Neutral Citation Number: [2024] EWHC 1505 (KB)

Case No: KB-2022-004333

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4/6/2024

Before :

MR JUSTICE SOOLE

- -

Between :

NATIONAL HIGHWAYS LIMITED	**Claimant**
- and -	
CALLUM GOODE (D12) **TEZ BURNS (D61)**	**Defendants**

Michael Fry and Michael Feeney (instructed by **DLA Piper UK LLP**) for the Claimant
Callum Goode in person (not attending 6 and 8 March 2024)
Tez Burns in person (not attending 6 March and 17 May 2024)

Hearing dates: 5, 6, 8 March and 17 May 2024

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JUDGMENT

Mr Justice Soole :

1. By my judgment dated 8 March 2024 with neutral citation number [2024] EWHC 566 (KB) ('the Russenberger judgment') I dealt with the Claimant (NHL)'s application dated 10 August 2023 to commit 16 of the 18 Defendants in this part of the action title for contempt of court arising from their alleged breach of a precautionary injunction granted by Chamberlain J on 5 November 2022 (the Chamberlain Order) against Persons Unknown associated with the Just Stop Oil (JSO) protest group against trespassing on the structures (and in particular the gantries) of the M25. This judgment concerns the remaining two Defendants in this cohort, Callum Goode (D12) and Tez Burns (D61); and should be read together with that judgment.

2. My judgment of 8 March did not deal with their cases because, as it recorded at [12], these had to be adjourned part-heard until a further date to be fixed. The reason for the adjournment was that, having given their evidence on 5 March and the case having been adjourned to the following day, on that following morning they glued themselves to the entrance gates of the Royal Courts of Justice and in consequence were taken into custody.

3. At the conclusion of the hearing on that day (6 March), I reserved my judgment on the 16 Defendants until 8 March and delivered it orally that day. On that date Callum Goode was still in custody, but Tez Burns had been granted bail and attended the hearing.

4. By paragraph 11 of my Order of 8 March, the part-heard hearing against these two Defendants was adjourned until 10.30 a.m. on 17 May 2024 and it was further ordered (as before) that the two Defendants were required to attend. Before fixing that date, I sought and obtained confirmation from Tez Burns that the date was suitable. A requirement to attend were expressly articulated by me in Court and therefore in the presence of Tez Burns.

5. The evidence from NHL's solicitors shows that the Order of 8 March was subsequently served on Tez Burns by the alternative means permitted by paragraph 15 of my Order, i.e. service by email to the email address which Tez Burns had provided.

6. When the adjourned hearing resumed on 17 May, Callum Goode was present in Court, but Tez Burns was not. As had been the case since these two Defendants withdrew their instructions to Hodge Jones Allen (HJA) shortly before the commencement of the hearing on 5 March 2024, neither was represented. NHL again appeared by Counsel Mr Fry and Mr Feeney.

7. I was provided with informal evidence, supported by a JSO press release, that in consequence of the incident outside the Court on 6 March, Callum Goode and Tez Burns had each been charged with an offence of "locking on" under s.1 Public Order Act 2023; and that each had been acquitted at the City of London Magistrates' Court on 16 April 2024.

8. Mr Fry told me that NHL's solicitors had had no communication from Tez Burns since the hearing on 8 March; and I was shown their emails to Tez Burns dated 14 and 21 March and 14 and 15 May to which there had been no response. The emails of 14 March and 13 May reminded Tez Burns of the requirement to attend Court on 17 May.

9. The question therefore arose as to whether or not the hearing should proceed in Tez Burns' absence and/or whether a bench warrant should be issued for their arrest. Whilst I took time to consider the relevant authorities, NHL's solicitors sent a further email to Tez Burns at their given email address and received no response.

10. I also asked Callum Goode if they had any information which might assist in respect of Tez Burns' absence from Court. Callum Goode said that they had heard vaguely that Tez Burns may be ill but had no further information. I am satisfied that this was an honest response.

11. Authority makes clear that, akin to the principles which apply in a criminal trial, the Court has a discretion to continue the hearing of contempt proceedings in a defendant's absence; but that it is a power to be exercised with great caution: Her Majesty's Attorney General v. Branch [2021] EWHC 1735 (Admin) per Dingemans LJ at [10].

12. Further, the Court's power to issue a bench warrant to secure attendance at committal proceedings (CPR 81.7(2)) includes a power – akin to a Crown Court bench warrant backed for bail – to direct that the warrant should provide for the defendant's arrest; a direction to attend at the Court on a specified date and time; and for their release in the meantime: Branch at [12].

13. Mr Fry submitted that the Court should proceed with the case against Tez Burns in their absence and should not issue a bench warrant. This was in particular because: (i) they had been present at the hearing on 8 March; had confirmed that the adjourned date of 17 May was suitable; and had been told of the requirement to attend; (ii) the resulting Order had been duly served by the permitted alternative means; (iii) no reason had been provided for their absence; (iv) save in one potential respect, the evidence had been completed on 5 March. The Court on that occasion left open the opportunity for either of the two Defendants to cross-examine NHL's witnesses Martell and Higson (whose witness statements had stood as evidence in chief by an earlier Order) on any aspect of their evidence, but no issues had been identified and it was quite unclear what challenges there could be; (v) there was uncertainty as to when a bench warrant would be executed and their attendance secured; (vi) adjournment of the hearing and such further steps would cause significant prejudice in time and cost to NHL, Callum Goode and the Court.

14. Callum Goode said that they would like to have the contempt application resolved sooner rather than later; and would be willing for the hearing to be separated as between the two of them; but said that they 'did not want to press the point'.

15. In the exercise of my discretion, I concluded that – as matters stood at that stage – the Court should not issue a bench warrant, whether qualified or unqualified; and that it should proceed with the case against both Defendants in the absence of Tez Burns. However I left open the possibility that the decision might be revisited if I thought it

necessary in the course of the hearing. In the event I did not consider it necessary to do so.

16. In reaching this decision, I was quite satisfied that Tez Burns knew of the date and time of the adjourned hearing and that they were required to attend. This was clear from the discussion in Court on 8 March; and the resulting Order was duly served on Tez Burns' given email address. There had been no response to the several emails from NHL's solicitors in March and May. Callum Goode's reference to possible ill-health was expressed in very limited terms. I concluded that, for one reason or another, Tez Burns had taken the deliberate decision not to attend. That conclusion has been reinforced by the Court's receipt this morning of an e-mail from Tez Burns stating that they will not be attending Court today. This is notwithstanding the Order made on the last occasion, again requiring attendance by these two Defendants.

17. In deciding to proceed, I then gave particular weight to the fact that the evidence had been completed, save for any questions which either Defendant might have asked of NHL's witnesses Martell and Higson. However it was difficult to see how cross-examination of those witnesses might advance Tez Burns' case on the critical issues of (i) liability and (ii) actual knowledge of the existence of the injunction and its material terms. In the event Callum Goode did not seek to ask any such questions.

18. As to disadvantages from the absent Tez Burns' inability to make closing submissions on those issues, or on any subsequent issue of sanction, this was a further reason to allow the decision to proceed to be revisited if it became necessary to do so.

19. With that necessary procedural prelude, I turn to the issues of liability and knowledge in each case.

Liability

20. As summarised in my judgment in NHL v. Kirin & ors [2023] EWHC 3000 (KB) ('the Kirin judgment') at [20], a person is guilty of contempt of court by disobeying a court order that prohibits particular conduct if it is proved to the criminal standard of proof that the person (i) having received notice of the order did an act prohibited by it; (ii) intended to do the act; and (iii) had knowledge of all the facts which would make doing the act a breach of the order.

21. Further, as to the first ingredient, notice of the injunction is to be distinguished from knowledge of the injunction. For the reasons also set out in my previous judgments, the issue of whether a defendant had actual knowledge of the injunction goes to sanction not breach; and the burden is on the defendant to establish, on the civil standard, absence of knowledge: see the Kirin judgment at [15]-[38] and the Russenberger judgment at [10].

22. In the case of each of these two Defendants I am satisfied that the ingredients of liability have been proved to the criminal standard. In each of the two cases, the evidence shows that they (i) were duly served with the Chamberlain Order by the alternative means of service which the Order permitted; (ii) having received such notice, they did an act prohibited by the Order, in particular entering and remaining upon a gantry on the M25 motorway; (iii) intended to do the act in question; and (iv) had knowledge of all the facts which would make doing the act a breach of the order.

23. In the case of Callum Goode, the evidence of PC Wheeler is that on Monday 7 November 2022 at about 9.00 a.m. they were seen on gantry 4556A between Junctions 8 and 9 of the westbound carriageway; were unwilling to come down; and were subsequently brought down by the Protester Removal Team. Callum Goode did not challenge PC Wheeler's evidence save on one matter relevant to the issue of knowledge, to which I will return, and in their own evidence acknowledged the deliberate decision to protest by going onto the gantry.

24. In the case of Tez Burns, the evidence of PC Powell is that on Thursday, 10 November 2022 at about 8.00 a.m., they were seen on gantry 4490B between Junctions 9 and 8 of the motorway and likewise had to be brought down by members of the Removal Team. Tez Burns likewise did not challenge PC Wheeler's evidence as it related to the issues of liability and also in their own evidence acknowledged the deliberate decision to protest by going onto the gantry in question.

25. As to the liability ingredient of notice, and as with all the other Defendants in these proceedings, these two Defendants have made no application to set aside the order for alternative service. Further, and as I also concluded in the Kirin judgment at [29], on the evidence before me (and in the absence of any submissions to such effect) I see no basis for the Court to conclude that the Chamberlain Order in respect of alternative service was the result of misinformation or a wrong assessment of what constituted reasonable steps to bring the injunction to the attention of the identified class of Persons Unknown.

26. In the case of each of these two Defendants, NHL has therefore satisfied me to the criminal standard that each is liable for contempt of court by acting as they did.

Knowledge

27. As set out above and in the Kirin judgment, the issue of knowledge of the existence of the injunction and its material terms is relevant to sanction, not liability, and the burden of proof of the absence of knowledge is on each Defendant on the civil standard.

28. As with the other Defendants, I record that each of these two Defendants expressly reserved the right to contend in higher courts that, contrary to my ruling, actual knowledge of the injunction must be proved by the applicant, i.e. NHL, and to the criminal standard of proof.

Callum Goode

29. Callum Goode is aged 24 and had been a Mathematics student for three years at university. They told the Court that they had autism. They had got involved with JSO and learned what they had to do. They took the action they did because of the climate crisis. In the period leading up to the action, they were anxious and depressed, having particular regard to the big action to be taken. They did not engage with anything other than the necessary preparations for the action. They travelled to the safe house on the day before or possibly the day before that, i.e. Sunday or Saturday. They were focusing on getting to the location; did not have their own phone at the location; and, when there, were just focusing on preparing mentally and talking through what had to be done. At no point did anyone tell them about the injunction; and so they had no

knowledge of it when going out onto the gantry. What they were expecting was a criminal trial, not a separate civil procedure for something they did not know about. However it was important to say that they did not feel it was something that people should have to worry about anyway.

30. As to the position at the gantry, PC Wheeler's evidence was that a copy of a warning notice about an injunction (in fact the Bennathan Order dated 9 May 2022) was affixed to the ladder which Callum Goode would have had to climb to get on top of the gantry. Callum Goode's evidence was that they had climbed up the ladder on the other side and that there was no such notice there. In cross-examination the officer agreed that the ladder with a warning notice was on the same side as where the notice had been read out to Goode after being brought down from the gantry; and that he had assumed that this was the ladder which they had climbed. On Goode's account, PC Wheeler's evidence was therefore based on a false assumption.

31. In cross-examination by Mr Feeney, Callum Goode said that they had been involved with JSO since about April 2022. During that seven month period they had not subscribed to any of the social media accounts. They saw some videos but could not guess what they might have contained. Most of their interaction was with people engaged with JSO. They attended a number of gatherings of JSO people and were in some messaging groups. Asked whether injunctions were ever discussed, Callum Goode replied "that would be testing my memory. I assume injunctions would be mentioned in such conversations as I had. I was vaguely aware of the concept of an injunction. I made that assumption probably because some people have been getting some sentencing around it, but I'm guessing here". They did not know if anyone from JSO had any proceedings in terms of injunctions; it might have been other groups.

32. As to preparation for the action, they undertook safety training including how to use the harnesses. Asked about 'legal training', Callum Goode described 'training' as an odd word to use in the context. They had attended some calls to learn about legal implications and what they might face in a criminal trial. As to the content, that would be testing their memory. They did not have a good memory, especially with the 'mental health stuff' there were going through. They were told that they would expect to be charged with criminal offences, but that there were lawful defences. As a legal briefing they would have been told of the potential of a criminal offence; but they did not recall discussion of injunctions: 'If there had been talk of injunctions relevant to me, I expect I would have remembered them'.

33. As to the safe house, they did not recall where it was, but an educated guess was that it was in London. They did not want to say who else was there. They had no Internet access, but there must have been a "select few" who had access outside the safe house. They assumed that people were communicating with other relevant people for the action to take place. They did not remember if the house had a TV. They denied remembering more; and were telling the truth.

34. They had some familiarity with the Kirin hearings in October 2023, having discussed it a bit subsequently because it was relevant to understand what might happen in those proceedings. They were aware that those Defendants were asked the same questions about knowledge.

35. They did not feel the processes were legitimate. However "I would be lying in Court if I said that I knew of the order. I have respect for the truth and being honest". It was not possible that they had been told about the injunction and had forgotten: "I know that I would have remembered it. If I knew about it, but did not respect it, I would still remember it." They were telling the truth and were committed to telling the truth.

Tez Burns

36. The evidence of PC Jacob Powell was that, shortly after 8.00 a.m. on Thursday 10 November, he observed the person who was Tez Burns on the gantry with a JSO banner. A few minutes later he informed them by megaphone that they were arrested for causing a public nuisance. Tez Burns offered passive resistance to the removal team who brought them down and then to Salford custody station. In the van he read out details of the Bennathan Order and sought and received confirmation from Tez Burns that they understood that they were in breach of its terms.

37. In cross-examination, he agreed that he was unaware of anything Burns might have said on the gantry, having arrested by megaphone from the carriageway below. He did not remember seeing a card saying that they were autistic.

38. Tez Burns' evidence was that they are 35, a bicycle mechanic from Swansea with a degree in physics; and autistic. They have been involved in climate activism since 2018. Not long before the November 2022 protest, they decided to take part and turned up at the safe house on the weekend before.

39. They were very solitary in respect of social media which made them very anxious. They had to be dragged in front of a computer. They attended safety training and the legal briefing. The latter talked of the criminal implications in respect of public nuisance and obstruction of the highway and what might happen. There was no mention of injunctions. They were talking about criminal, not civil, law.

40. The safe house was somewhere near the M25 but they did not have a clue where it was. Burns had no phone, no internet and no knowledge of the injunction. However they did not think it right for 'the company' to be able to 'buy the injunction'.

41. On 10 November they had climbed up the outside of the gantry, clicked on and recorded a video. When PC Powell shouted up, 'I went into a kind of shutdown. In the exchange I said that I was forced to take civilly disobedient action and then found myself crying uncontrollably. That traumatic memory made it difficult to piece together what happened'. The video taken at the bottom of the gantry would show that distress. The action was one of desperation, caring about people's future and the responsibility of the global North: "but I have no knowledge of the injunction".

42. In cross-examination by Mr Feeney, Tez Burns accepted that they were a named Defendant (no.100) to the Bennathan Order dated 9 May 2022, but said they had no engagement with it. This is the Order referred to in the Russenberger judgment at [7], which was not confined to the 'structures' on the M25 but extended to the whole of the 'Roads' whose wide definition included the gantries.

43. Taken to Ms Higson's evidence that the Bennathan Order had been served on their home address for service with a notice affixed to the door drawing the recipient's

attention to the fact that the package contained a Court order, Burns did not accept service of that Order: "No. I have a problem. Everything that came through my door went straight into the recycle bin. Big piles of paper that I didn't want to look at. If I did not read it this was because I put it in the rubbish along with a lot of other post." Further, 'people kept sending me angry letters and people kept harassing me'.

44. Tez Burns accepted that they had been a member of quite a few App groups, including WhatsApp, but "hated meetings". They went to the mandatory legal briefing, but never to a meeting about injunctions. Then: "People tend not to speak to me about injunctions, because they know I think they are not legitimate"; and "I did not know what the injunction contained, I just know that they kept harassing me in my home".

45. In the legal briefing, they were not told about civil injunction: 'Civil court is different to criminal court; and it was not what we were talking about'. They decided to take the action because sometimes the law has to be broken.

46. In the safe house, people were coming and leaving, going to shops and for walks. They did not go out of the house and did not see any information about injunctions. They had not seen any of the exhibited news and press releases, nor seek out news and read newspapers: "I would have dived deep into my community". There was no discussion about injunctions during the 3 or 4 days in the safe house.

47. To the concluding challenge that they were not telling the truth about the injunction, Tez Burns replied: 'Absolutely not, I did not know about the injunction. I have sworn to tell the truth.'

NHL submissions on knowledge: re Callum Goode

48. Mr Fry submitted that Callum Goode had failed to satisfy the civil burden on absence of knowledge of the Chamberlain Order. When represented by HJA, NHL's solicitors sent a letter dated 27 November 2023 asking for details of their case on safe houses and generally. There was no response to that letter on behalf of Callum Goode. By contrast, in cross-examination Callum Goode said that there was a safe house but gave the vaguest evidence about it; and declined to identify any else who was present. It was not credible that they had a lack of memory about such an event; and particularly when they had been given advance notice of questions on that topic from the solicitors' letter.

49. Goode had further made clear their view on injunctions generally and on their willingness to break the law. Their evidence showed deliberate evasiveness, from which the Court should draw adverse inferences on the issue of knowledge.

50. There were three possibilities. First, that they were telling the truth and had a selective memory. Secondly, that they had been told about the injunction but had forgotten about it; but that would be no defence on the issue of knowledge. Thirdly, that they knew about the injunction and were using lack of memory as an excuse for lying.

51. Callum Goode had made clear their contempt for the Court by failing to attend on 6 March, when they knew that two of NHL's witnesses (Martell/Higson) would be attending for their benefit. Instead they chose to glue themselves to the Court railings.

This conduct was all relevant to Goode's credibility and required their evidence to be treated with extra caution. All in all, the Court should conclude that Callum Goode had failed to establish the absence of knowledge to the civil standard.

Callum Goode's response

52. In response Callum Goode reiterated that they did not have knowledge of the injunction. They could not recall the details of all that happened but could be sure of important things such as knowledge of the injunction. If they had been told about the Chamberlain Order they would have remembered it. By contrast there had been no need to commit to memory the location of the safe house. They had not seen the list of questions in the solicitors' letter and would not want to do research to help memory. Goode pointed to their autism and focus on the absence of certainty on the details of the safe houses; and reminded the Court that the injunction was granted just 2 days before their action on 7 November.

53. As to the gluing incident, that had been dealt with by the Magistrates Court and they had been found not guilty. There was no connection between that event and the issue of knowledge. What was important was telling the truth. There was a scale as to how certain they could be about different things. They did not know about the injunction before taking the action on 7 November.

NHL submissions on knowledge: re Tez Burns

54. Mr Fry submitted that Tez Burns was in a different position from Callum Goode in that they had been served with the Bennathan Order by the permitted method; that Tez Burns thereby had actual knowledge of that Order and its material terms; and that those material terms were the same as in the Chamberlain Order.

55. As to the evidence of putting all post into the recycling bin, this was no answer and reflected the sort of 'Nelsonian blindness' to which the Court had referred in Secretary of State for Transport v. Cucuirean [2020] EWHC 2614 (Ch) per Marcus Smith J at [61]: '*The whole point about personal service is to bring the order to the attention or notice of the person being served. If that person – despite personal service – chooses to pay no heed to the order, by (for instance) immediately binning it, then that sort of unwillingness to engage clearly cannot permit such a person to avoid the consequences of breaching the order (including committal).*'

56. As to the safe house, Tez Burns was there from at least the Sunday (6th) when, as the exhibits showed, there was extensive news coverage of the injunction granted the previous day. Further the JSO issued press releases with references to the injunction on three separate days of the action.

57. Traumatic memory was no answer. If there were such a problem, it was strange that they could not remember the location of the safe house but could remember that they had absolutely no knowledge of the injunction.

58. As with Goode, there were the same three possibilities arising from the evidence. The Court could and should also take into account, as relevant to credibility, Burns' conduct in the gluing incident, the consequent failure to attend on 6 March and the further failure to attend on 17 May. The Court should conclude that Tez Burns had not

established the absence of knowledge of the injunction and its material terms. Burns had knowledge of both; and, as to knowledge of the material terms, having particular regard to the prior knowledge of the Bennathan Order.

Conclusions on knowledge

Callum Goode

59. I am satisfied that Callum Goode has discharged the burden of establishing absence of knowledge of the Chamberlain Order or therefore of its material terms.

60. In reaching that conclusion I have taken due account of the range of arguments advanced (collectively and individually) by Mr Fry to the contrary; and have, with one qualification, found his articulation of the 'three possibilities' to be helpful when considering the evidence.

61. Having observed and listened closely to Callum Goode's evidence, I am satisfied that they have told the honest truth when stating on oath that they had no knowledge of the injunction.

62. In reaching that conclusion I have not been persuaded that Callum Goode was displaying a "selective" memory nor that Mr Fry's first possibility requires that pejorative adjective. I accept that Goode was being particularly careful to distinguish between matters on which they were sure and those where they were uncertain because of poor recollection or otherwise. I consider this to be consistent with the overall character and presentation of this Defendant.

63. As with other Defendants in this litigation, I find it unsurprising that Goode's knowledge of the location of the safe house was so limited; and did not consider their answers on this to be evasive. By contrast, when unwilling to answer a question – notably on the identities of other occupants of the safe house – this Defendant did so directly and squarely.

64. I also reject the possibility that Goode may have been told or learned about the injunction (sometime between 5 and 7 November) but then subsequently forgot about it. This was an order in clear terms, directed at JSO's threatened action on the M25. I am satisfied that if this, and any other, Defendant had known about it yet decided to act in defiance of its prohibition, its existence would not have been forgotten. Thus, as in my previous judgment in respect of other Defendants, I consider that the challenge to Goode's evidence can only be on the basis that they have lied to the court. I reject the submission they have done so.

65. I am equally unpersuaded that Goode's statements to the effect of objecting to the use of injunctions to prevent protest and of willingness to break the law, or their conduct outside the Royal Courts of Justice on 6 March and consequential absence from Court on 6 and 8 March, provide support for the case that their evidence on knowledge is not credible or reliable. I accept that these are factors to take into account, but in my judgment this Defendant was telling the truth when insisting on the importance they attached to telling the truth, and whether in Court or anywhere else.

66. Whilst, as Mr Fry correctly emphasised, the case of each Defendant must be judged individually, I consider it relevant and appropriate to recall the evidence which was given and accepted in other cases to the effect that the JSO legal briefing for this protest did not extend to civil injunctions. Goode's evidence is consistent with those other accounts.

67. I am equally satisfied that Goode was not following a dishonest "party line", derived from consideration of the evidence and judgment in the Kirin cases, by a false denial of knowledge of the injunction. I am not persuaded that the absence of a response on behalf of Goode to NHL's letter of 27 November 2023 puts in doubt the honesty of their account. I also accept Goode's evidence that they had not seen the list of questions in the solicitors' letter.

68. As to the position when on the gantry, I accept Goode's evidence that they climbed the ladder on the other side and that there was no warning notice there.

Tez Burns

69. In this case NHL places particular emphasis on service of the Bennathan Order on Burns by the alternative method which it permitted; and then on the presumptive knowledge of that Order and its terms which is said to result.

70. In my judgment, this calls for caution on the part of the Court, since this contempt application is in respect of the Chamberlain Order alone. It is not a hearing, by a side-wind, of an allegation of contempt of court in respect of the Bennathan Order. I add that the material terms of the two Orders are, whilst similar, not identical: cf. paras. 10 and 11 of the Bennathan Order.

71. In these circumstances I consider that it would be wrong to make definitive findings on liability or knowledge in respect of that Order. That said, I accept Burns' account of the binning of post and the reasons for doing so.

72. However, even on an assumption of fact and law that Burns is to be treated as having actual knowledge of the Bennathan Order and its materially similar terms, I am not persuaded that this advances NHL's case. This is essentially because, having heard and observed this Defendant give evidence, I am satisfied that they have told the honest truth when stating on oath that they had no knowledge of the Chamberlain Order.

73. In reaching this conclusion, I am again quite unpersuaded by the possibility that Burns might have been told about the Chamberlain Order (in their case between 5 and 10 November) but subsequently forgot about it. I am satisfied that this is again a case where the Defendant in question is either lying to the Court about prior knowledge of that Order or telling the truth.

74. I am equally unpersuaded that Burns' veracity on this point is undermined by their stated objections to the use of injunctions or willingness to risk breaking the law in support of the cause or conduct outside the court on 6 March or failure to attend Court on 17 May or today. This is conduct which has required close consideration, but having done so I accept Burns' evidence about the importance of telling the truth on

oath and otherwise; and am satisfied that this belief was held quite independently of these other aspects of their conduct.

75. I am satisfied that Burns gave evidence consistently with that belief and was not seeking to be evasive or to take false advantage of the supposed effect of traumatic events on memory. I accept the veracity of Burns' account on the trauma of the events and its effect. I do not find it strange or inconsistent that their detail of the location of the safe house is so limited; nor do I find any inconsistency with their emphatic evidence as to the absence of knowledge of the injunction.

76. I have also taken due account of the period of time between Burns' arrival at the safe house and participation on the final day of the protest (10 November) and the evidence of reports of the Chamberlain Order in the media and in JSO press releases. I accept that Burns did not know these; and in doing so reject the contention that they had actual knowledge in the form sometimes described as Nelsonian blindness.

77. Accordingly I find that Burns did not have knowledge of the Chamberlain Order nor therefore of its material terms.

78. In these circumstances, and as Mr Fry accepts, it must follow that, whilst each of these two Defendants acted in technical breach of the Chamberlain Order, no penalty should be imposed in either case.