Neutral Citation Number: [2022] EWHC 2458 (KB)

Case No: QB-2022-001236

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

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

Monday, 12 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) STEPHANIE AYLETT
(2) CALLUM GOODE
(3) JOHN JORDAN

Defendants

MS C CROCOMBE appeared on behalf of the Claimant
MR FRASER appeared on behalf of the Defendants (1) and (2)
MR JORDAN appeared in person

Trial dates: 6th, 7th and 12th September 2022

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

JUDGE KELLY:

APPROVED JUDGMENT ON LIABILITY

1. This is an extempore judgment following the trial of an application by the claimant, North Warwickshire Borough Council, to commit Stephanie Aylett, Callum Goode and John Jordan for contempt of the court.

2. The claimant is represented by Ms Crocombe of counsel. The first and second defendants, Stephanie Aylett and Callum Goode, are represented by Mr Fraser of counsel. On the first day of the trial, the third defendant, John Jordan, was also represented by Mr Fraser however Mr Jordan dispensed with Mr Fraser's services on the second morning of trial. By that stage, all the evidence had been heard bar that of Mr Jordan. Mr Jordan has thereafter conducted his own advocacy but retains solicitors on record. I note his solicitor is present in court today.

3. I have received a helpful skeleton argument from counsel for the first and second defendants and copy authorities from both counsel.

Background

4. Kingsbury Oil Terminal is a large inland oil terminal located near Tamworth in Warwickshire. In the Spring of 2022, various protests against the production and use of fossil fuels took place at and in the vicinity of the terminal. That led to the claimant applying for an interim injunction to protect the site.

5. On 14 April 2022, Sweeting J granted an interim without-notice injunction against various named defendants and Persons Unknown. The sixth named defendant to the substantive proceedings was a John Jordan, albeit there is some uncertainty as to whether that John Jordan is the same John Jordan that appears before the court today. It matters not given the definition of Persons Unknown as those "who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels in the locality of the site known as Kingsbury Oil Terminal, Tamworth B78 2HA."

6. On 5 May 2022, an on-notice hearing took place before Sweeting J. Some of the named defendants were represented although none of the defendants before the court today were at or represented at that hearing. Sweeting J amended clause 1(a) of the interim injunction and reserved judgment as to the remainder of the issues raised at that hearing. The reserved judgment has not yet been handed down.

7. The variation to the interim injunction was incorporated into an order dated 6 May 2022. For the purposes of this judgment, I will refer to the order of 6 May 2022 as "the injunction." The injunction has a penal notice attached in a standard form wording. By paragraph 1(a) of the injunction:

> "The defendants shall not (whether by themselves or by instructing, encouraging or allowing any other person):
> "(a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels, at Kingsbury Oil Terminal (the Terminal), taking place within the areas the boundaries of which are edged in red on the map attached to this Order at Schedule 1."

8. The plan at Schedule 1 is drawn to a scale of 1 to 5,000. The edging in red largely follows the perimeter boundary of the areas known as Kingsbury Oil Terminal. The original without-notice interim order of 14 April 2022 also had a plan attached at Schedule 1 but it was at a scale of 1 to 10,000, and therefore a larger geographical area was depicted on the page.

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

> "The defendants shall not (whether by themselves or by instructing, encouraging or allowing any other person):
> "(b) in connection with any such protest anywhere in the locality of the Terminal perform any of the following acts..."

10. There then follows a series of 11 subparagraphs defining specified prohibited activities. Of those relevant to these proceedings:

    a. At paragraph (ix): "digging any holes in or tunnelling under (or using or occupying existing tunnels under) land including roads."

    b. At paragraph (xi): "instructing, assisting, encouraging or allowing any other person to do any act prohibited by paragraphs (b)(i) to (x) of this order."

11. The word "locality" is not defined within the body of the injunction.

12. Paragraph 2 of the injunction attaches a power of arrest to paragraphs 1(a) and 1(b) aforementioned, pursuant to s.27 of the Police and Justice Act 2006. Paragraph 3 provides:

> "This order and power of arrest shall continue until the hearing of the claim unless previously varied or discharged by further order of the court."

13. By paragraph 5 of the injunction, the judge gave permission for the claimant to serve the claim form, supporting documents, the order and power of arrest by alternative methods specified at schedule 2 to the order. Reservice of the claim form and supporting documents were dispensed with but not service of the injunction and power of arrest. Paragraph 1 of schedule 2 to the injunction details the alternative service methods:

> "Service of the claim form and this order shall be effected by
> (i) placing signs informing people of
> (a) this claim,
> (b) this order and power of arrest, and the area in which they have effect and
> (c) where they can obtain copies of the claim form, order and power of arrest and the supporting documents used to obtain this order
> in prominent locations along the boundary of the buffer zone referred to at paragraph 1 of this order and particularly outside the terminal and at the junctions of roads leading into the zone,
>
> (ii) placing a copy prominently at the entrances to the Terminal;
>
> (iii) posting a copy of the documents referred to at para. 1(i)(c) above order on its website, and publicising it using the claimant's Facebook page and Twitter accounts, and posting it on other relevant social media sites including local police social media accounts,
>
> and/or
>
> (iv) any other like manner as the claimant may decide to use in order to bring the claim form and this order and power of arrest to the attention of the defendants and other persons likely to be affected."

14. It is not in dispute that on 24 August 2022 the defendants were arrested for criminal matters on exiting a tunnel they had been occupying. The tunnel had been dug alongside and partly under Piccadilly Way in Kingsbury, Warwickshire. Piccadilly Way is a public highway to the south of Kingsbury Oil Terminal. The defendants were taken to Nuneaton police station. Later in the day on 24 August, the police exercised the power of arrest attached to the injunction and arrested each for alleged breach. On 25 August 2022 the defendants were produced before this court and the case adjourned for the defendants to obtain legal representation. Each of them was bailed. At that first hearing on 25 August, the claimant provided each the defendant with written particulars of the alleged contempt together with details of their rights as summarised in CPR 81.4(2).

Particulars of Alleged Contempt

15. I turn to those written allegations of contempt. The claimant's schedule of allegations reads as follows:

> "1. On 24 August 2022, the defendants dug and occupied a hole roughly 5 and a half feet in depth and running alongside and under Piccadilly Way ("the hole"). For the safety of the public and defendants, Warwickshire Police closed the road.
> "2. At 16:42 Clive Tobin, the claimant's Head of Legal Services, attended the hole and personally served two copies of the claim form, supporting evidence, the order of Mr Justice Sweeting dated 6 May 2022 and accompanying power of arrest on the defendants.
> "3. At 19:00 the defendants decided to leave the tunnel but they failed to do so until 21:25.
> "4. By virtue of the action detailed at paragraphs 1 to 3 above, the defendants breached the injunction dated 14 April 2022 as amended and extended by order of Sweeting J dated 6 May 2022 ("the injunction") by committing the following acts within the locality of the terminal and in connection with the protest against the production or uses fossil fuels:
>
> 4.1. Digging a hole in, and tunnelling under, land contrary to paragraph 1(b)(ix),
> "4.2. Occupying a hole in, and tunnelling under, land contrary to paragraph 1(b)(ix),
> "4.3. Instructing, assisting, or encouraging each other to do the aforementioned acts prohibited by the injunction contrary to paragraph 1(b)(xi)."

The issues

16. The defendants put the claimant to proof on all aspects of its case. Each defendants' case falls to be considered separately on the evidence. The following issues require consideration:

1. Can the claimant prove that a given defendant was served with the injunction?
2. On the proper interpretation of the injunction, what conduct is prohibited by clauses 1(b)(ix) and 1(b)(xi)?
3. Did a given defendant dig and/or occupy a hole running alongside and under Piccadilly Way?
4. Did a given defendant's actions occur in the locality of the terminal?
5. Were a given defendant's actions in connection with a protest against the production or use of fossil fuels?

The parties' positions

17. The claimant's position is as follows.:
    a. The defendants were validly served with the injunction when Mr Clive Tobin effected personal service at 16:42 on 24 August 2022. In the alternative, the claimant relies on clause 1(iv) of schedule 2 of the injunction, which permitted service by any other like manner as the claimant may decide to use.
    b. On a proper construction of paragraph 1(b) of the injunction, there is no requirement that relevant protest activity be taking place within the boundary of the terminal edged in red before any liability under paragraph 1(b) can arise.
    c. All the defendants dug and occupied a hole in connection with a protest against the production or use of fossil fuels.
    d. On a proper construction of paragraph 1(b), the locality extends to the location of the tunnel occupied by the defendants and is not referable to a smaller geographical area depicted on the plan at schedule 1 to the injunction.

18. The defendants' position is as follows:
    a. The first and second defendants were not personally served with the injunction so as to be bound by it. The third defendant puts the claimant to proof as to personal service.
    b. It is not open for the claimants to rely on paragraph 1(iv) of schedule 2 to satisfy the court as to alternative service when they failed to avail themselves as to the other provisions as to alternative service at paragraphs 1(i) to 1(iii) of schedule 2.
    c. Paragraph 1(b) of the injunction is reasonably susceptible to at least two different meanings and, as such, the meaning more favourable to the defendants should be adopted. The two different interpretations contended for by the defendants are as follows.
        i. Firstly, a person will be in breach if they perform any of the acts at 1(b)(i) to (xi) in connection with a protest in the locality of the terminal.
        ii. Alternatively, a person will only be in breach if a protest is taking place within the areas the boundaries of which are edged in red on the map, and a person, in connection with that protest within the boundary, engages in an act prohibited by (b)(i) to (b)(xi) anywhere in the locality.
    d. The meaning of the word "locality" does not extend to the location of the tunnel.

19. The defendants put the claimant to proof generally as to their actions on 24 August. The third defendant acting in person adopts the submissions of law made by Mr Fraser on behalf of the co-defendants.

The legal principles

20. These are contempt proceedings and, as such, the burden of proof rests upon the claimant to prove the alleged breaches to the criminal standard, namely beyond reasonable doubt. In other words, the court must be sure.

21. A useful summary as to the requirements of service in the context of contempt proceedings is found in Arlidge, Eady & Smith on Contempt (5th edition) at paragraph 12-41:

> "It is also necessary where committal is sought to establish service of any order which is alleged to have been disobeyed by leaving a copy with the person to be served. The importance of personal service of the order is to enable the person bound by the order, and who is alleged to be in contempt, to know what conduct would amount to a breach and such notice is required to be proved beyond reasonable doubt. It seems, however, it is no excuse that a party who has been served with the relevant document failed to read it…In an appropriate case, the court may dispense with personal service altogether and grant permission for service to be effected by one or other of these means."

22. The notion of what amounts to personal service was considered in *Tseitline v Mikhelson* [2015] EWHC 3065 by Phillips J who, at paragraph 14 of the judgment, referred to *Kenneth Allison v AE Limehouse & Co* [1992] 2 AC 105, where:

> " 14.... the House of Lords considered what was meant by 'leaving a document with the person to be served', being the equivalent (and effectively identical) requirement for personal service in the former RSC (Order 65 r 2). Lord Bridge of Harwich stated, at p. 113E:
>
> > '"There is abundant authority for the proposition that personal service requires that the document be handed to the person to be served or, if he will not accept it, that he be told what the document contains and the document be left with or near him.'
>
> 15. At paragraph 124C Lord Goff of Chieveley stated as follows:
>
> > '"Prime facie, the process server must hand the relevant document to the person upon whom it has to be served. The only concession to practicality is that, if that person will not accept the document, the process server may tell him what the document contains and leave it with him or near him.'"

23. Phillips J continued at paragraph 34:

> "In my judgment it is plain from these authorities (and from the special nature and role of personal service discussed above) that the process of leaving a document with the intended recipient must result in them acquiring knowledge that it is a legal requirement which requires their attention in connection with proceedings. Whilst this is expressed as requiring that the intended recipient be 'told' the nature of the document, the focus is on the knowledge of the recipient, not the process by which it is acquired. Whilst in most cases knowledge of the nature of the document will be found to have been imparted by a simple explanation, it is clear that it can … also readily be inferred from pre-existing knowledge, prior dealings or from conduct at the time of or after service, including conduct in evading service: see *Barclays Bank of Switzerland v Hahn* [1989] 1 WLR 506 at 512A."

24. The law relating to personal service of a claim form was considered by HHJ Pearce in *Gorbachev v Guriev* [2019] EWHC 2684 at paragraph 27:

> "The relevant law on the personal service of a claim form can be summarised as follows.
> (i) CPR 6.3(1) provides for service of a claim form by various means, including 'personal service in accordance with rule 6.5.'
> (ii) CPR 6.5(3) provides that 'a claim form is served personally on an individual by leaving it with that individual ... '
> (iii) Service on an agent would not be good personal service -- see for example *Morby v Gate Gourmet Luxembourg IV Sarl* [2016] EWHC 74.
> (iv) In what has been described as a 'concession to practicality', if the person upon whom service is being attempted will not accept the document, service can be effected either by handing the document to the person (what is often called a 'limb 1' case) or by telling the person who the document contains and leaving the document with or near the person (a 'limb 2' case) -- see *Kenneth Allison Limited v AE Limehouse & Co* [1991] 3 WLR 671.
> (v) Knowledge of what the documents contain for this purpose is acquired by it being brought to the intended recipient's attention 'that it is a legal document which requires his attention in connection with proceedings' -- see Hoffmann LJ in *Walters v Whitelock*, unreported, 19 August 1994, cited by Phillips J in *Tsietline v Mikhelson* [2015] EWHC 3065 (Comm).
> (vi) 'The focus is on the knowledge of the recipient, not the process by which it is acquired' -- per Phillips J in *Tseitline*.
> (vii) Once the intended recipient has 'a sufficient degree of possession of the document to exercise dominion over it for any period of time however brief, the document has been "left with him" in the sense intended by the Rule' -- see Waite LJ in *Nottingham Building Society v Peter Bennet & Co*, The Times, 26 February 1997 cited by Phillips J in *Tsietline.*

(viii) If the intended recipient has gained possession within the meaning referred to in the previous subparagraph, it makes no difference that the person seeking to effect service may subsequently remove the document, for example because the intended recipient has not taken the document and has walked away from them - see Phillips J in *Tseitline*.
(ix) The burden is on the claimant to show a good arguable case that service was effected on the defendant – see for example in *Tseitline.*
(x) Where an issue of fact arises as to whether there is such a good arguable case, the court must take a view on the evidence if it can reliably do so (*Goldman Sachs International v Novo Banco SA* [2018] UKSC 34).
(xi) If the court is not able to make a reliable assessment of an issue on the evidence available, it is sufficient for the claimant to show a plausible evidential basis on the issue ... "

25. *Gorbachev v Guriev* involved the service of a claim form. In the context of service of an injunction for the purposes of a contempt application, rather than service of a claim form, I remind myself that the claimant must prove service to the criminal standard of proof.

26. The parties agree that the applicable principles in a contempt application were summarised by Males J, as he then was, in *Sheffield City Council v Teal* [2017] EWHC 2692:

> "… 1. The burden of proof is on the council to show the defendants have intentionally committed acts which are contrary to the order.
>
> 2. This must be proved to the criminal standard.
>
> 3. The conduct prohibited must be clearly stayed stated in the order.
>
> 4. If the order is reasonably susceptible to more than one meaning, the meaning favourable to the defendant should be adopted."

27. The fourth of those principles was considered by Moore-Bick LJ in the *Commission for Equality and Human Rights v Griffin* [2010] EWHC 3343 at paragraph 22:

> "In construing the judge's order it must be borne in mind that it was contemplated from the outset that if the court were to grant any injunction the order would be supported by a penal notice to enable it to be enforced, if necessary, by coercive measures, in particular the committal to prison of the three defendants and any other members of the BNP on whom it might have been served. In such cases it is vital that those to whom the order is addressed are able to understand clearly what they are or are not to do, and if there is any uncertainty in its meaning, the order should be construed in a meaning that is less, rather than more, onerous to them. In

Redwing Limited v Redwing Forest Products Limited [1947] 64 RPC 67 the court was concerned with an alleged breach of an undertaking given by the defendant not to advertise or offer for sale any products as 'Redwing' products so as to be liable to lead to the belief that they were the plaintiff's. Jenkins J held that there was no breach of the undertaking unless the manner of advertising or offer were such as to lead to such a belief. He said at page 71:

> "' ... a defendant cannot be committed for contempt on the ground that upon one of two possible constructions of an undertaking being given he has broken his undertaking. For the purposes of relief of this character, I think the undertaking must be clear and the breach must be clear beyond all question."'

The evidence

The Claimant's evidence

28. The claimant relies on the following witness evidence:

    a. Clive Tobin, the claimant's head of legal services,

    b. Stephen Maxey, the claimant's chief executive,

    c. PC Bradley, a police officer on site to monitor the tunnel.

    d. PC Bristow, a police officer who produces extracts from the police STORM incident recording system.

29. I previously gave permission for the claimant to rely on witness statement rather than affidavit evidence. PC Bristow's evidence was before the court in agreed written form. Video footage taken from the body worn cameras of PC Bradley and PC Hope have been exhibited and agreed extracts played as part of the claimant's evidence. The claimant's remaining witnesses attended court to give oral evidence.

    Clive Tobin

30. Mr Clive Tobin has produced two witness statements. In his first statement, he described arriving on site at approximately 4.30pm on 24 August 2022. Paragraph 6 of his statement read as follows:

> "A number of other police officers were present close to the entrance to the tunnel. As I approached, I saw a male within the tunnel who I now know to be John Jordan, the third defendant referred to, although at the time he referred to himself as Sean. I could also see a female who was slightly further inside the tunnel than Mr Jordan and who I now know should be Stephanie Aylett, the first defendant. I engaged in conversation

with Mr Jordan and explained that the order was in force and prohibited certain activity in the locality of the oil terminal. I then handed Mr Jordan and Ms Aylett copies of the order dated 6 May 2022, the accompanying power of arrest, the application documents and supporting evidence. These were handed to them shortly after 4.40 pm and were placed in blue tinted transparent folders."

31. Mr Tobin's written evidence exhibited a What3words location map for the entrance to the tunnel. He explained that the tunnel was approximately 400 metres from the oil terminal with the total terminal site being approximately 1800 metres by 1600 metres.

32. In cross-examination, Mr Tobin was asked about the certificate of service that he had prepared, dated 25 August 2022. By the certificate, Mr Tobin certified the date of service as 24 August 2022 answered the question "How did you serve the documents?" in the following way: "by personally handing it to or leaving it with at 16.42…" He provided the additional narrative: "by handing two copies to the defendants at the entrance to a tunnel on Piccadilly Way, Kingsbury, Warwickshire." By the certificate, Mr Tobin certified that John Jordan, Stephanie Aylett and Callum Goode had been served.

33. In cross-examination Mr Tobin confirmed that he handed two copies of the documents to Mr Jordan and that Mr Jordan had handed one copy to Ms Aylett. Mr Tobin described having one set of the papers in his hand, a second copy in his rucksack, but not having any further copies with him. He told the court he had provided Mr Jordan with an explanation as to the scope of injunction and had asked Mr Jordan if he had any colleagues down there with him. Mr Tobin agreed the video footage showed Mr Jordan replying "multiple" in response to the question as to whether there were colleagues in the tunnel with him. He accepted that he had not handed copies of the documents directly to anybody else occupying the tunnel other than Mr Jordan.

34. Mr Tobin was asked questions about his line of sight from his position standing at ground level above the down-shaft to the tunnel. He said that he could see into the front part of the tunnel and saw Ms Aylett's head come out. He agreed that he did not speak to anybody else inside the tunnel. He stated that he handed the documents to Mr Jordan who then passed them back to Ms Aylett. He maintained his view differed from that seen on the body worn footage of the police officer. He explained seeing Mr Jordan holding one copy higher up and passing the other copy down. He accepted that he had not seen or spoken to Callum Goode.

35. The police video footage from 16:47 to 16:49 was replayed to Mr Tobin. Mr Tobin accepted that he couldn't see anyone other than Mr Jordan on the video but explained that his view differed from the video and he was not completely static. He maintained that from where he was standing, it had looked like Mr Jordan was lowering the documents down to someone else, who had in turn taken them. He accepted that he had not seen a hand take the documents from Mr Jordan.

Stephen Maxey

36. In his written evidence Stephen Maxey provided details of his knowledge of the defendants' links to Just Stop Oil and of its aims to stop the use and production of fossil fuels. He exhibited a Just Stop Oil Twitter post from 25 August that referred to the defendants being supporters of Just Stop Oil. He also exhibited a Just Stop Oil post of the same date publicising a number of people tunnelling in protest against the use of oil. This included video stills of Ms Aylett and Mr Jordan. He further exhibited a copy of a Twitter video of Ms Aylett, taken whilst in the tunnel. The video was played to the court. Mr Maxey noted that when the defendants were first produced in court on 25 August 2022, a number of supporters attending including one with a Just Stop Oil high visibility jacket. There was limited cross-examination of Mr Maxey. He accepted that the mere presence of a supporter wearing a Just Stop Oil jacket did not mean he could explain precisely what the defendants' relationship was with that organisation although he noted that there had been some interaction between the supporters and the defendants.

PC Bradley

37. PC Bradley was present by the tunnel on the day that the defendants exited and were arrested. She adopted the evidence given by her colleague, PC Hope, who was on leave when the trial took place. PC Bradley described being crewed with PC Hope to attend Kingsbury Oil Terminal and tasked to monitor the hole. She described Mr Jordan being visible by the entrance and being aware that others were inside the tunnel but could not be seen. She recalled that the defendants made the decision to leave the tunnel at about 1900 hours but requested time to leave and eventually left at about 2125 hours. The officer described Mr Jordan exiting the hole first, then Ms Aylett and finally Callum Goode, whereupon all the defendants were arrested for criminal damage. PC Bradley was involved in searching Ms Aylett and transporting her to custody. PC Bradley described the custody officer asking PC Hope what Ms Aylett had been arrested for, to which Ms Aylett had replied, "I haven't damaged anything. I just dug a hole." PC Bradley stated that that was recorded in her pocket book, but Ms Aylett refused to sign the entry.

38. PC Bradley in cross-examination confirmed that she and PC Hope had been part of a team that had relieved the previous shift of police officers. She accepted that Mr Jordan had told her shift that he ready to come out of the hole and had indicated he liked PC Hope, so they would come out for him but had not liked the previous shift of officers. PC Bradley agreed that the defendants had cooperated and that the police had allowed the defendants to pass their belongings up and out of the hole and to leave at their own pace. PC Bradley explained that the police officers on site were not trained to go underground and, as the defendants were engaging, the police strategy was to continue with that engagement and allow the defendants to come out in their own time. She accepted that the police had not insisted that the defendants hurry up. PC Bradley agreed that she had a lengthy conversation with Ms Aylett in the police car and there were instances when questions were asked where Ms Aylett spoke of her motivation.

39. The claimant played video footage from the body worn cameras of PC Hope and PC Bradley. It is agreed that the time shown on the video is one hour behind the actual time, the equipment having not been adjusted for British Summer Time.

40. The key features from PC Hope's footage are as follows.

    a. Starting at 1646 hours, Mr Tobin can be seen standing at ground level above the down-shaft of the hole talking to Mr Jordan, who is standing in the down-shaft. It is raining quite heavily. Mr Tobin can be heard to refer to the injunction being in force and explaining that it covers the terminal and the locality. Mr Tobin can be seen to ask Mr Jordan if he has any colleagues down there with him to which Mr Jordan replies, "Yes, multiple." Mr Jordan is heard to say that the injunction had been deemed unlawful by a High Court Judge. In response, Mr Tobin is heard to explain that only the buffer zone had been removed and the remainder of the injunction remained in force. Mr Tobin is seen to hand two wallets of documents to Mr Jordan. Mr Jordan then appears to put them down to the front of his leg using his left hand.

    b. The next relevant extract is timed at just after 1900 hours. Over the next hour or so there are a number of exchanges between the police and Mr Jordan. The conversation includes a discussion about the occupants passing out their personal belongings. Mr Jordan is seen to pass out items of rubbish and commenting that it may take some time because they had a lot of stuff in the tunnel.

    c. Shortly before 2000 hours, the police are heard to say that the road will not be reopened until this had all been sorted out. Shortly thereafter Mr Jordan passes a shovel out of the hole. He then comments: "This is the better one" and a second shovel is handed out.

41. PC Bradley's footage commences at the same time as that of PC Hope and adds very little to his footage. Her footage does however also cover the period just before 2130 hours when the defendants had just left the tunnel. Her video footage continues in the police car that transported Ms Aylett to Nuneaton police station. During the journey, Ms Aylett is heard to refer to having caught a drill in her trouser a few days ago injuring her skin. Mr Aylett described her injury occurring maybe a week ago but that it did not hurt now unless she touched it.

The Defendants' evidence

42. Each of the Defendants had been advised of their right to silence, their entitlement but not obligation to give evidence and their right against self-incrimination. None of the defendants produced written witness statements or affidavits but each of them elected to give oral evidence.

Stephanie Aylett

43. Ms Aylett accepted that she had been in the tunnel on 24 August 2022. She described her motivation and her view that her previous efforts to campaign for timely restructuring from fossil fuels to renewable energy were not working. She had previously signed petitions, been on marches and written to MPs but remained very concerned about the death of the human race and the diminishing window within which a restructure to renewals was required. It was clear from her evidence that she was passionate in her view that the government is inextricably linked to the fossil fuel industry and is not doing enough. Ms Aylett accepted that she supported Just Stop Oil tweets that demanded the government immediately halt all new licences for fossil fuels.

44. Ms Aylett told that court that when she went into the tunnel, she was not aware there was any injunction in place covering the area in which she was protesting. She maintained that she first received a copy of the injunction when she was produced in court on 25 August 2022.

45. She explained that she had now seen the police footage and was now aware that Mr Tobin had given Mr Jordan documents but was not aware of that at the time. She maintained that no documents had been passed to her from anyone above ground or by Mr Jordan. She said that at the time she could not hear much of what was going on and sitting 3 to 4 metres from the entrance. Ms Aylett described Callum Goode being behind her and further into the tunnel. She described being aware of lots of different people coming to visit the tunnel including the police, someone from the council and the firemen but that, whilst she could hear a lot of what of what Mr Jordan said from the down-shaft, she struggled to hear what was being said by those above ground. She accepted that she had heard the word "injunction" from Mr Jordan which had worried her quite a lot. She described Mr Jordan thereafter coming back into the tunnel and it raining heavily. Ms Aylett told the court that she had a brief conversation with Mr Jordan about Mr Tobin's visit, but Mr Jordan told her that the injunction proposed in April had been deemed unlawful at a hearing around the end of April or May. She described the conversation then moving quickly on to other more important matters, in particular the fact that it was raining, that a big crack had opened in the tunnel, the risk the tunnel may flood or collapse, and her fear that if the road reopened, an accident may occur. Ms Aylett stated her decision to leave the tunnel reflected those concerns and was not based on her knowledge that an injunction existed. When she left the tunnel, Ms Aylett described seeing two blue plastic folders at the bottom of the down-shaft and asking "what's that" before she left.

46. In cross-examination, Ms Aylett agreed that the tunnel was located adjacent to and under Piccadilly Road but disputed the What3words location that was given in the police statement. She refused to answer questions as to whether she had been involved in digging the tunnel. She accepted that there were shovels in the tunnel and that she had told the police that she had been injured in the hole by a drill.

47. Ms Aylett was cross-examined as to the circumstances of Mr Tobin's visit to the tunnel. She maintained the account given in examination-in-chief, namely that when Mr Jordan was standing up in the down-shaft she could hear some of what he was saying but it was difficult, and she could not hear what Mr Tobin had had been saying. The video footage timed at 1647 hours was replayed to her. She accepted she could be heard on the video saying, "it was changed" shortly after Mr Jordan mentioned the word "injunction". Ms Aylett stated that her understanding was, as she had said in chief, that the injunction had been deemed unlawful and reduced to just the boundary of the terminal.

48. As to her actions, she told the court she was seeking to send a message to the government and to the fossil fuel industries with one of her aims being to force the closure of the road to prevent oil tankers filling up at the terminal. She accepted that she had been arrested on at least three occasions at protests over the last year, including at a protest at JP Morgan's premises in October 2021, in Greater Manchester in November 2021 and in Essex in April 2022. She agreed that she appeared on the video footage in Just Stop Oil's tweet.

49. Ms Aylett told the court the timing of the decision to leave the tunnel was based in part because they liked the current team of police officers that were manning the hole but had had difficulties with the earlier officers. She accepted that she could be heard on video discussing deleting various items from her phone before exiting but could not remember what she had deleted.

Callum Goode

50. The court was informed that Callum Goode's preferred pronouns are they/them and this judgment adopts those pronouns.

51. Callum Goode agreed with Aylett's explanation as to their motivation for occupying the tunnel. They confirmed that they were in support of the Just Stop Oil demands. Callum Goode explained that they were unaware, when entering the tunnel, that any injunction was in place at all and had not seen any paperwork before being produced in court.

52. Callum Goode drew a helpful sketch plan of the internal dimensions of the tunnel. They described a vertical down-shaft, the tunnel then proceeding 3 to 4 metres horizontally before a further drop of about 1 metre, at which point the tunnel curved round and continued horizontally. Callum described being at the far end of the tunnel, a horizontal distance of about 6 to 7 metres away from the entrance into the down-shaft. Callum described there being very little space to move around and, at most, being able to move half a metre from their position at very end of the tunnel.

53. Callum Goode told the court that they could not hear outside conversation and struggled to hear even that which Mr Jordan was saying when standing in the down-shaft. They

accepted that they had heard Ms Aylett mention something about an injunction to Mr Jordan. In cross examination, Callum Goode accepted that, immediately after Mr Tobin left, there had been a brief discussion about the injunction and about it being ruled illegal. Callum said, "To be honest, the information about the road being reopened was relayed immediately after that, and that seemed to be much more pressing." They described their concern about Ms Aylet's fear and about the cracking and rain.

54. Callum Goode confirmed their support for Just Stop Oil.

55. Callum confirmed that they were not communicating with the police and that was left to Mr Jordan. Callum stated that Mr Jordan had not brought the injunction papers to their attention and only seeing the blue wallets of documents as they exited the tunnel.

56. Callum Goode accepted that they had been arrested at protests previously including in April 2022 in Surrey. They also accepted that having been released on bail on 25 August 2022, they had been arrested in Essex and having spent a night in custody.

John Jordan

57. Mr Jordan gave evidence as a litigant in person. He confirmed that although his name is John Jordan, he is known by the first name Sean. Mr Jordan told the court he had taken action in Kingsbury in April 2022 and that he stood by those actions. He stated that his understanding was that the injunction that had been granted in April had been deemed to be unlawful. Mr Jordan told the court that when the injunction had first been granted in April, there had been copies of the order displayed very clearly around the site, on roundabouts, with the police officers and, as he put it, "basically everywhere". He said that by August there was nothing to inform them that the surrounding area was within a zone covered by the injunction and he was therefore unaware when he entered the tunnel that an injunction covering that land.

58. Mr Jordan explained that he tended to sit in the mouth of the tunnel and communicated with any visitors. He described Stephanie Aylett being 3 to 4 metres behind him and Callum Goode being behind her. Mr Jordan accepted that Mr Tobin had handed him two plastic folders whereupon he kneeled and put the documents on the floor. She denied handing any documents to Ms Aylett. Mr Jordan described it raining very heavily at that time and that the police had taken away their tarpaulin. He therefore placed the blue plastic wallets at an angle on the floor of the down-shaft to try to drain water away from the tunnel.

59. Mr Jordan stated that whilst in the tunnel, he could feel the vibration of police vehicles passing over and that the group were concerned about tankers and the risk of cracks forming. He stated that he had informed the police at around 7 pm that they would come out of the tunnel and the police had wanted the protesters to help with taking their belongings out of the tunnel.

60. Mr Jordan answered “no comment” to questions in cross-examination about his involvement in digging the tunnel, handing out shovels and pickaxes and about the other defendants' actions in tunnelling. He did, however, then answer the majority of the remaining lines of cross-examination.

61. Mr Jordan accepted that he was the person who had been communicating with Mr Tobin as he happened to be the person nearest the entrance. He stated it was not possible for anyone above ground to speak to everyone in the tunnel because the tunnel was narrow, and people could only fit in on a single-file basis. Mr Jordan accepted knowing that Mr Tobin was from the council and taking copies of the documents from him. He did not accept that Mr Tobin had said that "these are copy documents for your colleagues." Mr Jordan maintained he did not pass any of the documents to the other defendants.

62. Mr Jordan stated that after Mr Tobin left, he had two main concerns, the appearance of a big crack in the tunnel and his need to urinate. He described being concerned that the tunnel may cave in if the claimant decided to reopen the road and not wanting to be associated with the death of any driver using the road. Mr Jordan explained that the group made the decision to exit the tunnel because they were not willing risk road users being killed or injured.

63. Mr Jordan maintained that he stood by the actions of Just Stop Oil and his own actions of civil disobedience. Indeed, he admitted that he was contemptuous of the court.

Issue (1) Can the claimant prove service?

64. It is trite law that an injunction must be served on a defendant in order that it to be enforced by way of committal for contempt. Alternatively, an application must be made for service to be dispensed with. The claimant does not make an application to dispense with service.

65. Injunction orders against protesters, whether defendants be persons unknown or those that are identifiable but who have transient lifestyles, often make provision for service by alternative means to address the difficulties in effecting personal service. This injunction was no different. Both the without notice version of the order dated 14 April 2022 and the on notice variation dated 6 May 2022 granted permission to the claimant to serve the order and power of arrest by alternative methods. The claimant availed itself of the alternative methods of service in respect of the order dated 14 April and the relevant certificates of service are included in the hearing bundle. However, for reasons that have not been explained, the claimant failed to repeat the exercise in respect of the order dated 6 May 2022. It is for that reason the claimant seeks to rely on personal service by Mr Tobin on 24 August 2022.

66. The witness statement of Mr Tobin is somewhat unsatisfactory. At paragraph 6 of his statement, he stated that he handed Mr Jordan and Ms Aylett copies of the order dated 6 May 2022, the accompanying power of arrest, the application documents and

supporting evidence shortly after 4.40 pm in blue tinted transparent folders. He signed a certificate of service dated 25 August, stating he had served the three named defendants by handing two copies to the defendants at the entrance to the tunnel on Piccadilly Way. However, in oral evidence Mr Tobin accepted that he had in fact only handed the two blue folders to Mr Jordan who, he maintained, had handed one back to Ms Aylett.

67. The court has the benefit of PC Hope's body worn video footage. The police officer was located in a position that gave a clear view into the down-shaft of the tunnel. Mr Jordan can be seen on the video standing in the down-shaft and receiving the two blue folders from Mr Tobin. Mr Jordan then appears to use his left hand to place the folders down to his left. There is no sign of Ms Aylett's head or hand or indeed any other part of her body. Mr Jordan does not appear to pass anything behind him, which is where Ms Aylett was located in the main body of the tunnel. Mr Tobin can be heard to explain the nature of the document to Mr Jordan, including reference to the injunction covering the area of the tunnel. Mr Tobin does not ask Mr Jordan to pass copies of the document back to others in the tunnel. Mr Tobin does not ask anyone else in the tunnel to present themselves at the entrance, nor does he seek to shout any instructions into the tunnel or attract the attention of others that may be further into the tunnel. The video footage largely accords with the evidence of Mr Jordan and Ms Aylett on this topic.

68. I remind myself that the claimant has to prove service to the criminal standard of proof. I have no difficulty with the notion that at around 4.40pm Mr Jordan was handed a copy of the injunction and the power of arrest and told of the nature of those documents. The same is supported by the video evidence and indeed accepted by Mr Jordan. The claimant can therefore satisfy personal service of the type described in limb 1 of *Kenneth Allison Limited* by the handing of the document to Mr Jordan.

69. The position with Ms Aylett is rather different. I am not persuaded so that I can be sure that Mr Jordan handed back the document to Ms Aylett. The same is not consistent with what is seen on the video footage, which shows Mr Jordan putting the documents down towards the floor in front of him. The entrance to the tunnel at the foot of the down-shaft was behind Mr Jordan and thus placing the documents to his front is inconsistent with him having handed them back to Ms Aylett. Moreover, the video footage reveals no sign of Ms Aylett's hand or head. Mr Tobin's evidence as between his written witness statement and his oral evidence was contradictory, and that casts doubt on his reliability on this topic.

70. Even if, which the claimant did not seek to argue, Mr Jordan was deemed to be the agent of Ms Aylett, service on an agent would not be good service, per paragraph 27(iii) of *Gorbachev*.

71. A failure to hand the document to Ms Aylett is not necessarily fatal to the claimant's case. Personal service can still be established if Ms Aylett was told what the document contains and the document was left with or near her, as per limb 2 of *Kenneth Allison*.

However, I am not satisfied that the claimant can prove that the documents were left with Ms Aylett. They were left with Mr Jordan who placed them in front of him in the down-shaft. At best, the documents were near Ms Aylett, but she was separated from them by Mr Jordan's body which was blocking the narrow tunnel such that she could not physically pass him to reach them. I am not persuaded that amounts to the documents being left near Ms Aylett.

72. Moreover, Mr Tobin's conversation was directed solely at Mr Jordan. Ms Aylett was not told that she was being given documents or what those documents contained. At no time did Mr Tobin speak to Ms Aylett, direct Mr Jordan to pass on a message to Ms Aylett or ask her to come into the down-shaft to speak to him. Ms Aylett can be heard to say words to the effect that "it was changed" when Mr Jordan refers to the injunction. Given the depth of the tunnel and her position, I accept her evidence that whilst she could hear Mr Jordan's side of the conversation, it was difficult for her to hear what was being said by those above ground. In those circumstances, I am not persuaded that the claimant can prove beyond reasonable doubt that Ms Aylett was told what the document contained or that the document was left with or near her. I am not, therefore, satisfied as to personal service on Ms Aylett.

73. Callum Goode is further removed again from any dialogue between Mr Tobin and Mr Jordan. There is no evidence Callum Goode was handed any documents or that Mr Tobin directed any conversation to them or was even aware of their presence in the tunnel. The police evidence confirms that Callum Goode was the last person out of the tunnel, which is consistent with Callum's evidence of their location at the far end of the tunnel. I accept Callum Goode's evidence that it was around 6 or 7 horizontal metres from the entrance to the end of the tunnel. That is consistent with it being cramped but being long enough for 3 adults to lie end to end with room to store the significant volume of personal belongings that are seen on the video to exit the tunnel. Mr Tobin only left two copies of the documents with Mr Jordan, which I found he placed in the down-shaft. Not only were there insufficient copies for all three defendants, the documents were located at the opposite end of the tunnel to Callum Goode such that service of the kind recognised in limb 1 of *Kenneth Allison* is not made out. Furthermore, as with Ms Aylett, the claimant also fails to prove that Callum Goode was told what the documents contain or that the documents were left with or near him.

74. At one point in the claimant's submissions, Ms Crocombe appeared to be trying to submit that a general knowledge that an injunction of some form was in force but without service was good enough to bind the defendant. She referred and the to the case of *Atkinson v Varma* [2020] EWCA Civ 1602. At paragraph 54 Rose LJ held as follows:

> " ... once knowledge of the order is proved, and once it is proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his action put him in breach of the order; it is enough that as a matter of fact and law, they do so put him in breach."

75. Whilst *Atkinson* is authority for the proposition that it is not necessary for a defendant to know his action put him in breach, it does not obviate the need for either service in the first place or, in the alternative, an order dispensing with service. Unlike the cases before me, there was no suggestion in *Atkinson* that the defendant in question had not been served with the order. I am not therefore persuaded that the claimant can circumvent the need for service by relying on some general non-specific knowledge of that an injunction of some kind may be in force falling short of a recognised form of service or an order dispensing with service.

76. The claimant's alternative case on service is that it can satisfy the requirements of alternative service permitted by paragraph 5 of the injunction by complying with paragraph 1(iv) only of schedule 2 to the injunction. Paragraph 1(iv) of schedule 2 is the final of four sub-paragraphs dealing with alternative service. Paragraphs 1(i) to (iii) require service by variously placing signs in prominent locations along the boundary, outside the terminal, at junctions to roads, at entrances to the terminal and by posting the details on website and social media sites. There is no evidence that the claimant complied with any of those provisions as regards the injunction dated 6 May.

77. After paragraph 1(iii) are the words "and/or." Paragraph 1(iv) then states: “any other like manner as the claimant may decide to use in order to bring the claim form and this order and power of arrest to the attention of the defendants and the persons likely to be affected.” The claimant submits that 1inclusion of the word "or" means that it is open to the claimant to ignore the requirements of paragraphs (i) to (iii) and only adopt 1(iv). The claimant submits that whatever Mr Tobin's efforts amounted to, that suffices for the purposes of paragraph 1(iv).

78. Mr Fraser submits that such an interpretation amounts to the claimant having another bite of the cherry when it has failed to effect personal service and comply with alternative service envisaged by paragraphs 1(i) to (iii).

79. The use of the expression "and/or" leads to different outcomes depending whether the word "and" or "or" is applied. If the word "and" is used, it would require all four paragraphs (i) to (iv) inclusive to be complied with. If the word "or" is applied, it would require only one of the sub-paragraphs in paragraph 1 of schedule 2 to be complied with. The use of the expression is therefore somewhat curious. Service is rightly a very important concept in the context of a contempt application. An adverse finding on contempt can lead to committal to prison. Sub-paragraphs 1(i) to (iii) give detailed instruction as to where copies of the documents needed to be placed. Paragraphs (i) and (ii) use the word "prominently" and detail specific physical locations. The requirements at paragraphs 1(i) to (iii) are of a type commonly found in alternative service provisions and are designed to ensure the order is brought to the attention of those that may be affected. If an injunction is not so publicised, nor personal service effected, a defendant risks being severely prejudiced.

80. I remind myself of the guidance in *Sheffield City Council v Teal*, namely that if an order is reasonably susceptible to more than one meaning, the meaning more favourable to the defendant should be adopted. As discussed above, the use of the words "and/or" are reasonably susceptible to more than one meaning depending which of the two conjunctions is adopted. I therefore adopt the interpretation more favourable to the defendants. The claimant failed to comply with paragraph (i) to (iii) of paragraph 1 of schedule 2 and thus cannot cherry-pick a form of service of their own choosing.

81. Even if I were to be incorrect as to that finding, any further alternative method of service is required to be "any other like manner". The like manner must be referable back to the earlier provisions at paragraph 1(i) to (iii). A constant theme of the earlier provisions is that publication of the order has to be prominent, whether that be outside the terminal, at junctions of roads, on the entrances to the terminal or on social media sites. I have already determined that Mr Tobin's actions fell short of personal service as against Ms Aylett and Callum Goode. The findings of fact as to the steps he took did not ensure that the injunction was highlighted to these two defendants in a manner that was prominent. Therefore, even if I had been persuaded that the claimant could cherry-pick so as to rely on paragraph 1(iv) only, I would not have been persuaded that the actions taken satisfied the requirement of being "any other like manner". The steps taken were insufficient to bring the terms of the injunction to the attention of those affected.

82. In conclusion, the claimant has established personal service of the injunction on Mr Jordan at around 4.46 pm on 24 August 2022. However, the claimant has not proved service on either Stephanie Aylett or Callum Goode and the contempt application against those two defendants therefore fails for want of service.

83. The remainder of this judgment pertains to Mr Jordan alone.

Issue (2): On a proper interpretation of the injunction, is conduct complained of prohibited by paragraph 1(b)(ix) and/or (xi)?

84. The defendants contend that the words “in connection with any such protest” in paragraph 1(b) of the injunction are reasonably susceptible to more than one meaning such that the more favourable meaning to the defendants be should adopted, per *Sheffield City Council v Teal*. The defendants contend for at least two different meanings.

    a. Firstly, that a person will be in breach if they perform any of the acts at paragraph 1(b)(i) to (b)(xi) in connection with a protest against the production or use of fossil fuels in the locality of Kingsbury Oil Terminal.

    b. Secondly, a person will only be in breach if a protest against the production or use of fossil fuels is taking place “within the areas the boundaries of which are edged in red on the map” and that person, in connection with any such protest

within the boundary, engages in an act prohibited by 1(b)(i) to (b)(xi) anywhere in the locality.

85. Paragraph 1(a) of the injunction prohibits protests against the production or use of fossil fuels taking place within the boundary marked in red. That boundary is largely the perimeter of the terminal site itself. Paragraph 1(a) serves an obvious purpose in that it stops persons trespassing on the site to protest against the production or use of fossil fuels.

86. Paragraph 1(b) refers to "any such protest". The only earlier reference to a protest is in paragraph 1(a). In paragraph 1(a) the applicable protest is one "against the production or use of fossil fuels." If the protest is about another subject matter, it would not be caught. There is a comma after the words ending "…production or use of fossil fuels" before the sentence continues "at Kingsbury Oil Terminal." There is then another comma before "taking place within the areas the boundaries of which are edged in red…" In my judgment, the only reasonable construction of "any such protest" is that it is one against the production or use of fossil fuels. It is a matter of unreasonable contortion to say that paragraph 1(b) is only invoked if acts in the locality of the terminal are connected to a protest actually taking place within the boundary edged in red.

87. Firstly, the use of the comma after "any protest against the production or use of fossil fuels" supports an understanding that any such protest is limited to one being aimed at fossil fuels.

88. Secondly, the wording in the preamble to paragraph 1(b) needs to be construed in the context of the whole clause. For example, clause (viii) of paragraph 1(b) prohibits the abandoning of any vehicle which blocks any road or impedes the passage of any other vehicle on a road or access to the terminal. A vehicle blocking an access road is a potential problem regardless of whether a protest was also occurring within the perimeter of the boundary marked in red. Such a clause would be illogical if it only applied if a protest was happening within the perimeter of the terminal. Likewise, clause (iv) prohibits the climbing on to or otherwise damaging or interfering with any vehicle. It would be perverse if someone was only prevented from climbing on to an oil tanker on the approach road to the terminal if it was in connection with a protest that was taking place within the boundary of the site itself. The mischief at which this injunction is aimed is not limited to protests within the boundary only.

89. In conclusion, I am not persuaded that paragraph 1(b) is reasonably susceptible to more than one meaning. Paragraph 1(b) bites if, in connection with a protest against the production or use of fossil fuels anywhere in the locality of the terminal, any of the acts in subclauses (i) to (xi) are performed.

Issue 3: Did Mr Jordan dig and occupy a hole running alongside and under Piccadilly Way?

90. In light of my finding that Mr Jordan was only served with the injunction at around 4.46 pm on 24 August, it is only his conduct thereafter that is relevant for the purpose of this contempt application.

91. Mr Jordan admits occupying the tunnel from the point of service until he exited with his colleagues at around 9.25 pm. That is supported by evidence from the police officers who were by the tunnel throughout that period and saw him exit with his co-defendants. I am therefore satisfied to the criminal standard that Mr Jordan was occupying the tunnel throughout the period. If I had been persuaded as to service on Ms Aylett and Callum Goode, the same would have been said for them.

92. The claimant accepts that if the court considers that service only occurred when Mr Tobin effected personal service at 4.46 pm, it cannot prove that Mr Jordan was engaged in digging in the tunnel. That is a sensible concession. Whilst Mr Jordan passed shovels out of the tunnel to the police, there is no evidence that Mr Jordan or the other defendants were digging after 4.46 pm. Indeed, the tunnel appeared to have been constructed well before then and the defendants were in the occupying phase of their protest.

93. Mr Jordan's actions in occupying the tunnel do, however, fall within that prohibited by paragraph 1(b)(ix), which makes express reference to "using or occupying existing tunnels under land including roads". His presence in the tunnel, particularly acting as spokesperson with the outside world, further amounted to him assisting or encouraging any other person to do any act prohibited by paragraphs 1(b)(i) to (x) of the order. That is, of course, subject to a determination as to whether the claimant can establish that such acts took place in the “locality.”

Issue 4: Did Mr Jordan’s actions occur in the locality of the terminal?

94. Mr Jordan adopted Mr Fraser's legal submissions on this issue. Mr Fraser submitted that "in the locality" is reasonably susceptible to more than one meaning, such that the court should prefer the construction more favourable to the defendants. The defendants contend that because the expression is not defined in the order, it is capable of causing confusion. The defendants content that the expression could be interpreted as:

    a. The area shown on the plan at schedule 1 to the injunction, or

    b. By reference to the general ordinary English meaning of the word, which itself is arguably vague.

95. The defendants contend that the locus of the tunnel was outside that which appears on the plan at schedule 1 and therefore not in the locality.

96. The claimants submit that the words "in the locality" are commonly encountered in injunctive orders and indeed in statute. In *Manchester v Lawler* 31 HLR 119, the Court of Appeal considered whether, in contempt proceedings arising in a neighbourhood nuisance case, the words "in the locality" were defined with sufficient precision. Butler-Sloss LJ held:

> "In in each case it would be a question of fact for the judge whether the place in which the conduct occurred was or was not within the locality. There will be, as Sir John Vinelott said during argument, fuzzy edges. The issue as to the fuzzy edges or grey areas and whether the injunction stretches to a particular place which may be within or without the locality will be decided by the judge. The finding he makes will affect his decision as to whether the injunction covers the place where the conduct occurred…

On the facts of that case, the Court of Appeal accepted that "in the locality" was defined with sufficient precision.

97. The purpose of the map at schedule 1 of the injunction is to identify the boundaries edged in red as described in paragraph 1(a). Paragraph 1(b), within which the reference to "locality" appears, makes no reference to the map at schedule 1. It is therefore difficult to see why anyone would construe the words "in the locality" as meaning activity had to fall within the area covered on the map on schedule 1. The map serves a wholly separate purpose.

98. I am not therefore persuaded that the words "in the locality" are reasonably susceptible to more than one interpretation. The words in the locality are commonly used in injunctions, as evidenced by *Manchester City Council v Lawler*. It is not an unacceptably vague definition but a question of fact as to whether the locus of this tunnel fell within the meaning of locality of the terminal.

99. It is not in dispute that the tunnel was situated along a bank and under Piccadilly Way. Piccadilly Way runs from a roundabout to the south of Kingsbury Oil Terminal, northwards to and past the terminal. Ms Aylett took issue with whether the What3words location given by the police accurately reflected the precise location of the tunnel. However, there is no challenge to Mr Tobin's evidence that the tunnel was approximately 400 metres from the boundary of the terminal or that the overall size of the terminal is approximately 1800 metres by 1600 metres.

100. I am satisfied to the criminal standard that the tunnel was approximately 400 metres south of the terminal, adjacent to and extending under Piccadilly Way. The combination of the relatively short distance from the terminal and the location on a main access road to the terminal leads to my finding that the tunnel was within the locality for the purposes of paragraph 1(b).

Issue 5: Were Mr Jordan's actions in connection with a protest against the production or use of fossil fuels?

101. Neither Mr Jordan nor indeed any of the other co-defendants sought to suggest that the protest was not connected with the production or use of fossil fuels. Mr Jordan was passionate in his oral evidence as to his concern for humanity from climate change and the consequences of continued reliance or fossil fuels. The evidence from Just Stop Oil's social media campaign evidences the activities of Mr Jordan and the co-defendants in support of their cause. Indeed, Mr Jordan was wearing a Just Stop Oil T-shirt on the second morning of the trial. I am therefore persuaded that Mr Jordan's actions were in connection with a protest against the production or use of fossil fuels.

Conclusion

102. In conclusion, the applications for committal for contempt against Stephanie Aylett and Callum Goode are dismissed for want of service of the injunction order. Each of them will be discharged from bail. The claimant is to pay the first and second defendants' costs on the standard basis, to be the subject of detailed assessment if not agreed.

103. The claimant has proved a contempt by John Jordan but only to the extent that he breached paragraphs 1(b)(ix) and (xi) by occupying a tunnel in the locality of the terminal from approximately 4.46 pm to 9.25 pm on 24 August 2022. It follows that any involvement by Mr Jordan in digging the tunnel or his actions in entering the tunnel in advance of the point of service do not amount to contempt of court.

104. A transcript of this judgment will be obtained at public expense on an expedited basis and placed for publication on the judiciary website. I propose to break now to hear submissions before determining the appropriate penalty for contempt as regards Mr Jordan.

THE COURT THEN HEARD SUBMISSIONS

APPROVED JUDGMENT ON SENTENCE

105. Mr Jordan, following my earlier determination of your contempt, it falls to me to determine the appropriate penalty for breaching paragraphs 1(b)(ix) and (xi) of the interim injunction granted by Sweeting J dated 6 May. You have the benefit of public funding and have solicitors on record but you have chosen to conduct your own advocacy for today's purposes. Ms Crocombe of counsel continues to represent the claimant.

106. Earlier today I set out the background to the breach in the judgment and I do not propose to repeat the facts here. The proved contempt is limited to your occupation of

a makeshift tunnel in the locality of the terminal from approximately 4.46 pm to 9.25 pm on 24 August 2022. I take no account of any allegation that you were involved in any digging and accept that you entered the tunnel in circumstances where you had not yet been served with the order.

107. Counsel for the claimant has prepared a sentencing note as to the approach she advocates the court adopt when determining the appropriate penalty for contempt. I largely agree with her analysis. I bear in mind the objectives of the court when imposing a sanction for contempt. In *Willoughby v Solihull MBC* [2013] EWCA Civ 699, at paragraph 20, Pitchford LJ identified the objectives as follows: "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court orders, if possible; the third is rehabilitation, which is the natural companion to the second objective."

108. The Sentencing Council produce guidelines for use in the criminal courts. Those guidelines do not extend to the civil courts. However, the Court of Appeal have indicated in cases such as *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 that the definitive guideline for breach of an antisocial behaviour order was equally relevant when dealing with breaches of antisocial behaviour orders in the civil courts. I bear in mind that the analogy is not a complete one. The maximum sentencing power for breach of a criminal behaviour order in the criminal courts is one of five years' imprisonment whereas in this court there is a two-year maximum under Section 14 of the Contempt of Court Act 1981. I also bear in mind that the criminal courts have a wide variety of different community order disposals available which are unavailable in the civil courts. I also take into account the fact that the injunction in this case is not a true anti-social behaviour injunction under the Anti-social Behaviour, Crime and Policing Act. However, the definitive guidelines provide a useful analogy.

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

110. In assessing the category of culpability, I take note that, once served with the injunction, you had the option of leaving immediately but did not do so. Whilst I accept you were entitled to some time to read the documents, your decision to stay in occupation for approximately four and a half hours in total amounts to a deliberate breach falling into culpability B category.

111. I turn to consider the category of harm. The guideline requires the court to determine the "harm that has been caused or was at risk of being caused." Your occupation of the

tunnel caused a public high ay to be closed through concern for your safety and that of road users. The closure will have inconvenienced many ordinary members of the public trying to go about their daily lives, as well as those trying to access and egress the oil terminal. Your actions also caused significant amounts of emergency service resources to be allocated to your occupation of the tunnel when they could have been dealing with other matters. I accept that you eventually came out of your own volition and that you cooperated with the police officers and assisted in removing your personal belongings from the tunnel. However, your actions risked not only your life but also those of any rescue professionals had the tunnel collapsed. If the road had been reopened, there was a risk of harm to road users. Given the relatively modest duration of your occupation, the actual harm was relatively modest albeit the risk of harm much higher. I place it into category 2 falling between the highest and lowest harm categories.

112. In the criminal courts a category 2 harm, culpability B matter would have a starting point of twelve weeks' custody with a range of a medium-level community order to one year's custody. Those figures have to be reduced to reflect the fact that this is a civil contempt of court.

113. I have to consider any aggravating factors. You were on unconditional bail to Lewes Crown Court at the time this breach occurred. There are few other aggravating factors.

114. There are mitigating features in your case. I accept that your actions were ones of civil disobedience borne from your strongly held views about the dangers of using fossil fuels and climate change. I take account of the fact that the duration of the contempt was relatively short and that from around 7pm you cooperated with the police in removing possessions from the tunnel before exiting voluntarily. You have no previous criminal convictions or cautions. There is no evidence before this court that you have ever been found to be in breach of another injunction. I also take into account what you have told the court about the daily telephone support you provide your father with to assist him with this mental health difficulties. I am mindful that you have already served the equivalent of a two-day custodial sentence as a result of you spending the best part of 24 hours in custody following your arrest.

115. You are not, however, entitled to any credit for an admission because the contempt was proved after trial.

116. I am mindful of the guidance given by the Court of Appeal in the protester case *Cuadrilla Bowland Limited v Persons Unknown* [2020] EWCA Civ 9. At paragraph 95 of that decision, Leggatt LJ considered the correct approach to sentencing protesters. He held as follows:

> "[95] Where, as in the present case, individuals not only resort to compulsion to hinder or to try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they

have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.

"[96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protesters who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons…"

117. The judge continued:

"[98] It seems to me there are at least three reasons for showing greater clemency in response to such acts of civil disobedience than in dealing with other disobedience of the law. First, by adhering to the conditions mentioned, a person who engages in acts of civil disobedience establishes a moral difference between herself and ordinary law-breakers which it is right to take into account in determining what punishment is deserved. Secondly, by reason of that difference and the fact that such a protester is generally - apart from their protest activity - a law-abiding citizen, there is reason to expect less severe punishment is necessary to deter such a person from further law-breaking. Third, part of the purpose of imposing sanctions, whether for a criminal offence or for the intentional breach of an injunction, is to engage in a dialogue with the defendant so that he or she appreciates the reasons, why in a democratic society, it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's lawful activities are contrary to the protester's own moral convictions. Such a dialogue is more likely to be effective where authorities (including judicial authorities) show restraint in anticipation that the defendant will respond by desisting from further breaches…

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

118. I bear in mind the guidance in *Cuadrilla Bowland* and that in the definitive guideline. In my judgment, the contempt arising from your occupation of the makeshift tunnel adjacent to the public highway such that it caused its closure is so serious that only a custodial sentence is appropriate. Taking into account the mitigation, I take the view that the appropriate sentence is one of fourteen days' imprisonment.

119. I have considered whether it is appropriate to suspend the sentence. In doing so I take into account the guidance in *Cuadrilla Bowland* and the Sentencing Council guideline on the Imposition of Community and Custodial sentences. I consider that in your case there is a realistic prospect of rehabilitation and that you have strong personal mitigation such that an immediate custodial sentence would harm a harmful impact on your father and also, to a lesser extent, your siblings to whom you provide some financial support.

120. I am persuaded that the fourteen-day term of imprisonment should be suspended on condition of compliance for a period of two years from today with the terms of any interim or final injunction order made in this claim. For the avoidance of doubt, the current order in force in this claim numbered QB-2022-001236 is the interim order of Sweeting J dated 6 May 2022. That order may be varied in the future and I am conscious that Sweeting J has not yet handed down his reserved judgment following the on-notice hearing.

121. It is unclear whether you are the same John Jordan that is named as the 6th defendant in the original pleadings. I propose to add you as a named defendant to the proceedings to ensure that you are served with any copy of any varied order as and when it arises. I am mindful you have no fixed abode and, therefore, I propose to make an order allowing any future order to be served on you at the email address you have previously provided to the court. It is important you understand the terms of any varied order because compliance with that forms the basis of the condition of the suspension of the fourteen-day term of imprisonment.

122. You referred in your mitigation to not being persuadable to changing your views on climate change. That is not the aim nor function of this court; nor indeed that of the claimant. These proceedings for contempt simply uphold the rule of law. As noted by the Court of Appeal in *Cuadrilla Bowland*, in a democratic society it is the duty of responsible citizens to abide by laws and respect the rights of others. If everybody in society acted with flagrant disregard of the rights of others and without heed to the law, society would very quickly descend into chaos. It is that duty as a citizen and respect for the rule of law that the Court seeks to persuade you of.

123. Although I am suspending the term of imprisonment, I remind you that if you do not comply with the terms of the suspension, you face the high risk that the order will be activated and you will have to serve some or all of the sentence of imprisonment. You have a right of appeal to the Court of Appeal Civil Division with any appeal to be filed within 21 days of today.

124. The claimant seeks an order that you pay its costs of the costs of the contempt application. The general rule is that the unsuccessful party will be ordered to pay the successful party's costs, but the court may make a different order. As a matter of principle, there is no reason to depart from the general rule in this case and you shall pay the claimant's costs. There is some uncertainty as to the period covered by any

public funding certificate. For the period that you had the benefit of a public funding certificate, then those costs are not to be enforced unless there is the usual means assessment. For any period when there is no public funding certificate, the costs will be enforceable in the usual way. There will need to be a detailed assessment of the claimant's costs.

125. If there is a public funding certificate in place, your solicitor will want a detailed assessment of their publicly funded costs. Hodge, Jones & Allen need to clarify the legal aid funding position as a matter of urgency.

126. As with my judgment on liability, this judgment will be transcribed at public expense on an expedited basis and published on the judiciary website.

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

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