



Neutral Citation Number: [2022] EWHC 205 (QB)

Case No: QB-2021-003576, QB-2021-3626 and QB-2021-3737

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 February 2022

Before :

LORD JUSTICE WILLIAM DAVIS

MR JUSTICE JOHNSON

Between :

NATIONAL HIGHWAYS LIMITED

- and -

- (1) ARNE SPRINGORUM**
- (2) BEN TAYLOR**
- (3) BENJAMIN BUSE**
- (4) BIFF WHIPSTER**
- (5) CHRISTIAN ROWE**
- (6) DAVID NIXON**
- (7) DIANA WARNER**
- (8) ELLIE LITTEN**
- (9) GABRIELLA DITTON**
- (10) INDIGO RUMBELOW**
- (11) JESSICA CAUSBY**
- (12) LIAM NORTON**
- (13) PAUL SHEEKY**
- (14) RUTH JARMAN**
- (15) STEPHANIE AYLETT**
- (16) STEPHEN GOWER**
- (17) STEPHEN PRITCHARD**
- (18) SUE PARFITT**

David Elvin QC, Michael Fry and Jonathan Welch (instructed by DLA Piper UK LLP) for the Claimant
Owen Greenhall (instructed by Hodge Jones & Allen) for the Third Defendant;

The other defendants appeared in person

Hearing dates: 1-2 February 2022

Approved Judgment

Lord Justice William Davis:

1.

This is the judgment of the court to which we both made substantial contributions. Between September and November 2021 a series of protests was carried out by members of a group calling itself “Insulate Britain”. Many protestors blocked motorways and other roads, usually by sitting down on and/or gluing themselves to the road surface and so preventing the flow of traffic. Others went onto the hard shoulder of motorways so as to endanger themselves and to distract the fast-moving traffic on the motorways. On 21 September 2021 Lavender J granted the claimant an injunction to restrain such activity on the M25 motorway (“the order”).

2.

This is the third in a series of applications made by the claimant for the committal for contempt of court of those it says have breached the order.

3.

The first application was determined on 17 November 2021 - National Highways Limited v Ana Heyatawin and others [\[2021\] EWHC 3078 \(QB\)](#). At the time of that hearing the protests were continuing to take place. The Divisional Court (Dame Victoria Sharp P and Chamberlain J) dealt with nine defendants who the claimant alleged had, on 8 October 2021, breached the order. The court found that the breaches of the order were proved. The defendants were committed to prison for terms of between 3 and 6-months. In the absence of any reasonable basis for concluding that the defendants would comply with the court’s orders in the future, the court did not consider that it would be right to suspend the orders for committal (at [65]). The defendants to that application included Ben Taylor and Benjamin Buse. They were committed to prison for terms of 6 months and 4 months respectively.

4.

The second application was determined on 15 December 2021 - National Highways Limited v Benjamin Buse and others [\[2021\] EWHC 3404 \(QB\)](#). By that stage the series of protests had come to an end, and no further protests were planned in the immediate future. The Divisional Court (Dingemans LJ and Johnson J) dealt with nine defendants who had on 27 October 2021 (and, in one case, also on 8 October 2021) breached the order. Again, the breaches of the order were found proved. The defendants to that application included Benjamin Buse, Biff Whipster, Diana Warner, Paul Sheeky, Ruth Jarman, Stephen Gower, Stephen Pritchard and Sue Parfitt. Benjamin Buse was committed to prison for a term of 30 days to run consecutively to the 4-month term that had been imposed following the first application. Diana Warner (who initially failed to attend the hearing) was committed to prison for a term of 2-months. Biff Whipster (who had acted in breach of the injunction

on two separate occasions) was committed to prison for consecutive terms of 2-months and 30 days, the order for committal being suspended for a period of 2 years on condition that he must not take any of the steps that are forbidden by the order. The remaining defendants were committed to prison for terms of 2 months, the orders being suspended on the same terms. The court decided that there was a principled basis to suspend the orders for committal in those cases because the protests were not continuing, a “dialogue” had started to take place between the court and the defendants, and because of what the court had heard in each individual case (see per Dingemans LJ at [57]).

5.

This present application concerns three further protest events that took place on the M25, two on 29 October 2021 and one on 2 November 2021. Each of the defendants took part in one of those events. The claimant says that each defendant thereby breached the order. It seeks an order determining that the defendants are in contempt of court and providing for their committal or other sanction.

6.

The defendants each accept that they were validly served with the order. In relation to the events on 29 October 2021, the relevant defendants admit that they breached the order in the terms alleged by the claimant, and that they are therefore in contempt of court. The issue for the court in those cases is the sanction that should be imposed on each defendant.

7.

Three defendants, Arne Springorum, Jessica Causby and Liam Norton, are said to have breached the order by their acts on 2 November 2021. On behalf of Jessica Causby, Mr Owen Greenhall argues that the claimant cannot prove a breach of the order by any defendant on that date. Mr Springorum and Mr Norton expressly dissociate themselves from that submission. They assert that they were in breach of the order. We are satisfied that their purported admissions cannot prevail if in fact and law Mr Greenhall is correct.

The order

8.

On 21 September 2021 the claimant made an urgent application for an interim injunction against “persons unknown causing the blocking, endangering, slowing down, obstructing or otherwise preventing the free flow of traffic onto or along the M25 motorway for the purposes of protesting”. Lavender J made an order the same day. The order defined the M25 as “the London Orbital Motorway including but not limited to the verges, central reservation, on- and off-slip roads, overbridges and underbridges including the Dartford Crossing and Queen Elizabeth II Bridge, and any apparatus related to that motorway”. It forbids the persons against whom the order was made from:

(1)

Blocking, endangering, slowing down, preventing, or obstructing the free flow of traffic onto or along or off the M25 for the purposes of protesting.

(2)

Causing damage to the surface or to any apparatus on or around the M25 including but not limited to painting, damaging by fire, or affixing any item or structure thereto.

(3)

Affixing themselves to any other person or object on the M25.

(4)

Erecting any structure on the M25.

(5)

Tunnelling in the vicinity of the M25.

(6)

Entering onto the M25 unless in a motor vehicle.

(7)

Abandoning any vehicle or item on the M25 with the intention of causing an obstruction.

(8)

Refusing to leave the area of the M25 when asked to do so by a police constable, National Highways Traffic Officer or High Court Enforcement Officer.

(9)

Causing, assisting or encouraging any other person to do any of the prohibited acts above.

(10)

Continuing any of the prohibited acts above.

9.

The order stated in bold capitalised text that breach of the order may lead to imprisonment, or a fine, or seizure of assets.

10.

Each of the defendants accepts that they were validly served with the order (in some instances by means of forms of alternative service that had been authorised by the court).

Protests on the M25 following the order

Protests prior to 29 October 2021

11.

The reaction to the order from Insulate Britain was described by Dame Victoria Sharp P in Heyatawin at [15]-[18]:

“15. On various dates and in various locations, Insulate Britain protestors publicly burned copies of the M25 Order.

16. On 28 September 2021, Insulate Britain posted an article on its website in these terms:

“INJUNCTION? WHAT INJUNCTION?

...Yesterday, 52 people blocked the M25, in breach of the terms of an injunction granted to the Highways Agency on 22nd September.

A second injunction was granted on 24th September covering the A2, A20 and A2070 trunk roads and M2 and M20 motorway, after an Insulate Britain action outside the Port of Dover last Thursday.

Insulate Britain says actions will continue until the government makes a meaningful commitment to insulate all of Britain's 29 million leaky homes by 2030, which are among the oldest and most energy inefficient in Europe.”

17. On 29 September 2021, there was a further post as follows:

"THE SECOND TIME TODAY

...Insulate Britain has returned for a second time today to block the M25 at Swanley (Junction 3).

...Today's actions are in breach of a High Court injunction imposed on 22nd September, which prohibits 'causing the blocking, endangering, slowing down, preventing, or obstructing the free flow of traffic onto or along or off the M25 for the purposes of protesting.'"

18. On 30 September, Insulate Britain posted that it had blocked the M25 "for the third day this week" and that it was now "raising the tempo". It added that its actions were in breach of a High Court injunction."

12.

The protest on 8 October 2021 which resulted in the first application involved 15 to 20 protestors sitting or lying in the road at the roundabout at junction 25 of the M25. Both lanes of the carriageway leading from the M25 slip road were blocked. There was a long line of traffic. The disruption lasted for about 1½ hours.

13.

The protest on 27 October 2021 which resulted in the second application took place at the A206 junction with the A282/M25. Protestors sat in the road across the westbound carriageway. It took around an hour to clear the protestors. There were substantial traffic delays.

First protest on 29 October 2021 - junctions 28-29 of the M25

14.

At about 8am on 29 October 2021 police were called to the M25 between junctions 28 and 29. When they arrived Benjamin Buse, Christian Rowe, Diana Warner, Ruth Jarman and Sue Parfitt were on the eastbound carriageway, sitting down and blocking all three lanes. They were wearing high visibility vests. Some were holding "Insulate Britain" signs. As a police officer approached them all five lay down on the surface of the carriageway. For about 5 minutes police officers tried to engage with those protestors. They asked them to move. When the protestors declined to engage, they were arrested and lifted by police officers off the carriageway and moved to the hard shoulder.

15.

On the westbound carriageway Biff Whipster, Ellie Litten, Gabriella Ditton, Stephen Gower and Stephen Pritchard walked across the grass verge and climbed over the barrier that separated the verge from the carriageway. They did not enter the carriageway. Ellie Litten, Stephen Gower and Stephen Pritchard stood beside the barrier holding "Insulate Britain" signs. A police officer stood between them and the carriageway. Gabriella Ditton and Biff Whipster were a few metres away from them. They also were holding "Insulate Britain" signs. They sat down on the area immediately beside the barrier. None of the protestors agreed to move off the M25. After about fifteen minutes more police officers arrived. Traffic then was stopped on that carriageway to allow the police to remove the protestors. Gabriella Ditton and Biff Whipster obstructed those efforts by sitting down and then "going limp" when the police sought to move them. Gabriella Ditton said "I am breaching the court injunction today... it is important to me that we're not bullied."

16.

The protestors were moved by about 8.40am. The allegations of contempt that are made in respect of this protest are that:

“[Biff Whipster, Ellie Litten, Gabriella Ditton, Stephen Gower and Stephen Pritchard] wilfully breached the M25 Order in the morning of 29 October 2021 by endangering and slowing down the free flow of traffic onto or along or off the M25 for the purposes of protesting (in breach of clause 2.1 of the M25 Order), by entering onto the M25 Westbound (anti-clockwise) between junction 28 and 29 without a motor vehicle (in breach of clause 2.6 of the M25 Order) and refusing to leave the area of the M25 when asked to do so by a police constable (in breach of clause 2.8 of the M25 Order).

[Benjamin Buse, Christian Rowe, Diana Warner, Ruth Jarman and Sue Parfitt] wilfully breached the M25 Order in the morning of 29 October 2021 by blocking, endangering, slowing down, preventing, or obstructing the free flow of traffic onto or along or off the M25 for the purposes of protesting (in breach of clause 2.1 of the M25 Order), by entering onto the M25 Eastbound (clockwise) between junction 28 and 29 without a motor vehicle (in breach of clause 2.6 of the M25 Order) and refusing to leave the area of the M25 when asked to do so by a police constable (in breach of clause 2.8 of the M25 Order).”

Second protest on 29 October 2021 – junction 21A of the M25

17.

At about 10.30am on 29 October 2021 a second protest took place on the M25, this time in the vicinity of junction 21A. Paul Sheeky, Stephanie Aylett and Theresa Norton walked along the hard shoulder on the westbound carriageway. Aylett and Norton held an “Insulate Britain” banner between them. Sheeky walked behind them. They were stopped and arrested by police officers who had arrived on the scene. Ben Taylor was on the hard shoulder of the eastbound carriageway. He was standing next to another protestor who was holding an “Insulate Britain” sign. David Nixon (who was holding an “Insulate Britain” sign) and Indigo Rumbelow were standing nearby. When the police arrived they went and stood behind the crash barrier running alongside the hard shoulder. The police arrested the protestors on both carriageways. There was no obstruction of the live carriageway. Traffic was able to continue moving as normal.

18.

The allegations of contempt that are made in respect of this protest are that:

“[Ben Taylor, David Nixon and Indigo Rumbelow] wilfully breached the M25 Order in the morning of 29 October 2021 by endangering the free flow of traffic onto or along or off the M25 for the purposes of protesting (in breach of clause 2.1 of the M25 Order), by entering onto the M25 Eastbound (clockwise) between junction 21A and 22 without a motor vehicle (in breach of clause 2.6 of the M25 Order) and refusing to leave the area of the M25 when asked to do so by a police constable (in breach of clause 2.8 of the M25 Order).

[Paul Sheeky, Stephanie Aylett and Theresa Norton] wilfully breached the M25 Order in the morning of 29 October 2021 by endangering the free flow of traffic onto or along or off the M25 for the purposes of protesting (in breach of clause 2.1 of the M25 Order), by entering onto the M25 Westbound (anti-clockwise) between junction 21A and 22 without a motor vehicle (in breach of clause 2.6 of the M25 Order) and refusing to leave the area of the M25 when asked to do so by a police constable (in breach of clause 2.8 of the M25 Order).

Protest on 2 November 2021

19.

In relation to the various events of 29 October 2021 there is no issue but that the protestors in one or more respects breached the terms of the order made on 21 September 2021. The same does not apply in relation to the events of 2 November 2021.

20.

At about 7.45am on that day a group of protestors gathered close to the South Mimms roundabout. This roundabout provides a link between the M25 and the A1(M). It also gives access to the A1081 St Albans Road and to the South Mimms service area. Nicola Bell, who gave evidence on behalf of the claimant, suggested that the roundabout is part of the M25. We are satisfied that it is not. The road signage visible on video evidence makes it plain that the roundabout is not part of the M25. Mr David Elvin QC on behalf of the claimant acknowledges this fact. The definition of the M25 in the order does not expressly include a roundabout linking the M25 to other roads. In a later order made on 2 October 2021 by Holgate J in relation to other motorways and similar roads within the strategic road network, the words “including any roundabouts for access to and from the Roads” were included in the order. Mr Elvin submits that these words simply clarify what is implicit in the M25 order with which we are concerned. We disagree. This was a penal order. Had it been intended to include a roundabout of the type involved here, it could and should have said so explicitly.

21.

In any event, the police were alerted to the gathering of the protestors close to the roundabout. When police officers went to the roundabout, they saw Liam Norton on the pavement close to the carriageway. He was about to go onto the road when he was arrested by a police officer. Another police officer went to Arne Springorum and Jessica Causby who were close by and stopped them from going onto the carriageway of the roundabout. They were arrested. During the wait for the police van they asked if they could sit down. Springorum said that he was feeling weak. He and Causby did sit down. Springorum had a bottle of superglue. He spread glue on the pavement beside the carriageway. He and Causby stuck themselves to the pavement. It was over an hour before they could be moved. A short section of one lane of the carriageway on the roundabout was coned off whilst efforts were made to remove Springorum and Causby. It is apparent from the video evidence we have seen that this caused some congestion on the roundabout, in particular when traffic was emerging from the off-slip road from the M25 closest to the area which had been coned off.

22.

Nicola Bell produced an incident log relating to 2 November. It purported to describe the events on the roundabout. It referred to the closure of one lane of the off-slip road i.e. part of the M25. There is no evidence that there was any such closure. It described the incident as “pedestrians in the carriageway”. In fact, no pedestrian went onto the carriageway. The protestors were on the pavement throughout. Based on this incident log and information provided to her by an incident liaison officer, Nicola Bell stated that delays of 12 minutes and 2.1 miles of congestion resulted from the acts of the protestors. We are not, on the evidence that has been produced, satisfied to the requisite standard that those consequences were caused by anything relating to the protestors.

23.

Mr Elvin argues that the protestors slowed down or obstructed the free flow of traffic off the M25 for the purposes of protesting. He submits that, whilst the coning off by the police of a section of one lane of the roundabout may have been the immediate cause of congestion in that area and thereby onto the off-slip of the M25, the real cause was the activity of the protestors. There was a breach of clause 2.1 or, in the alternative, a breach of clause 2.9 of the order. The breach of clause 2.9 arose because the protestors, by their activity, caused the police to obstruct the free flow of traffic. We reject these

arguments. Nothing done by Springorum, Causby and Norton slowed down or obstructed the traffic. It may be that, had the police not arrived when they did, one or more of those protestors would have gone onto the carriageway and led to an obstruction of traffic on the off-slip of the M25. But they did not do so. Their presence on the pavement was of no consequence to the traffic flow. That is apparent from the video evidence. Any congestion was caused by the action of the police in placing cones onto the carriageway. That cannot have been something caught by clause 2.9. The police were not caused to do an act prohibited by clause 2.1. An act so prohibited has to be done “for the purposes of protesting”.

24.

For these reasons we are not satisfied that there was any breach of the order on 2 November 2021 by those named in these proceedings. The application to commit Arne Springorum, Jessica Causby and Liam Norton for contempt fails.

Breach of the order in respect of the 29 October protests

25.

In order to establish a contempt of court the claimant must make the court sure that the defendant: (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](#) and *Buse* at [23].

26.

The allegations of contempt of court in relation to those involved in the incidents on 29 October 2021 are supported by affidavit evidence and by video evidence. None of the defendants challenges any of that evidence. Each defendant has admitted the allegation of contempt of court that is made against them. We have, separately, considered whether the evidence establishes the allegations of contempt of court that are advanced. Having done so, we are sure that:

(1)

Benjamin Buse, Biff Whipster, Christian Rowe, Diana Warner, Ellie Litten, Gabriella Ditton, Ruth Jarman, Stephen Gower, Stephen Pritchard and Sue Parfitt each deliberately breached the order in the respects alleged (see paragraphs 14 and 15 above) on the morning of 29 October 2021 between junctions 28 and 29 of the M25.

(2)

Paul Sheeky, Stephanie Aylett, Theresa Norton, Ben Taylor, David Nixon and Indigo Rumbelow each deliberately breached the order in the respects alleged (see paragraph 17 above) on the morning of 29 October 2021 at junction 21A of the M25.

27.

In addressing us a number of the defendants complain about the use of a civil injunction to police their protest activities. It is argued that their actions were proportionate given the urgency of the threat posed by climate change. It is said that the proper course would have been to charge the protestors with a criminal offence. Had they been charged with wilful obstruction of a highway contrary to [Section 137 of the Highways Act 1980](#) they say that they would have been able to assert that their actions were a reasonable and proportionate exercise of their Convention rights under Article 10 and Article 11 and thereby avoid criminal liability: see *DPP v Ziegler* [\[2021\] UKSC 23](#) [\[2021\] 3 WLR 179](#). On an application for committal for contempt proportionality is not a live issue in determining whether there has been a breach of an order. Whilst proportionality is a matter to be considered when an order is made, the submission is that it is unrealistic to expect full consideration

to be given to that issue when (as here) the initial order was made without notice. One defendant argues that it is not a feasible proposition to challenge an order of the kind made here because of the cost involved in doing so. It is suggested that the applications for committal are politically motivated, the claimant having been directed by government to apply for the M25 order and thereafter to enforce it via contempt proceedings.

28.

The history of the protests involving obstruction of the highway is rehearsed in *Heyatawin*. It is unnecessary for us to repeat it. Where the body responsible for the strategic road network is aware of organised protests involving repeated obstruction of the highway, it is not a matter of criticism when that body seeks the assistance of the courts to prohibit such protests when they cause very significant inconvenience to members of the public. We do not consider that this demonstrates a political decision on the part of the highway authority whether a decision of its own making or a decision at the behest of others. We recognise the genuine concerns of these defendants and others associated with *Insulate Britain* in relation to what is and is not being done to meet the challenges of climate change. Equally, they must recognise that a High Court judge acting wholly independently made the M25 order after balancing the Convention rights of those involved with the activity of *Insulate Britain* against those of the general public. We are concerned only to enforce that order by such sanctions as we consider appropriate and proportionate. In doing so we maintain the rule of law.

Sanction for contempt of court

29.

There is no material dispute about the principles that apply. They are set out in *Heyatawin* at [49] and *Buse* at [27]-[31]. In both those cases the court found that custodial threshold was crossed in respect of each individual defendant. In respect of the question of whether committal to prison should be immediate, the court in *Buse* said at [29]:

“In relation to the issue of suspension where a contempt takes place in the course of a protest, that is a significant factor. Articles 10 and 11 of the European Convention on Human Rights are engaged. As was made clear in *Heyatawin* and others and *Cuadrilla* the conscientious motives of protestors are relevant. This is because most will not be conventional law breakers but motivated by a desire to improve matters, as they see it. A lesser sanction may be appropriate because the sanction can be seen as part of a dialogue with the defendant so that they may appreciate “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 activities are contrary to the protestor’s own moral convictions”. The reason for this duty is because it would not be possible to co-exist in a democratic society if individuals chose which laws they decided to obey.

...

A form of “bargain or mutual understanding” operates between protestors and the court: where the former exercise a sense of proportion (for example in avoiding excessive danger or inconvenience) then the court may take a “relatively benign approach”, see Lord Burnett CJ at paragraph 34 of *R v Roberts (Richard)* [2018] EWCA Crim 2739; [2019] 1 WLR 2577. These principles, from criminal cases, have been applied in cases involving sanctions for contempt of court, see *Cuadrilla* at paragraph 98, but it is very important to note that in cases for contempt of court the court has already balanced the rights of protestors and the rights of others in deciding whether to grant the injunction.”

Culpability

30.

Each defendant made a free and deliberate decision to breach the order, knowing that the consequence might be imprisonment. Each did so as part of a group activity. In each case their conduct was designed to cause significant disruption and inconvenience, targeting important national infrastructure during rush-hour on a weekday. Each defendant knew that their actions would require police attendance, diverting officers from other policing functions and potentially putting them at risk. The culpability of each defendant is akin to that of the defendants in Heyatawin at [54(a)] and Buse (at [32]-[34]).

Harm

31.

29 October junction 28-29: The westbound carriageway of the M25 was blocked by the protestors during a weekday morning rush-hour for a period of 40 minutes. There was no incursion into the eastbound carriageway, but the presence of the protestors on the verge meant that the police closed the carriageway as a precautionary measure. There was a significant impact on motorists. There was congestion for 3-4 miles in both directions. Average speeds were reduced to 3mph on the eastbound carriageway, and 27mph on the westbound carriageway. There was, we accept, the potential to cause a serious traffic incident.

32.

29 October junction 21A: The protestors remained on the hard-shoulder, and there was no incursion into the live carriageway. The protest lasted for around 25 minutes. The impact on motorists was minimal, aside from the distracting effect of the protest on fast moving traffic.

33.

General risk of harm: Aside from the specific identified harm in each case, the potential risks are obvious, as explained in Buse at [37]:

“The effect on those marooned in the traffic is not difficult to contemplate. There is a risk that emergency services will not be able to respond. This is so even though the defendants operated what they called a “blue light” policy, which was to move from one lane if they saw a blue light approaching. This does not deal with the emergency workers stuck in traffic on their way to work, or the emergency vehicles stuck at the back of the queue. Workers will be late for work. Drivers and passengers will be late for appointments or meetings. The time of every normal driver and passenger stuck on the roads was treated by the defendants as not counting enough to outweigh the protesters’ own view of how people should be alerted to their view. This might be considered to be the antithesis of the individual rights which are still to be provided to the nine defendants by this court. This is because it has never been the law that one wrongful action justifies another.”

Antecedents and totality

34.

Ben Taylor, Benjamin Buse, Biff Whipster, Diana Warner, Paul Sheeky, Ruth Jarman, Stephen Gower, Stephen Pritchard and Sue Parfitt have each previously been committed for contempt of court for similar conduct, and have been subject to orders of imprisonment (immediate in the case of Ben Taylor, discharged in the case of Benjamin Buse, and suspended in the remaining cases). Ben Taylor and Benjamin Buse took part in the protest on 8 October which was the subject of the first application for committal. That application was issued on 22 October 2021. Taylor and Buse were served personally with the application. Each was aware of the application when he took part in the protests

on 29 October 2021. This is a significant aggravating feature. It also raises a question of totality, that is the need to ensure that the overall penalty is proportionate to the seriousness of the contempt. There is no reason to take a different approach to totality from that which would be taken when sentencing for criminal offences. The Sentencing Council's overarching guidance on totality states:

"Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence."

Acceptance of breach at first reasonable opportunity

35.

Each defendant fully admitted in advance of the hearing that they had deliberately breached the order (although, as we have found in the cases of Liam Norton, Arne Springorum and Jessica Causby, the admissions were wrongly made). None of the defendants who now fall to be considered have ever sought to resile from those admissions. Up until the start of the hearing, none of them sought to disrupt the process and each had been co-operative. All attended court at the start of the hearing, and all made it clear at the start of the hearing that they admitted deliberately breaching the order.

36.

The claimant does not accept that the admissions were made at the first reasonable opportunity. Mr Elvin QC correctly points out that the admissions were made at various different stages. He relies on a letter from the claimant dated 8 October 2021 (when the order of Lavender J was served) in which admissions of contempt are invited. We do not consider there is any merit in that reliance. The letter pre-dated all of the contempts with which we are concerned. We accept the submission of Mr Greenhall that it is not possible to draw a precise link with the carefully calibrated scheme for the credit resulting from a guilty plea in criminal proceedings – see the Sentencing Council's overarching guidance on reduction in sentence for a guilty plea. In criminal cases, the defendant will typically have received legal advice at the police station, together with pre-interview disclosure. Here, there is no equivalent to the first hearing before a Magistrates' Court or a plea and trial preparation hearing. Moreover, as our decision on the 2 November 2021 protest shows, the question of whether a contempt has taken place is not always clear-cut, even where a defendant intended to breach the order. Each defendant was entitled to time to obtain legal advice. Each defendant is, we consider, entitled to a full one third reduction of the sanction on account of their admissions.

Individual circumstances of the defendants

37.

The defendants were, we accept, all motivated by a genuine and deep-seated concern about the lack of government action in response to the climate crisis. A number apologised for the disruption that their activities had caused, but they did not regret their actions and maintain what they consider is a highly principled stand: that although unlawful, their actions were justified by the emergency that faces the whole of humanity. They were proud of their actions, ashamed of the government, and they acted, they said, "out of love".

38.

The claimant drew our attention to public statements made by a number of the defendants as to their intention to continue to protest in order to influence a change in government policy. They have every right to do so. What they are not entitled to do is to breach court orders or commit criminal offences.

None of the public statements on which the claimant relies amounts to a direct threat to do either of those things, although some of the statements are more equivocal than others.

39.

In the course of these proceedings, none of the defendants evinced an intention to commit further breaches of the order, although again, some were more equivocal about their intentions than others, and (leaving aside Dr Warner) only in the case of Benjamin Buse was there a clear undertaking not to commit any further breach.

40.

Mr Greenhall, on behalf of Benjamin Buse, told us that everything he had said when he successfully purged his previous contempts of court applied equally to the contempt on 29 October 2021. He maintained the sincere apology that he had previously proffered to the court. His mother is elderly and unwell, and he is remorseful as to the impact that his imprisonment has had on both of his parents. He has made a determined decision to find different and lawful ways to persuade others of the importance of addressing climate change. That commitment is supported by character evidence adduced on his behalf.

41.

On behalf of Dr Diana Warner, Mr Greenhall told us that she is a medical doctor by training and has spent many years working for the NHS as a general practitioner. He relied on the observations in Buse as to a “dialogue” between the court and those who commit acts of protest in breach of a court order. He said that Dr Warner had now served the term of imprisonment that was imposed following the decision in Buse and that she now gave a sincere undertaking that she would not breach the order in the future. That, he said, was the start of the dialogue. He invited the court to respond by not imposing an immediate custodial order and instead suspending any order.

42.

Those submissions had force at the time they were made, on the first morning of the hearing. Dr Warner did not attend the hearing in the afternoon of the first day. Instead, she glued herself to the steps outside the Royal Courts of Justice. She did so in the knowledge of what the consequence would be. In Buse she had failed to attend the start of the hearing. A warrant was issued for her arrest and the resulting order for committal was not suspended (see at [8]-[9] and [54]). When Dr Warner was brought back before the court Mr Greenhall said that if an order for committal were suspended then she would comply with the terms.

43.

Ben Taylor is in custody as a result of the previous committal order. In mitigation he relied on the fact that before he became involved with the campaign to insulate homes he had not committed any offence. He explained that the conditions in custody are onerous as a result of the covid pandemic. He has to spend 23½ hours in his cell each day. His partner is pregnant and is due to give birth in approximately 6 months.

44.

Biff Whipster told us that (aside from his previous committal for contempt) he has never received so much as a speeding fine or a parking ticket. He was asked to stand as a local councillor. He focusses on living with a small carbon footprint. He lives a frugal life, undertakes volunteering activities, and is in receipt of universal credit.

45.

David Nixon has been a careworker for 10 years, working with young people. He regards that as part of his identity, and considers his acts of protest as an extension of his care work. He has left his job in order to pursue his commitment to campaigning in relation to the climate crisis.

46.

Gabriella Ditton told us that she did not regret her actions and could not express remorse, albeit she regretted the impact of her actions on others. She felt ashamed that she was not with the four defendants who had glued themselves to the steps outside the court building. Her mother is terminally ill and she was worried about not being able to spend time with her mother if she was sent to prison. She said that she had no plans to breach the order again, and that “none of us are malicious people, we are genuinely trying to do the right thing.”

47.

Indigo Rumbelow emphasised that her actions were peaceful, accountable and carefully planned. The police had been called in advance of the protest so that they could attend and ensure the safety of the public. She said that she would continue campaigning until there is a change in government policy. She was not sure what form that campaigning would take.

48.

Paul Sheeky considered that the Insulate Britain campaign was a proportionate protest to secure action on the climate emergency. The protest had originally been planned for 8am. At that point it was dark and wet. They delayed the start of the protest until the road conditions were safer. He had not decided what he would do, in terms of protest activity, in the coming months.

49.

Ruth Jarman said that she answered to a higher authority – “love and life”. She did not wish to be a bystander in the face of the climate emergency. She was sorry for the effect of the protests, but she did not regret breaching the order and could not make a promise not to do it again. She had no contempt for the court, but she did have contempt for “the system.”

50.

Stephanie Aylett described herself as a scientist, a mother and a sister. She had been brought up not to consume unnecessarily. She delivers food parcels to the homeless, is on universal credit, and sometimes relies on food donations herself. She explained that the police were called 10 minutes before starting the protest so that they could ensure safety.

51.

Stephen Gower is a volunteer advocate for the homeless. He has received a community award. He gave examples of cases where he had sought to procure help for others but public bodies had failed to act and “nothing was done”. He felt that there was nowhere else to turn other than “civil non violent direct action.”

52.

Sue Parfitt is an Anglican priest. She said that everything she had done was motivated by her Christian faith. She wished to bear witness to the truth of the science regarding the climate catastrophe and to respond to God’s command to stand up for the poor. She, and her fellow defendants, were “people of high principle willing to sacrifice liberty, if need be, for the sake of waking up the government to the insanity of the [failure to address the climate emergency].”

53.

Christian Rowe believed his actions were necessary and proportionate. He stressed that he acted peacefully at all times and that he was cooperative with the police. He said he was only trying to shine a light on the truth about climate change.

54.

Ellie Litten described herself as a programmer and “quite an ordinary sort of person.” She lives quietly in a flat. She said she was sorry for the “stress” she had caused, but was not able to apologise because she purposefully broke the injunction and decided not to attend the afternoon of the first day of the hearing. She said that insulating homes would significantly reduce the number of deaths each year that occur through fuel poverty. She said that she would keep protesting until things change.

55.

Stephen Pritchard said he was motivated by the selfless example of his parents who “modelled compassion”) and his grandfather. He had spent his adult life trying to make the world a better place. He had planted tens of thousands of trees and dug hundreds of wildlife ponds. He had tried writing to his MP to effect change, but without a positive response. He considered that the use of civil law was a politically motivated attempt to bypass the decision in Ziegler and to avoid a jury trial. He had breached the injunction 5 times in the past (more if one included occasions on which he had encouraged others to do so).

56.

Theresa Norton is an active member of the labour party and is an elected local councillor. She volunteers to help at the local food bank. She apologised to the people who were inconvenienced and disrupted by her actions, but she would do it again. She would continue to fight for climate and social justice. She was willing to serve a prisons sentence “in solidarity with those sentenced before me.” In mitigation, she told us that she is the primary carer for her 92-year-old mother (although she had put contingency arrangements in place), and she has council and volunteering commitments.

The appropriate sanction in each case

57.

We consider that the custody threshold is passed in relation to each individual defendant. In other words, having considered the possibility of imposing a fine, we have concluded that each contempt is so serious that only a custodial penalty will suffice. In each case we make a reduction to reflect the restrictive custodial regime that is continuing to operate in the light of the Covid-19 pandemic.

58.

In respect of those who entered the live carriageway on 29 October 2021 (Benjamin Buse, Christian Rowe, Diana Warner, Ruth Jarman and Sue Parfitt) we consider that the 2-month term that was imposed in Buse is, in principle, the shortest period of imprisonment which properly reflects the seriousness of the contempt and is proportionate, taking account of prison conditions and the admissions (3-months before allowing for the admissions).

59.

In the case of Benjamin Buse, the term falls to be adjusted to reflect the aggravating feature that the contempt was committed after service of earlier applications to commit for contempt of court. In the case of Benjamin Buse, Diana Warner, Ruth Jarman and Sue Parfitt a further adjustment falls to be made for totality. Taking these factors into account we consider that the appropriate term following a contested application would be 60 days in the cases of Benjamin Buse (so 40 days after reducing for

the early admission), and 45 days in the cases of Diana Warner, Ruth Jarman and Sue Parfitt (so 30 days after reducing for the early admissions).

60.

In the remaining cases there was no incursion into the live carriageway of the motorway. Although the level of harm caused was slightly different between the two protests (see paragraphs 31 and 32 above), is not possible to distinguish between the level of harm that was intended, and we do not consider it appropriate to draw a distinction in the sanctions to be imposed. We consider that the appropriate term in those cases is, in principle, 9 weeks, reduced to 6 weeks for the admissions. In Theresa Norton's case, in the light of her caring responsibilities, we consider that the appropriate term is 4 weeks.

61.

In the case of Ben Taylor there is the aggravating factor that the contempt was committed after service of the application to commit for the earlier contempt. In the cases of Ben Taylor, Biff Whipster, Paul Sheeky, Stephen Gower and Stephen Pritchard the terms fall to be adjusted to reflect totality. Taking those factors into account we consider that the appropriate term is 48 days in the case of Ben Taylor (reduced to 32 days for the admission), and 36 days in the cases of Biff Whipster, Paul Sheeky, Stephen Gower and Stephen Pritchard (reduced to 24 days for the admissions).

62.

This results in the following terms:

- (2) Ben Taylor: 32 days
- (3) Benjamin Buse: 40 days.
- (4) Biff Whipster: 24 days.
- (5) Christian Rowe: 60 days.
- (6) David Nixon: 42 days.
- (7) Diana Warner: 30 days.
- (8) Ellie Litten: 42 days.
- (9) Gabriella Ditton: 42 days.
- (10) Indigo Rumbelow: 42 days.
- (13) Paul Sheeky: 24 days.
- (14) Ruth Jarman: 30 days.
- (15) Stephanie Aylett: 42 days.
- (16) Stephen Gower: 24 days.
- (17) Stephen Pritchard: 24 days.
- (18) Sue Parfitt: 30 days.
- (19) Theresa Norton: 28 days.

63.

Ben Taylor is currently in custody. It does not seem to us to be right to impose a suspended order which in practice will only be effective after his release (see Buse at [55]). He will therefore be subject to an order for committal to custody for a term of 32 days, to run consecutively to the existing 6-month term.

64.

In the cases of Theresa Norton, Diana Warner, Ellie Litten and Stephen Pritchard their actions in gluing themselves to the pavement in front of the court building, rather than attending the hearing, shows that they are not prepared to engage in the dialogue referred to in the cases (see Buse at [54]). The orders for committal to custody in their cases will therefore take immediate effect.

65.

In the remaining cases, we consider that the reasons given in Buse for suspending the orders for committal apply. In particular, it remains the case that no further protests organised by Insulate Britain have taken place over the road network in breach of injunctions granted by the court. There is no evidence that further protests are imminent. None of the defendants have said that they have any intention to commit further breaches of the court's order. Mr Buse has gone further, and has apologised for the contempts of court, undertaken not to breach further court orders, and committed to finding other ways to demonstrate his sincere commitment to communicate to others the urgency of the climate crisis.

66.

Accordingly, we will suspend the orders we have made in each case (save that of Ben Taylor, Theresa Norton, Diana Warner, Ellie Litten and Stephen Pritchard) on terms. In each case we direct that the order for committal shall be suspended for 2 years so that the committal to prison shall not take effect so long as, during the next 2 years, the defendant does not take any of the steps that are forbidden by paragraphs 2.1-2.10 of the order of Lavender J dated 21 September 2021 (the "M25" for the purposes of those paragraphs, being defined in the same way as paragraph 1 of that order). This condition will apply whether or not the order of Lavender J remains in force.

Route of appeal

67.

The route of appeal is to the Supreme Court, with a requirement that leave to appeal is granted before an appeal may be pursued – see Buse at [58]-[62].