



Neutral Citation Number: [2021] EWHC 3078 (QB)

Case No: QB-2021-003576
QB-2021-003626
QB-2021-003737

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/11/2021

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION
MR JUSTICE CHAMBERLAIN

Between :

National Highways Limited

Claimant

-and-

- (1) Ana Heyatawin**
- (2) Ben Taylor**
- (3) Benjamin Buse**
- (4) Emma Smart**
- (5) James Thomas**
- (6) Louis McKechnie**
- (7) Oliver Rock**
- (8) Roman Paluch-Machnik**
- (9) Tim Speers**

Defendants

Myriam Stacey QC, Joel Semakula & Horatio Waller (instructed by **DLA Piper UK LLP**)
for the **Claimant**
Owen Greenhall (instructed by **Hodge Jones & Allen**) for the **Benjamin Buse**; the other
defendants appeared in person

Hearing dates: 16th & 17th November 2021

Approved Judgment

Dame Victoria Sharp P:

Introduction

- 1 The claimant, National Highways Limited, is the highway authority for the United Kingdom’s motorways and major ‘A’ roads, together known as the strategic road network. It is also the licence holder and owner of the land for the strategic road network. The nine defendants all took part in a protest organised by the campaign group Insulate Britain on the morning of 8 October 2021 at the Waltham Cross Interchange roundabout, at Junction 25 on the M25 motorway (the Protest). Insulate Britain aims to induce the government to take certain specific kinds of action to address the climate emergency and fuel poverty.
- 2 The claimant seeks an order that, by participating in the Protest, the nine defendants breached an injunction order granted by Lavender J on 21 September 2021 (the M25 Order) and are in contempt of court. The claimant invites us to commit the defendants to prison or to impose such other penalty as we consider appropriate.
- 3 This is the judgment of the court to which both members have contributed.

The M25 Order

- 4 The background to the making of the M25 Order was a series of protests organised by Insulate Britain that involved the obstruction of highways. The protests began on 13 September 2021 and continued for about nine weeks. The protests involved the creation of human roadblocks whereby people sat down on and glued themselves to the road in live lanes of traffic, wearing high visibility jackets and holding Insulate Britain banners.
- 5 On 16 September 2021 Insulate Britain asked police to slow traffic on the M25 to 20 mph as “supporters of the Insulate Britain campaign would be participating in acts of civil disobedience there”. This request was refused by Highways England. On 19 September 2021, the request was repeated as “campaign supporters will be on the M25 network on Monday 20 September from 7am and will continue indefinitely during the week unless the government makes a meaningful statement that they will look at starting the process of decarbonising the homes in Britain”.
- 6 The claimant applied for and obtained a number of injunction orders against persons whose identities were unknown at the time of the relevant applications but who were trespassing on the M25 and causing a nuisance there.
- 7 The first application concerned the M25 and associated slip roads. On 21 September 2021, Lavender J granted the M25 Order 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 purpose of protesting”. The M25 Order prohibited those to whom the injunction was addressed from:

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

2.2 Causing damage to the surface of 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.

2.3 Affixing themselves (“locking on”) to any other person or object on the M25.

2.4 Erecting any structure on the M25.

2.5 Tunnelling in the vicinity of the M25.

2.6 Entering onto the M25 unless in a motor vehicle.

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

2.8 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.

2.9 Causing, assisting or encouraging any other person to do any act prohibited by paragraphs 2.1-2.8 above.

2.10 Continuing any act prohibited by paragraphs 2.1-2.9 above.”

8 The M25 was defined in paragraph 1 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”.

9 The claimant undertook to identify and name defendants and to apply to add them to the M25 Order as soon as reasonably practicable.

10 The M25 Order had on its front page the usual penal notice. It reads as follows:

“IF YOU THE WITHIN NAMED DEFENDANTS OR ANY OF YOU DISOBEY THIS ORDER OR INSTRUCT OR ENCOURAGE OTHERS TO BREACH THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED”

11 It also contained a notice that “You are advised to consult a solicitor as soon as possible”.

12 Further injunction orders, in similar terms, were made in relation to other parts of the strategic road network, by Cavanagh J on 24 September 2021, Holgate J on 2 October 2021 and Linden J on 25 October. This application is not concerned with those orders.

Service of the M25 Order

13 On 1 October 2021, on the application of the claimant, May J ordered that a number of named defendants be joined to the proceedings. As a result of difficulties in serving the M25 Order, she dispensed with the requirement of personal service. The defendants to

this application were among those added as parties to the M25 Order at this stage. Alternative service was permitted by a combination of (i) service by email to Insulate Britain; and (ii) posting a copy through the letterbox of each Defendant, with a notice affixed to the front door if necessary, drawing attention to the fact that the package contained a court order.

- 14 There is no dispute that each of the defendants was properly served with the M25 Order. The affidavit of Victoria Davies-Short, for the claimant, establishes that the M25 Order was served on the defendants to this application either personally (in the case of Ben Taylor and Benjamin Buse) or in the case of the other defendants, by the alternative methods permitted by May J's Order on dates between 30 September and 4 October 2021. It was also sent to Insulate Britain by email on 24 September 2021.

Insulate Britain's reaction to the M25 Order

- 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.

Alleged breaches of the M25 Order by the defendants

- 19 On the morning of 8 October 2021, at 8.35am, police were alerted by construction workers that a large group of protestors were running on to the road at the Waltham Cross Interchange roundabout at Junction 25 on the M25. When they arrived they found a group of 15 to 20 protestors sitting or lying in the road wearing high visibility vests, some of whom were holding Insulate Britain banners. Both lanes of the carriageway leading from the M25 slip road to the roundabout were blocked. By the time the police arrived, there was a long line of traffic leading to the protestors' location.
- 20 Part of the evidence relied on by the claimant in support of this application is bodycam footage from the police officers who attended. The footage shows a somewhat chaotic scene with the defendants very close to traffic, and in some instances moving traffic, and the police attempting to restrain them from continuing with their protest and re-entering the road. The police cleared one lane relatively quickly, but not because the defendants complied willingly with efforts to remove them. Roman Paluch-Machnik tried to move into the oncoming traffic after being removed. Emma Smart and Ben Buse (who had glued themselves together) ran back into the road from the verge to which they had been removed. James Thomas was removed to the verge and then had to be removed and/or restrained from re-entering the road on two further occasions. The second lane was blocked until 9.55am because two of the defendants, Ben Taylor and Louis McKechnie, had managed to glue themselves to the road.
- 21 In paragraph 22 of the Statement of Case supporting this committal application, the claimant says this:

“The conduct of the Defendants is very serious and significant. The IB [Insulate Britain] Protests involve individuals placing their physical bodies in the way of oncoming traffic, potentially travelling at very high speed and continuing to do so in wilful defiance of the law and the orders of the Court. A direct consequence of the way in which those protests have been chosen to be carried out is:

(a) risk to life of protestors: as well as the obvious risk from the Defendants sitting or lying on a motorway road, the video footage of police officers shows a number of instances of protestors, having been removed from the road, rushing rapidly (in a bid to avoid police apprehension) back onto the road to continue protesting;

(b) risk to life of the emergency services;

(c) disruption to the SRN [strategic road network], including of emergency services vehicles, which are heavily reliant on the SRN: as is shown by the video footage, the protest that took place on Junction 25 made it impossible, while it was effective, for traffic to proceed;

(d) diversion of police resources from other responsibilities: again, the level of police manpower required to manage one protest is evident from police officers' video footage;

(e) economic damage and costs of policing and enforcement through disruption.”

- 22 Against that background, the following conduct said to constitute a deliberate breach of the M25 Order is alleged against each defendant:
- (a) Ana Heyatawin sat down on the road surface holding an Insulate Britain banner until removed by a police officer. This is said to breach paragraphs 2.1, 2.6 and 2.10;
 - (b) Ben Taylor sat down on and glued himself to the road surface holding an Insulate Britain banner. When police officers attempted to remove him from the road, he refused to be moved and was physically pulled from the road. This is said to breach paragraphs 2.1, 2.6 and 2.10;
 - (c) Benjamin Buse rushed on to the road glued to Emma Smart was removed by police officers. This is said to breach paragraphs 2.1, 2.6 and (insofar as he assisted the breaches of Emma Smart) 2.9;
 - (d) The equivalent allegation is made against Emma Smart;
 - (e) James Thomas twice entered the road and sat down on the road surface, each time being removed by a police officer. When police officers attempted to remove him, he lay down on the road. This is said to breach paragraphs 2.1, 2.6 and 2.10;
 - (f) Louis McKechnie sat down on and glued himself to the road surface holding an Insulate Britain banner. He was carried to the police van. This is said to breach paragraphs 2.1, 2.6 and 2.10;
 - (g) Oliver Rock sat or lay down on the road surface. This is said to breach paragraphs 2.1, 2.6 and 2.10;
 - (h) Roman Paluch-Machnik sat down on the road surface, refused to move when requested to do so, and made his body limp when a police officer attempted to remove him from the road. This is said breach paragraphs 2.1, 2.6 and 2.8;
 - (i) Tim Speers sat down on the road surface and refused to leave the area when requested to do so by a police officer. This is said to breach paragraphs 2.1, 2.6 and 2.8.

The committal application

- 23 This committal application was issued on 22 October 2021. At the hearing before us, it was accepted by or on behalf of the defendants that they had been properly served. We should nonetheless set out the steps taken to effect service.
- 24 Ana Heyatawin, Ben Taylor, Benjamin Buse, Emma Short and James Thomas were personally served with the application.
- 25 By 2 November 2021, the claimant had not been able to effect personal service on James Thomas, Louis McKechnie, Oliver Rock, Roman Paluch-Machnik and Tim Speers and on 3 November 2021 it applied for an order permitting service on these defendants by the alternative means identified in May J's order.

- 26 We granted that order on 8 November 2021. By that time, James Thomas had been served personally and Louis McKechnie, Oliver Rock, Roman Paluch-Machnik and Tim Speers had been served by leaving a copy of the order at their respective addresses and affixing a notice to their front doors. Pursuant to our order, the committal application was served by email on Insulate Britain on 8 November 2021. The papers were re-served on Louis McKechnie, Oliver Rock, Roman Paluch-Machnik and Tim Speers by the alternative means permitted by our order on 10 November 2021 in case our order did not operate retrospectively.
- 27 As to the defendants' knowledge of the M25 Order, it is not suggested by any defendant that they had not received it or did not understand its contents.
- 28 The claimant also refers to press releases on Insulate Britain's website on 2 and 3 November, which say that nine Insulate Britain supporters have been summoned to appear at the High Court for breach of the M25 Order, and to a video posted to Insulate Britain's Twitter account on 4 November which we have viewed. The video contains the following statements, parts of which were read to camera by Roman Paluch-Machnik, Ben Taylor, Emma Smart, Tim Speers, Oliver Rock and Louis McKechnie:

“On the 16th and 17th of November, we are going to be in Court and I will likely be imprisoned for essentially asking the Government to do its job to insulate Britain. I won't be there on the 20th, most likely, but we are calling for people to come out and challenge this injunction and challenge this Government who is trying to silence us and scare us off from talking about the right thing. We have such a small window: it is my responsibility, it is all of our responsibility who are able to do things and step up, which I feel, unfortunately, at this point in history is, like, necessary. I can't do any campaigning while I'm in there, so I ask you, anyone that is watching this video, if you can, please we need as many people to stand up to this fascist Government that is putting non-violent protestors in prison instead of just doing their job. And we need others to step up in this moment because it is what is required of us and on the 20th, show some solidarity, come to an action with us (or, what's left of us).”

- 29 The following text appears after the statement:

“Nine peaceful protestors face 2 years in prison for asking the Government to keep its own pledge on climate change. This affects us all. On 20th November we will come together in an act of mass civil resistance. Join us.”

Legal representation

- 30 The committal application included on its front page the following prominent notice, as required by CPR r. 81.4(2):

“You should take legal advice immediately with respect to this application.

(i) You have the right to be legally represented in these contempt proceedings.

(ii) You are entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test.

... (viii) If the Court is satisfied that you have committed a contempt, the court may punish you by a fine, imprisonment, confiscation of assets or other punishment under the law.”

- 31 As indicated in the notice, in contempt proceedings arising from breach of a court order, legal aid is available as of right (i.e. without any assessment of his means or of whether it is in the interests of justice for representation to be provided). Where the proceedings are in the High Court, the application must be made to the Legal Aid Agency: see *All England Lawn Tennis Club (Championships) Ltd v McKay* [2019] EWHC 3065 (QB), [2020] 1 WLR 216, [29]. In practice, such an application is made by a solicitor with the relevant legal aid contract. However, as the Court of Appeal pointed out in *Corrigan v Chelsea Football Club Ltd* [2019] EWCA Civ 1964, at [49], “a defendant can only benefit from legal representation if he is prepared to engage with legal representatives and the court”.
- 32 On 10 November 2021, the week prior to this hearing, a firm of solicitors, Hodge, Jones & Allen, served notice of acting for all nine defendants. At the hearing, Benjamin Buse was represented by counsel, Owen Greenhall; the other defendants had the benefit of legal advice but chose to speak on their own behalf.

The claimant’s submissions

- 33 It emerged at or shortly before the hearing that (subject only to one discrete matter: see [36] below) none of the defendants contested what the claimant said on liability, which was that each defendant had broken the terms of the order and had done so deliberately. Nonetheless, Miss Myriam Stacey QC for the claimant referred us to the evidence relied on by the claimant in this regard. This included the affidavits of a number of police officers who attended the scene, and who exhibited the bodycam footage they had taken. They were present at the hearing and available for cross-examination had the defendants wished to challenge their evidence; but none of the defendants did so.
- 34 The claimant further referred to a number of statements made by Insulate Britain on its website, which, it was submitted it was safe to infer, clearly reflected the position of the defendants. Although Mr Greenhall invited us to be cautious about this aspect of the evidence, none of the defendants dissociated themselves from Insulate Britain’s position or expressed any contrary view; and we are sure the claimant’s inference is a safe one to draw.
- 35 The statements include the following:

“[to Home Secretary] ...if you believe, as you say, that our acts are outrageous and illegal, and if you believe there is no right of necessity for citizens to cause disruption to prevent the infinitely greater threat of destruction to our economy and way of life, then you have a duty to act decisively. The offence of creating a public nuisance is already there to be used, you didn’t need an injunction. Take us to court, charge us, and put us in prison.” (22 September 2021)

“We are more scared of the destruction of our country than we are of breaking an injunction. There are times when we have to step up and do what is right.” (27 September 2021)

“Insulate Britain wishes to profoundly apologise for the disruption caused over the past three weeks. We cannot imagine undertaking such acts in normal circumstances. But we believe that the reality of our situation has to be faced... As soon as we have a meaningful statement we can trust, we will call off the campaign. That is all we ask. But, if our government believes that our acts are outrageous and illegal, that there is no right of necessity to cause disruption, to prevent the far greater destruction of our economy and way of life, then it has a duty to act decisively. Take us to court, charge us, and put us in prison. We are more fearful of the loss of our country than we are of the courts. Throw injunctions at us, but we are going nowhere, there is nowhere to go.” (5 October 2021)

- 36 Shortly after they were instructed, Hodge, Jones & Allen wrote to the claimant inviting it not to proceed with the allegations (made only against James Thomas and Tim Speers) of a breach of paragraph 2.8 of the M25 Order. They did so on the basis that, at a hearing last week in relation to a different claim arising out of the Insulate Britain protests, it was agreed that a provision identical to paragraph 2.8 should be modified in a different order. However, as Miss Stacey QC pointed out, rightly in our view, paragraph 2.8 was part of the M25 Order on 8 October 2021 and thus had to be complied with, and in any event, there had been no agreement to remove it from the order with which we are concerned, even prospectively.
- 37 So far as sanction is concerned. Miss Stacey QC referred us to a number of authorities including some of those to which we refer at [48] and following. In relation to this case, she emphasised the points adverted to in paragraph 22 of the claimant’s Statement of Case, viz. that the conduct of the defendants has had a number of serious consequences, including risk to the life of the protestors and emergency services personnel, disruption of the strategic road network (including of emergency services vehicles), diversion of police resources from other responsibilities, economic damage and policing costs. She referred too to the video of 4 November (see [28] above) and to news reports of a separate incident on 13 October 2021 in which the behaviour of Insulate Britain protestors led to breaches of the peace because of the anxiety and frustration of members of the public seeking to use the road those protestors had blocked. Her submission was that if the defendants are not sanctioned for breaches of the M25 Order, there is a real risk that they and other activists who support the Insulate Britain campaign will continue to engage in conduct, in breach of orders of the court, causing risk to life and continued disruption.

The defendants’ submissions

- 38 On behalf of Benjamin Buse, as we have indicated, Mr Greenhall did not dispute liability, nor the claimant’s summary of the legal principles relevant to sanction, as outlined in Miss Stacey QC’s skeleton argument and in her oral submissions. Mr Greenhall submitted that we should take into account Mr Buse’s admission of contempt. He accepted that it was open to the court to impose a custodial order, whether immediate or suspended, though such an order should only be imposed as a last resort and, if imposed, should be as short as possible. He pointed out that even deliberate breach of an order would engage Articles 10 and 11 ECHR if done in furtherance of a protest. He drew

attention to the limited nature of Mr Buse's actions. Mr Buse had sat in the road and remained there for about 10 minutes. When removed, he had gone back into the road before being removed again. After that he remained at the side of the road. As we have already said, Mr Greenhall urged caution in drawing inferences about the motivation of the individual defendants from the statements made by Insulate Britain, but said nothing about Mr Buse's own motivation, other than that his motives were conscientious.

- 39 We also listened carefully to the submissions of the unrepresented defendants. Although expressed in different language, they amounted to this. They were, without exception, proud of what they had done (protesting on the M25) and each was conscious of the fact that what he or she was doing was in breach of the order of the court. They spoke about their beliefs, the nature of the climate emergency and the paramount importance of taking steps to insulate homes. Each considered this aim to be more important than complying with court orders. Several of them described their actions as proportionate. Ben Taylor expressed himself in strong and defiant language. He described the injunction as counter-productive and irrelevant. He said if non-violent civil disobedience did not achieve the result that Insulate Britain wanted, things would turn violent. If he was not imprisoned he would go back out to block the motorway at the earliest opportunity and continue doing so until the Government acts.

The issues for the court

- 40 There are two issues: (a) has the claimant proved that the nine defendants are in contempt of court? (b) If so, what sanction should be imposed?

- 41 We consider these issues in turn.

Issue (a): Liability for contempt of court

- 42 In our democratic society, all citizens are equal under the law and all are subject to the law. It is integral to the rule of law, and to the fair and peaceful resolution of disputes, first, that orders made by the court must be obeyed, unless and until they are set aside or subject to successful challenge on appeal, and secondly, that a mechanism exists to enforce orders made by the court against those who breach them. In this jurisdiction, that mechanism is provided by the law of contempt.
- 43 In order to establish liability for contempt of court, an applicant to commit must prove each of the following elements to the criminal standard: (i) having received notice of the order, the defendant did an act prohibited by the order; (ii) he intended to do the act; (iii) he had knowledge of all the facts which would make the carrying out of the prohibited act a breach of the order. The act constituting the breach must be deliberate rather than merely inadvertent, but an intention to commit a breach is not necessary.
- 44 The defendants in this case were engaged in a protest when the breaches occurred. This has no relevance to liability in this instance, for the reasons recently explained by the Court of Appeal in *Cuciurean v Secretary of State for Transport* [2021] EWCA 357, a case in which the breaches were committed as part of a protest against the construction of the HS2 railway line. Applications to commit for contempt of court in protest cases engage the rights to freedom of expression and freedom of peaceful assembly protected under Articles 10 and 11 of the European Convention on Human Rights. However, where

the court has already conducted the necessary balancing process and granted an injunction, that order must be obeyed unless and until it has been set aside.

- 45 It follows that a person accused of contempt by disobedience to a court order may not seek to revisit the merits of the original injunction as a means of securing an acquittal. Thus, at the liability stage of a contempt application, the underlying merits of the matter to which the protest is directed are irrelevant, as is the fact that the case involves speech or protest or assembly. The essence of civil contempt is disobedience to a court order. It is not only the applicant but the court – and, we would add, the public – which has an interest in deterring disobedience to its orders and in upholding the rule of law. See *Cuciurean* at [9]-[11]; see also the same case at first instance: [2020] EWHC 2723 (Ch), at [9]-[20].
- 46 Returning to this case, in our judgment, the evidence establishes to the criminal standard that:
- (a) Each of the defendants did acts prohibited by the M25 Order, having received notice of that Order. We are satisfied that the Protest was on “the M25” as defined in the M25 Order and that each of the defendants breached the Order in the ways alleged by the claimant as set out above;
 - (b) Each of the defendants intended to do the relevant acts;
 - (c) Each of the defendants had knowledge of the facts which would make the carrying out of the relevant acts a breach of the M25 Order.

47 It follows that we find each of the defendants in contempt of court in the respects alleged.

Issue (b): Sanction

48 There is no tariff for sanctions for contempt of court, because every case depends on its own facts: *Longhurst Homes Ltd v Killen* [2008] EWCA Civ 402, [14] (Hughes LJ). The sanction for contempt of court “has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed”: *JSC BTA Bank v Solodchecenko* [2011] EWCA Civ 1241, [2012] 1 WLR 350, at [45]. As Jackson LJ said there, in some cases the sanction provides an incentive for belated compliance, because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question. But this latter point has no purchase on the facts of this case having regard to what has been said by and on behalf of the defendants.

49 The key general principles are as follows:

- (a) The court has a broad discretion when considering the nature and length of any penalty for civil contempt. It may impose: (i) an immediate or suspended custodial sentence; (ii) an unlimited fine; or (iii) an order for sequestration of assets;
- (b) The discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely (i) punishment for breach; (ii) ensuring future compliance with the court’s orders; and (iii) rehabilitation of the contemnor;

- (c) The first step in the analysis is to consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order;
- (d) The court should consider all the circumstances, including but not limited to: (i) whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy; (ii) the extent to which the contemnor has acted under pressure; (iii) whether the breach of the order was deliberate or unintentional; (iv) the degree of culpability; (v) whether the contemnor was placed in breach by reason of the conduct of others; (vi) whether he appreciated the seriousness of the breach; (vii) whether the contemnor has cooperated, for example by providing information; (viii) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; (ix) whether a sincere apology has been given; (x) the contemnor's previous good character and antecedents; and (xi) any other personal mitigation;
- (e) Imprisonment is the most serious sanction and can only be imposed where the custody threshold is passed. It is likely to be appropriate where there has been serious contumacious flouting of an order of the court;
- (f) The maximum sentence is 2 years' imprisonment: s. 14(1) of the Contempt of Court Act 1981. A person committed to prison for contempt is entitled to unconditional release after serving one half of the term for which he was committed: s. 258(2) of the Criminal Justice Act 2003;
- (g) Any term of imprisonment should be as short as possible but commensurate with the gravity of the events and the need to achieve the objectives of the court's jurisdiction;
- (h) A sentence of imprisonment may be suspended on any terms which seem appropriate to the court.

See materially *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9, [2020] 4 WLR 29 and the judgments in *Cuciurean* at first instance and on appeal, which provide guidance as to the application of these principles when the contempts arise in the context of protests.

- 50 *Cuadrilla* says that the conscientious motives of the protestors are relevant, and there may be cases where the contemnor is a law-abiding citizen (apart from their protest activities). In such cases, a lesser sanction may be appropriate because the sanction can be seen as part of 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 activities are contrary to the protestor's own moral convictions". This is one reason why an order for imprisonment is sometimes suspended: *Cuadrilla*, [98]-[99]; *Cuciurean (CA)*, [18(2)].
- 51 The classic exposition of why and how conscientious motives are relevant is to be found in the speech of Lord Hoffmann in *R v Jones (Margaret)* [2006] UKHL 16, [2007] 1 AC 136, at [89]:

“...civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account.”

- 52 Those observations were cited by Lord Burnett of Malden CJ in *R v Roberts* [2018] EWCA Crim 2739, at [33]. In that case, the defendants had expressed remorse for their actions and good intent for the future, and in those circumstances, the Court of Appeal accepted that the custody threshold was not crossed and a community sentence with a punitive element would have met the justice of the case.
- 53 In some contempt cases, there may be scope for the court to temper the sanction imposed because there is a realistic prospect that this will deter further law-breaking or, to put it another way, encourage contemnors to engage in the dialogue described in *Cuadrilla* with a view to mending their ways or purging their contempt. However, it is always necessary to consider whether there is such a prospect on the facts of the case. In some cases, there will be. In some cases, not. Moreover, it is important to add, that “there is no principle which justifies treating the conscientious motives of the protestor as a licence to flout court orders with impunity”: *Attorney General v Crossland* [2021] UKSC 15, at [47].
- 54 In our judgment, the material features of the present cases are as follows. Insofar as these features depend on factual findings, we make those findings applying the criminal standard to the evidence before us:
- (a) As to culpability, the affidavit evidence and body worn footage make clear that each of the defendants was protesting under the banner of Insulate Britain. The statements on Insulate Britain’s website show that Insulate Britain knew of the M25 Order and loudly proclaimed its intention to breach it. All this emerges from the evidence of the claimant and in any event was expressly acknowledged in the submissions made to us by and on behalf of the defendants. We are sure that each defendant was served with the M25 Order before 8 October 2021, and was fully aware that his or her actions on 8 October 2021 would be in breach of it. This was not a case of inadvertent breach. It was, rather, a deliberate and flagrant act of defiance to an order of the court, albeit one which each defendant undertook for conscientious reasons. There is no evidence and no suggestion that any defendant was acting under pressure from anyone else. Rather, each decided freely and individually to breach the order.
 - (b) As far as harm is concerned, it is important to focus on both the harm actually caused *and* the harm intended or likely to be caused by the breach. In both respects, the location of the breach and the nature and number of people who would

foreseeably be affected by it are critical. Unlike the events the court had to consider in *Cuadrilla* and *Cuciurean*, this was not a protest directed at a specific activity taking place on private land. It was a protest 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. In other words, harm was not the by-product of the protest; its very objective was to cause harm and disruption to as many ordinary members of the public as possible to bring attention to the cause the defendants advocated.

- (c) At least one lane of 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. 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. The harm caused was likely to go beyond mere inconvenience, because those held up might well include emergency vehicles and critical workers.
- (d) We note that it was said on behalf of Mr Buse, no doubt on his instructions, that there was a “blue light policy” under which the protestors made sure that could move out of the way of emergency vehicles with blue lights on, by gluing themselves only to one lane. There was no evidence of this however. All that has been said in Insulate Britain press releases is that their policy is “to move out of the way for emergency vehicles with ‘blue lights’ on”. In any event this, does not address the gravamen of the likely harm. Emergency vehicles may simply be stuck in stationary traffic a long way off, as may medical and other critical workers travelling to work in vehicles which do not have blue lights.
- (e) 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.
- (f) Although no injuries were caused, there was an obvious risk of serious injury, not only to the protestors themselves but also to motorists, who might have to brake quickly or swerve to pass the protestors at a location where pedestrians would not be expected. There was also a risk of injury to the police who would have to remove them.

55 There is an additional important feature of this case.

56 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 the protestors’ right to protest and the right of members of the public to use the highways is to be determined not by the say-so of the protestors, but according to the law, as applied in the circumstances of the particular case by independent and impartial courts.

57 In this case, the exercise of balancing the protestors’ rights against those of the public had been performed by the High Court on 21 September 2021. The result was an order prohibiting the defendants from carrying out their protests by blocking the M25. The

order did not prevent them from protesting or expressing their views in other ways. A hearing had been set to consider whether the order should be continued or not. The defendants could have engaged with the court's process by making submissions at the hearing which they knew was listed on 11 October. If they had been unsuccessful, they could have appealed. They chose not to do any of this, but rather to decide for themselves what level of inconvenience and harm the public should have to put up with. Members of the public held up by the Protest on 8 October would also have known about the M25 Order, since it was widely publicised. They would have known that the protestors were now going beyond what an impartial court considered reasonable and had decided to inconvenience and harm others based on their own view of what was justified.

- 58 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, these defendants 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, which carried with it the prospect that the defendants' own safety and the safety of others would be put at risk; and that members of the community might take the law into their own hands in trying to deal with the disruption the protest had caused. We consider this a proper inference to draw from all the evidence we have seen, including the proximity of the protestors to heavy traffic at a busy time of day before the police arrived and the attempts of some of the defendants to go back into the road when traffic started flowing again.
- 59 Having regard to the culpability and harm caused by the defendants' actions, we consider the custody threshold is passed. We have considered whether any other penalty would suffice. However, in our judgment, no lesser sanction than an order for imprisonment would adequately mark the gravity of the defendants' conduct or adequately deter them and others from breaching this and other associated orders.
- 60 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 the defendants was acting for personal gain. We accept that each of them was acting from conscientious motives. The defendants had the opportunity, if they wished to do so, to provide us with information about their personal circumstances. The information which was forthcoming was limited. We have read character references for four of the defendants: Ms Heyatawin, Mr Buse, Ms Smart and Mr Paluch-Machnik. We have taken these into account. Ms Heyatawin also told us that she suffered from a number of medical conditions, and she outlined the difficulties she would face if an order for imprisonment were imposed. She did not rely on any medical evidence.
- 61 We have considered the circumstances of each defendant individually, taking into account (i) the actions of each on 8 October; (ii) the personal circumstances insofar as we were told of them; and (iii) what was said by or on behalf of each defendant.
- 62 Though the actions of the individual defendants differed to some degree, these differences are not such as to justify a fundamentally different approach to sanction. Each of the defendants deliberately flouted the court's order. They did so in the context of the wider picture we have described. The sanctions we impose, however, are – it should be emphasised – relate to only one of the many incidents in which protestors have engaged under the Insulate Britain banner. Nonetheless, as we have said, significant harm has been done. Importantly, none of the defendants has demonstrated any contrition or

understanding of the seriousness of deliberately breaching a court order. Each continues to believe that his or her actions were justified. We have seen nothing to indicate that the defendants will not continue to protest in breach of the M25 Order or other similar orders. Everything that has been said by or on behalf of the defendants suggests the contrary. In those circumstances, the least sanction we can impose commensurate with the gravity of the defendants' conduct is an order for imprisonment.

- 63 The defendants, or some of them, seem to want to be martyrs for their cause, and the media campaign surrounding this hearing appears designed to suggest this. We, however, have to act dispassionately and proportionately. The term of imprisonment in each case, apart from those of Ana Heyatawin, Louis McKechnie and Ben Taylor, will be 4 months. In Ana Heyatawin's case, we are persuaded that some discount should be applied given having regard the medical conditions from which she told us she suffers. In her case, the sanction will be an order for imprisonment for 3 months. Louis McKechnie is 21 today. His youth is a factor which we consider should be reflected in the sanction imposed. In his case, the sanction will be an order for imprisonment for 3 months.
- 64 In Mr Taylor's case, different considerations apply. His submissions to us were described by Miss Stacey, aptly in our view, as a "call to arms". We would regard them as inflammatory. Such submissions do not on their own supply a principled reason for increasing the length of a custodial sanction, but they are relevant to the court's judgment as to the length of sanction necessary to deter Mr Taylor from committing further breaches. In his case, the sanction necessary to achieve this purpose is an order for imprisonment for 6 months.
- 65 We have considered with care whether the terms of imprisonment should be suspended. But for that to be appropriate it would have been necessary for the contemnors to show remorse and good intent for the future. On the facts of this case, in the absence of an expressed intention to comply with the M25 Order and other associated orders in the future (or any other reasonable basis for concluding that the defendants intend to comply), we do not consider that it would be right to suspend the orders for imprisonment.

Conclusion

- 66 We find that the defendants breached the M25 Order by doing the acts set out in paragraph 25 above, in the respects alleged and, accordingly, each defendant is in contempt of court. In Ana Heyatawin's and Louis McKechnie's cases, the sanction is an order for immediate imprisonment for 3 months. In Ben Taylor's case, the sanction is an order for immediate imprisonment for 6 months. In the case of the other defendants, the sanction is an order for immediate imprisonment for 4 months. In accordance with the law, each defendant will be entitled to release after serving half of that term.