communicating with Mr Tobin as he happened to be the person nearest the entrance. He stated it was not possible for anyone above ground to speak to everyone in the tunnel because the tunnel was narrow, and people could only fit in on a single-file basis. Mr Jordan accepted knowing that Mr Tobin was from the council and taking copies of the documents from him. He did not accept that Mr Tobin had said that "these are copy documents for your colleagues." Mr Jordan maintained he did not pass any of the documents to the other defendants.

62. Mr Jordan stated that after Mr Tobin left, he had two main concerns, the appearance of a big crack in the tunnel and his need to urinate. He described being concerned that the tunnel may cave in if the claimant decided to reopen the road and not wanting to be associated with the death of any driver using the road. Mr Jordan explained that the group made the decision to exit the tunnel because they were not willing risk road users being killed or injured.

63. Mr Jordan maintained that he stood by the actions of Just Stop Oil and his own actions of civil disobedience. Indeed, he admitted that he was contemptuous of the court.

Issue (1) Can the claimant prove service?

64. It is trite law that an injunction must be served on a defendant in order that it to be enforced by way of committal for contempt. Alternatively, an application must be made for service to be dispensed with. The claimant does not make an application to dispense with service.

65. Injunction orders against protesters, whether defendants be persons unknown or those that are identifiable but who have transient lifestyles, often make provision for service by alternative means to address the difficulties in effecting personal service. This injunction was no different. Both the without notice version of the order dated 14 April 2022 and the on notice variation dated 6 May 2022 granted permission to the claimant to serve the order and power of arrest by alternative methods. The claimant availed itself of the alternative methods of service in respect of the order dated 14 April and the relevant certificates of service are included in the hearing bundle. However, for reasons that have not been explained, the claimant failed to repeat the exercise in respect of the order dated 6 May 2022. It is for that reason the claimant seeks to rely on personal service by Mr Tobin on 24 August 2022.

66. The witness statement of Mr Tobin is somewhat unsatisfactory. At paragraph 6 of his statement, he stated that he handed Mr Jordan and Ms Aylett copies of the order dated 6 May 2022, the accompanying power of arrest, the application documents and

supporting evidence shortly after 4.40 pm in blue tinted transparent folders. He signed a certificate of service dated 25 August, stating he had served the three named defendants by handing two copies to the defendants at the entrance to the tunnel on Piccadilly Way. However, in oral evidence Mr Tobin accepted that he had in fact only handed the two blue folders to Mr Jordan who, he maintained, had handed one back to Ms Aylett.

67. The court has the benefit of PC Hope's body worn video footage. The police officer was located in a position that gave a clear view into the down-shaft of the tunnel. Mr Jordan can be seen on the video standing in the down-shaft and receiving the two blue folders from Mr Tobin. Mr Jordan then appears to use his left hand to place the folders down to his left. There is no sign of Ms Aylett's head or hand or indeed any other part of her body. Mr Jordan does not appear to pass anything behind him, which is where Ms Aylett was located in the main body of the tunnel. Mr Tobin can be heard to explain the nature of the document to Mr Jordan, including reference to the injunction covering the area of the tunnel. Mr Tobin does not ask Mr Jordan to pass copies of the document back to others in the tunnel. Mr Tobin does not ask anyone else in the tunnel to present themselves at the entrance, nor does he seek to shout any instructions into the tunnel or attract the attention of others that may be further into the tunnel. The video footage largely accords with the evidence of Mr Jordan and Ms Aylett on this topic.

68. I remind myself that the claimant has to prove service to the criminal standard of proof. I have no difficulty with the notion that at around 4.40pm Mr Jordan was handed a copy of the injunction and the power of arrest and told of the nature of those documents. The same is supported by the video evidence and indeed accepted by Mr Jordan. The claimant can therefore satisfy personal service of the type described in limb 1 of *Kenneth Allison Limited* by the handing of the document to Mr Jordan.

69. The position with Ms Aylett is rather different. I am not persuaded so that I can be sure that Mr Jordan handed back the document to Ms Aylett. The same is not consistent with what is seen on the video footage, which shows Mr Jordan putting the documents down towards the floor in front of him. The entrance to the tunnel at the foot of the down-shaft was behind Mr Jordan and thus placing the documents to his front is inconsistent with him having handed them back to Ms Aylett. Moreover, the video footage reveals no sign of Ms Aylett's hand or head. Mr Tobin's evidence as between his written witness statement and his oral evidence was contradictory, and that casts doubt on his reliability on this topic.

70. Even if, which the claimant did not seek to argue, Mr Jordan was deemed to be the agent of Ms Aylett, service on an agent would not be good service, per paragraph 27(iii) of *Gorbachev*.

71. A failure to hand the document to Ms Aylett is not necessarily fatal to the claimant's case. Personal service can still be established if Ms Aylett was told what the document contains and the document was left with or near her, as per limb 2 of *Kenneth Allison*.

However, I am not satisfied that the claimant can prove that the documents were left with Ms Aylett. They were left with Mr Jordan who placed them in front of him in the down-shaft. At best, the documents were near Ms Aylett, but she was separated from them by Mr Jordan's body which was blocking the narrow tunnel such that she could not physically pass him to reach them. I am not persuaded that amounts to the documents being left near Ms Aylett.

72. Moreover, Mr Tobin's conversation was directed solely at Mr Jordan. Ms Aylett was not told that she was being given documents or what those documents contained. At no time did Mr Tobin speak to Ms Aylett, direct Mr Jordan to pass on a message to Ms Aylett or ask her to come into the down-shaft to speak to him. Ms Aylett can be heard to say words to the effect that "it was changed" when Mr Jordan refers to the injunction. Given the depth of the tunnel and her position, I accept her evidence that whilst she could hear Mr Jordan's side of the conversation, it was difficult for her to hear what was being said by those above ground. In those circumstances, I am not persuaded that the claimant can prove beyond reasonable doubt that Ms Aylett was told what the document contained or that the document was left with or near her. I am not, therefore, satisfied as to personal service on Ms Aylett.

73. Callum Goode is further removed again from any dialogue between Mr Tobin and Mr Jordan. There is no evidence Callum Goode was handed any documents or that Mr Tobin directed any conversation to them or was even aware of their presence in the tunnel. The police evidence confirms that Callum Goode was the last person out of the tunnel, which is consistent with Callum's evidence of their location at the far end of the tunnel. I accept Callum Goode's evidence that it was around 6 or 7 horizontal metres from the entrance to the end of the tunnel. That is consistent with it being cramped but being long enough for 3 adults to lie end to end with room to store the significant volume of personal belongings that are seen on the video to exit the tunnel. Mr Tobin only left two copies of the documents with Mr Jordan, which I found he placed in the down-shaft. Not only were there insufficient copies for all three defendants, the documents were located at the opposite end of the tunnel to Callum Goode such that service of the kind recognised in limb 1 of *Kenneth Allison* is not made out. Furthermore, as with Ms Aylett, the claimant also fails to prove that Callum Goode was told what the documents contain or that the documents were left with or near him.

74. At one point in the claimant's submissions, Ms Crocombe appeared to be trying to submit that a general knowledge that an injunction of some form was in force but without service was good enough to bind the defendant. She referred and the to the case of *Atkinson v Varma* [2020] EWCA Civ 1602. At paragraph 54 Rose LJ held as follows:

> " ... once knowledge of the order is proved, and once it is proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his action put him in breach of the order; it is enough that as a matter of fact and law, they do so put him in breach."

75. Whilst *Atkinson* is authority for the proposition that it is not necessary for a defendant to know his action put him in breach, it does not obviate the need for either service in the first place or, in the alternative, an order dispensing with service. Unlike the cases before me, there was no suggestion in *Atkinson* that the defendant in question had not been served with the order. I am not therefore persuaded that the claimant can circumvent the need for service by relying on some general non-specific knowledge of that an injunction of some kind may be in force falling short of a recognised form of service or an order dispensing with service.

76. The claimant's alternative case on service is that it can satisfy the requirements of alternative service permitted by paragraph 5 of the injunction by complying with paragraph 1(iv) only of schedule 2 to the injunction. Paragraph 1(iv) of schedule 2 is the final of four sub-paragraphs dealing with alternative service. Paragraphs 1(i) to (iii) require service by variously placing signs in prominent locations along the boundary, outside the terminal, at junctions to roads, at entrances to the terminal and by posting the details on website and social media sites. There is no evidence that the claimant complied with any of those provisions as regards the injunction dated 6 May.

77. After paragraph 1(iii) are the words "and/or." Paragraph 1(iv) then states: “any other like manner as the claimant may decide to use in order to bring the claim form and this order and power of arrest to the attention of the defendants and the persons likely to be affected.” The claimant submits that 1inclusion of the word "or" means that it is open to the claimant to ignore the requirements of paragraphs (i) to (iii) and only adopt 1(iv). The claimant submits that whatever Mr Tobin's efforts amounted to, that suffices for the purposes of paragraph 1(iv).

78. Mr Fraser submits that such an interpretation amounts to the claimant having another bite of the cherry when it has failed to effect personal service and comply with alternative service envisaged by paragraphs 1(i) to (iii).

79. The use of the expression "and/or" leads to different outcomes depending whether the word "and" or "or" is applied. If the word "and" is used, it would require all four paragraphs (i) to (iv) inclusive to be complied with. If the word "or" is applied, it would require only one of the sub-paragraphs in paragraph 1 of schedule 2 to be complied with. The use of the expression is therefore somewhat curious. Service is rightly a very important concept in the context of a contempt application. An adverse finding on contempt can lead to committal to prison. Sub-paragraphs 1(i) to (iii) give detailed instruction as to where copies of the documents needed to be placed. Paragraphs (i) and (ii) use the word "prominently" and detail specific physical locations. The requirements at paragraphs 1(i) to (iii) are of a type commonly found in alternative service provisions and are designed to ensure the order is brought to the attention of those that may be affected. If an injunction is not so publicised, nor personal service effected, a defendant risks being severely prejudiced.

80. I remind myself of the guidance in *Sheffield City Council v Teal*, namely that if an order is reasonably susceptible to more than one meaning, the meaning more favourable to the defendant should be adopted. As discussed above, the use of the words "and/or" are reasonably susceptible to more than one meaning depending which of the two conjunctions is adopted. I therefore adopt the interpretation more favourable to the defendants. The claimant failed to comply with paragraph (i) to (iii) of paragraph 1 of schedule 2 and thus cannot cherry-pick a form of service of their own choosing.

81. Even if I were to be incorrect as to that finding, any further alternative method of service is required to be "any other like manner". The like manner must be referable back to the earlier provisions at paragraph 1(i) to (iii). A constant theme of the earlier provisions is that publication of the order has to be prominent, whether that be outside the terminal, at junctions of roads, on the entrances to the terminal or on social media sites. I have already determined that Mr Tobin's actions fell short of personal service as against Ms Aylett and Callum Goode. The findings of fact as to the steps he took did not ensure that the injunction was highlighted to these two defendants in a manner that was prominent. Therefore, even if I had been persuaded that the claimant could cherry-pick so as to rely on paragraph 1(iv) only, I would not have been persuaded that the actions taken satisfied the requirement of being "any other like manner". The steps taken were insufficient to bring the terms of the injunction to the attention of those affected.

82. In conclusion, the claimant has established personal service of the injunction on Mr Jordan at around 4.46 pm on 24 August 2022. However, the claimant has not proved service on either Stephanie Aylett or Callum Goode and the contempt application against those two defendants therefore fails for want of service.

83. The remainder of this judgment pertains to Mr Jordan alone.

Issue (2): On a proper interpretation of the injunction, is conduct complained of prohibited by paragraph 1(b)(ix) and/or (xi)?

84. The defendants contend that the words “in connection with any such protest” in paragraph 1(b) of the injunction are reasonably susceptible to more than one meaning such that the more favourable meaning to the defendants be should adopted, per *Sheffield City Council v Teal*. The defendants contend for at least two different meanings.

    a. Firstly, that a person will be in breach if they perform any of the acts at paragraph 1(b)(i) to (b)(xi) in connection with a protest against the production or use of fossil fuels in the locality of Kingsbury Oil Terminal.

    b. Secondly, a person will only be in breach if a protest against the production or use of fossil fuels is taking place “within the areas the boundaries of which are edged in red on the map” and that person, in connection with any such protest

within the boundary, engages in an act prohibited by 1(b)(i) to (b)(xi) anywhere in the locality.

85. Paragraph 1(a) of the injunction prohibits protests against the production or use of fossil fuels taking place within the boundary marked in red. That boundary is largely the perimeter of the terminal site itself. Paragraph 1(a) serves an obvious purpose in that it stops persons trespassing on the site to protest against the production or use of fossil fuels.

86. Paragraph 1(b) refers to "any such protest". The only earlier reference to a protest is in paragraph 1(a). In paragraph 1(a) the applicable protest is one "against the production or use of fossil fuels." If the protest is about another subject matter, it would not be caught. There is a comma after the words ending "…production or use of fossil fuels" before the sentence continues "at Kingsbury Oil Terminal." There is then another comma before "taking place within the areas the boundaries of which are edged in red…" In my judgment, the only reasonable construction of "any such protest" is that it is one against the production or use of fossil fuels. It is a matter of unreasonable contortion to say that paragraph 1(b) is only invoked if acts in the locality of the terminal are connected to a protest actually taking place within the boundary edged in red.

87. Firstly, the use of the comma after "any protest against the production or use of fossil fuels" supports an understanding that any such protest is limited to one being aimed at fossil fuels.

88. Secondly, the wording in the preamble to paragraph 1(b) needs to be construed in the context of the whole clause. For example, clause (viii) of paragraph 1(b) prohibits the abandoning of any vehicle which blocks any road or impedes the passage of any other vehicle on a road or access to the terminal. A vehicle blocking an access road is a potential problem regardless of whether a protest was also occurring within the perimeter of the boundary marked in red. Such a clause would be illogical if it only applied if a protest was happening within the perimeter of the terminal. Likewise, clause (iv) prohibits the climbing on to or otherwise damaging or interfering with any vehicle. It would be perverse if someone was only prevented from climbing on to an oil tanker on the approach road to the terminal if it was in connection with a protest that was taking place within the boundary of the site itself. The mischief at which this injunction is aimed is not limited to protests within the boundary only.

89. In conclusion, I am not persuaded that paragraph 1(b) is reasonably susceptible to more than one meaning. Paragraph 1(b) bites if, in connection with a protest against the production or use of fossil fuels anywhere in the locality of the terminal, any of the acts in subclauses (i) to (xi) are performed.

Issue 3: Did Mr Jordan dig and occupy a hole running alongside and under Piccadilly Way?

90. In light of my finding that Mr Jordan was only served with the injunction at around 4.46 pm on 24 August, it is only his conduct thereafter that is relevant for the purpose of this contempt application.

91. Mr Jordan admits occupying the tunnel from the point of service until he exited with his colleagues at around 9.25 pm. That is supported by evidence from the police officers who were by the tunnel throughout that period and saw him exit with his co-defendants. I am therefore satisfied to the criminal standard that Mr Jordan was occupying the tunnel throughout the period. If I had been persuaded as to service on Ms Aylett and Callum Goode, the same would have been said for them.

92. The claimant accepts that if the court considers that service only occurred when Mr Tobin effected personal service at 4.46 pm, it cannot prove that Mr Jordan was engaged in digging in the tunnel. That is a sensible concession. Whilst Mr Jordan passed shovels out of the tunnel to the police, there is no evidence that Mr Jordan or the other defendants were digging after 4.46 pm. Indeed, the tunnel appeared to have been constructed well before then and the defendants were in the occupying phase of their protest.

93. Mr Jordan's actions in occupying the tunnel do, however, fall within that prohibited by paragraph 1(b)(ix), which makes express reference to "using or occupying existing tunnels under land including roads". His presence in the tunnel, particularly acting as spokesperson with the outside world, further amounted to him assisting or encouraging any other person to do any act prohibited by paragraphs 1(b)(i) to (x) of the order. That is, of course, subject to a determination as to whether the claimant can establish that such acts took place in the “locality.”

Issue 4: Did Mr Jordan’s actions occur in the locality of the terminal?

94. Mr Jordan adopted Mr Fraser's legal submissions on this issue. Mr Fraser submitted that "in the locality" is reasonably susceptible to more than one meaning, such that the court should prefer the construction more favourable to the defendants. The defendants contend that because the expression is not defined in the order, it is capable of causing confusion. The defendants content that the expression could be interpreted as:

    a. The area shown on the plan at schedule 1 to the injunction, or

    b. By reference to the general ordinary English meaning of the word, which itself is arguably vague.

95. The defendants contend that the locus of the tunnel was outside that which appears on the plan at schedule 1 and therefore not in the locality.

96. The claimants submit that the words "in the locality" are commonly encountered in injunctive orders and indeed in statute. In *Manchester v Lawler* 31 HLR 119, the Court of Appeal considered whether, in contempt proceedings arising in a neighbourhood nuisance case, the words "in the locality" were defined with sufficient precision. Butler-Sloss LJ held:

> "In in each case it would be a question of fact for the judge whether the place in which the conduct occurred was or was not within the locality. There will be, as Sir John Vinelott said during argument, fuzzy edges. The issue as to the fuzzy edges or grey areas and whether the injunction stretches to a particular place which may be within or without the locality will be decided by the judge. The finding he makes will affect his decision as to whether the injunction covers the place where the conduct occurred…

On the facts of that case, the Court of Appeal accepted that "in the locality" was defined with sufficient precision.

97. The purpose of the map at schedule 1 of the injunction is to identify the boundaries edged in red as described in paragraph 1(a). Paragraph 1(b), within which the reference to "locality" appears, makes no reference to the map at schedule 1. It is therefore difficult to see why anyone would construe the words "in the locality" as meaning activity had to fall within the area covered on the map on schedule 1. The map serves a wholly separate purpose.

98. I am not therefore persuaded that the words "in the locality" are reasonably susceptible to more than one interpretation. The words in the locality are commonly used in injunctions, as evidenced by *Manchester City Council v Lawler*. It is not an unacceptably vague definition but a question of fact as to whether the locus of this tunnel fell within the meaning of locality of the terminal.

99. It is not in dispute that the tunnel was situated along a bank and under Piccadilly Way. Piccadilly Way runs from a roundabout to the south of Kingsbury Oil Terminal, northwards to and past the terminal. Ms Aylett took issue with whether the What3words location given by the police accurately reflected the precise location of the tunnel. However, there is no challenge to Mr Tobin's evidence that the tunnel was approximately 400 metres from the boundary of the terminal or that the overall size of the terminal is approximately 1800 metres by 1600 metres.

100. I am satisfied to the criminal standard that the tunnel was approximately 400 metres south of the terminal, adjacent to and extending under Piccadilly Way. The combination of the relatively short distance from the terminal and the location on a main access road to the terminal leads to my finding that the tunnel was within the locality for the purposes of paragraph 1(b).

Issue 5: Were Mr Jordan's actions in connection with a protest against the production or use of fossil fuels?

101. Neither Mr Jordan nor indeed any of the other co-defendants sought to suggest that the protest was not connected with the production or use of fossil fuels. Mr Jordan was passionate in his oral evidence as to his concern for humanity from climate change and the consequences of continued reliance or fossil fuels. The evidence from Just Stop Oil's social media campaign evidences the activities of Mr Jordan and the co-defendants in support of their cause. Indeed, Mr Jordan was wearing a Just Stop Oil T-shirt on the second morning of the trial. I am therefore persuaded that Mr Jordan's actions were in connection with a protest against the production or use of fossil fuels.

Conclusion

102. In conclusion, the applications for committal for contempt against Stephanie Aylett and Callum Goode are dismissed for want of service of the injunction order. Each of them will be discharged from bail. The claimant is to pay the first and second defendants' costs on the standard basis, to be the subject of detailed assessment if not agreed.

103. The claimant has proved a contempt by John Jordan but only to the extent that he breached paragraphs 1(b)(ix) and (xi) by occupying a tunnel in the locality of the terminal from approximately 4.46 pm to 9.25 pm on 24 August 2022. It follows that any involvement by Mr Jordan in digging the tunnel or his actions in entering the tunnel in advance of the point of service do not amount to contempt of court.

104. A transcript of this judgment will be obtained at public expense on an expedited basis and placed for publication on the judiciary website. I propose to break now to hear submissions before determining the appropriate penalty for contempt as regards Mr Jordan.

THE COURT THEN HEARD SUBMISSIONS

APPROVED JUDGMENT ON SENTENCE

105. Mr Jordan, following my earlier determination of your contempt, it falls to me to determine the appropriate penalty for breaching paragraphs 1(b)(ix) and (xi) of the interim injunction granted by Sweeting J dated 6 May. You have the benefit of public funding and have solicitors on record but you have chosen to conduct your own advocacy for today's purposes. Ms Crocombe of counsel continues to represent the claimant.

106. Earlier today I set out the background to the breach in the judgment and I do not propose to repeat the facts here. The proved contempt is limited to your occupation of

a makeshift tunnel in the locality of the terminal from approximately 4.46 pm to 9.25 pm on 24 August 2022. I take no account of any allegation that you were involved in any digging and accept that you entered the tunnel in circumstances where you had not yet been served with the order.

107. Counsel for the claimant has prepared a sentencing note as to the approach she advocates the court adopt when determining the appropriate penalty for contempt. I largely agree with her analysis. I bear in mind the objectives of the court when imposing a sanction for contempt. In *Willoughby v Solihull MBC* [2013] EWCA Civ 699, at paragraph 20, Pitchford LJ identified the objectives as follows: "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court orders, if possible; the third is rehabilitation, which is the natural companion to the second objective."

108. The Sentencing Council produce guidelines for use in the criminal courts. Those guidelines do not extend to the civil courts. However, the Court of Appeal have indicated in cases such as *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 that the definitive guideline for breach of an antisocial behaviour order was equally relevant when dealing with breaches of antisocial behaviour orders in the civil courts. I bear in mind that the analogy is not a complete one. The maximum sentencing power for breach of a criminal behaviour order in the criminal courts is one of five years' imprisonment whereas in this court there is a two-year maximum under Section 14 of the Contempt of Court Act 1981. I also bear in mind that the criminal courts have a wide variety of different community order disposals available which are unavailable in the civil courts. I also take into account the fact that the injunction in this case is not a true anti-social behaviour injunction under the Anti-social Behaviour, Crime and Policing Act. However, the definitive guidelines provide a useful analogy.

109. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore rely on the criminal guideline as the best analogy.

110. In assessing the category of culpability, I take note that, once served with the injunction, you had the option of leaving immediately but did not do so. Whilst I accept you were entitled to some time to read the documents, your decision to stay in occupation for approximately four and a half hours in total amounts to a deliberate breach falling into culpability B category.

111. I turn to consider the category of harm. The guideline requires the court to determine the "harm that has been caused or was at risk of being caused." Your occupation of the

tunnel caused a public high ay to be closed through concern for your safety and that of road users. The closure will have inconvenienced many ordinary members of the public trying to go about their daily lives, as well as those trying to access and egress the oil terminal. Your actions also caused significant amounts of emergency service resources to be allocated to your occupation of the tunnel when they could have been dealing with other matters. I accept that you eventually came out of your own volition and that you cooperated with the police officers and assisted in removing your personal belongings from the tunnel. However, your actions risked not only your life but also those of any rescue professionals had the tunnel collapsed. If the road had been reopened, there was a risk of harm to road users. Given the relatively modest duration of your occupation, the actual harm was relatively modest albeit the risk of harm much higher. I place it into category 2 falling between the highest and lowest harm categories.

112. In the criminal courts a category 2 harm, culpability B matter would have a starting point of twelve weeks' custody with a range of a medium-level community order to one year's custody. Those figures have to be reduced to reflect the fact that this is a civil contempt of court.

113. I have to consider any aggravating factors. You were on unconditional bail to Lewes Crown Court at the time this breach occurred. There are few other aggravating factors.

114. There are mitigating features in your case. I accept that your actions were ones of civil disobedience borne from your strongly held views about the dangers of using fossil fuels and climate change. I take account of the fact that the duration of the contempt was relatively short and that from around 7pm you cooperated with the police in removing possessions from the tunnel before exiting voluntarily. You have no previous criminal convictions or cautions. There is no evidence before this court that you have ever been found to be in breach of another injunction. I also take into account what you have told the court about the daily telephone support you provide your father with to assist him with this mental health difficulties. I am mindful that you have already served the equivalent of a two-day custodial sentence as a result of you spending the best part of 24 hours in custody following your arrest.

115. You are not, however, entitled to any credit for an admission because the contempt was proved after trial.

116. I am mindful of the guidance given by the Court of Appeal in the protester case *Cuadrilla Bowland Limited v Persons Unknown* [2020] EWCA Civ 9. At paragraph 95 of that decision, Leggatt LJ considered the correct approach to sentencing protesters. He held as follows:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or to try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they

have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.

"[96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protesters who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

117. The judge continued:

"[98] It seems to me there are at least three reasons for showing greater clemency in response to such acts of civil disobedience than in dealing with other disobedience of the law. First, by adhering to the conditions mentioned, a person who engages in acts of civil disobedience establishes a moral difference between herself and ordinary law-breakers which it is right to take into account in determining what punishment is deserved. Secondly, by reason of that difference and the fact that such a protester is generally - apart from their protest activity - a law-abiding citizen, there is reason to expect less severe punishment is necessary to deter such a person from further law-breaking. Third, part of the purpose of imposing sanctions, whether for a criminal offence or for the intentional breach of an injunction, is to engage in a dialogue with the defendant so that he or she appreciates the reasons, why in a democratic society, it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's lawful activities are contrary to the protester's own moral convictions. Such a dialogue is more likely to be effective where authorities (including judicial authorities) show restraint in anticipation that the defendant will respond by desisting from further breaches…

[99] These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence of contempt of court which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

118. I bear in mind the guidance in *Cuadrilla Bowland* and that in the definitive guideline. In my judgment, the contempt arising from your occupation of the makeshift tunnel adjacent to the public highway such that it caused its closure is so serious that only a custodial sentence is appropriate. Taking into account the mitigation, I take the view that the appropriate sentence is one of fourteen days' imprisonment.

119. I have considered whether it is appropriate to suspend the sentence. In doing so I take into account the guidance in *Cuadrilla Bowland* and the Sentencing Council guideline on the Imposition of Community and Custodial sentences. I consider that in your case there is a realistic prospect of rehabilitation and that you have strong personal mitigation such that an immediate custodial sentence would harm a harmful impact on your father and also, to a lesser extent, your siblings to whom you provide some financial support.

120. I am persuaded that the fourteen-day term of imprisonment should be suspended on condition of compliance for a period of two years from today with the terms of any interim or final injunction order made in this claim. For the avoidance of doubt, the current order in force in this claim numbered QB-2022-001236 is the interim order of Sweeting J dated 6 May 2022. That order may be varied in the future and I am conscious that Sweeting J has not yet handed down his reserved judgment following the on-notice hearing.

121. It is unclear whether you are the same John Jordan that is named as the 6th defendant in the original pleadings. I propose to add you as a named defendant to the proceedings to ensure that you are served with any copy of any varied order as and when it arises. I am mindful you have no fixed abode and, therefore, I propose to make an order allowing any future order to be served on you at the email address you have previously provided to the court. It is important you understand the terms of any varied order because compliance with that forms the basis of the condition of the suspension of the fourteen-day term of imprisonment.

122. You referred in your mitigation to not being persuadable to changing your views on climate change. That is not the aim nor function of this court; nor indeed that of the claimant. These proceedings for contempt simply uphold the rule of law. As noted by the Court of Appeal in *Cuadrilla Bowland,* in a democratic society it is the duty of responsible citizens to abide by laws and respect the rights of others. If everybody in society acted with flagrant disregard of the rights of others and without heed to the law, society would very quickly descend into chaos. It is that duty as a citizen and respect for the rule of law that the Court seeks to persuade you of.

123. Although I am suspending the term of imprisonment, I remind you that if you do not comply with the terms of the suspension, you face the high risk that the order will be activated and you will have to serve some or all of the sentence of imprisonment. You have a right of appeal to the Court of Appeal Civil Division with any appeal to be filed within 21 days of today.

124. The claimant seeks an order that you pay its costs of the costs of the contempt application. The general rule is that the unsuccessful party will be ordered to pay the successful party's costs, but the court may make a different order. As a matter of principle, there is no reason to depart from the general rule in this case and you shall pay the claimant's costs. There is some uncertainty as to the period covered by any

public funding certificate. For the period that you had the benefit of a public funding certificate, then those costs are not to be enforced unless there is the usual means assessment. For any period when there is no public funding certificate, the costs will be enforceable in the usual way. There will need to be a detailed assessment of the claimant's costs.

125. If there is a public funding certificate in place, your solicitor will want a detailed assessment of their publicly funded costs. Hodge, Jones & Allen need to clarify the legal aid funding position as a matter of urgency.

126. As with my judgment on liability, this judgment will be transcribed at public expense on an expedited basis and published on the judiciary website.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

TRANSCRIPT OF PROCEEDINGS

Claim No: QB-2022-001236

IN THE HIGH COURT AT BIRMINGHAM **Neutral Citation [2022] EWHC 1323 (QB).**

QUEEN'S BENCH DIVISION

BIRMINGHAM DISTRICT REGISTRY

Before His Honour Judge Rawlings sitting at Birmingham Civil Justice Centre on 19 May 2022

B E T W E E N

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

-and-

VICTORIA LINDSELL **(Defendant)**

MR SHEPHEARD appeared on behalf of the Claimant MR JONES appeared on behalf of the Defendants

APPROVED JUDGMENT

JUDGE RAWLINGS:

1. You have accepted that you knew that an injunction was in force and that, by your actions and in the manner asserted by the Claimants you were breaching that injunction, It follows that I am satisfied to the criminal standard so that I am sure that you deliberately breached the injunction.

2. So I must consider the question of the appropriate sanction.

3. Guidance is given as to the appropriate sanction to impose by the Sentencing Guidelines for the breach of a Criminal Behaviour Order. Whilst those guidelines relate to sanctions to be imposed by a criminal court for the breach of an order imposed by a criminal court and I am considering the breach of a civil injunction, those guidelines are still used to establish the starting point for the sanction and the range of sanction for a breach of a civil injunction.

4. The guidelines require that I asses first your culpability for the breach according to the 3 levels of breach (A-B) and then consider the degree of harm caused by the breach according to 3 levels (1-3). In this case I consider that culpability falls in the middle band (B) for a deliberate breach of the injunction and that there was no material harm flowing from your breach of the injunction and that the level of harm should therefore be assessed at 3 . So by looking at the guidelines for B3 I arrive at the starting point and range of appropriate sanctions. One of the sanctions specified in that band is a Community Service order, but that sanction I not available as a sanction for breach of a civil injunction.

5. I am satisfied that the appropriate sanction is the imposition of a fine. If you were not of limited means then, in my judgment the appropriate starting point would be £1200, but on the basis of what I am very briefly told by you about her financial circumstances I am satisfied that you have very limited means to pay a fine and for that reason I assess the starting point at half the level that it would be for a defendant of adequate means, so £600.

6. I also take into account the fact that you have accepted breach of the injunction at the first opportunity and, therefore, the fine that I impose, taking into account a discount of onethird, for accepting the breach at the first opportunity is £400. There are no aggravating or mitigating factors, so the fine will be £400.

7. I am told that by counsel that for defendants who have breached the index injunction in a similar manner to you, who are of limited means Her Honour Judge Kelly has ordered that the fine be paid within 12 months. It is important there should be a level of consistency in relation to sanctions imposed for similar breaches of the index injunction, and the basis upon which they are ordered to be paid so, I will order that the £400 fine be paid at the rate of £20 a month.

This transcript has been approved by the Judge

Claim No: QB-2022-001236

IN THE HIGH COURT AT BIRMINGHAM **Neutral Citation [2022] EWHC 1322 (QB).**

]

QUEEN'S BENCH DIVISION

BIRMINGHAM DISTRICT REGISTRY

Before His Honour Judge Rawlings sitting at Birmingham Civil Justice Centre on 19 May 2022

B E T W E E N

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

-and-

WILLIAM WHITE

Defendant

MR SHEPHEARD appeared on behalf of the Claimant
MR JONES appeared on behalf of the Defendants

APPROVED JUDGMENT

JUDGE RAWLINGS:

1. I will deal with the issue, first, of whether the order has been breached. Mr Shepheard has read out the facts of the breach and you have accepted those facts to be correct. You have accepted that you knew that there was an injunction in place and that by doing what you did you were deliberately breaching that injunction. I am satisfied therefore so that I am sure that you have breached the injunction and that the breach was deliberate.

2. According to the sentencing guidelines for Breach of a Criminal Behaviour Orders (which does not directly apply to breaches of civil injunctions (but is the only available guidance as to the sanction to be imposed for breaches of civil injunctions of the type you breached) I need to assess your culpability for breach of the injunction and the harm that your breach caused. This then provides me with guidance as to the starting point for the sanction to be imposed. Culpability is split into 3 categories according to your culpability for the breach (A-C) and harm also into 3 categories (1-3) according to the seriousness of the harm.

3. On the basis that this was a deliberate breach I assess culpability at B. So far as harm is concerned, it appears from the details that I have been given. Which you accept that there has been little or no real harm as a result of your breach of the injunction. On this basis I assess harm at 3. So, for the purposes of the sentencing guidelines the breach is B3. The sentencing guidelines refer to the imposition of a Community Order, but as this is not a criminal matter and this is not a criminal court I have no power to impose a community order. In my judgment, the appropriate sanction is the imposition of a fine.

4. Consistent with the fine that I imposed on Reverend Hewes for a similar breach of the injunction, the fine that I would have been minded to subject Reverend White to would have been in the region of £700 to £800. However, the court considers a period of incarceration to be a more severe penalty than a fine and I am satisfied in the circumstances that the six days that you, Reverend White have spent in jail as a result of being remanded in custody is sufficient punishment in relation to his breach of the injunction and I will, therefore, make no further order in relation to a penalty for that breach and you will be free to go.

5. So far as costs are concerned, what I propose to do is, as I have with the other defendants, is to order that you pay a contribution of £250 towards the claimant's costs and that that should be paid within 28 days, which is the same order I made for Reverend Hewes, on costs.

This transcript has been approved by the Judge

Claim No: QB-2022-001236

IN THE HIGH COURT AT BIRMINGHAM **[2022] EWHC 1326 (QB)**

QUEEN'S BENCH DIVISION

BIRMINGHAM DISTRICT REGISTRY

B E T W E E N

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

-and-

(1) EILIDH McFADDEN
(2) TIMOTHY HEWES

Defendants

MR SHEPHEARD appeared on behalf of the Claimant MR JONES appeared on behalf of the Defendants

APPROVED JUDGMENT

JUDGE RAWLINGS:

1. You have each accepted that you knew that there was an injunction in force which prohibited you from acting in the way that has been described by Mr Shepheard and that you knew therefore that you were deliberately breaching the injunction. I am satisfied to the criminal standard therefore (that is so that I am sure) that you each breached the injunction.

2. Having found that there have been breaches of the injunction, I need to turn to the question of sanction.

3. The sentencing guidelines for breaches of Criminal Behaviour Orders provide guidance as to the starting point and range of appropriate sanctions for breach of a Criminal Behaviour Order. Although the guidelines do not refer specifically to civil injunctions they are taken also to also provide useful guidance as to the appropriate starting point and range of appropriate sanctions to be applied in the case of the index civil injunction breached by both of you in this case.

4. The guidelines operate by requiring the judge to first assess the culpability of the party in breach by reference to 3 levels of breach (A-C) and then to assess the harm caused by the breach by reference to 3 levels (1-3). The breach committed by each of you which you have accepted is that you walked into the middle of the road in front of the terminal gates and sat down. Your counsel, Mr Jones and the Claimant's counsel, Mr Shepheard agree that, for both of you, given that your breaches are similar, your breaches of the injunction should be classified as B3, that is B (a deliberate breach) and 3 (little or no harm flowing from the breach). I agree that that is the appropriate classification of the breaches, for the purposes of the sentencing guidelines.

5. I will deal with Reverend Hewes first.

6. In relation to Reverend Hewes it is said that an aggravating factor is that Reverend Hughes has a number of convictions in relation to similar matters, which all seem to relate to protests about climate change or similar.

7. On behalf of Reverend Hewes it is said that there is a difference between his conduct, both on this occasion and on previous occasions, which is based upon his view that urgent action needs to be taken to stop using fossil fuels and that he has a moral duty to act in the way that he has acted.

8. I consider that it is right to distinguish what Reverend Hewes has done, based on what I am satisfied he sees as a moral imperative and duty to act from a defendant who breaches court orders or commits criminal offences for their own personal benefit or advantage or with an intent to hurt others ..

9. As to Reverend Hewes' means, it has fairly been accepted by Mr Jones that Reverend Hughes is able to afford a fine that I might reasonably impose upon him within 28 days.

10. I take the view that the starting point is a fine of £1,200, with a one-third deduction because Reverend Hewes has accepted that he breached the injunction at the earliest opportunity, reducing the starting point to £800. As a mark of my appreciation that

there is genuine mitigation for Reverend Hughes's breach of the injunction because, I am satisfied that he considers that he was acting under an urgent moral duty and that he would not otherwise have knowingly breached an order of the court, I will set the fine at £700 but I will say that it must be paid within 28 days.

11. As for Miss McFadden, I am satisfied (and this is accepted by Mr Shepheard) that her breach in relation to the injunction, was a fleeting one, in that she was sitting on the ground obstructing the entrance to the Terminal for a very short period of time.

12. Miss McFadden has no previous convictions, although she was on bail at the time she breached the index injunction and that is an aggravating factor, but in relation to another matter, not in relation to a breach of this injunction.

13. It is put on her behalf that she is a student who has no income beyond her student loan and the income that she does have from her student loan is swallowed up by her outgoings. Miss McFadden is a person with very little means in respect of whom a higher level of fine would not be appropriate. The starting point for Miss McFadden is £600 (half of what the fine would be for a person with means with a deduction to take account of the fact that she has pleaded guilty at the first opportunity, making a total of £400. I will impose a fine, therefore, on Miss McFadden of £400 but, as previously, to be paid at the rate of £20 per month.

(There followed further submissions)

JUDGE RAWLINGS:

14. In relation to costs, it is right that costs normally follow the event and the claimant has been successful against the defendants who have accepted their breaches of the injunction, but the court is able to make a different order in spite of that starting position.

15. A point is made on behalf of the two defendants that I am dealing with now that the costs schedule which has been produced names four people as defendants who are not the defendants who are before me today, but I accept that that is an error and that the costs schedule is meant to refer to the four defendants including Reverend Hewes and Miss McFadden, because it refers to contempt hearings on 13 and 19 May and gives some detail in relation to work done on 13 and 19 May which is consistent with hearings in relation to these defendants.

16. Try as he might, Mr Jones cannot put his submissions really any higher than that the wrong defendants have been named in the costs schedule. All other details of the costs schedule do appear to be consistent with the costs schedule being intended to refer to the proceedings taken against these defendants.

17. So, I am afraid from the defendants' perspective, the starting point is that these defendants should pay at least a contribution towards the costs of these proceedings, but I can, as I say, make a different order. Mr Jones has not however put forward any reason why Reverend Hewes and Miss McFadden should not pay a contribution towards the Claimant's costs incurred in bringing these contempt proceedings and therefore there is no reason to depart from the starting position and I will order that Reverend Hewes and Miss McFadden pay a contribution towards the Claimant's costs.

18. The costs sought when compared to the fines that I have imposed are relatively high.

There are within the costs schedules round figures specified for amounts of time spent, so that individual items are recorded for example as five hours, two hours, three hours, 10 hours and six hours. Normally costs schedules are prepared on a more precise basis than that, so far as time spent on each recorded task is concerned. Further the descriptions of the tasks performed is very generic in nature.

19. If this costs schedule were split between the six defendants who are before me equally and at the full value claimed, then that would result in each of them making a contribution of £510. I think that is too much and taking into account the imprecise nature of the time and task recording and the overall proportionality of the amount claimed. What I will order is that these defendants should make a contribution towards the costs of £250 each.

20. In relation to time for payment, Reverend Hughes will be required to pay that sum within 28 days, but so far as Miss McFadden is concerned, that it will be added to the fine that I have imposed upon her and she will have to pay the fine first and then the costs contribution of £250 at the rate of £20 per month until they have been paid in full.

This transcript has been approved by the Judge

IN THE HIGH COURT AT BIRMINGHAM [2022] EWHC 1331 (QB)

QUEEN'S BENCH DIVISION

BIRMINGHAM DISTRICT REGISTRY

Before His Honour Judge Rawlings sitting at Birmingham Civil Justice Centre on 19 May 2022

B E T W E E N

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

-and-

PETER MORGAN

Defendant

MR SHEPHEARD appeared on behalf of the Claimant DEFENDANT in person

APPROVED JUDGMENT

JUDGE RAWLINGS:

1. I will deal with the issue, first of whether the injunction has been breached by you and if so whether that breach was deliberate. Mr Shepheard has read out the facts of the breach. You say that you accept those facts as correct. You have accepted that you knew that there was an injunction in place and that by doing what you did you were deliberately breaching that injunction. I am satisfied therefore so that I am sure that you have breached the injunction and that the breach was deliberate.

2. The sentencing guidelines for Breach of Criminal Behaviour Orders do not apply directly to breaches of civil injunctions, like the index injunction but they are used as a guide to the appropriate sanction for the breach of such an injunction. The guidelines require that I assess your culpability for breach of the injunction and the harm that your breach of the injunction caused.. Culpability is split into 3 categories according to your culpability for the breach (A-C) and harm also split into 3 categories (1-3) according to the seriousness of the harm.

3. On the basis that this was a deliberate breach I assess culpability at B. So far as harm is concerned, it appears from the details that I have been given that there has been little or no real harm as a result of your breach of the injunction. On this basis I assess harm at 3. So, for the purposes of the sentencing guidelines the breach is B3. The sentencing guidelines refer to the imposition of a Community Order, but as this is not a criminal matter and this is not a criminal court I have no power to impose a community order. In my judgment, the appropriate sanction is the imposition of a fine.

4. Consistent with the fines that I have imposed on the other defendants that I have dealt with today and on the basis that your breach of the injunction is similar to theirs I would have been minded to impose a fine upon you of £800. That is a starting point £1,200 less one third for your accepting that you breached the injunction at the first opportunity, before taking into account aggravating and mitigating factors. In your case you have previous convictions for similar protest activity which protest activity I accept was carried out pursuant to what you consider to be the moral imperative of protesting against issues that contribute towards climate change. On the basis of my acceptance that you have breached the index injunction and that your previous convictions relate to what I accept your see as a moral imperative I would not be inclined to increase the fine from £800 to take into account your previous convictions.

5. However, the court considers a period of incarceration to be a more severe penalty than a fine and I am satisfied in the circumstances that the six days that you have spent in jail as a result of being remanded in custody is sufficient punishment in relation to your breach of the injunction and I will, therefore, make no further order in relation to a penalty for that breach and you will be free to go.

6. So far as costs are concerned, what I propose to do, as I have with the other defendants, is to order that you pay a contribution of £250 towards the claimant's costs and that that should be paid within 28 days, which is the same order I made for Reverend Hewes, on costs.

This transcript has been approved by the Judge

Neutral Citation Number: [2022] EWHC 1464 (QB)

Case No: QB-2022-001236

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

Sitting at
Birmingham Crown Court, 1 Newton Street,
Birmingham, B4 7NR

Date: 18/05/2022

Before:

HER HONOUR JUDGE EMMA KELLY

- -

Between:

NORTH WARWICKSHIRE BOROUGH COUNCIL	**Claimant**
- and -	
MICHELLE CHARLESWORTH	**Defendant**

- -
- -

MR SHEPHARD of Counsel appeared for the **Claimant**
MR JONES of Counsel 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.

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 Charlesworth you appear before the court in respect of:

   i) Two admitted breaches of an interim injunction granted by the Honourable Mr Justice Sweeting 14th April 2022. Those breaches occurred on 27th April 2022 and 4th May 2022.

   ii) In addition, one admitted contempt in the face of court occurring on 5th May 2022.

2. You have the benefit of legal representation and I have heard from counsel, Mr Jones, on your behalf.

3. The claimant has provided you with written particulars of the two breaches of the interim injunction. The court has served you with a summons in form N601 in respect of a contempt in the face of court matter. The court has to be satisfied of any allegation of contempt to the criminal standard of proof, namely beyond reasonable doubt. In light of your admissions, and also having read the police witness evidence in respect of events on 27th April and 4th May, I am so satisfied.

Background

4. The background to your appearance today is as follows. Kingsbury Oil Terminal is a large inland oil terminal located near Tamworth in Warwickshire. Various protests at the terminal gave rise to serious health and safety concerns leading the claimant to apply for an interim injunction to protect the site. On 14th April 2022 Mr Justice Sweeting granted an interim without notice injunction against various named defendants, of which you were not so named, and "persons unknown." The "persons unknown" were defined as those "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." Pursuant to section 27 of the Police and Justice Act 2006, a power of arrest was attached to the interim injunction.

5. Paragraph 1(a) of the interim injunction stated:

> "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 of the boundaries of which are edged in red on the map attached to this order at schedule 1, or within five metres of those boundaries (edged in red) (the 'buffer zone').

The paragraph went on to state:

> "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 the protest held, or to be held, outside the buffer zone."

6. Paragraph 1(b) of the interim injunction prohibited "in connection with any such protest anywhere in the locality of the Terminal" a number of defined acts.

7. Mr Justice Sweeting granted permission for the interim injunction to be served by alternative methods. On 14th April 2022 it was served by placing signage in prominent locations around the site and on the claimant's website, Facebook and Twitter accounts.

8. You appear before the court in relation to two breaches of the interim injunction. On 27th April 2022, just after 4pm, you were one of ten individuals gathered on a grass verge to the side of the main entrance to Kingsbury Oil Terminal to protest against the use and/or production of fossil fuels. Your protest was inside the buffer zone referred to in paragraph 1(a) of the injunction and was thus in breach of its terms. The police advised your group to move away and indicated where you could continue to protest without being in breach of the injunction. You and your fellow protestors refused to move and were subsequently arrested. The claimant accepts, and the court agrees, that the protest was entirely peaceful albeit in breach of paragraph 1(a) of the injunction for being inside the buffer zone.

9. You were produced before the court on 28th April and bailed on condition that you comply with the terms of the injunction to attend the next hearing on 4th May 2022

10. On 4th May 2022 you failed to attend court to answer bail to deal with the breach of the allegation from the previous week and instead chose to attend Kingsbury Oil Terminal to continue your protest. At approximately 2pm you and ten others again stood on a grass verge to the side of the entrance to the site with placards and banners. Again, that protest was inside the buffer zone referred to in paragraph 1(a) of the injunction. Police officers approached your group and some of your fellow protestors told the police they were due to appear at court that day but had failed to do so. Your group then huddled together and held some form of discussion before walking across the road outside the Terminal entrance. It is said by the claimant that such behaviour impeded the route of oil tankers trying to enter the Terminal. I accept there is no evidence that your individual actions in walking across the road caused any tanker's route to be impeded. However, the protest both on the grass verge and on the road were inside the buffer zone and thus in breach of paragraph 1(a) of the injunction.

11. The police again exercised the power of arrest and you were taken to Nuneaton Police Station before being produced before this court on 5th May. You were represented by counsel at that hearing. In light of the large number of protestors that had been produced before the court that day, and the need for you to have time to take legal advice, your case was adjourned to 12th May. You were remanded in custody. At approximately 5pm, as you stood up to be taken down to the cells with the custodians, you glued yourself to the dock screen using solvent that you had secreted on your person.

12. Your actions in court on 5th May caused very significant disruption to the court process. The custodians could not remove you. The police had to be called who, in turn, had to call in specialist police officers with de-bonding expertise. At the time of your actions, the court still had six other defendants' cases to deal with. Another court room had to be convened but the court could not immediately recommence as there were insufficient custodians to bring

defendants from the cells into court as a result of the need of multiple officers to remain with you. It was approximately 8pm before the court concluded.

The legal framework

13. I turn to the question of penalty.

14. As to the contempt in the face of court, the High Court, as a superior court of record, has an inherent jurisdiction to deal with contempt affecting its own proceedings. It is not subject to the limitations imposed on inferior courts of record as to the length of sentence for contempt in the face of court. For example, section 12 of the Contempt of Court Act 1981 constrains the Magistrates' Court to a maximum period of committal of one month in respect of contempt relating to its proceedings. In the County Court, section 118 of the County Courts Act 1984 makes similar provision. The High Court is not so constrained. Section 14(1) of the Contempt of Court Act 1981 nonetheless applies, such that the term of any custodial sentence on any occasion shall not exceed two years in a case of committal by a superior court. By section 14(2) of the 1981 Act, the court has the power to impose a fine of unlimited amount or order sequestration of assets.

15. When imposing penalties for contempt of court, the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699 identified three objectives. Pitchford LJ at [20] held:

> "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's orders, if possible; the third is rehabilitation, which is a natural companion to the second objective."

16. The Sentencing Council does not produce guidelines for contempt of court, whether that be breach of a civil injunction or contempt in the face of court. In *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817, the Court of Appeal found that the definitive guidelines for breach of an anti-social behaviour order were equally relevant when dealing with breaches of anti-social behaviour orders in the civil courts. When that analogy was used by the first instance judge in *Cuadrilla Bowland v Persons Unknown* [2020] EWCA Civ

9, also a protestor case, the Court of Appeal endorsed reference to those guidelines. Leggatt LJ at [102] held as follows:

> "In deciding what sanctions were appropriate, the judge approached the decision, correctly, by considering both the culpability of the appellants and the harm caused, intended or likely to be caused by their breaches of the injunction. I see no merit in the appellants' argument that, in making this assessment, he misapplied the Sentencing Council guideline on sentencing for breach of a criminal behaviour order. In *Venables v News Group Newspapers [2019] EWCA Civ 534*, para 26, this court thought it appropriate to have regard to that guideline in deciding what penalty to impose for contempt of court in breaching an injunction. As the court noted, however, the guideline does not apply to proceedings for committal. There is therefore no obligation on a judge to follow the guideline in such proceedings and I do not consider that, if a judge does not have regard to it, this can be said to be an error of law. The criminal sentencing guideline provides, at most, a useful comparison."

17. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration.

18. I bear in mind that the matters of contempt before me today are not breaches of an anti-social behaviour injunction. However, page 56 of the Definitive Guideline for Breach Offences states:

> "Where an offence is not covered by a sentencing guideline a court is also entitled to use, and may be assisted by, a guideline for an analogous offence subject to differences in the elements of the offences and statutory maxima."

Against this background a breach of an injunction is clearly analogous to breach of a criminal behaviour order and that Definitive Guideline will be of considerable assistance in respect of the breaches of the injunction on 27th April and 4th May 2022.

19. However, the contempt in the face of court does not involve the breach of any specific order. It was a deliberate attempt to undermine the authority of the court and an attempt to interfere with the administration of justice. The most serious aspect of your behaviour is the contempt in the face of court on 5th May, so I propose to consider that first.

20. In circumstances where the Definitive Guideline for breach of a criminal behaviour order is only of limited analogy when dealing with contempt in the face of court, I propose to begin by considering your behaviour by reference to the Sentencing Council's General Guideline. That provides overarching principles for use where there is no guideline. The court must consider culpability and harm. The question of culpability "is assessed with reference to the offender's role, level of intention and/or premeditation and the extent and sophistication of planning." In terms of culpability, the contempt in the face of court on 5th May was a deliberate act with substantial planning. You had armed yourself with glue intent on using it for a contemptuous purpose, either by breaching the injunction and/or in the manner in which you eventually used it. You concealed the glue notwithstanding you had been arrested the previous day, spent the night in custody at Nuneaton Police Station and were thereafter handed over to GeoAmey custodians at the Magistrates' Court cells. You continued to conceal the glue when you came into the court room whilst in custody. Culpability is at a high level, albeit falling short of the highest level, as I accept your planning falls short of the most sophisticated of adventures.

21. In terms of harm, your actions caused considerable disruption to the administration of justice, a delay of several hours to other proceedings and the diversion of police, custodian and court staff resources. Furthermore, your conduct involved the risk of undermining the court's authority in the eyes of others. Balancing these factors, harm is at a significant level falling between the highest and lowest levels.

22. Notwithstanding my conclusion that the breach of the criminal behaviour order Definitive Guideline is of limited assistance, I propose to place it within the guideline as providing the closest analogy that can be found. Importing

my conclusions from the general guidelines, I conclude your behaviour would fall within culpability A, and category harm 2, giving a starting point in the criminal courts of one year's custody and a category range between a high level community order and two years' custody.

23. Before considering aggravating and mitigating factors, I will consider where the two breaches of the injunction fall within the Sentencing Council guideline. Both breaches were deliberate and planned, although you caused little or no harm or distress. As such, both breaches of the injunction would fall into culpability B and category harm 3 with a starting point of a high level community order and a range from a low level community order to 26 weeks' custody. The second breach was on bail, within days of the first breach, and in circumstances where you failed to attend court the same day. Those matters increase the seriousness of the breach on 4th May. However, even in combination, the two breaches of the injunction would not of themselves have justified a custodial sentence and therefore the court would have been limited to an appropriate fine dependent on your means.

24. The contempt in the face of court does, however, cross the custody threshold. By reference to the Sentencing Council totality guideline, I propose to pass no separate penalty on the earlier two breaches but treat them as aggravating features of the contempt in the face of court.

25. In my judgment, seen cumulatively, your conduct evidences a pattern of behaviour of escalating seriousness. There are limited other aggravating features. You have two criminal convictions for public nuisance arising from protest activity on 15th September 2021. You entered a guilty plea to those charges on 22nd April 2022 and are still awaiting sentence. It appears from your antecedent history that you were remanded on unconditional bail in relation to those matters and therefore the matters of contempt before this court were committed whilst on unconditional bail for the criminal matters.

26. I turn to consider any mitigating factors. Your counsel tells me that, as a result of your behaviour in court on 5th May, you were sanctioned in prison and subject to solitary confinement. The precise details of the sanction are unclear.

I am told that you were sentenced to two separate days in solitary confinement, but it may be that one of the days was referrable to a separate incident of disorder in the prison. However, I propose to approach the ambiguity on the most generous basis to you and assume that both days in solitary confinement relate to the gluing incident in court on 5th May. That sanction represents an element of punishment already delivered in respect of your behaviour and I bear that in mind when determining the appropriate penalty. I also bear in mind that conditions in prison for all prisoners at present are onerous due to the continuing effects of the pandemic.

27. You put before the court through counsel significant personal mitigation. Having read your nine character references and heard from counsel, it is apparent that hitherto you have led a thoroughly worthwhile and law abiding life. Until you gave up employment in March 2022 to concentrate on your protest actions, you had responsible roles working with victims of domestic violence, the homeless and in environmental roles. To that extent, you have contributed in a very beneficial way to society. You have three adult children, albeit the youngest is still only 19 and at university and for whom you provide financial support. I take all your personal mitigation into account.

28. You have admitted the contempt in the face of the court at the earliest opportunity as today was the first hearing following the serving of the summons. However, I detect no element of remorse. After events on 5th May, you continued to defy the court process and, when your case was listed on 12th May, you refused leave prison to attend court.

29. Balancing those features, I conclude that the appropriate penalty for the contempt in the face of court, before consideration of credit for your admission, is one of 14 weeks' custody. You are entitled to a discount of one third to reflect your admission of breach at the earliest opportunity. That produces a penalty of 9 weeks or 63 days, rounding down the weeks in your favour.

30. The court has to consider whether it is appropriate to suspend any term of imprisonment. Your counsel, in support of his submission that any custodial

sentence should be suspended refers, quite properly, to the comments of the Court of Appeal in *Cuadrilla Bowland*. Leggatt LJ at held as follows:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.
>
> [96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

The judge continued:

> "[98] It seems to me that there are at least three reasons for showing greater clemency in response to such acts of civil disobedience than in dealing with other disobedience of the law. First, by adhering to the conditions mentioned, a person who engages in acts of civil disobedience establishes a moral difference between herself and ordinary law-breakers which it is right to take into account in determining what punishment is deserved. Second, by reason of that difference and the fact that such a protestor is generally – apart from their protest activity – a law-abiding citizen, there is reason to expect that less severe punishment is necessary to deter such a person from further law-breaking. Third, part of the purpose of imposing sanctions, whether for a criminal offence or for intentional breach of an injunction, is to engage in a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's lawful activities are contrary to the protestor's own moral convictions. Such a dialogue is more likely to be effective where authorities (including judicial authorities) show restraint in anticipation that the defendant will respond by desisting from further breaches. This is part of what I believe Lord Burnett CJ meant in the Roberts case at para 34 (quoted above) when he referred to "bargain or mutual understanding operating in such cases.
>
> [99] These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on

> condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

31. I bear in mind that your actions, insofar as you breached the injunction on the two occasions, were borne out of protest activity and were acts of civil disobedience by somebody who is otherwise a law-abiding citizen. I have already indicated that in isolation the breaches of the injunction would not have warranted a custodial sentence. The contempt in the face of the court is however distinguishable from the behaviour seen in *Cuadrilla Bowland.* Your actions on 5th May went further than they type of civil disobedience seen in *Cuadrilla* and struck at the heart of the administration of justice and sought to undermine the rule of law.

32. I have referred myself to the Sentencing Council guidelines on the imposition of community and custodial sentences. In this respect, your conduct demonstrates a history of poor compliance with court orders and the appropriate punishment can only be achieved by an immediate custodial penalty. Furthermore, this is not a case in which it can be said there is a realistic prospect of rehabilitation. Balancing these features leads me to the conclusion it is not appropriate to suspend the penalty.

33. In terms of fixing the term of imprisonment, the court has to take into account the time you have already spent on remand. Unlike when sentences are imposed in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take into account the time spent on remand. You have already spent 15 days in custody: one day in custody following your arrest on 27th April and a further 14 days from your arrest on 4th May and subsequent further remands in custody. That is the equivalent of a 30-day sentence. I therefore deduct 30 days from the 63-day term. I pass a penalty of 33 days immediate imprisonment in respect of the contempt in the face of court on 5th May. There will be no order made on the contempt matters on 27th April and 4th May for the reasons I have given, namely that I have treated those as aggravating factors of the contempt in the face of court.

34. You have a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today.

35. The claimant does not apply for costs and therefore I do not make an order that you pay the claimant's costs.

36. In dealing with these contempt of court matters, this court sends out a very clear message that it will not tolerate either breaches of its orders or, even more so, behaviour that interferes with the administration of justice. If you return to court in respect of further matters of contempt, you risk further periods in custody.

37. A transcript of this judgment will be ordered at public expense on an expedited basis.

(Judgment ends)

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1462 (QB)

Ref. QB-2022-001236

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

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL **(Claimant)**

-v-

RAJAN NAIDU **(Defendant)**

MR SHEPHARD appeared on behalf of the Claimant
MR JONES appeared on behalf of the Defendant

Hearing date: 17th May 2022

APPROVED JUDGMENT

Transcribed from the official recording by eScribers
Central Court, 25 Southampton Buildings, London WC2A 1AL
Tel: 0330 100 5223 | Email: uk.transcripts@escribers.net | https://viqsolutions.com.au/

HER HONOUR JUDGE EMMA KELLY:

1. Mr Naidu, you appear before the court today in respect of two admitted breaches of an interim injunction that was granted by the Honourable Mr Justice Sweeting on 14 April 2022, as amended on 5 May 2022.

2. You are represented by counsel today and I have heard what counsel has had to say on your behalf.

3. You face two matters of contempt: the first on 27 April 2022 and the second on 12 May 2022. The claimant has provided you with written particulars of each alleged contempt. You have admitted the breach in relation to 27 April 2022 in accordance with the written particulars. In relation to the allegation on 12 May, you have made an admission on a basis that is acceptable to the claimant but not as it was originally drafted. You accept breaching paragraph 1(b)(ii) of the injunction, namely "congregating or encouraging or arranging for another person to congregate at the entrance to the Terminal" but not that you obstructed the entrance so as to breach paragraph 1(b)(iii). I proceed on the basis of your admission. In light of those admissions, I am satisfied that the contempt matters before the court have been proved to the criminal standard.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. You were not named as a defendant. The injunction was 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. The injunction placed certain restrictions on what protest activity could take place in and around the oil terminal. 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 (ii) "congregating or encouraging or arranging for another person to congregate at the entrance to the Terminal".

7. The order was served on 14 April 2022 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. The injunction was varied by Sweeting J on 5 May when he removed the 5-metre "buffer zone," but the other material terms remained the same.

9. On 27 April 2022, at just after 4 pm, you were one of a group of 10 individuals who gathered on the grass verge outside the main entrance to the oil terminal to protest against the use and/or production of fossil fuels. It was a purely peaceful protest and caused no inconvenience to people using the oil terminal. It was however inside the "buffer zone" referred to in the original paragraph 1(a) of the interim injunction and therefore amounted to a breach of the injunction. You were arrested by the police and produced before the court on 28 April, when Sweeting J bailed you to attend on 4 May. You answered your bail on 4 May, admitted the breach on 27 April 2022 and were bailed to attend a hearing on 12 May alongside co-defendants whose cases were already listed that day.

10. You failed to attend court on 12 May and instead made the deliberate decision to return to the oil terminal to continue your protest. At around 2pm in afternoon you were part of a group of eight protesting outside the oil terminal. The buffer zone element of the injunction was no longer in force on that date. However, a number of your group started to walk across the site entrance and sit down in the middle of the road, blocking access. I proceed on the basis that you were not one of those sitting down in the road so as to obstruct traffic, but you were nonetheless were in breach of paragraph 1(b)(ii) of the injunction in that in connection with your protest you congregated or encouraged others to congregate at the entrance to the oil terminal.

11. The court has to determine the appropriate penalty for the admitted breaches. The objectives of penalties for contempt of court were considered in *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ 699 where Pitchford LJ held as follows:

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

12. The Sentencing Council do not produce guidelines for breach of a civil injunction. However, in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 the Court of Appeal held that the Definitive Guidelines for breach of antisocial behaviour orders were equally relevant when dealing with breaches of antisocial behaviour orders in the civil courts. There are important differences that need to be borne in mind. The criminal courts have far greater powers for sentencing: a maximum of five years as opposed to two years in the civil courts on any one occasion. The criminal courts also have a variety of community orders at their disposal; the civil courts do not. I also remind myself the injunction is not a true antisocial behaviour injunction under the Anti-social Behaviour, Crime and Policing Act 2014. However, following the approach in *Amicus Horizon*, the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order) is relevant to determining the appropriate penalty.

13. I agree with both counsel that each breach was deliberate and falls within culpability category B.

14. I also agree that each of the breaches caused little or no harm or distress and thus fall in lowest harm category 3. On 27 April your protest was wholly peaceful on the grass verge, causing no hindrance to any traffic trying to access the site. On 12 May you were congregating around the entrance. To that extent it would have caused some inconvenience, but I accept that you were not sitting in the road and blocking those wishing to use the site.

15. The Definitive Guideline gives a starting point in the criminal courts of a high level community order with a range from a low level order to 26 weeks in custody.

16. I have to consider any aggravating factors. The breach on 27 April is aggravated by the fact that it was committed only 13 days after the order was made. The breach on 12 May is further aggravated in that it occurred a short period of time after the first breach, whilst you were on bail and in circumstances where you had failed to attend the hearing that was listed the same day. I have been shown your antecedent history. You have got no convictions or cautions. It appears that you were the subject of police bail as of 27 November 2021. It is unclear whether you still would have been on that bail at the time of the breaches. I resolve the doubt in your favour and proceed on the basis that you were not on police bail at the time.

17. As to mitigation, I therefore proceed on the basis you are of good character. Your counsel tells the court that your protests were based on the strong moral grounds you believe

you have to protest in that way. I have no doubt that you feel very strongly about the matters as to which you were protesting. I accept that there is a distinction to be drawn between individuals who protest without causing significant criminal disturbance and those that commit criminal offences. Nonetheless, a High Court injunction was and remains in place and you have to accept that in exercising your asserted rights you knowingly acted in breach of it. The strongest mitigation in your case is your acceptance of both breach of the injunction at the earliest opportunity after seeking legal advice. Under the Definitive Guideline for Reduction of Sentence for a Guilty Plea you are entitled to a one-third discount on the penalty that would have been passed after a trial.

18. In my judgment, the most appropriate penalty for both breaches would have been a fine. This court has the power to impose unlimited fines. I have heard, through your counsel, that you have very limited means and have only state pension income. Any financial penalty would have had to reflect your very modest means. But for the fact you have been in custody, the appropriate level of fine in respect of the contempt on 27 April would have been £600, reduced to £400 to reflect your early admission. The fine for the breach on 12 May would have had a higher starting point because it occurred whilst on bail, only a matter of days after the first breach and in circumstances where you failed to attend court the same day. That would have had a starting point of £1,000, reduced by one third to £666.

19. You have however spent a total of six days in custody: one day following your arrest on 27 April and a further five days following your arrest on 12 May and subsequent remand in custody following your failure to attend court. You have served the equivalent of a 12-day sentence. The time you have spent on remand in custody is more draconian than the penalty you would have received had you simply answered your bail and been dealt with in relation to the breaches. In those circumstances, it would be unjust for you to pay a fine in addition to time that you have now spent in custody. I therefore make no order on each of the breaches. The order will record the time that you have spent in custody as equivalent to a 12-day sentence and detail what the financial penalties would have been but for your remand in custody.

20. The claimant does not make a costs application and has not provided a schedule of costs. There will thus be no order as to the costs of the contempt proceedings. If you go with the custodians, they will be able to process your paperwork and then release you.

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1463 (QB)

Ref. QB-2022-001236

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

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL **(Claimant)**

-v-

JOE HOWLETT **(Defendant)**

MR SHEPHARD appeared on behalf of the Claimant
The Defendant appeared in person.

Hearing date: 17th May 2022

APPROVED JUDGMENT

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

HER HONOUR JUDGE EMMA KELLY:

1. Mr Howlett, you appear before the court today in respect of two admitted breaches of an interim injunction that was granted by the Honourable Mr Justice Sweeting J on 14 April 2022, as amended on 5 May 2022.

2. You have not been represented during today's hearing. You spoke to counsel, Mr Jones, in the cells before the hearing commenced but you have informed the court that you do not want representation and wish to conduct your own advocacy today. Mr Jones has also confirmed that position to the court.

3. You face two matters of contempt; the first on 27 April 2022 and the second on 12 May 2022. The claimant has provided you with written particulars of the breaches and you have admitted those. In light of your admissions, the court is satisfied the breaches have been proved the criminal standard, namely beyond reasonable doubt.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. You were not named as a defendant. The injunction was 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. The injunction placed certain restrictions on what protest activity could take place in and around the oil terminal. 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 (i) "entering or attempting to enter the terminal" and at subsection (iv) "climbing onto or otherwise damaging or interfering with any vehicle or any objects on land (including buildings, structures, caravans, trees and rocks)"

7. The order was served on 14 April 2022 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. The injunction was varied by Sweeting J on 5 May when he removed the 5-metre "buffer zone," but the other material terms remained the same.

9. On 27 April 2022, at just after 4 pm, you were one of a group of 10 individuals who gathered on the grass verge outside the main entrance to the oil terminal to protest against the use and/or production of fossil fuels. It was a purely peaceful protest and caused no inconvenience to people using the oil terminal. It was however inside the "buffer zone" referred to in the original paragraph 1(a) of the interim injunction and therefore amounted to a breach of the injunction. You were arrested by the police and produced before the court on 28 April, when Sweeting J bailed you on condition to comply with the terms of the injunction. You were due to attend court on 12 May but failed to attend.

10. At around 8pm on 12 May you, along with two others, entered within the curtilage of the oil terminal and sat on the grass verge. When police asked you to move, you refused. You were there, with banners, for about 10 minutes before you and the others walked further into the site. You climbed a tree and refused to come down when asked by the police. After some 10 minutes you climbed down the tree of your own volition and were arrested. Those actions in entering the oil terminal site amount to a breach of paragraph 1(b)(i) and 1(b)(iv) of the interim injunction, as varied on 5 May 2022.

11. The objectives of penalties for contempt of court were considered in *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ 699 where Pitchford LJ held as follows:

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

12. The Sentencing Council produce Definitive Guidelines to the criminal courts. Those guidelines are not aimed at the civil courts. However, the Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] They are not a complete analogy. The maximum sentence for breach of

a antisocial behaviour order in the criminal courts is five years as against a two year maximum in the civil courts on a contempt of court. I am also mindful that civil courts do not have available the wide variety of community orders used by the criminal courts. I also take note that the interim injunction is not an antisocial behaviour injunction in its true sense under the Anti-social Behaviour, Crime and Policing Act 2014. There are, however, parallels between the conduct prohibited by the interim injunction and antisocial behaviour in its general sense.

13. Turning to the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order), each breach was deliberate and falls within culpability category B. The breach on 12 May is more serious than that of 27 April. You trespassed within the curtilage of the oil terminal itself albeit with no obvious health and safety concerns being raised by your conduct when inside the site. The claimant contends, and I agree, both breaches fall within category 3 harm, causing little or no harm or distress.

14. . The Definitive Guideline gives rise to a starting point in the criminal courts of a high level community order with a range from low level community order to 26 weeks in custody.

15. I have to consider whether there are any aggravating factors. The breach on 27 April was committed only 13 days after the order was made. The breach on 12 May is aggravated by its timing - only a couple of weeks after the first breach – and committed whilst on bail and having failed to attend the hearing the same day.

16. I have heard what you say in mitigation and acknowledge that you feel very strongly about the use of fossil fuels and consider you were right to take the action you did. In circumstances where there is a High Court injunction in place, your belief that your actions were justified is not a defence, as indeed you must accept by your admissions of breach. Indeed, it is little mitigation. I do however take note that your actions did not cause any real harm or distress and little inconvenience to the operation of the oil terminal.

17. Under the Definitive Guideline for Reduction of Sentence for Guilty Plea you are entitled to credit for your admissions. Your admission today in relation to 12 May was made at the earliest opportunity after you had had the opportunity of seeking legal advice. You are, therefore, entitled to a one-third credit in relation to that matter.

[DEFENDANT INDICATES HE WISHES TO SPEAK. STATES THAT ON HIS LAST HEARING ON 12 MAY, THE COURT VENUE WAS CHANGED AND HE WASN'T TOLD.]

JUDGE KELLY:

18. The venue for the hearing on 12 May 2022 was changed from Birmingham Magistrates' Court to Birmingham Crown Court following a fire at the Magistrates' Court on 10 May. In circumstances where you contend you were not informed of the change in venue on 12 May, and notwithstanding that there were court officials standing outside the doors to the Magistrates' court redirecting individuals over to this court building, I will proceed on the basis that you are entitled to maximum credit for the breach on 27 April. It will make no material difference to the outcome of today's hearing, and therefore it is not appropriate to investigate that further. You would thus be entitled to the maximum one-third discount in relation to both matters of contempt.

19. But for your period on remand in custody, the appropriate penalty would have been a fine. This court has the power to impose unlimited fines. On the information before the court, I would have proceeded on the basis that you are of very limited means with little disposable income. If you had not spent the time in custody, the appropriate penalty for the breach on 27 April 2022 would have been a starting point fine of £600 reduced to £400 to reflect your admission at the earliest opportunity. The breach on 12 May is more serious because it was inside the site, in breach of the condition of bail, and on the day you were supposed to be in court. The appropriate penalty would have been a fine with a higher starting point of £1,200, reduced to £800 to reflect your admission at the earliest opportunity.

20. You have, however, spent a total of six days in custody: a day when you were arrested on 27 April and the produced on 28th; and five days following your remand in custody on 12 May. You have therefore served the equivalent of a 12-day sentence. The time you have spent on remand is more draconian than the financial penalty that the breaches in themselves warrant. In those circumstances it would be unjust to make you pay a fine as well as having spent the time in custody. Accordingly, I am not going to make any order on each of the breaches. The order will record that you have spent time in custody equivalent to a 12-day sentence and what the financial penalty would have been but for that.

21. The claimant is not making an application for costs and has prepared a schedule in that regard. I thus make no order as to the costs on the contempt proceedings.

22. If you go with the custodians back down to the cells, they then will be able to process the paperwork and release you.

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1459 (QB)

Ref. QB-2022-001236

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

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL **(Claimant)**

-v-

(1) JONATHAN COLEMAN
(2) SAMUEL JOHNSON **(Defendants)**

MR SHEPHARD appeared on behalf of the Claimant
MR JONES appeared on behalf of Mr Coleman
Mr Johnson appeared in person

Hearing date: 12th May 2022

APPROVED JUDGMENT

HER HONOUR JUDGE EMMA KELLY:

1. Jonathan Coleman and Samuel Johnson, you 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. You have each had the opportunity of obtaining legal representation. I have heard from Mr Jones, of counsel, on behalf of Mr Coleman. Mr Johnson has spoken to counsel prior to the hearing but indicated that he wishes to undertake his own advocacy at today's hearing.

3. The particulars of alleged breach have been provided to you by the claimant in writing. You have each admitted breaching the interim injunction on 27 April 2022. In light of the admissions each of you have made, I am satisfied that the contempt of court have been proved, as alleged by the claimant, to the criminal standard of proof.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. Neither of you were named defendants. 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. The injunction placed certain restrictions on what protest activity could take place in and around the oil terminal. It did not prohibit protesting in its entirely in the vicinity of the oil terminal, but it created a buffer zone of 5 metres around the boundary to the site. 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. The order was served on 14 April 2022 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. The breach on 27 April 2022 occurred just after 4pm when you were part of a group of 10 individuals gathered on the grass verge at the side of the main entrance to the oil terminal to protest against the use and production of fossil fuels. It is accepted by the claimant and this court that it was a wholly peaceful protest. It was, nonetheless, inside the buffer zone and thus in breach of paragraph 1(a) of the injunction. The police advised you to move away and indicated where you could continue the protest lawfully, but you refused to move and were thereafter arrested pursuant to the power of arrest attached to the injunction. If you had simply moved five metres away from the terminal boundary so as to be outside the buffer zone the protest would not have been in breach of the injunction.

9. You have already heard me say to others being dealt with for similar contempt matters that when determining the penalty for contempt of court, the court has to consider the three objectives identified by the Court of Appeal in the case of *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699:

> "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. Both counsel have referred me to the Sentencing Council Definitive Guidelines. The Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 concluded that the guideline for breach of an anti-social behaviour order was equally relevant when dealing with breaches of anti-social behaviour orders in the civil courts. I thus consider the Definitive Guidelines, albeit by analogy only given that they apply in the criminal courts, not directly to the civil courts. I bear in mind that this court does not have the same sentencing powers as the criminal court; that this court does not have community disposals available; and that this is not an antisocial behaviour injunction in the true sense.

11. As to culpability, the single breach falls with category B. I do not accept it was a minor breach or one falling just short of reasonable excuse such that it falls within category C. Your actions were deliberate; that being the defining characteristic for culpability B. The likelihood is that had you heeded the advice of the police to move your protest outside the buffer zone, it is very likely they would not have proceeded to arrest you and the claimant is unlikely to have taken enforcement action.

12. As to category of harm, in my judgment it clearly falls in category 3 (causing little or no harm or distress). That gives rise to a starting point sentence in the criminal courts of a high level community order, with a category range of a low level community order to 26 weeks' custody.

13. In terms of aggravating factors, each of you has a previous conviction for obstructing free passage. Whilst that is relevant to the nature of the protest you were engaged in on that day, I do not take the view it aggravates the breach to any significant extent. The court accepts that each of you has admitted the breach at the very earliest opportunity, at the next hearing following your remand on bail having had a reasonable time to take legal advice. You are therefore each entitled to the maximum one-third discount anticipated by the Definitive Guideline for Reduction in Sentence for a Guilty Plea.

14. 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. That may result in different defendants facing different levels of fine for the same factual breach depending on their personal circumstances. Counsel has provided information as to Mr Coleman's assets…

[MR COLEMAN INTERRUPTS AND WISHES TO ADDRESS THE COURT IN MITIGATION. JUDGE POINTS OUT HE IS REPRESENTED BY COUNSEL WHO HAS ALREADY SPOKEN ON HIS BEHALF. JUDGE ALLOWS MR COLEMAN A SHORT OPPORTUNITY TO ADD TO COUNSEL'S SUBMISSIONS.]

JUDGE KELLY:

15. I return to my judgment. Unconventionally I paused my judgment and afforded Mr Coleman the opportunity to address the court directly notwithstanding his counsel had already addressed the court on his behalf. I recognise he feels strongly about this matter and wished for his voice to be heard. I return to the question of financial penalty. As far as Mr Coleman's position is concerned, he is of moderate financial means. He has a number of

assets. By contrast, Mr Johnson has very minimal income or assets, indeed less income that he would receive were he claiming state benefits. It is therefore appropriate that the financial penalty in Mr Coleman's case is greater than that for Mr Johnson.

16. In Mr Coleman's case, the starting point for the financial penalty is £900. That is reduced by one-third to reflect the admission at the earliest opportunity to £600. In Mr Johnson's case the starting point is £450, reduced by one-third to £300.

17. In Mr Coleman's case the financial penalty will be payable in full by 1 June 2022, given his savings position. In Mr Johnson's case, the sum of £300 will be payable at rate of £20 a month, first payment by 1 June 2022.

18. I make it clear that the financial penalties in relation to the incident on 27 April 2022 have lower starting points than I have adopted in relation to other defendants involved in the protest on 26 April. A distinction between the two protests can be drawn. The protest on 27 April was purely peaceful, causing no inconvenience to any road-users, as opposed to events on 26 April, when part of a group sat down across the road.

19. The claimant has made an application for costs. Unlike similar cases that have proceeded before the court over the past two days, the claimant has now prepared a costs schedule. However, the costs schedule relates to the hearings on 4 and 5 May 2022. On 4 May neither Mr Colemann or Mr Johnson's cases were listed. They were not part of the protest group arrested and produced on 5 May. The costs schedule is thus irrelevant to either defendant. In the absence of the claimant serving a relevant costs schedule, I am not prepared to make a costs order. There will therefore be no order as to costs as between the claimant and Mr Coleman and Mr Johnson.

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1461 (QB)

Ref. QB-2022-001236

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

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL **(Claimant)**

-v-

(1) EMILY BROCKLEBANK
(2) AMY PRITCHARD **(Defendants)**

MR SHEPHARD appeared on behalf of the Claimant
The Defendants appeared in person

Hearing date: 12th May 2022

APPROVED JUDGMENT

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

HER HONOUR JUDGE EMMA KELLY:

1. Emily Brocklebank and Amy Pritchard each appear before the court in respect of admitted breaches of an interim injunction granted by the Honourable Mr Justice Sweeting on 14 April 2022. The court has to determine the appropriate penalties for the admitted contempt.

2. Ms Pritchard and Ms Brocklebank were each given the opportunity of attending court in person when their cases were listed yesterday. Each is in custody and failed to attend yesterday having refused to get onto the prison transport. The court indulged them and listed their case again today by CVP link to give them a second opportunity to attend. Each has attended court this morning via CVP link. They each have solicitors on record and had a conference with instructed counsel, Mr Jones, in advance of the hearing. Mr Jones informed the court that each defendant has instructed that that they do not want an advocate for the purposes of today's hearing and wished to conduct their own advocacy. I have, therefore, heard from them both in person.

3. Ms Pritchard and Ms Brocklebank each admitted breaching the interim injunction on 26 April 2022, 28 April 2022 and 4 May 2022.

4. I have heard from Ms Brocklebank and Ms Pritchard in mitigation. Ms Pritchard had very little to say and wished to hand over to Ms Brocklebank as spokesperson. Ms Brocklebank was informed at the start of her mitigation that this was an opportunity for her to address the court as to any aggravating or mitigating factors that she wanted the court to take into account when determining the appropriate penalty. She was warned that it not an opportunity to make political statements or make statements in support of her cause. Ms Brocklebank would not desist from making political statements despite further warning, and then started singing over the CVP link. At that stage the CVP link was muted and the hearing proceeded with the defendants having the ability to see and hear the proceedings and the court being able to see but not hear the defendants in light of the disruption caused to the proceedings.

5. The claimant has provided particulars of each breach in writing and both defendants have admitted the three breaches. I am therefore satisfied, as I need to be, to the criminal standard of proof that the breaches have been established.

6. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. Ms Pritchard but not Ms Brocklebank was a named defendant. The injunction was 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.

7. 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."

8. 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…"

9. The interim order did not therefore prohibit all protest activity in the vicinity of the Kingsbury Oil Terminal. It did however prohibit protesting within the five-metre buffer zone or protesting in the general locality that engaged limb 1(b) of the order.

10. The order was served on 14 April 2022 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.

11. The two defendants before the court have admitted the following three breaches.

12. On 26 April 2022, just before 8am in the morning, Ms Pritchard and Ms Brocklebank were two of 16 individuals who gathered outside the main entrance to Kingsbury Oil Terminal on the grass verge to the private road. They were involved in a peaceful protest for approximately two hours, with signs and placards being held. Although the protest was peaceful, it was located within the 5-metre buffer zone and was therefore in breach of paragraph 1(a) of the injunction. The group did not move on when asked to do by the police. Shortly after 10 o'clock a number of individuals, of which Ms Brocklebank was one but Ms

Pritchard was not, spread out along the road, and sat down obstructing the access to and egress from the site. The defendants were arrested and produced in court on 27 April where they were bailed on condition that they comply with the terms of the injunction.

13. Notwithstanding the conditions of bail, on 28 April 2022 the defendants returned to Kingsbury Oil Terminal. At about 11.35 am in the morning they were part of a group of eight protesters again positioned along the external fencing to the site with placards and banners within the 5-metre buffer zone. It is accepted that it was a wholly peaceful protest, but nonetheless in breach of paragraph 1(a) of the injunction. The defendants were again arrested and produced before the court later in the day on 28 April. Mr Justice Sweeting bailed each again on condition that they comply with the terms of the injunction.

14. On 4 May 2022 both defendants were due to attend court to answer bail, as ordered on 28 April. Instead, they made a deliberate decision to attend the Kingsbury Oil Terminal to continue their protest, in breach of paragraph 1(a) of the injunction. At about 2 pm in the afternoon the defendants were part of a group of 11 individuals who were stood on the grass verge to the side of the site entrance with various placards and banners. A number of individuals walked across the road to the site, causing difficulties for tankers that were trying to use the terminal. The claimant's case is that Emily Brocklebank was one of those standing in the way of the tanker, causing it to brake suddenly. Notwithstanding her admission of breach, it was apparent from that which she said later in the hearing that she disputes that aspect of her involvement. I proceed in her favour on the basis that she did not cause the tanker to brake suddenly. In my judgment that factual dispute makes no difference to the overall penalty that I will impose in this case.

15. When the court considers the question of penalty for contempt of court, it must bear in mind the objectives of any penalty exercise in the civil jurisdiction. Pitchford LJ in *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699 held as follows:

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

16. The Sentencing Council does not produce Definitive Guidelines for use in the civil courts. However, the Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 found that the Definitive Guideline for breach of antisocial behaviour orders were equally relevant when dealing with breaches of antisocial behaviour in the civil courts.

17. When drawing any analogy with a criminal case, one has to bear in mind that the civil courts have lower sentencing powers: a two-year custodial maximum as opposed to five years. Furthermore, the civil courts do not have a wide variety of community orders available. I also take note of the fact that the interim injunction in this case was not an antisocial behaviour injunction in the true sense under the Anti-social Behaviour, Crime and Policing Act 2014. However, I do accept that the Definitive Guideline nonetheless provides a useful analogy for consideration of the appropriate penalty.

18. There have been references in other contempt cases within the substantive claim to the Civil Justice Council's draft guidelines for breach of antisocial behaviour injunctions. I am mindful that those guidelines are not in force. I therefore prefer to consider the Sentencing Council's Definitive Guidelines as endorsed by the Court of Appeal in *Amicus Horizon.*

19. Each defendant faces three breaches. The most serious of those breaches is the one on 4 May 2022 because it occurred whilst on bail for the first and second breaches and in circumstances where each defendant had failed to surrender to court that same day.

20. I consider each Defendant's cumulative culpability, taking the breach on 4 May as the lead matter. By reference to the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order), the breach on 4 May 2022 falls within culpability category A breach, defined as being a "very serious or persistent breach." Each defendant's actions were persistent. By the date, there had been three breaches in the space of an eight-day period. As to the category of harm, notwithstanding the submissions made by the claimant that the breaches fall into category 2, I proceed on the basis that this is a category 3 harm case (defined as causing "little or no harm or distress.") That gives rise, in the criminal courts, to a starting point of 12 weeks' custody, with the range of a medium level community order to one year's custody.

21. I turn to consider any aggravating factors. The breach on 4 May was committed whilst on bail and having failed to attend the hearing that very day. I do not take account of the other breaches as an aggravating factor because the question of persistence has already been addressed when determining the level of culpability. Both defendants have a previous conviction for obstructing the highway.

22. There are limited mitigating factors in either case. It is apparent from that which has been said to me that neither shows any remorse at all. However, each has admitted the breach and is entitled to credit for those admissions pursuant to the Definitive Guideline for Reduction in Sentence for a Guilty Plea. The admissions are not made at the first opportunity. Each had an opportunity on 4 May to enter admissions in respect of the breaches on 26 and

28 April but failed to attend that hearing. Each had an opportunity on 11 May, yesterday, to enter an admission in relation to the breach on 4 May but failed to attend from custody. Each defendant has however now made admissions and they are entitled to 25 per cent credit for their admissions.

23. In my judgment, the breach on 4 May is so serious that, after a trial, the appropriate penalty would have been one of 28 days' imprisonment. That sentence reflects the cumulative culpability and persistent nature of the conduct. A discount of 25 per cent for the admission would reduce the penalty to one of 21 days. Given that the sentence on 4 May takes into account the cumulative culpability, no further order would have been necessary on the other breaches.

24. When a custodial penalty is fixed by the civil courts, the court has to take into account any time spent on remand. Unlike in criminal courts, the Prison Service cannot adjust the penalty to reflect time on remand. Each of these defendants has spent a total of 10 days on remand: the one day following arrest on 26 April; a second day following arrest on 28 April; and then a further period of eight days from their remand in custody on 4 May. That is the equivalent of a 20-day custodial sentence. In light of the time that has been spent on remand my conclusion is that it is not necessary to pass any further order. Each defendant is one day short of the 21-day sentence I would have considered appropriate but, bearing in mind they would only serve half of that, it is not appropriate to pass a one-day custodial sentence.

25. In those circumstances the order will simply record that each defendant has served the equivalent of a 20-day sentence and accordingly that the court will make no order on each breach.

26. If the defendants had not spent the time in custody, I would have had to consider whether it was appropriate to suspend any custodial sentence. I would not have been persuaded on the facts of these cases that it was appropriate to suspend. The Definitive Guideline on the Imposition of Community and Custodial Sentences provides guidance as to when it is appropriate to suspend. That include when there is a realistic prospect of rehabilitation, strong personal mitigation and a significant harmful impact to others. None of the factors apply in these cases. It is apparent that neither defendant shows any remorse or desire to change their behaviour going forwards.

27. The practical effect of the court's sentence is that each defendant will be released from custody today. The court nonetheless sends out a very clear message that it expects its orders to be complied with and treats any breaches as a grave matter. Those appearing before the

court today, and others that have appeared on similar breaches, are warned that if they return to court in breach of the injunction order they risk further periods in custody.

28. The claimant has made an application for its costs. Unlike in other similar contempt matters within this claim, the claimant has now provided a costs schedule albeit one which only deals with the costs of the hearings on 4 and 5 May 2022. Each of these defendants was due to attend court on 4 May and then did attend, from custody, on 5 May. I am informed that the costs have been divided equally between all 26 defendants that were arrested and dealt with at those hearings and the sum of £195 per defendant is sought. The general rule is that the unsuccessful party will pay the costs of the successful party. The claimant is clearly the successful party. There will therefore be an order that each of the defendants pays a sum of £195 to the claimant as a contribution to the costs. Neither defendant has provided any information about their means. The default position as to payment will apply, namely that the costs are due for payment within 14 days. Insofar as either defendant wishes to make an application for payment by instalments, they will have to make an application to this court, supported by documentary evidence as to their means.

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1460 (QB)

Ref. QB-2022-001236

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

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL **(Claimant)**

-v-

(1)) LUCIA WHITTAKER DE ABREU
(2) ALYSON LEE **(Defendants)**

MR SHEPHARD appeared on behalf of the Claimant
MR JONES appeared on behalf of Ms Whittaker De Abreu
Ms Lee appeared in person

Hearing date: 12th May 2022

APPROVED JUDGMENT

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Transcribed from the official recording by eScribers
Central Court, 25 Southampton Buildings, London WC2A 1AL
Tel: 0330 100 5223 | Email: uk.transcripts@escribers.net | https://viqsolutions.com.au/

HER HONOUR JUDGE EMMA KELLY:

1. Lucia Whittaker De Abreu and Alyson Lee, you each appear before the court having admitted two breaches each of an interim injunction granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. Ms Whittaker De Abreu, you are represented by counsel, and I have heard what he has said on your behalf. Ms Lee, you have solicitors on record and have spoken to counsel but inform the court that you wish to conduct your own advocacy at today's hearing.

3. You each face an allegation of breaching the injunction on 27 April 2022 and 4 May 2022. The claimant provided particulars to you in writing and you have each made admissions today in accordance with those particulars. In light of your admissions, the court is satisfied that the allegations of contempt of court have been proved to the criminal standard, namely beyond reasonable doubt.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. Ms Lee was named as a defendant but Ms Whittaker De Abreu was not. The injunction was 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. The injunction placed certain restrictions on what protest activity could take place in and around the oil terminal. 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…" The injunction did not therefore prohibit all protest activity in the vicinity of the oil terminal, but it did create a buffer zone of 5 metres around the site.

7. The order was served on 14 April 2022 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. The first breach on 27 April 2022 occurred just after 4pm when you were two of a group of 10 individuals who had gathered on the grass verge at the side of the main entrance to the oil terminal to protest against the use and production of fossil fuels. It was a wholly peaceful protest. It was, nonetheless, inside the buffer zone and thus in breach of paragraph 1(a) of the injunction. The police advised you to move away and indicated where you could continue the protest lawfully, but you refused to move and were thereafter arrested pursuant to the power of arrest attached to the injunction. If you had simply moved outside the five-metre area and continued your protest there, you likely would not have been before the court. You were each produced before the court on 28 April and bailed on condition to comply with the injunction. Your cases were listed on 4 May 2022.

9. Instead of attending court on 4 May, you each made a deliberate decision to attend Kingsbury Oil Terminal to continue your protest, in breach of paragraph 1(a) of the injunction. Approximately 2 pm you were amongst a group of 11 who stood on a grass verge to the side of the entrance to the site, again with placards and banners. Some of your number told police officers that you were due to appear in court that day and had failed to do so. Some individuals slow-walked across the road junction, causing access problems for vehicles. I accept that you are not named in any of the evidence as individuals who caused traffic problems by your actions.

10. When determining the appropriate penalty, the court has to consider the objectives of such an exercise. Pitchford LJ in *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699 held as follows:–

> "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; the third is rehabilitation, which is a natural companion to the second objective."

11. Both counsel have made reference to the Sentencing Council's Definitive Guidelines. Those guidelines are produced for use in the criminal courts. The Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 however held that the definitive guidelines for breach of an antisocial behaviour order were equally relevant when dealing with breaches of antisocial behaviour orders made in the civil courts. There are some distinctions. One has to bear in mind that the criminal courts have far greater sentencing powers: a maximum of five years' imprisonment for breach of antisocial behaviour as against a two-year maximum on any one occasion under the Contempt of Court Act. The criminal courts also have a whole range of community orders available to them which the civil courts do not. I also bear in mind that this was not an antisocial behaviour injunction in the true sense under the Anti-social Behaviour, Crime and Policing Act 2014. Nonetheless, the aims of the interim injunction draw parallels with the type of conduct that one would find in an antisocial behaviour injunction order. I consider the Definitive Guideline for breach of a criminal behaviour order (also applicable to breach of an anti-social behaviour order) by analogy only.

12. The two breaches in question, the first on 27 May and the second on 4 May, each fall within the culpability B category. They were deliberate breaches falling between the highest category (persistent breach) and the lowest category (minor breach). The second breach does not cross the threshold into persistence. I accept what is said on behalf of Ms Whittaker De Abreu that they fall towards the bottom end of the culpability B range.

13. As to the category of harm, the claimant concedes and I agree that both breaches fall within category 3, causing little or no harm or distress.

14. The guideline gives a starting point for sentence in the criminal courts as a high level community order, with a category range from a low level community order to 26 weeks' imprisonment. One has to bear in mind that this is in the civil courts and therefore the starting point and range will necessarily be lower.

15. Turing to aggravating factors. Each of you committed the first breach on 27 April, only 13 days after the interim injunction was granted. The breach on 4 May is further aggravated by the fact that you were both on bail at the time and had failed to surrender to your bail for the hearing that same day.

16. You have both admitted breaches of the injunction and you are entitled to credit for your admission under the Definitive Guideline for Reduction of Sentence for a Guilty Plea. Your admissions in relation to events on 27 April was made at an early, but not the first, opportunity. The first opportunity following the reasonable time to obtain advice would have been 4 May, when you failed to surrender. You would thus receive a 25 per cent discount for

your admission regarding events on 27 April. Your admissions in relation to events on 4 May are at the first opportunity allowing reasonable time for you to obtain legal advice. That admission would attract a one-third reduction in penalty.

17. But for the fact that you have been remanded in custody since the hearing on 5 May, the appropriate penalty in respect of the two breaches you each face would have been a fine. You have however served nine days in custody in total: one day when arrested on 27 April; and eight days following your arrest on 4 May. You have therefore served a sentence equivalent to 18 days. The time in custody is more draconian penalty than a financial penalty these breaches would otherwise have warranted. It would be unjust for you to be ordered to pay a financial penalty in addition to the time you have each spent in custody. I am, therefore, not going to make any order on the breaches. The order will however record the reason why no fine is being imposed, namely that you have spent time in custody equivalent to an 18-day sentence.

18. If the court had been imposing a financial penalty, I would have proceeded on the basis that each of you are of very modest means. In relation to the breach on 27 April, the starting point would have been £600, reduced by 25 per cent to reflect your admissions to £450. In relation to the breach on 4 May, that breach was much more serious, given your position on bail and your failure to attend court. The starting point would have been £900, reduced by a third to reflect your admissions to £600.

19. The claimant has made an application that you pay a contribution towards its costs in the sum of £195 each. The claimant has produced a costs schedule setting out their costs of the hearings that were listed on 4 May and 5 May. You were supposed to attend court on 4 May but failed to do so. On 5 May you were produced from custody following your arrest. Counsel on behalf of Ms Whittaker De Abreu opposes the making of a costs order on the basis that other defendants that appeared before the court over the past two days have had not been ordered to pay costs. Over the last two days the claimant has failed to file or serve a schedule of costs and therefore the court and the defendants had no information before them as to how those costs were being quantified. The position today is different. The claimant has now provided a schedule of costs. The defendants have had the opportunity to consider that. It is a schedule which is generous to the defendant as it does not include any costs from the hearing on 28 April or in relation to today. I am going to make an order that the defendants make a contribution to the claimant's costs. Whilst that will mean that there is not parity between all the defendants facing contempt of court matters, that is the good fortune of the defendants who appeared earlier this week and not a reason why the claimant

should be deprived of its costs now that it have got their house in order. The general rule is that costs follow the event, and there is no reason to depart from that rule. As to the quantum of those costs, the sum of £195 is sought from each defendant. That is a perfectly proportionate sum and I order each defendant to pay the claimant the sum of £195. Having considered the financial circumstances of each defendant, Ms Whittaker De Abreu has modest savings and Ms Lee's financial position generally is such that the sums are to be paid in full to the claimant by 1 June 2022.

20. The practical effect of today's judgment is that you will be released from custody today. You need to go down to the cells with the dock officers, but they will then process the paperwork and you will be released.

Neutral Citation Number: [2022] EWHC 1517 (QB)

Case No: QB-2022-001236

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

Sitting at
Birmingham Crown Court,
1 Newton Street,
Birmingham, B4 7NA

Date: 11/05/2022

Before:

HER HONOUR JUDGE EMMA KELLY

- -

Between:

NORTH WARWICKSHIRE BOROUGH COUNCIL	**Claimant**
- and –	
DAVID NIXON **MARGARET REID**	**Defendants**

- -

MR SHEPHARD of Counsel appeared for the Claimant
The Defendants appeared in person

- -

NOTE OF JUDGMENT

(No transcript is available as the recording cannot be retrieved.)
This note of judgment has been prepared and approved by HHJ Emma Kelly)

- -

HER HONOUR JUDGE EMMA KELLY:

1. David Nixon and Margaret Reid appear before the court to be dealt with in relation to three admitted breaches of an interim injunction order granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. Both defendants appear in person. They were informed by the court when first produced on each breach that they were entitled to legal advice and representation and asked again today whether they wanted representation. They have continued to inform the court that they do not wish to take legal advice and want to represent themselves.

3. The particulars of the breaches have been provided to the defendants by the claimant in writing. The court has to be satisfied of any breach to the criminal standard of proof, namely beyond reasonable doubt. In light of the defendants' admissions 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. The defendants were not named defendants. 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 the 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 the 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 and 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. Mr Nixon referred to the injunction and the defendants' knowledge that they were acting in breach of it. At approximately 10am, some defendants spread out and sat down across road obstructing the entrance to the 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. On 28 April 2022, the day after the court hearing, the defendants returned to the site with six others. They again participated in a peaceful protest within the buffer zone along external fencing to the site, in breach of paragraph 1(a) of the order. The defendants were arrested and produced before the court later in the day on 28 April, and again bailed to attend court on 4 May 2022.

10. On 4 May 2022 the defendants failed to attend court and instead returned to the oil terminal to continue to protest. At approximately 2pm the defendants and nine others stood on the grass verge at the side of the entrance to the site, again with placards and banners. The protest was peaceful but inside the buffer zone such that it amounted to a further breach of paragraph 1(a) of the interim injunction. Some of the defendants then walked across the road junction slowly, such that it hindered vehicular access to the site.

11. When determining the penalty for contempt of court, the court has to consider the 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."

11. 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 provides useful insight into the appropriate approach.

12. 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.

13. In my judgment, the breach on 4 May is the most serious and I take that as the lead matter. By reference to the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order), the 4 May incident falls within culpability category A, as being a "very serious or persistent breach." It was the third breach in short succession in circumstances where the defendants were on bail at the time and had failed to surrender to the hearing on the same day. The harm caused however falls into the lowest category 3 in that it caused little or no harm or distress. A culpability A, category 3 harm case in the criminal courts has a starting point of 12 weeks' custody with a category range from a medium level community order to 1 year's custody. That starting point and range necessarily have to be reduced to reflect the civil court's lower maximum custodial term.

14. The breaches on 26 and 28 April fall into culpability B, being deliberate but not at that stage persistent. Again, category 3 harm applies. A culpability B, category 3 harm case has a starting point of high level community order and a range from a low level community order to 26 weeks' custody.

15. I turn to consider any aggravating factors. The contempt matter on 4 May breach is aggravated by the fact that the defendants were on bail at the time. I do not take into account the earlier breaches on 26 and 28 April as aggravating factors because the question of persistence is already addressed when determining that the 4 May matter is a culpability A case.

16. Each defendant was motivated by strongly held convictions and each is of previous good character. Mr Nixon informs the court he is a full-time volunteer with a house and mortgage. Ms Reid explains she was a historian working in museums for around 30 years and lives with her partner. The defendants are entitled to credit for their admissions. The admissions in respect of 26 and 28 April were made at an early but not the earliest opportunity; that would have been at the hearing the defendants failed to attend on 4 May. Pursuant to the Definitive Guideline for Reduction in Sentence for a Guilty Plea, the admissions in respect of 26 and 28

April attract a 25% discount. The admission in relation to the breach on 4 May was made at the earliest opportunity and attracts a one-third discount.

17. In my judgment, the breach of 4 May 2022 is so serious that, after a trial, the appropriate penalty after a trial would have been one of 28 days' imprisonment, given the persistent nature of the conduct. The admissions each defendant has made reduces that by one-third. Rounding down in favour of the defendants reduces the penalty to one of 18 days' imprisonment. The breaches of 26 April and 28 April on their own would not attract a custodial sentence.

18. When a civil court fixes a custodial sentence, it must deduct time spent in custody on remand. Unlike in criminal courts, where the Prison Service adjusts the penalty to take account of time spent on remand, that does not happen when the civil court passes a custodial penalty. Each defendant has spent nine days in custody: one day when arrested on 26 April; a further day when arrested on 28 April; and seven days following arrest on 4 May and subsequent remand in custody. The defendants have served the equivalent of an 18-day sentence. Each has therefore already served the necessary penalty. I therefore propose to make no further order on the three matters, but the order will record that each has served the equivalent of an 18-day custodial sentence and what the penalty would have been but for the time in custody.

19. If the defendants had not already spent the time in custody, I would have had to consider whether it was appropriate to suspend the term of imprisonment. The Definitive Guideline for the Imposition of Community and Custodial Sentences identifies factors that the court should take into account when determining whether to suspend a sentence of imprisonment. Factors indicating it may be appropriate to suspend include where there is a realistic prospect of rehabilitation, strong personal mitigation or a significant harmful impact to others. Given that the position of each defendant is that they do not agree with the injunction, do not recognise its legitimacy and the persistent nature of the breaches, I would not have been persuaded it would have appropriate to suspend. That point is rendered academic in light of the time spent on remand.

20. This court sends out a very clear message that it expects court orders to be complied with. It treats any breach of an order as a very serious matter. Those appearing before the court need recognise that if they return to court on further breaches of the injunction order, they risk further periods in custody.

21. The claimant has failed to provide a schedule of costs to either the court and or to the defendants. 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, there will be no order as to costs on the contempt.

22. The defendants are thus eligible for immediate release, once the custodians have processed the paperwork.

Neutral Citation Number: [2022] EWHC 1518 (QB)

Case No: QB-2022-001236

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

Sitting at
Birmingham Crown Court,
1 Newton Street,
Birmingham, B4 7NA

Date: 11/05/2022

Before:

HER HONOUR JUDGE EMMA KELLY

- -

Between:

NORTH WARWICKSHIRE BOROUGH COUNCIL	**Claimant**
- and –	
BARRY MITCHELL	**Defendant**

- -

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

- -

NOTE OF JUDGMENT

(No transcript is available as the recording cannot be retrieved.)
This note of judgment has been prepared and approved by HHJ Emma Kelly)

- -

HER HONOUR JUDGE EMMA KELLY:

1. Barry Mitchell appears before the court to be dealt with in relation to two admitted breaches of an interim injunction order granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. Mr Mitchell is represented by Mr Jones of Counsel. Mr Jones has explained to the court that he has had a conference with Mr Mitchell in the cells, but Mr Mitchell is refusing to leave

his cell to come into the courtroom. The hearing has thus proceeded in the absence of Mr Mitchell but with Mr Jones representing him in court.

3. The particulars of the breaches have been provided to the defendant by the claimant in writing. Through Mr Jones, Mr Mitchell admits breaches of the interim injunction on 26 April 2022 and 4 May 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 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. The defendant was not 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 defendant was one of 16 individuals who gathered outside the 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 and placards

being held. The location of the protest was within the buffer zone referred to in paragraph 1(a) of injunction. The protestors 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, some protestors spread out and sat down across road obstructing the site entrance. I accept the defendant was not one of those named in the evidence as sitting down on the road. The protestors 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. On 4 May 2022 the defendant failed to attend court for the adjourned hearing and instead returned to the oil terminal to continue to protest. At approximately 2pm the defendant and 10 others stood on the grass verge at the side of the entrance to the site, again with placards and banners. The protest was peaceful but inside the buffer zone such that it amounted to a further breach of paragraph 1(a) of the interim injunction. Some of the defendants then walked across the road junction slowly, such that it hindered vehicular access to the site.

10. When determining a penalty for contempt of court, the court has to consider the 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."

11. 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.

12. 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.

13. As to the breach on 26 April, the breach was a deliberate breach which puts it into culpability B. The breach on 4 May also falls category B. Although it was a second breach, only a short period after the first, I do not consider such conduct persistent so as to warrant upward movement to category A. Both of the breaches fall into the lowest harm category, namely 3. 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.

14. I turn to consider any aggravating factors. The breach on 26 April was committed only 12 days after the interim injunction was made. The breach on 4 May is aggravated by its timing only days after the first breach and occurring whilst on bail. The defendant has one previous conviction, for failing to comply with conditions imposed on public assembly, dating to September 2020. The defendant's antecedent history suggests he was on police bail at the date of both breaches.

15. As to mitigation, the defendant admitted the breach from 26 April at an early but not the earliest opportunity. The first opportunity would have been at the hearing on 4 May that the defendant failed to attend. That admission entitles the defendant to a 25% reduction in the penalty that would otherwise have been appropriate. The admission in relation to the breach on 4 May was at the earliest opportunity, taking into account the need for the defendant to take advice. He will therefore receive a one-third discount on the penalty for that breach.

16. In my judgment the most appropriate penalty, had the defendant not spent time on remand in custody, would have been a fine. The court has the ability to impose unlimited fines. Mr Jones has provided some brief details as to Mr Mitchell's means. If he had not been on remand, the breach on 26 April would have warranted a fine of £450, based on a provisional sentence of £600 but reduced by 25%. The breach on 4 May would have warranted an additional fine of £600, from a starting point of £900 but discounted by one-third to reflect the admission.

17. However, the court has to have regard to the time the defendant has spent in custody. The defendant has spent 8 days in custody: one day following arrest on 26 April and seven days following his arrest on 4 May and subsequent remand in custody. Those eight days are the equivalent to a 16-day term of imprisonment. The time spent in custody, stemming largely from the failure to surrender and subsequent breach on 4 May, is a more draconian sanction

than the breaches warrant. It would therefore be unjust to order the defendant to also pay a fine. I therefore propose to make no order on the breaches.

18. The court order will record the time spent in custody and what the financial penalty would have been but for the time spent in custody. The approach taken today in no way condones the breaches. The court treats disobedience with its orders very seriously, as will have been evident from the remand in custody.

19. The claimant has failed to provide a schedule of costs to either the court and or to the defendant. The defendant is 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, there will be no order as to costs on the contempt.

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1457 (QB)

Ref. QB-2022-001236

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

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL **(Claimant)**

-v-

SARAH BENN **(Defendant)**

MR SHEPHARD appeared on behalf of the Claimant
The Defendant appeared in person

Hearing date: 11th May 2022

APPROVED JUDGMENT

Transcribed from the official recording by eScribers
Central Court, 25 Southampton Buildings, London WC2A 1AL
Tel: 0330 100 5223 | Email: uk.transcripts@escribers.net | https://viqsolutions.com.au/

HHJ EMMA KELLY:

1. Sarah Benn, you appear before the court today in respect of two admitted breaches of an interim injunction granted by the Honourable Mr Justice Sweeting on 14 April 2022. You represent yourself today. At the last hearing you had solicitors on record but did not want them to speak as your advocate in court. You told me earlier today that you wanted to speak to your legal representatives, but they were not present at court. Your case was put back for efforts to be made to contact your solicitor and the barrister who was instructed by your solicitors to represent other defendants in this case. The barrister had left court and is no longer available. You have been given the option of your case being adjourned to tomorrow for your solicitor can attend, or for you to speak to the duty solicitor by telephone today. You have told me that you do not wish to speak to the duty solicitor or for your case to be adjourned to tomorrow and wish to proceed today.

2. The claimant has provided particulars of the alleged breaches to you in writing. You have admitted two breaches of the interim injunction on 28 April 2022 and 4 May 2022. Bearing in mind your admissions and having read the witness evidence of the police officers, I am satisfied that the two breaches have been proved, as they need to be, to the criminal standard of proof.

3. Something needs to be said as to the background to why you find yourself in court today. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants, of which you were not one, but also 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.

4. 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."

5. 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…"

6. The interim order did not therefore prohibit all protest activity in the vicinity of the Kingsbury Oil Terminal. It did however prohibit protesting within the five-metre buffer zone or protesting in the general locality that engaged limb 1(b) of the order.

7. The order was served on 14 April 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. You appear before the court in respect of two breaches of the interim injunction.

9. On 26 April 2022 at approximately 7.45am you were one of 16 individuals who gathered outside the main entrance the Kingsbury Oil Terminal on a grass verge to the private road. You were involved in a peaceful protest for approximately two hours. There were various signs and placards. The claimant - and indeed this court - accept that the initial protest was wholly peaceful, but it was, nonetheless, within the buffer zone and therefore was in breach of paragraph 1(a) of the injunction. You and your co-defendants were asked to move by the police but refused. At approximately 10am a number of you and others spread out and sat down across the road, obstructing access to and egress from the terminal site. You were arrested a short time later for obstructing the highway and later that day arrested for breach of the injunction. You were produced before the court on 27 April and bailed on condition that you comply with the terms of the injunction. You were ordered to return to court for a hearing on 4 May to progress the breach allegation from 26 April.

10. On 4 May 2022 you chose not to answer your bail and made a deliberate decision to attend the oil terminal to again continue your protest. At approximately two o'clock in the afternoon you and around 10 others stood on the grass verge at the side of the entrance, again with placards and banners. The protest was peaceful but inside the buffer zone such you're your actions were in breach of paragraph 1(a) of the interim injunction. You were one of two individuals who told police officers quite frankly that you were due to appear in court that day and had failed to do so. Individuals then walked across the road junction slowly, such that it hindered access by vehicles to the site. I accept that you were not one of the named

individuals acting in a manner that caused the police to intervene and pull individuals out of harm's way so as not to cause a health and safety incident.

11. When considering the appropriate penalty for these breaches, the court has to take into account the objectives of any penalty exercise. Those objectives were considered by the Court of Appeal in the case of *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ 699. Lord Justice Pitchford 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 court orders, if possible; the third is rehabilitation, which is a natural companion to the second objective."

12. The claimant's barrister has referred to the Sentencing Council's 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 were equally relevant when dealing with breaches of antisocial behaviour orders made in the civil courts. It is not, however, a complete analogy: the criminal court has a greater sentencing maximum of five years as opposed to the civil court's maximum of two years on any single occasion. The criminal courts also have a variety of community orders available that this court does not. I also take account of the fact that the injunction in this case is not an antisocial behaviour injunction in the true sense as it would be if granted under the Anti-social Behaviour, Crime, and Policing Act of 2014.

13. 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.

14. By reference to the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order), the first breach on 26 April was a deliberate breach and therefore would fall within culpability B. The claimant accepts, and I agree, that it however falls in the lowest category 3 of harm, causing little or no harm or distress. As to the second breach on 4 May 2022, albeit it occurred very shortly after the first breach, I conclude it remains within culpability category B and does not cross the threshold into culpability A which would require persistency.

15. Each breach therefore gives rise to a starting point of a high-level community order and a range of a low-level community order to 26 weeks in custody.

16. Against that starting point, I consider any aggravating factors. The breach on 26 April was committed only 12 days after the order was made. The breach on 4 May is further aggravated by the fact that it was committed only days after the first breach. It was also on bail and it was in circumstances where you had failed to attend a court hearing on the very same day. The deliberate flouting of both the injunction and the order of the court to attend the hearing undoubtedly aggravates that matter.

17. As to the question of mitigation, you have explained something to me of your personal circumstances and I have seen your statement of means. The most obvious mitigating factor in your case is your admission of the breaches. You are entitled to credit for your admissions. Your admission to the breach on 26 April was not entered at the first opportunity; that would have been at the hearing on 4 May that you failed to attend.

Applying the Definitive Guideline for Reduction in Sentence for a Guilty Plea, your admission today in respect of 26 April entitles you to a 25 per cent discount. Your admission in relation to breach on 4 May was at the earliest opportunity, taking into account the need for you to seek advice. You will therefore receive a one-third discount on the penalty for that breach.

18. In applying the Definitive Guidelines, I bear in mind that this is a civil court with a lesser maximum sentence and without the availability of community order disposals. In my judgment the most appropriate penalty for someone in your position, who had not spent any time on remand in custody, would have been a financial penalty. The court has the ability to impose unlimited fines. It is apparent from your statement of means that you have only a modest income with outgoings that almost match that income. I would, therefore, have considered you as someone of very modest means. In relation to the breach on 26 April, a fine of £450 would have been appropriate based on a provisional sentence of £600 but reduced by 25 per cent to £450. In relation to the breach on 4 May, a fine of £600 would have been appropriate, with a starting point of £900 but discounted by one-third to reflect the admission. I give you those figures so that you have some idea of the financial penalty the court would have had in mind.

19. However, I need to be mindful of the time that you have spent in custody. You spent a day in custody following your arrest on 26 April. Since then, you have spent a further seven days in custody following your arrest on 4 May and subsequent remand in custody. Those eight days are the equivalent of a 16-day term of imprisonment. The practical effect is that the time that you have now spent on remand as a result of your failure to surrender on 4 May is more draconian that the financial penalty that the breaches warrant. It would be unjust to

put you in a position whereby you were paying a financial fine having already spent time in custody. I therefore propose to make no further order on the breaches.

20. The court order will record the time you have spent in custody and it will also record what the financial penalty would have been if you had not spent that time in custody. The approach I take in no way condones your actions. The court treats disobedience with its orders very seriously, as you will have realised from your previous remand in custody.

21. I am not going to make any order that you pay the costs of the proceedings. The claimant has failed to provide a schedule of costs, as they should have done, to either the court and or to the defendants. You are disadvantaged in to responding to an application for costs. I therefore make no order as to costs, a position which mirrors that I have adopted with other defendants in a similar position.

22. In those circumstances you are free to go with the custodians who will discharge you from custody. A hard copy of the order from today will be sent out to you in due course by post. I am not going to order that the same be personally served.

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1458 (QB)

Ref. QB-2022-001236

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

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL **(Claimant)**

-v-

SIMON MILNER-EDWARDS **(Defendant)**

MR SHEPHARD appeared on behalf of the Claimant
The Defendant appeared in person

Hearing date: 11th May 2022

APPROVED JUDGMENT

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

HER HONOUR JUDGE EMMA KELLY:

1. Mr Milner-Edwards, you appear before the court today in relation to three admitted breaches of an interim injunction that was granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. You appear as a litigant in person. You have been given the opportunity to obtain legal advice and representation but have told the court, now on a number of occasions, that you wish to represent yourself.

3. You face three matters of contempt: the first on 26 April 2022, the second on 28 April 2022 and the third on 4 May 2022. The claimant provided particulars to you in writing and you have admitted each matter today in accordance with those particulars. In light of your admissions, the court is satisfied that the allegations of contempt of court have been proved to the criminal standard, namely beyond reasonable doubt.

4. Turning to the relevant background. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. You were not named as a defendant. The injunction was 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. The injunction placed certain restrictions on what protest activity could take place in and around the oil terminal. 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…" The wording of the order did not therefore prohibit all protests but it did prevent protests within the five-metre buffer zone.

7. The order was served on 14 April 2022 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, shortly before 8 am, you were one of group of 16 individuals who gathered outside the main entrance to Kingsbury Oil Terminal on a grass verge to the private road. You engaged in a peaceful protest for about two hours, with signs and placards. The claimant and indeed the court accepts it was a wholly peaceful protest, but it was within the five-metre buffer zone and thus in breach of paragraph 1(a) of the injunction. The police asked you and your fellow protestors to move but you refused. At approximately 10 o'clock a number of individuals sat down across the across the road obstructing access to and egress from the site. You are not one of those individuals named in the police evidence as having sat down across the road. As a result of your engagement in the protest you were, however, arrested, produced before the court on 27 April. You were bailed on condition that you comply with the interim injunction.

9. On 28 April 2022 you returned to the site, that being the day after the court appearance. With seven others you again participated in a peaceful protest within the buffer zone along external fencing to the site, in breach of paragraph 1(a) of the order. You were arrested and produced before the court later on 28 April and again bailed to attend court on 4 May 2022.

10. On 4 May 2022 you failed to attend court to answer your bail and made the deliberate decision to again attend Kingsbury Oil Terminal to protest. At approximately 2 pm on that day you and 10 others were on the grass verge to the side of the entrance to the site with placards and banners. The protest was within the buffer zone and thus in breach of paragraph 1(a) of the interim injunction. Some of your number told police officers that you were due appear in court that day and you failed to do so. Some protestors started to walk across the road junction so as to cause inconvenience to vehicles that were trying to enter the terminal. I accept that you are not named in the police evidence as causing any difficulty to vehicles.

10. In determining the appropriate penalty, the court has to bear in mind the objectives of the exercise of setting penalties for contempt of court. penalty exercise. Pitchford LJ in *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699 held as follows:

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

11. This Sentencing Council does not produce Definitive 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 definitive guidelines for breach of an antisocial behaviour order were equally relevant when dealing with breaches of antisocial behaviour orders in the civil courts. It is not, however, a complete analogy because breach of an antisocial behaviour in the Crown Court gives rise to a maximum sentence of five years; breach of a civil order giving rise to a contempt of court has a two-year maximum. The criminal courts also have a far greater range of sentencing options open to them than the civil court does. In particular, the criminal courts have a range of community orders. This court does not. I also bear in mind that the injunction concerned was not one made under the Anti-social Behaviour Crime, and Policing Act 2014. Nonetheless, in my judgment the guidelines offer a useful starting point by way of broad-brush analogy. Whilst reference has been made the the Civil Justice Council's draft guidelines for contempt arising from anti-social behaviour, I am mindful they are in draft form only and have not been implemented. I therefore prefer the criminal guidelines.

13. In my judgment the breach on 4 May 2022 is the most serious breach and I take that as the lead matter. By reference to the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order), the breach on 4 May 2022 falls within culpability category A breach, defined as being a "very serious or persistent breach." It was the third breach in short succession in circumstances where you were on bail at the time and had failed to surrender to the hearing on the same day. The breach does however fall into category 3 harm causing little or no harm or distress.

14. If this were in the criminal courts, the starting point would be a 12-week custodial sentence and with a category range of a medium level community order to one year's custody.

15. The breaches occurring on 26 and 28 April would not on their own have been culpability category A. Those first and second breaches were deliberate and properly within culpability category B. Again, those breaches caused little or no harm and would fall within category 3 harm.

16. I turn to consider any aggravating factors. Your antecedent history reveals two criminal convictions. One occurring on 2 September 2020 for failing to comply with conditions imposed on public assembly and a second occurring on 4 October 2021 for wilfully obstructing the free passage of the highway. You have explained to me that you were due to attend the

Magistrates' court on 6 May 2022 in respect of the matter from 4 October 2021 but were in custody and not produced. You tell me that had you been given the opportunity to attend the Magistrates' Court, you would have entered a not guilty plea. You clearly need to take some legal advice as to that criminal matter, but for the purpose of today's hearing, I do not take the conviction in respect of 4 October into account. The contempt matters on 4 May is however aggravated by the fact that you were on bail at the time. I do not take into account the earlier breaches on 26 and 28 April as aggravating factors when considering the 4 May breach because the question of persistence is already addressed when determining it is a culpability A case.

17. I have considered whether there are any mitigating factors that the court properly should take into account. The most obvious mitigating factor in your case is your early admission of breach. In relation to the breaches on 26 April and 28 April, you did not make admissions on the first opportunity. That would have been the 4 May when you failed to attend. You did however make admissions in respect of those matters when produced on 5 May. On that date you made an admission at the earliest opportunity regarding events on 4 May. when you admitted the breach of 4 May at the earliest opportunity. Pursuant to the Definitive Guideline for Reduction in Sentence for a Guilty Plea, you are entitled to the maximum one-third discount from any penalty in respect of the 4 May contempt and a 25 per cent discount in respect of the 26 and 28 April breaches.

19. In my judgment, the breach of 4 May 2022 is so serious that, after a trial, the appropriate penalty would have been one of 28 days' imprisonment, given the by then persistent nature of the conduct. Your admission was entered at the first opportunity and therefore you are entitled to a one-third reduction. Rounding that down in your favour would reduce the penalty to one of 18 days' imprisonment. The breaches of 26 April and 28 April on their own would not attract a custodial sentence.

20. When a civil court fixes a custodial sentence, it must take into account time that you have already spent in custody on remand. Unlike in criminal courts, where the Prison Service adjusts the penalty to take account of time spent on remand, that does not happen when the civil court passes a custodial penalty. You have already spent nine days in custody: one day when arrested on 26 April; a further day when arrested on 28 April; and seven days following your arrest on 4 May and subsequent remand in custody. You would only serve half of any custodial sentence before being released. As such, you have served the equivalent of an 18-day sentence. You have already served the necessary penalty and it is therefore appropriate to make no further order on the three breaches. The order will record that you have served the equivalent

of an 18-day custodial sentence and what the penalty would have been but for the time you have already spent in custody.

22. If you had not already spent the time in custody, I would have had to consider whether it was appropriate to suspend any custodial sentence. The Definitive Guideline for the Imposition of Community and Custodial Sentences identifies factors that the court should take into account when determining whether to suspend a sentence of imprisonment. Factors indicating it may be appropriate to suspend include where there is a realistic prospect of rehabilitation, strong personal mitigation or significant harmful impact to others. Given that your position is that you do not agree with the injunction, do not recognise its legitimacy and the persistent nature of the breaches, I would not have been persuaded it would have appropriate to suspend. That point is rendered academic in light of the time you have spent on remand.

24. This court sends out a very clear message that it expects court orders to be complied with. It treats any breach of an order as a very serious matter. And everyone appearing before the court today for breaches needs recognise that if they return to court on further breaches of the injunction order ,they risk further periods in custody.

25. I am not going to make any order as to costs because the claimant has failed to file or serve a schedule of costs. Neither the court nor the defendant has thus had the opportunity of understanding what costs are sought. A schedule should have been provided if costs were going to be pursued.

26. Mr Milner-Edwards, you are thus eligible for immediate release. If you go back down to the cells with the custodians, they will be able to arrange for your discharge from custody.

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. **C**ounsel have referred the court to **t**he 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 w**as** 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.

Neutral Citation Number: [2022] EWHC 1483 (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 –	
SIMON REDING **CATHERINE RENNIE-NASH**	**Defendants**

- -

MR SHEPHARD of Counsel appeared for the Claimant
MR JONES of Counsel appeared for the Mr Reding
Ms Rennie-Nash appeared in person

- -

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. Simon Reding and Catherine Rennie-Nash 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. Mr Reding is represented by Mr Jones of counsel. Ms Rennie-Nash was advised when she was first produced before the court that she is entitled to legal representation and to reasonable time to prepare her case. She told the court that she does not want legal representation.

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. **C**ounsel have referred the court to **t**he 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 w**as** 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. Mr Jones submits the culpability is on the cusp of B and C. 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 Mr Reding's case, he has a previous conviction for obstructing the highway dating to events in October 2021 when he was also engaged in protest activity.

14. As to mitigation, Ms Rennie-Nash is of previous good character. Each defendant feels very strongly about the environmental cause they support and that motivated their actions. The court accepts that each defendant admitted the breach at the first opportunity having had time to consider whether they wanted to take legal advice. Each is entitled to a one-third 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. That may result in different defendants facing different levels of fine for the same factual breach depending on their personal circumstances.

16. Mr Reding has completed a statement of means and Mr Jones has made further submissions in that regard. Mr Reding is of very limited means, in receipt of Universal Credit supplemented by some very modest earnings. He lives in rented accommodation and has a number of debts. Ms Rennie-Nash has explained to the court that she lives with her daughter and is in receipt of a basic state pension only. She has no property or savings. I treat each as being of very limited means.

17. For the breach on 26 April, each defendant will be ordered to pay a fine of £400. That figure already includes a one-third reduction for the admission of breach at the first opportunity. Having taken into account each of the defendant's means, the fines will be paid by instalments of £20 per month, which will result in the liability being discharged in the reasonable period of under 2 years. The first payment to be due by 4pm on 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 on the contempt.

Neutral Citation Number: [2022] EWHC 1484

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 –	
STEPHANIE PRIDE **GWEN HARRISON**	**Defendants**

- -

MR SHEPHARD of Counsel appeared for the Claimant
The Defendants appeared in person

- -

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. Stephanie Pride and Gwen Harrison each appear before the court to be dealt with in relation to admitted breaches of an interim injunction order granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. Each defendant appears in person. Both were advised when she was first produced before the court and at subsequent hearings that they were entitled to legal representation and to reasonable time to prepare her case. Each has maintained they do not want legal representation.

3. The particulars of the breach have been provided to the defendants by the claimant in writing. Ms Pride has admitted breaching the interim injunction on 26 April 2022. Ms Harrison has admitted two breaches of the interim injunction on 26 April 2022 and 28 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. On 28 April 2022 Ms Harrison returned to Kingsbury Oil Terminal along with 7 others. At approximately 11.35am the group gathered along external fencing to the site, within the buffer zone, and resumed their protest in breach of para. 1(a) of the injunction.

10. 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."

11. **C**ounsel for the Claimant has referred the court to **t**he 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 w**as** 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.

12. 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.

13. As to the breach on 26 April, the breach was a deliberate breach which puts it into culpability B. As to category of harm, each breach falls in category 3 having caused little or no harm or distress. As to the breach on 28 April, faced by Ms Harrison alone, the breach still falls within culpability B. Although it was the second breach only two days after the first, I do not consider such conduct persistent so as to warrant upward movement to category A. Again, the breach on 28 April falls into the lowest harm category. 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.

14. I turn to consider any aggravating factors. The breach on 26 April was committed only 12 days after the interim injunction was made. In Ms Harrison's case, the breach on 28 April is aggravated by its timing only two days after the first breach and occurring whilst on bail. Ms Harrison has two previous convictions for wilfully obstructing the free passage along the highway from events in October 2019 and October 2021.

15. As to mitigation, Ms Pride is of previous good character. Each of you feel very strongly about the environmental cause they support and that motivated their actions. The court accepts that each defendant admitted the breach at the first opportunity having had time to consider whether they wanted to take legal advice. Each is entitled to a one-third discount on the penalty that would otherwise be imposed by analogy with the Definitive Guideline for Reduction in Sentence for a Guilty Plea.

16. In my judgment the appropriate penalty for the breaches each faces 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. That may result in different defendants facing different levels of fine for the same factual breach depending on their personal circumstances.

17. Mr Pride has explained to the court that she lives in rented accommodation. Her current income is only £370 per month and her outgoings, including rent of £350 per month, exceed that by some margin. She is using savings of £20,000 to supplement her income. Ms Harrison has explained to the court that her income is around £1,000 made up of Air B&B income and some consultancy work. She has a mortgaged property worth around £200,000 but could not assist the court with what outstanding mortgage balance was. I treat each as being of limited means. .

18. For the breach on 26 April, each defendant will be ordered to pay a fine of £400. That figure already includes a one-third reduction for the admission of breach at the first opportunity.

In addition, Ms Harrison will pay a further fine of £500 in respect of the breach on 28 April. Again, a one-third discount has already been applied to that figure. Having taken into account Ms Pride's saving, there is no reason why her fine of £400 cannot be paid in full by 4pm on 1 June 2022. In Ms Harrison's case the total fine of £900 will be paid by instalments of £100 per month, first payment by 4pm on 1 June 2022.

19. 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 on the contempt.

The page can’t be found.

It looks like nothing was found at this location.

Industries

Courts

FirstDraft™

Carbon

Lexel

AccessPoint™

Transcription Services

Recording Services

Real-time Live Events

Legal Transcription

Criminal Justice Transcription

Insurance Transcription

Government Transcription

Corporate Finance Transcription

Media Transcription

Follow us: