



Neutral Citation Number: [2024] EWHC 1506 (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: 6/6/2024

**Before :**  
**MR JUSTICE SOOLE**

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**Between :**

**NATIONAL HIGHWAYS LIMITED**

**Claimant**

**- and -**

**AARON GUNNING (D2)**  
**ALFRED BESWICK (D6)**  
**AMY FRIEL (AKA O'DONNELL) (D7)**  
**DANIEL MIFSUD (D20)**  
**EDWARD LANEY (D26)**  
**GEORGE CATTELL (D29)**  
**GEORGE SIMONSON (D30)**  
**JAN GOODEY (D34)**  
**LOUISE HARRIS (D39)**  
**NICHOLAS MARK ONLEY (D48)**  
**SAM HOLLAND (D58)**  
**SAMUEL PRICE (D60)**  
**THOMAS CHRISTOPHER GARDENER (D64)**  
**TOBY ROBARDS (D66)**

**Defendants**

**Michael Fry and Michael Feeney** (instructed by **DLA Piper UK LLP**) for the Claimant  
**Owen Greenhall** (instructed by **Hodge Jones & Allen**) for Defendants D2, 7, 10, 29, 30, 34;  
and instructed by **Commons Legal** for D26; and by **ITN Solicitors** for D48  
**Ms Audrey Mogan** (instructed by **Hodge Jones & Allen**) for D39, 58, 60, 64 and 66  
**Jacob Bindman** (instructed by **Birds Solicitors**) for D6

Hearing date: 6 June 2024  
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**JUDGMENT**

**Mr Justice Soole :**

1. This is an application by the Claimant (NHL) dated 10 August 2023 to commit each of these 14 Defendants 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.
2. Mr Michael Fry and Mr Michael Feeney again appear for NHL. Mr Owen Greenhall appears for D2, 7, 10, 26, 29, 30, 34 and 48; Ms Audrey Mogan for D39, 58, 60, 64 and 66; and Mr Jacob Bindman for D6.
3. The application arises from the same events which were the subject of the contempt applications against Defendants in this action which I determined by my successive judgments dated 30 October 2023: [2023] EWHC 3000 (KB) ('the Kirin judgment'); 8 March 2024: [2024] EWHC 566 (KB) ('the Russenberger judgment'); and on 4 June 2024 in a judgment relating to two other Defendants in the Russenberger cohort.
4. The Kirin judgment discussed and determined a number of points of principle on both liability and sanction. Counsel for the represented parties helpfully made clear their acceptance of those principles, subject to reserving for any higher court their position on the issue of knowledge and the burden of proof. Accordingly the Kirin judgment should be read together with and as necessary background to this judgment. For ease of reading, I shall in some respects repeat sections of that judgment verbatim.
5. On various occasions over 4 days commencing Monday 7 November 2022 protesters (including these Defendants) associated with JSO climbed onto and in some cases affixed themselves to the gantries with consequent massive disruption of the motorway. NHL is the highways authority and owner of the Strategic Road Network (SRN) which includes the M25 and its structures.
6. In apprehension of such protest activity, NHL applied to the High Court for an urgent interim precautionary injunction against Defendants described as 'Persons Unknown entering or remaining without the consent of the Claimant on, over, under or adjacent to a structure on the M25 motorway'.
7. By the Chamberlain Order, NHL was granted an injunction until just before midnight on 10 December 2022 which restrained such Persons Unknown from (amongst other things) 'Entering or remaining upon or affixing themselves or any object to any Structure on the M25 motorway...'. 'Structures' were defined by the Order to include the gantries. Subsequent orders have continued that injunction. Before 5 November there had been previous injunction orders in respect of the M25 and many other motorways and roads in the SRN; and arising from activities of Insulate Britain, Extinction Rebellion and JSO. These included the Order of Bennathan J dated 9 May 2022 (the Bennathan Order) which was not confined to the 'structures' on the motorways; but required personal service and so was ineffective against 'newcomers'. That Order continued in force at the time of this protest action.

8. In the absence of any named defendants, the Chamberlain Order included permission for its service to be effected by methods alternative to personal service, namely by emailing a copy of the order to two JSO email addresses; providing a direct link to the Order on the National Highways Injunction website; advertising the existence of the Order on the National Highways Twitter feed with a link to that website; and notifying the Press Association of the existence of the Order. There is no dispute by any Defendant that NHL complied with that order for alternative service.
9. As in Kirin, each of these Defendants was arrested by the police at the relevant scene; and was thereafter charged under s.78 Police, Crime, Sentencing and Courts Act 2022 with the statutory offence of public nuisance.
10. 12 of the present Defendants contend that they had no knowledge of the injunction before acting as they did; and NHL accept this. For the reasons set out in my judgment in Kirin, this is a matter which goes to sanction not breach ([15]-[30]) and the burden is on the defendant to establish, on the civil standard, absence of knowledge ([31]-[38]).
11. Following discussions between NHL and solicitors for those 12 Defendants, agreement has been reached, subject to the approval of the Court, on compromise of the committal application. The terms in each case are the same, namely that upon the Defendant in question giving undertakings as to their conduct in relation to NHL's Roads (as defined) for a period of two years, the contempt application would be discontinued and dismissed. As in the Russenberger judgment I am again satisfied that in each case those terms of compromise represented a fair and appropriate balance both between the parties and having regard to the public interest. In the absence of such an agreement, the Court would have had to hold that there was a technical breach of the injunction but to impose no penalty. Before accepting those terms, I obtained the personal assurance of each Defendant that they understood the significance of an undertaking to the Court and the potential consequences of any breach.

#### The principles on sanction

12. I take these directly from the Kirin judgment at [114]-[119]; and which derive from the summary by the Divisional Court in NHL v Heyatawin & ors [2021] EWHC 3078 (QB) at [48]-[53].
13. Thus: there is no tariff for sanctions for contempt of court, because every case depends on its own facts. The sanction has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed.
14. The key general principles are that (a) the court has a broad discretion when considering the nature and length of any penalty for civil contempt. It may impose an immediate or suspended custodial sentence, an unlimited fine, or an order for sequestration of assets; (b) the discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely punishment for breach; ensuring future compliance with the court's orders; and rehabilitation of the contemnor; (c) the first step in the analysis is to consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order; (d) the court shall consider all the circumstances including but not limited

to: whether there has been prejudice as a result of the contempt and whether that prejudice is capable of remedy; the extent to which the contemnor has acted under pressure; whether the breach of the order was deliberate or unintentional; the degree of culpability; whether the contemnor was placed in breach by reason of the conduct of others; whether he appreciated the seriousness of the breach; whether the contemnor has cooperated, for example by providing information; whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; whether a sincere apology has been given; the contemnor's previous good character and antecedents; and any other personal mitigation; (e) imprisonment is the most serious sanction and can only be imposed where the custody threshold is passed. It is likely to be appropriate where there has been serious contumacious flouting of an order of the court; (f) the maximum sentence is 2 years imprisonment. A person committed to prison for contempt is entitled to unconditional release after serving one-half of the term for which he was committed; (g) any term of imprisonment should be as short as possible but commensurate with the gravity of the events and the need to achieve the objectives of the court's jurisdiction; (h) a sentence of imprisonment may be suspended on any terms which seem appropriate to the court.

15. Further the conscientious motives of the protesters are relevant and there may be cases where the contemnor is a law-abiding citizen apart from their protest activities. In such cases a lesser sanction may be appropriate because the sanction can be seen as part of a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's activities are contrary to the protester's own moral convictions. This is one reason why an order for imprisonment is sometimes suspended.
16. In some contempt cases there may be scope for the court to temper the sanction imposed because there is a realistic prospect that this will deter further lawbreaking or, to put it another way, encourage contemnors to engage in the dialogue described above with a view to mending their ways or purging their contempt. However it is always necessary to consider whether there is such a prospect on the facts of the case. In some cases there will be. In some cases, not. Moreover it is important to add that there is no principle which justifies treating the conscientious motives of the protester as a licence to flout court orders with impunity.
17. In reaching my decision I also take account of the sentences imposed in similar protester cases: including Heyatawin and NHL v. Buse & ors [2021] EWHC 3404(QB); and of course the sanctions which I imposed in the Kirin and Russenberger judgments.
18. I turn to the evidence and submissions relating to the remaining Defendants: Jan Goodey (D34) and Nicholas Onley (D48).
19. In each case, these Defendants accept that their conduct renders them liable for contempt of court in their breach of the Chamberlain Order. Furthermore they accept that they acted as they did with actual knowledge of the injunction and its material terms; save there is a significant distinction between the two cases. Nicholas Onley accepts that he had such knowledge before climbing onto the relevant gantry; Jan Goodey only from the time when on the gantry and advised by a police officer of the injunction. NHL accept that qualification in respect of Jan Goodey. The relevant facts

in each case can be taken shortly, from the affidavit evidence of the relevant police officers.

20. Jan Goodey, now aged 59, was on 7 November at 7.53 a.m. seen climbing up the gantry between junctions 15 and 16. He had secured himself with rope and carabiners. Attempts to persuade him to come down voluntarily were unsuccessful. One of the officers told him of the injunction. Two of the four lanes had to be closed and he was brought down by the removal team and arrested on the ground at 10.54 a.m. Mr Goodey pleaded guilty at the Magistrates Court on 29 November 2022 to the offence of public nuisance and received a prison sentence of 6 months, not suspended. Further he has offered an undertaking to the Court in the same terms as the 12 Defendants referred to earlier. In a further witness statement dated 6 June 2024 he sets out his personal circumstances, states that he has not previously breached any injunctions; and that he has moved on from direct action and does not intend to breach any further court orders. He also stood up at this hearing to make an apology to the Court for his conduct in breaching a Court order.
21. Nicholas Onley, now aged 61, was on 10 November at 7.40 a.m. seen on gantry 11541 between junctions 15 and 16. There was a full road closure so the traffic was at a standstill. Pedestrians on the nearby overbridge were throwing drink cans at him. PC Holland put on a helmet and climbed up to speak to him. After about 10 minutes he agreed to come down of his own accord. He was arrested on the ground at 7.53 a.m. Both carriageways between the junctions were closed for around two hours that morning, the total period reflecting the continuing presence of another protester.
22. On 12 April 2024 Onley confirmed in open correspondence both his liability for breach of the injunction and that he had knowledge of it before he took his action. On 30 May 2024 he signed an undertaking in the same terms as other Defendants. His witness statement of the same date records that he was remanded in custody from 10 November until granted bail on 22 December 2022. His trial is listed for 1 July 2024 and he has decided to plead guilty.
23. He then sets out his motivation for his conduct; but having reflected on the matter expresses his regret for the action and for the disruption caused to the public. He offers his sincere apologies and states that the current proceedings have underlined for him the serious consequences of breaching Court orders. In a further witness statement he sets out more detail of his personal and financial circumstances. Since release on bail he has lived with his 91 year old mother, who has Alzheimer's, as her sole day carer. In the circumstances I have permitted this Defendant, uniquely, to attend the hearing by CVP.

#### Submissions

24. As to the facts generally applicable to each Defendant, Mr Fry submits that the material features were: the deliberate nature of the acts; the foreseeable risk of serious harm, including from traffic accidents and potential interference with emergency vehicles and critical workers; the circumstances where the very objective of the protests was to cause harm and disruption to as many ordinary members of the public as possible so as to bring attention to the cause which was advocated; the fact of such harm, as set out in the undisputed affidavit evidence of Mr Martell on behalf of NHL; inevitable consequential economic loss to members of the public and to the police;

and the harm to the public interest which results from the deliberate flouting of a court order. In each case the culpability and the harm were high.

25. As to Nicholas Onley, he submits that the custody threshold is passed. However he acknowledges that there is strong mitigation in his case: in particular that he came down from the gantry voluntarily after 10 minutes of discussion with the officer; that he made full admissions at an early stage, was polite and compliant in correspondence, and minimised the preparation that NHL was required to carry out for this hearing; that he has offered an undertaking and provided an apology to the Court which appears to be sincere; that he has plainly engaged in the dialogue on which the authorities place particular importance; and that he has strong personal mitigation in respect of caring for his mother. Mr Fry submits that the Court may think that a penalty akin to that imposed on Diane Hekt in the Russenberger judgment is appropriate.
26. Mr Greenhall reminds the Court that sanction in any case must be tailored to the very specific circumstances of each case. He submits that, having regard to all the features of strong mitigation identified by Mr Fry and which go beyond those which applied to Diane Hekt, together with the period of 42 days spent on remand and for which, depending on the disposal of the criminal proceedings there may never be credit, the right course would be to impose no sanction.
27. As to Mr Goodey, Mr Fry submits that, in the circumstances of the punishment imposed on him by the Magistrates Court, and consistently with the approach and absence of penalty in the cases of Springorum and Whitehouse (where the respective 6-month sentences were suspended), the Court may think it right to impose no further penalty. Mr Greenhall of course made submissions to the same effect.

### Conclusion

28. In respect of Nicholas Onley, I consider that the culpability and harm were high. From the outset, his acts were deliberate and in defiance of the Court. The overall aim and motivation was of course to draw attention to the climate change and fossil fuel issues; but the means to that end were to cause severe disruption on the motorway which would result in publicity for that campaign.
29. As the evidence shows, the protest caused massive disruption to the M25 and to members of the public. This is fully detailed in the affidavit evidence of Mr Martell. Notwithstanding the 'blue light' policy of JSO and protesters in respect of emergency vehicles there was evident risk that emergency vehicles and critical workers might be held up. There will have been inevitable economic loss and disruption to members of the public and the police who had to devote resources in anticipating and removing the protesters. In addition there is the risk of members of the public responding by taking the law into their own hands. The public interest firmly requires the upholding of orders of the court.
30. Having given full weight to Mr Greenhall's submissions, I am not persuaded that it would be right to impose no penalty. I am also satisfied that a fine would not be an appropriate sanction and that the custody threshold is passed. However I again agree that all the mitigating features identified make it appropriate to suspend the sentence which I shall impose.

31. In the light of all the mitigating features, and before full credit for the admission of liability, I consider the appropriate term of imprisonment to be 36 days. With that one-third credit, the term is reduced to 24 days. For the reasons given in the Kirin judgment, no reduction has been made for the period of time on remand. The resulting committal order is to be suspended for two years, on the same terms as imposed in the Kirin judgment.
32. As to Jan Goodey, I am satisfied that no penalty should be imposed. In reaching that conclusion I have taken particular account of his absence of knowledge of the injunction until informed on the gantry, the prison sentence actually served, his apology and his statements of intent for the future.

Conclusions on sanction

33. Nicholas Onley: committal for 24 days, suspended for 2 years, on the same terms as in the committal orders imposed by the Kirin judgment.

Jan Goodey: no penalty.