



National Highways Ltd v Heyatawin and others

Judges: Dame Victoria Sharp (President of the Queen's Bench Division)
and Mr Justice Chamberlain

Summary of the Court's judgment

Dame Victoria Sharp:

The full reasons for the judgment of the Court will be handed down and made available at www.judiciary.uk once I have read this summary.

ANA HEYATAWIN, BEN TAYLOR, BENJAMIN BUSE, EMMA SMART, JAMES THOMAS, LOUIS MCKECHNIE, OLIVER ROCK, ROMAN PALUCH-MACHNIK AND TIM SPEERS:

- 1 On the morning of 8 October 2021 each of you participated in a protest organised by Insulate Britain at Junction 25 of the M25 motorway. Each of you placed yourself in the highway with the aim and effect of obstructing the traffic exiting the motorway. Each of you remained there until forcibly removed by the police.
- 2 We are sure that when you did this you had all been served with the order of Mr Justice Lavender, that your actions were in breach of the order and that those actions were intentional. We are sure that your actions were in contempt of court in the ways alleged by the Claimant.
- 3 In considering the sanction to impose on each of you, we have considered both your culpability and the harm which your actions have caused.
- 4 As to culpability, this was not a case of inadvertent breach. It was, rather, a deliberate act of defiance to an order of the Court, albeit one which each of you undertook for conscientious reasons. There is no evidence that any of you was acting under pressure from anyone else. Rather, each of you decided freely and individually to breach the order.
- 5 As to harm, the protest took place on the slip road of a busy motorway at rush hour on a weekday. The protest affected and was intended to affect large numbers of ordinary members of the travelling public. The road was blocked from 8.35am (at the latest) until 9.55am. Traffic would have been heavy at that time as commuters were driving to work.
- 6 The blocking of a junction on a major motorway could be expected, and was intended, to cause serious inconvenience to a large number of people. It could also be expected to cause harm, because those held up might well include emergency vehicles and critical workers. Economic losses must have been caused to those who could not get to work

while the protest took place and to those who employ them. The protest also diverted police resources from other important tasks.

- 7 Although no injuries were in fact caused, there was an obvious risk of serious injury, not only to you but also to motorists, who might have to brake quickly or swerve to pass you at a location where pedestrians would not be expected. There was also a risk of injury to the police who would have to remove you.
- 8 The harm caused by your contempt of court also has another aspect, which is important in the circumstances of this case.
- 9 In a democratic society which recognises the right to freedom of peaceful assembly, protests causing some degree of inconvenience are to be expected and, up to a point, tolerated. But the words “up to a point” are important. Ordinary members of the public have rights too, including the right to use the highways. The public’s toleration of peaceful protest depends on an understanding that, in a society subject to the rule of law, the balance between your right to protest and the right of members of the public to use the highways is to be determined not by your say-so, but according to the law, as applied by independent and impartial courts.
- 10 In this case, the exercise of balancing your rights against those of the public had been performed by the High Court on 21 September 2021. The result was an order prohibiting you from carrying out your protests by blocking the M25. The order did not prevent you from protesting or expressing your views in other ways. A hearing had been set to consider whether the order should be continued or not.
- 11 You could have engaged with the Court by making submissions at the hearing which you knew was listed on 11 October. If you had been unsuccessful, you could have appealed. You chose not to do any of this, but rather to decide for yourselves what level of inconvenience and harm the public should have to put up with.
- 12 The harm caused by breach of the Court’s order therefore goes beyond the inconvenience and economic damage we have mentioned. By deliberately defying the M25 Order, you broke the social contract under which, in a democratic society, the public can properly be expected to tolerate peaceful protest. This was bound to give rise to frustration and anger.
- 13 We consider it clear that the custody threshold is passed. No lesser sanction than an order for imprisonment would adequately mark the gravity of your conduct or adequately deter you and others from breaching this and other associated orders.
- 14 In setting the length of the custodial term, we bear in mind that the contempt proved in this case involved only one, non-violent protest. None of you was acting for personal gain. Each of you was acting from conscientious motives and we have taken into account what you have told us about your personal circumstances.
- 15 Although your actions differed to some degree, the differences were not significant. Each of you deliberately flouted the Court’s order. Significant harm has been done. None of you has demonstrated any contrition or recognised the seriousness of deliberately breaching a Court order. Each of you continues to believe that your actions were justified.

We have seen nothing to indicate that you will not continue to protest in breach of the M25 Order or other similar orders; indeed what you have said to us makes it clear that you intend to continue to do so.

- 16 We have considered carefully whether the terms of imprisonment should be suspended. In the light of what has been said by you and on your behalf, suspension would be inappropriate given that you are intent on continuing to flout the Court's orders. The orders will therefore take effect immediately.
- 17 Ana Heyatawin, stand up. We have taken into account what you have told us about your medical conditions and the sanction we impose is an order for imprisonment for 3 months.
- 18 Ben Taylor, stand up. Your submissions to us were inflammatory. They were aptly described as a "call to arms". In your case, a greater sanction is required to deter you from further breaches. The sanction in your case will be an order for imprisonment for 6 months.
- 19 Benjamin Buse, stand up. In your case, the sanction we impose is an order for imprisonment for 4 months.
- 20 Emma Smart, stand up. In your case, the sanction we impose is an order for imprisonment for 4 months.
- 21 James Thomas, stand up. In your case, the sanction we impose is an order for imprisonment for 4 months.
- 22 Louis McKechnie, stand up. In your case we have taken into account your youth and the sanction we impose is an order for imprisonment for 3 months.
- 23 Oliver Rock, stand up. In your case, the sanction we impose is an order for imprisonment for 4 months.
- 24 Roman Paluch-Machnik, stand up. In your case, the sanction we impose is an order for imprisonment for 4 months.
- 25 Tim Speers, stand up. In your case, the sanction imposed is an order for imprisonment for 4 months.
- 26 In accordance with the law, each of you will be released after serving half of your term.