



Neutral Citation Number: [2022] EWCA Civ 1519

Case No: CA-2022-001987

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**MR JUSTICE RITCHIE**  
**([2022] EWHC 2457 (KB))**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17/11/2022

**Before:**

**LORD JUSTICE COULSON**  
**LORD JUSTICE PHILLIPS**  
and  
**LORD JUSTICE EDIS**

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**Between:**

**Elliott Cuciurean**  
**- and -**  
**(1) Secretary of State for Transport**  
**(2) HS2 Limited**

**Appellant**

**Respondents**

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**Tim Moloney KC & Adam Wagner** (instructed by **Robert Lizar Solicitors**) for the **Appellant**  
**Richard Kimblin KC & Michael Fry, Brendan Brett** (instructed by **DLA Piper**) for the  
**Respondents**

Hearing Date: 9 November 2022  
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**Approved Judgment**

This judgment was handed down remotely at 2pm on 17 November by circulation to the parties or their representatives by e-mail and by release to the National Archives

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## **LORD JUSTICE COULSON:**

### **1. Introduction**

1. By a judgment dated 23 September 2022 ([2022] EWHC 2457 (KB)), Ritchie J (“the judge”) sentenced the appellant to 268 days immediate custody for contempt of court. He also fined him £3,000. The relevant order was dated 6 October 2022. The appellant appeals against that order as of right.
2. There were originally four Grounds of Appeal. Ground 1 complained about the judge’s conduct of the contempt hearings. Grounds 2 and 3 went to the sanction that the judge imposed. Ground 4 was a challenge to the finding of contempt: the argument was that the injunction in question did not apply to the appellant and therefore he was not in contempt of court.
3. On the Monday before the appeal hearing, the court was informed that Ground 1 had been abandoned. Save in one very limited respect, I say no more about it. Of the remaining Grounds, it is appropriate to consider Ground 4 first because, if the appellant is right, there was no contempt of court. As will become apparent below, the court has concluded, by a majority, that the injunction applied to the appellant and he was in contempt of court. It is therefore necessary to consider the question of sanction (Grounds 2 and 3): for the reasons set out below, the court is unanimously of the view that the sanction imposed by the judge was not excessive or unreasonable. In the result, therefore, the appeal will be dismissed.

### **2. The Appellant**

4. The appellant is a serial protestor against the HS2 Scheme. This has led to at least one criminal conviction, a number of findings of contempt of court and the imposition of various terms of imprisonment although, until the present case, those have always been suspended.
5. On 16 October 2020, the appellant was committed for contempt of court for 12 breaches of an injunction protecting HS2 land at Crackley, near Kenilworth in Warwickshire. In his judgment on liability ([2020] EWHC 2614 (Ch)), Marcus Smith J found the contempt proved, saying that the appellant “would go to very considerable lengths in order to give his objections to the HS2 scheme as much force as they possible could have”. He found the appellant to be an evasive witness.
6. The sanction imposed by Marcus Smith J was 6 months imprisonment suspended for one year. That term was reduced by this court to 3 months imprisonment, suspended for one year ([2021] EWCA Civ 357). Despite that reduction, I note that, when that year was over, on 24 October 2021, the appellant published a social media message which read: “Goodbye suspended sentence, injunction breaking here we come.” The judge rejected the suggestion that that was some sort of “joke” on the part of the appellant, and there is no appeal against that finding.
7. In fact, it appears that the appellant had not waited until the end of the one year period to continue to break the law. Between 16 and 18 March 2021 - in other words, during the period in which the suspended sentence was operational - he trespassed on land in Hanch, near Lichfield in Staffordshire, and dug and occupied a tunnel there, again to

disrupt the HS2 scheme. Although he was initially acquitted of aggravated trespass, the Divisional Court, in their judgment of 30 March 2022 ([2022] EWHC 736 (Admin)), remitted the case to the magistrates' court with the direction to convict the appellant.

8. The appellant was duly found guilty of aggravated trespass on 29 June 2022. On 21 July 2022, he was sentenced to a 10 week term of imprisonment, again suspended for a year. No further details of this sentence have been provided. It is unclear to me why, having committed a further HS2-related offence during the period in which the original suspended sentence was extant, the appellant was not given a term of immediate custody. This history also means that, at the time of the contempt with which this appeal is directly concerned (May-June 2022), the appellant knew that he was going to be convicted and sentenced for the aggravated trespass, but he did not allow that to deter him. It appears that neither of the earlier suspended sentences were ever activated, either in whole or in part and, although this history was identified by the judge, it was not treated as the particularly aggravating feature I consider it to be.

### **3. The Order And The Alleged Contempt**

9. On 28 March 2022, the respondents commenced proceedings against 63 defendants in respect of land, known as the Cash's Pit Land ("CPL"), on the proposed route of HS2 in Staffordshire. D1-D4 were all categories of "persons unknown" defined by reference to particular activities. D1 was defined as:

"Persons unknown entering or remaining without the consent of the claimants on, in or under land known as land at Cash's Pit, Staffordshire, coloured orange on Plan A annexed to the Particulars of Claim (the Cash's Pit Land)".

D5-D63 were all named defendants. The appellant was D33.

10. The Claim Form and Particulars of Claim ("PoC") sought immediate possession of the CPL. The PoC explained at paragraph 12 that the respondents did not know the names of all those occupying the CPL, but knew enough to identify D5-D20, D22, D31 and D63. That group of defendants, which did not include the appellant, were called the "Cash's Pit Named Defendants" in the PoC. However, the PoC made clear that there were other individuals-whether other named defendants or otherwise-who might come and go on the CPL. That was why the claim for trespass was made against both the Cash's Pit Named Defendants and D1. Those defendants, taken together, were called "the Cash's Pit Defendants".
11. At paragraph 17 of the Particulars of Claim, the respondents sought an order for possession of the CPL. At paragraph 18 they sought a declaration confirming their immediate right to possession of the CPL. Both those claims were made against the Cash's Pit Defendants. At paragraph 24, the respondents set out their reasonable fear that, having removed the Cash's Pit Defendants from the CPL, "the Defendants will return to trespass on or cause nuisance to the CPL" or on other parts of the HS2 land. This last was a reference to the wider injunction sought against the defendants in relation to the entire route of the HS2 scheme, with which this appeal is not concerned.
12. In the prayer for relief, the respondents claimed:

“(1) An order that the Cash’s Pit Defendants deliver up possession of the Cash’s Pit Land to the First Claimant forthwith;

(2) Declaratory relief confirming the First Claimant’s immediate right to possession of the Cash’s Pit Land;

(3) Injunctive relief in the terms of the draft Order appended to the Application Notice;

(4) Costs;

(5) Further and other relief.”

13. The injunction in respect of the CPL was granted by Cotter J on 11 April 2022 (“the Cotter Order”). It was to all intents and purposes in the form referred to at paragraph (3) of the prayer in the PoC. Paragraph 3 of the Cotter Order ordered the Cash’s Pit Defendants to give the respondents vacant possession of the CPL. Paragraph 4 contained the operative injunction:

“4. With immediate effect, and until the earlier of (i) Trial; (ii) Further Order; or (iii) 23.59 on 24 October 2022:

a. The Cash’s Pit Defendants and each of them are forbidden from entering or remaining upon the Cash’s Pit Land and must remove themselves from that land.

b. The Cash’s Pit Defendants and each of them must not engage in any of the following conduct on the Cash’s Pit land, in each case where that conduct has the effect of damaging and/or delaying and/or hindering the Claimants by obstructing, impeding or interfering with the activities undertaken in connection with the HS2 Scheme by them or by contractors, sub-contractors, suppliers or any other party engaged by the Claimants at the Cash’s Pit Land:

i. entering or being present on the Cash’s Pit Land;

ii. interfering with any works, construction or activity on the Cash’s Pit Land;

iii. interfering with any notice, fence or gate on or at the perimeter of the Cash’s Pit Land;

iv. causing damage to property on the Cash’s Pit Land belonging to the Claimants, or to contractors, sub-contractors, suppliers or any other party engaged by the Claimants, in connection with the HS2 Scheme;

v. climbing onto or attaching themselves to vehicles or plant or machinery on the Cash’s Pit Land used by the Claimants or any other party engaged by the Claimants.

c. The Cash’s Pit Defendants and each of them:

- i. must cease all tunnelling activity on the Cash's Pit Land and immediately leave and not return to any tunnels on that land;
- ii. must not do anything on the Cash's Pit Land to encourage or assist any tunnelling activity on the Cash's Pit Land."

14. Consistent with the PoC, the Cash's Pit Defendants were defined in the Cotter Order as:

"D1 and D5 to D20, D22, D31 and D63 whose names appear in the schedule annexed to this Order at Annex A."

The relevant parts of Annex A identified D1 in the same terms as the Particulars of Claim (paragraph 9 above).

15. Paragraph 6 of the Cotter Order was in the following terms:

"6. The Court makes declarations in the following terms:

The Claimants are entitled to possession of the Cash's Pit Land and the Defendants have no right to dispossess them and where the Defendants or any of them enter the said land the Claimants shall be entitled to possession of the same."

Paragraphs 7, 8 and 9 of the Cotter Order were all concerned with the service of the Order itself by the various methods identified there.

16. The appellant was in court when the Cotter Order was made. He said that, at the time, he understood that the Cotter Order related to him. As Mr Wagner fairly conceded on his behalf during the appeal hearing: "he always thought he was bound by the order". The appellant further admitted that, despite that knowledge, he continued his protest against the HS2 scheme by going on to the CPL on 10 May 2022, and staying in the tunnel from 10 May 2022 to 25 June 2022, a period of 46 days. The evidence was that, every day, the respondents' contractors issued verbal warnings to the occupiers of the CPL about the terms of the Cotter Order. On 25 June 2022, the appellant burrowed out of the tunnel with others and escaped across a field outside the CPL.

#### **4. The Subsequent Proceedings**

17. By then, the appellant and six others were the subject of an application for committal for contempt. Those committal proceedings were commenced on 8 June 2022. It is accepted that the papers were served on the appellant on 9 June when he was still occupying the CPL. On 10 June he was served with notice of a directions hearing in the committal proceedings, to take place on 14 June 2022. The appellant stayed on the CPL and did not attend and was not represented at the directions hearing.
18. At the directions hearing various directions were made as to i) the provision by the defendants of a service address by 20 June; and ii) the service of any evidence by 27 June. Although those directions, too, were served on him, the appellant did not comply with them. Following his flight from the CPL, a skeleton argument was provided on his

behalf on 20 July, in accordance with the judge's directions. This raised, for the first time, the argument that he was not in contempt at all because of the wording of the Cotter Order.

19. The committal hearing took place over three days in July 2022 (25, 26 and 27 July), involving the appellant and a number of co-defendants. The appellant then sought an adjournment to put in evidence on a variety of issues, including a personal medical issue. The judge acceded to that request, which led to a further two day hearing on 22 and 23 September 2022. In my view, this process was unnecessarily drawn-out, particularly given the relatively straightforward issues raised by the contempt proceedings.
20. As I have said, although the appellant thought at the time that the Cotter Order applied to him, and admitted the conduct which amounted to contempt, it was argued by Mr Wagner at the hearing in July that, on a proper construction of the Cotter Order, it did not concern him. The argument was that he was not one of the named defendants within the definition of Cash's Pit Defendants and, because he was a named defendant, he could not be a 'Persons Unknown' within the definition of D1. The judge rejected that argument. That left the September hearing to address the issue of sanctions against the appellant.
21. The judge found that the appellant's culpability was high for the reasons set out at [142]-[144] of the judgment under appeal. No challenge is made to those findings. The judge also identified the wide-ranging nature of the harm he had caused at [145], noting that "the limited tax-payers resources of our society would have been better spent on the NHS, social care, the environment, the underprivileged and other needy issues than chasing and waiting around after you as you played your underground civil disobedience games in breach of the Cotter Injunction". The judge had earlier noted at [34] – [36] and [142] that any increase in cost in the HS2 project was an increase that had to be met by the tax-payer, and that the cost of the security for the events at the CPL alone amounted to approximately £8 million. Again, there is no appeal against those findings in respect of harm.
22. As to aggravating factors, the judge said this:

“[146] **Aggravating factors** You accept that you did not engage with the Courts or the lawyers for HS2 at all until after you came out of the tunnel. You did not attend the pre-trial review about which I am sure that you were aware. You did not raise any evidential or legal issues which would be relevant to the final hearing at the pre-trial review. You did not serve the evidence which you now rely upon in accordance with the Court's directions.

[147] On the other hand from late June onwards you did engage, you instructed lawyers, applied for legal aid and you served your first witness statement, you gave evidence to me direct and you provided mitigation through your counsel. However you did not do so at the main hearing because you did not gather your evidence on time. Instead you sought an adjournment to put in more evidence because you had not prepared the evidence you wished to rely upon before the main hearing. You increased the costs and expenses of HS2 and the Secretary of State as a result.”

The judge also referred to the previous contempt in respect of the injunction at Crackley, and the aggravated trespass at Lichfield.

23. On the question of insight, the judge found at [150] that the appellant had not shown any real understanding of the effects of his actions on society and tax payers' funds, on the emergency services and on the court system. At [151] he said:

“[151] In addition you attempted to assert at the start of the main sanctions hearing that you did not consider that you personally were bound by the Cotter Injunction due to a misreading of or a technical point taken on the terms which you adopted after talking to your lawyers. I have already ruled on that application and dismissed it. The approved transcript of my judgment is in the Appendix to this judgment.”

The judge dealt in detail with the possible mitigating factors between [152]-[165]. He found that the case passed the custody threshold (which is not a finding which is appealed to this court), and he concluded that a fine would not be sufficient punishment [169].

24. In calculating the sanction, the judge took a starting point of 332 days imprisonment (46 days underground x 7 days per day of occupation), and reduced that by around 20% to reflect the mitigating factors. That left a net term of 268 days imprisonment. The judge said that, in all the circumstances, he could not suspend the term [171], a conclusion which, again, is not appealed. He concluded by saying this: “the dialogue between you and the Courts in relation to conscientious objection has been far too one-sided for far too long”.

## **5. Was The Appellant Caught By The Cotter Order (Ground 4)?**

### ***5.1 The Issue***

25. The first issue raised by this appeal is whether or not the appellant was caught by the Cotter Order. If he was not, then there would be no contempt. So although it was the last ground of appeal, it must be considered first.
26. During the July hearing, the judge gave a number of *ex tempore* judgments on matters which arose during the course of argument. They were then usefully gathered up as an Appendix to the September judgment. The first of these concerned the appellant's argument that he was not caught by the Cotter Order. The judge ruled against the appellant for two reasons. First, he said that no notice of the submission had been given at the pre-trial review; that it was a preliminary issue which had not been raised until 5 days before the hearing. He described it as “a last-minute ambush”. He therefore rejected the submission on procedural grounds. If he was wrong about that, the judge went on to consider and reject the submission on its merits.

### ***5.2 The Procedural Bar***

27. In their written skeleton argument on appeal, Mr Moloney KC and Mr Wagner complained that the judge was wrong to dismiss the submission as a matter of procedure because it was not a preliminary issue, but a substantive defence to the claim for

contempt. In his skeleton argument, Mr Kimblin KC did not seek to support this aspect of the judge's approach.

28. I can well understand the judge's irritation that, at the start of what appeared to be a hearing dealing with sanctions for admitted contempt on the part of a large number of defendants, the appellant was raising, for the first time, an issue of liability. Furthermore, it is not an answer to say that this was a pure point of law and that, because it was in the skeleton argument (which was served in time), there was no default on the part of the appellant. The appellant subsequently gave evidence on this topic: he should therefore have addressed this point in a witness statement served weeks before the hearing in accordance with the judge's directions. In addition, as I note below at paragraph 52, there was an obvious riposte to this argument which, somewhat ironically, Mr Wagner said in July that he could not deal with, because it was raised late. There was therefore a real risk that, in raising the point for the first time at the hearing, the appellant was gaining a potential procedural advantage.
29. However, I accept Mr Wagner's basic submission that this was not a preliminary issue as such, but a substantive argument about whether the appellant was caught by the Cotter Order, and therefore whether or not he was in contempt of court. Although the appellant can properly be criticised for not complying with court orders until the last minute or beyond, and for not giving what I consider to be proper and fair notice of this issue, it was plainly something which the judge had to address at the hearing in July. In effect, the respondents had to show that the appellant's submission on the wording of the Cotter Order was wrong in order to establish contempt.
30. I note that, in his ruling on this aspect of the case, the judge did not identify any part of the CPR which would have permitted him, as a matter of procedure, to rule out the appellant's submission without considering it on the merits. Pleadings are not usually required in contempt applications and certainly none were ordered here, so the judge's criticism that the matter had not been pleaded was erroneous. Although, as I have said, the point was not unlinked to the evidence, it would have been wrong in principle to rule out any consideration of what was, at root, a matter of construction because of the absence of evidence, particularly in circumstances where the direction in respect of witness statements was not framed as an unless order.
31. I therefore agree with Mr Wagner that the judge erred in dismissing the appellant's argument as a matter of procedure. The remaining question is whether he was wrong to dismiss it on its merits.

### ***5.3 The Substantive Argument***

32. The core of the argument is that the appellant was a named defendant (D33) in the Cotter Order and therefore could not be a 'Person Unknown' at the same time. That is said to be illogical: he was known (and named), and therefore he could not be a 'Person Unknown'. Mr Wagner accepted that his argument was "a narrow one", although he said that paragraph 6 of the Cotter Order provided support for the proposition that, when the respondents wanted orders to cover all the defendants, they had no difficulty in framing them as such.
33. In answer to that, Mr Kimblin said that there were two stages: getting possession of the CPL (paragraph 3 of the Cotter Order) and then keeping it free of protestors (paragraph



4). He said that the named defendants within the definition of Cash's Pit Defendants were those relevant to stage one; those who were believed at the time to be in occupation of the CPL. Since the appellant was not believed to be in occupation of the CPL at the time of the Cotter Order, he was not one of those named defendants. But, he said, in respect of stage two, anyone who then went to the CPL after the order was made "became a person to whom the injunction was addressed and a defendant" in the words of Sir Tony Clarke MR in *South Cambridgeshire DC v Gammell* [2005] EWCA Civ 1439; [2006] 1WLR 658 at [32]. They were therefore covered by the definition of D1 whether they were otherwise named or not.

34. I agree with Mr Kimblin. My reasons are these. The Cash's Pit Defendants, as defined in the Cotter Order, fell into two groups. One group were those particular defendants "whose names appear in the Schedule and Annex to the order". They were D5-D20, D22, D31 and D63. They did not include the appellant because it was believed (correctly, as it turned out) that he was not occupying the CPL in April. He was not therefore in that group, called in the PoC "the Cash's Pit Named Defendants".
35. The other group of Cash's Pit Defendants were those defined as D1, namely "persons unknown entering or remaining without the consent of the claimants on, in or under the CPL". That was aimed at Mr Kimblin's second stage, after possession: keeping the CPL free of protestors. On the face of it, when the appellant went to the CPL the following month, and remained there for 46 days, he fell within the definition of D1. Thus, although he was not a *named* Cash's Pit Defendant, he was a *defined* Cash's Pit Defendant because he was caught by that definition of D1.
36. It is not seriously argued to the contrary that, on the plain words of the D1 definition, the appellant was not caught by the definition. The argument therefore depends on other parts of the Cotter Order, and alleged inconsistencies or illogicalities to which those other parts might give rise. Although I accept that the wording of an injunction in a contempt case should be free from all reasonable doubt, it is not insignificant that, for the purposes of the appeal, the critical parts of the Cotter Order are clear. Who are the Cash's Pit Defendants? Certain named defendants and D1. Did the appellant fall within the definition of D1? When he went to the CPL and occupied the tunnel after the Cotter Order, Yes, he did. He did all the things prohibited by paragraph 4(b).
37. The main argument put forward by Mr Wagner is that the appellant could not be a "person unknown" because he was known to the respondents and named in the Cotter Order. But why not? If the definition of D1 is clear, then there is no reason why he could not be both. The principal purpose of the wide definition of D1 was to cover anyone who might go onto the CPL after the making of the Cotter Order. At the time that the Cotter Order was made, the appellant was not a person known to the respondents as occupying the CPL. So he was not in that group of named defendants, who were on the CPL at the time. But the respondents could not look into the future. They did not know what the appellant (or any of the other defendants, named or not) was going to do thereafter. But they still needed to protect themselves against anyone, be they named defendants or others, from trespassing on to the CPL and causing nuisance after they had obtained possession.
38. In this way, the respondents needed a 'Persons Unknown' category to protect themselves against trespass and nuisance in the future. Through the definition of D1, the Cotter Order gave them that, and provided the vital means of ensuring that those

who needed to be notified of the injunction were notified appropriately. And when, the following month, the appellant went to the CPL and occupied the tunnel, he was notified of the terms of the injunction (although he knew them anyway) and he fell foursquare within the definition of D1.

39. Mr Wagner said during argument that, in this case “‘Persons Unknown’ describes activities which will make you a defendant and in breach of the order”. I agree with that. It is the prohibited activities in the future which matter for the definition of D1, not whether the respondents happened to know your name at the date of the Cotter Order, and so could name you as a defendant. When the appellant went to the CPL and occupied the tunnel in May 2022, he was undertaking an activity which caused him to be within the D1 definition, and therefore a defendant in breach of the Cotter Order. It matters not that he was separately a named defendant.
40. I accept that the declaration at paragraph 6 of the Cotter Order extends to all defendants, and plainly caught the appellant. It may therefore have been possible for the respondents to include a wider group of defendants - perhaps all the defendants - in the relevant parts of the Cotter Order at paragraphs 3 and 4. But a declaration is a different thing to an injunction and, certainly in a case of this sort, precise targeting is less important. Furthermore, I do not consider that this goes to the narrow argument advanced by Mr Wagner: what matters is whether the relevant part of the Order, which is the definition of Cash’s Pit Defendants, includes the appellant *if* the appellant went on to the site in breach of its terms. I believe it clearly did.
41. As with many matters of interpretation, different views are possible. I have seen the judgment of Phillips LJ in draft, and note that he takes a different view on the wording of the Cotter Order. But although I understand why, it does not, with great respect to him, cause me to alter my conclusion.
42. Moreover, I would be troubled about any interpretation which signalled to the respondents that they would have been better off naming *all* the defendants in respect of *all* the prohibitions, so as not to fall foul of this sort of narrow argument, even though they knew that not all the named defendants were on the CPL originally. It would be unfortunate if this court sent a signal that ‘kitchen sink’ drafting was better than a properly targeted injunction; indeed, such a signal would be contrary to the judgment of this court in *Canada Goose*, noted below.
43. For those reasons, I consider that the judge was right to conclude that the appellant was a Cash’s Pit Defendant for the purposes of the Cotter Order. In my view, such a reading is in accordance with *Gammel*, and the cases on ‘persons unknown’ injunctions.
44. In this context, I should address briefly the decision of this court in *Canada Goose UK Retail Limited v Persons Unknown* [2020] EWCA Civ 303; [2020] 1WLR 2802. Ground 1 of the appeal in that case was concerned with whether there was effective service on “persons unknown”. It built upon the Supreme Court decision in *Cameron v Hussain* [2019] UKSC 6; [2019] 1 WLR 1471 and Lord Sumption’s observations that service of the originating process “is the act by which the defendant is subjected to the court’s jurisdiction” [14], and that “it is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard” [19].

45. The problem in *Canada Goose* was that the injunction was too widely drafted and gave rise to issues of service and proper notification. Hence, at paragraph 82 of the judgment of the court in that case (to which Mr Wagner referred in argument), the obvious point was made that if defendants are known and have been identified, they must be joined as individual defendants to the proceedings, in contrast to “persons unknown”. That latter category “must be people who have not been identified but are capable of being identified and served with the proceedings if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention”.
46. As that brief summary makes plain, this part of the judgment in *Canada Goose* was concerned with service, and in particular the problem of service on “persons unknown”. Service is not in issue here: in accordance with *Canada Goose*, the respondents joined the appellant as a named defendant and served him as such. They served him again when he went to the CPL in May. But *Canada Goose* was not stipulating that, in every case, and regardless of the wording of the order in question, a named defendant could not also be, in particular and clearly defined future circumstances, a “person unknown”.
47. I also consider that paragraph 82(1) of the judgment in *Canada Goose*, which refers to the “persons unknown” as including “people who in the future will join the protest and fall within the description of the ‘persons unknown’”, supports the respondents’ case. In respect of the CPL, the appellant “joined the protest” in May and fell within the description of ‘persons unknown’ in D1.

#### **5.4 Ambiguity**

48. Mr Wagner had a fall-back position in respect of Ground 4. He said that, even if he was wrong as to its construction, the Order was ambiguous and, in those circumstances, it could not properly form the basis of findings of contempt of court. He referred to *Cuadrilla* (citation below) in which Leggatt LJ (as he then was) said at [59] that, “in principle, people should not be at risk of being penalised for breach of a court order if they act in a way that the order does not clearly prohibit. Hence a person should not be held to be in contempt of court if it is unclear whether their conduct is covered by the terms of the order.” Mr Wagner argued that, if it was unclear whether the order related to the appellant, he should not have been found in contempt of court.
49. I accept the proposition that a lack of clarity in the underlying order may impact on the court’s ability or willingness to find contempt of court. I also acknowledge that, in view of Phillips LJ’s dissenting judgment, it may be said that this is just such a case. However, for two principal reasons, I do not consider that any question of ambiguity arises here.
50. The first reason is because, although I respectfully acknowledge that the argument put forward by Mr Wagner is plausible, it did not sway me from what I consider to be the clear and sensible construction of the Cotter Order. Merely because there is an alternative argument does not make the Cotter Order ambiguous, or trouble me as to the propriety of the finding of contempt of court.
51. Secondly, I consider that the proof of this pudding is in the eating. Leggatt LJ talked about “conduct” because it is obvious that, if it is unclear what conduct is prohibited, a subsequent finding of contempt will or may be unjustified. But this is not a case in which conduct is in issue: the appellant accepts that what he did breached the Cotter

Order. On the appellant's case, what may matter is identity: who was caught by the Cotter Order? But here, the appellant accepts that he understood that the Cotter Order referred to him and "always thought he was bound by it". He did not consider that to be ambiguous at the time he was deliberately occupying the tunnel. He would have acted as he did come what may. Accordingly, I do not consider that the fact that an alternative construction was plausible means that the Order was so ambiguous as to make the finding of contempt unjustified.

52. I should add this. The underlying reality is that, by his presence on the CPL for 46 days, despite the daily warnings and the service of the contempt proceedings, the appellant was *prima facie* procuring and encouraging the breach of the injunction by those to whom it was addressed. That would put him in contempt of court regardless of the narrow construction argument. When this proposition was put to Mr Wagner by the judge at the hearing in July, he said that, because the contempt case had not so far been put in that way, he was not able to deal with it. I am uncomfortable with that, not only because it seems to me self-evident that the appellant was in contempt in those ways, but also because the objection to that alternative way of looking at the contempt potentially rewarded the appellant for taking his original argument about the Cotter Order so late. It is another reason why I consider that any question of doubt about the relationship between the Cotter Order and the appellant should, perhaps unusually in a case of this sort, be resolved in the respondents' favour.
53. In essence, however, I conclude that the appellant was the subject of the injunction; he always knew that he was the subject of the injunction; he deliberately breached the terms of the injunction; and his conduct, however it is categorised, amounted to a contempt of court. In those circumstances, in my view, there is no room for any ambiguity.
54. In my view, therefore, Ground 4 of the appeal must fail.

## **6. Was The Sanction Excessive (Grounds 2 & 3)?**

### ***6.1 The Legal Principles***

55. The legal principles as to sanctions in protestor cases were summarised recently in the judgment of this court in *Breen & Ors v Esso Petroleum Company Ltd* [2022] EWCA Civ 1405 at [5]-[17]. It is therefore unnecessary to repeat those paragraphs here: they should be read as if they were part of this judgment. The principles there set out are distilled from what I consider to be the most relevant authorities, namely *Cuadrilla Boland Ltd. & Others v Persons unknown & Others* [2020] EWCA Civ 9; [2020] 4 WLR 29 ("*Cuadrilla*"); *Cuciurean v SoS for Transport & Anr* [2021] EWCA Civ 357 ("*Cuciurean*"); *Attorney General v Crosland* [2021] UKSC 15; [2021] 4 WLR 103 ("*Crosland*"); *National Highways Limited v Heyatawin* [2021] EWHC 3078 (KB); [2022] Env.L.R. 17 ("*Heyatawin*"); *National Highways Limited v Buse & Others*. [2021] EWHC 3404 (QB) ("*Buse*") and *National Highways Ltd v Springorum and Others* [2022] EWHC 205 (QB) ("*Springorum*").
56. As to the test which this court should apply, an appeal like this is not a re-hearing but a review: see CPR r.52.21(1). This court will only interfere if it is satisfied that the decision under appeal is "(a) wrong, or (b) unjust because of a serious procedural or other irregularity": r.52.21(3). A decision on sanction involves an exercise of judgment

which is best made by the judge who deals with the case at first instance: see [20] of *Cuciurean*. This approach was also stated in [85] of *Cuadrilla*, which led Leggatt LJ to say that it followed that “there is limited scope for challenging on an appeal a sanction which is imposed for contempt of court as being excessive (or unduly lenient)”.

## **6.2 Ground 2(a) Legal Submission On Liability Wrongly Treated As an Aggravating Factor.**

57. It is said that the judge erred in treating the argument under Ground 4 - namely the construction argument as to whether or not he was caught by the terms of the Cotter Order - as an aggravating factor. Mr Moloney argues that it was wrong in principle for a defendant to be penalised for running an unsuccessful defence.
58. The answer to this complaint is that the judge did not treat this as an aggravating factor. I have set out at paragraph 22 above those matters which he expressly regarded as aggravating factors, and this was not identified. What the judge might have said during the course of argument in July about what was or may be an aggravating factor is nothing to the point: it is what he said in the sanctions judgment in September that matters. The premise on which Ground 2(a) is based is therefore not made out.
59. I accept that the judge did have regard to this point when considering the question of the appellant’s insight: see [151] of the judgment, set out at paragraph 23 above. In my view, what the judge said there was erroneous: the running of an argument on the construction of the Cotter Order on the advice of his lawyers had nothing to do with the appellant’s insight (or lack of it). However, it does not appear that the judge’s (erroneous) observations in this paragraph was a relevant element in the assessment of the sanction. It did not appear to have been treated as an aggravating factor in any event.
60. For the avoidance of doubt, I reject out of hand Mr Kimblin’s submission that in some way the criticisms of the judge in Ground 1, now abandoned, also reflected adversely on the appellant’s insight. They are wholly unrelated.
61. However, I cannot leave this part of the case without expressing my disquiet over the way in which the judge suggested that the appellant was “taking a risk” by continuing with the submission that he was not bound by the Cotter Order. Indeed, in his *ex tempore* judgment in July on this point, the judge said:
- “38. I did offer D33 the option to withdraw this application at the close of submissions yesterday and that offer was refused. The effect of that refusal shall be taken into account when sentencing for D33’s admitted intentional and deliberate breaches of the injunction.”
62. Although, for the reasons I have given, the running of the construction argument does not appear to have had any effect upon the judge’s assessment of the appropriate sanction two months later, the judge had no right to offer some sort of ‘deal’ to the appellant, or to suggest that, if the appellant pursued his argument on liability, he might be penalised for so doing. That was, I regret to say, an unprincipled approach which might have prevented a defendant from ventilating a legitimate defence. It should not have happened.
63. However, as a matter of substance, I consider that there is nothing in Ground 2(a) because there is nothing to show that the running of the construction point was in fact

taken into account in the assessment of the sanction at all, much less as an aggravating factor.

### **6.3 Ground 2 (b): Submission Of Further Evidence Not An Aggravating Factor**

64. Mr Moloney argued that the judge wrongly penalised the appellant by reference to his subsequent evidence, at the September hearing, about a private medical issue.
65. In my view, that complaint is unfair, and based on a misreading of the judge's judgment, when set in its proper context. The point that the judge was making was that the appellant did not engage with the courts once the committal proceedings had been served. He stayed in the tunnel. He did not attend or arrange representation at the pre-trial review. As a result he did not raise in advance any particular issues to be addressed at the trial itself. He did not serve any evidence.
66. It was only from late June/early July onwards that the appellant engaged in the process. As a result, he was not properly ready for the hearing later in July. The expert evidence, which went amongst other things to the private medical issue, was not ready for that hearing. The appellant was therefore obliged to seek an adjournment of the sanctions hearing. That is why the matter had to be put off until September. It was that aspect of the history which the judge regarded as an aggravating factor.
67. In my view, the judge was entitled to reach that conclusion. The appellant had ignored the committal proceedings until too late to allow a complete resolution of the issues at the hearing in July. That was the reason why the sanctions hearing had to be adjourned until September. In my view, the courts have, throughout, gone out of their way to accommodate the appellant, and the judge was entitled to regard it as an aggravating factor that the same could not be said the other way round. As noted in *Breen v Esso* at [62], the heart of a committal application is the defendant's flouting of court orders. Repeated failures to comply with court directions, will – in an appropriate case – be rightly regarded as an aggravating factor, as they were in *Breen v Esso*.
68. There is therefore nothing in Ground 2(b).

### **6.4 Ground 3(a) No Application Of The 'Cuadrilla' Discount**

69. Mr Moloney argued by reference to the decision in *Cuadrilla* that the judge should have granted a discount to the sanction which would otherwise have been imposed. That entitlement was said to arise out of the fact that the court was dealing with a conscientious objector. In particular, Mr Moloney said that the judge was wrong to conclude that, in a case where he had concluded that dialogue was not possible, no discount was applicable. He did not suggest that the judge was wrong to conclude that, in this case, dialogue was not possible. His narrow submission was that, even in such a case, some (albeit limited) discount was still appropriate.
70. In response, Mr Kimblin argued that the judge plainly did take *Cuadrilla* into account but identified a number of matters (in particular the absence of a dialogue with the appellant and the presence of a monologue) which meant that the applicability of a *Cuadrilla* discount in this case had not been made out.

71. As Lord Justice Edis pointed out during the course of argument, it is rather misleading to talk about a *Cuadrilla* discount at all. It is not as if there is some sort of guideline sanction from which a reduction, to a greater or lesser extent, then needs to be made to reflect the decision in *Cuadrilla*. What matters is that the judge reaches a proportionate sanction in all the circumstances of the case, including the culpability of the contemnor. I respectfully agree with that.
72. Accordingly, the position is rather more nuanced than Mr Moloney suggested. Moreover, *Cuadrilla* is itself based on what Lord Hoffmann said in *R v Jones (Margaret)* [2006] UKHL 16; [2007] 1 AC 136, at [89]:
- “But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protestors behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protestors into account”.
73. So it follows that if, for example, the court concluded that a defendant had not behaved with a sense of proportion, or had caused excessive harm, or had not accepted the penalties imposed, his or her culpability would be much higher and there would be little or no basis to expect corresponding restraint from the courts.
74. In addition, in a case of a serial contemnor such as the appellant, where the court has concluded that dialogue is no longer possible, the fact that the underlying protest was non-violent and a matter of conscience may be of no or negligible weight in the balancing exercise. That is because the whole thrust of *Cuadrilla*, and the subsequent cases, is about the importance of dialogue. As Dame Victoria Sharp, President of the Kings Bench Division, noted in *Heyatawin* at [53]:
- “53. In some contempt cases, there may be scope for the court to temper the sanction imposed because there is a realistic prospect that this will deter further law-breaking or, to put it another way, encourage contemnors to engage in the dialogue described in *Cuadrilla* with a view to mending their ways or purging their contempt. However, it is always necessary to consider whether there is such a prospect on the facts of the case. In some cases, there will be. In some cases, not. Moreover, it is important to add, that "there is no principle which justifies treating the conscientious motives of the protestor as a licence to flout court orders with impunity": *Attorney General v Crosland* [2021] UKSC 15, at [47].”
75. It is clear that, in the present case, the judge did take *Cuadrilla* into account: see for example [154]. It is also clear that he did not give it very much weight because of the absence of dialogue: see [155]. I consider that he was quite entitled to reach that conclusion. The mitigating factors available to the appellant were limited. His serial contempt of court meant that he was emphatically not the sort of defendant which the court had in mind in *Cuadrilla*. A protestor, no matter how conscientious he or she believes themselves to be, cannot keep ignoring the court’s orders, and then expect some sort of discount in the sanction to be applied every time they are dealt with for

contempt. That would be contrary to principle and the two-way nature of the process emphasised by Lord Hoffmann in *Jones*.

76. I therefore reject Ground 3(a).

### **6.5 Ground 3(b) Requiring Detailed Views From The Appellant**

77. The next complaint is that the judge erred in asking the appellant, during the course of argument, to provide details of an alternative to HS2. The lack of a coherent answer was then reflected in the judgment at [153]. The appellant's complaint is that there is no authority for the proposition that a defendant must give a detailed account of his beliefs in order to qualify for mitigation. Mr Moloney fairly accepted that this was "a small point".

78. The full passage of the judgment to which this point goes reads as follows:

"[152] **Mitigation:** In mitigation you assert that you are a conscientious protester. You assert that you have been a conscientious campaigner for 3 years. You assert that by delaying the HS2 project you are seeking to avert an "environmental catastrophe". You assert you are concerned about the carbon foot print of the use of heavy machinery and the destruction of ancient woodland and habitats. You have not been able to explain how your tunnelling and obstruction makes any such contribution to avoiding an environmental catastrophe save for the mere assertion. You assert that the HS2 project is a 'scam'.

[153] You asserted in your witness statement that a new project should instead be built. You called it a "*transport network that has sufficient interconnectivity to present a real alternative to travelling by car*". It is wholly unclear to me how that would be built nationwide without heavy machinery, a lot of it, which would give off fumes."

79. Again, I consider the criticism of these passages to be unfair. There are two reasons for that. First, as already noted, one of the distinguishing features of a protester case may be the extent to which dialogue with the contemnor is possible. The judge cannot be criticised for endeavouring to initiate that dialogue with the appellant. The legitimacy of a protestor's claim that he or she was driven solely by conscience is undermined if the court concludes that their protests are quixotic or hopelessly impractical, and merely adding to the considerable cost of the project which they are disrupting.

80. Secondly, it does not seem to me that these paragraphs had any real significance in the judge's assessment of any sanction, save perhaps to add further weight to the conclusion that the so-called *Cuadrilla* discount was of very limited application in this case.

81. I pause here to note that, instead of asking the appellant about alternatives to HS2, the judge might have been better off simply noting that HS2 is being built after many years of public and Parliamentary scrutiny. It was Parliament which concluded that HS2 was the best solution, a decision confirmed by a review of the Scheme after the 2019 General Election: see *Packham v SoS For Transport and Others* [2020] EWHC 829 (Admin), subsequently upheld by the Court of Appeal.



82. I therefore reject Ground 3(b).

### ***6.6 Ground 3(d): Discount for Plea***

83. Just as Mr Moloney did, I take Ground 3(d) next. That is a complaint that there was insufficient credit for the equivalent of the appellant's guilty plea. I reject that submission for two reasons.

84. First, it might be said that, on the facts, there should be no or no significant discount for the equivalent of a guilty plea, given that the argument that the Cotter Order did not apply to the appellant (and that therefore there was no contempt of court) has continued right up to this judgment. In a criminal case, if a defendant admits the facts of the offence but says that their admission is subject to the resolution of an overarching issue (whether following legal argument or a Newton Hearing) which may provide a complete defence, they will usually plead not guilty. The discount for plea does not start to run until that matter has been resolved against the defendant and a guilty plea entered. Here, the argument that the appellant was not in contempt of court at all has been run right up to the Court of Appeal. There has therefore been no equivalent of a guilty plea.

85. Secondly, to the extent that any credit is due, it would be modest. The appellant did not leave the CPL when he was served with the committal proceedings. He did not participate in the legal process until the last moment, failing to comply with the earlier directions of the court. Even if one ignores the qualified nature of any plea, it was effectively made just before the hearing. In a criminal case, that would not entitle a defendant to more than about 10% discount. Here, given the qualified nature of the plea, the appropriate reduction would have been even less.

86. For those reason, I do not consider that there is anything in Ground 3(d).

### ***6.7 Ground 3(c) 20% Discount for Mitigation***

87. As noted above, the judge identified a 20% discount for all matters of mitigation. The complaint is that the 20% was not broken down.

88. I reject that criticism. In a criminal case, a judge must identify the discount for a guilty plea, because there are strict guidelines relating to the precise discount available in any given circumstance. That does not apply here. Aside from that, a judge sentencing in the Crown Court will usually take all other mitigating factors into account in one composite discount. In a contempt case, the judge is quite entitled to take an overall percentage to reflect the mitigating factors.

89. I should also make it quite clear that, in my view, the judge's 20% discount in this case was generous. There was, given the appellant's history, little that could be said by way of mitigation.

90. I therefore reject Ground 3(c).

### ***6.8 Summary On Grounds 2 &3***

91. For the reasons set out above, I consider that there is nothing in Grounds 2 or 3. They are either wrong in principle or not applicable on the facts of this case. They do not meet the applicable test on appeal noted at paragraph 56 above.

## **7. The Overall Sanction**

92. The overall sanction in this case was a custodial term of 268 days and a fine of £3,000.
93. It was not appropriate to fine the appellant on the particular facts of this case. He has no assets, and was the subject of a term of immediate custody. The reasons why a fine is usually inappropriate for an impoverished protestor serving a term of imprisonment are explained in *Breen v Esso* at [83]-[88]. The fine must therefore be quashed.
94. As to the methodology by which the judge calculated the overall term, I do not consider it appropriate for the reasons set out in *Breen v Esso* at [47]-[49]. In the light of that, and my acknowledgement above of the fact that the judge made some comments which were erroneous and/or irrelevant, it is appropriate for this court to review the overall sanction and to consider whether the period of 268 days was excessive or unreasonable.
95. In my view, the period of 268 days imprisonment (the equivalent of just under 9 months) was not excessive or unreasonable. The judge found that the appellant's culpability was high and that the harm that he had caused was wide-ranging. As I have said, there is no appeal against those findings and, in my judgment, they were rightly made. In addition, for the reasons I have already explained, there were a range of aggravating factors, including the appellant's previous history of offending, and the fact that there were earlier suspended sentences, whilst there was little in the way of mitigation.
96. The term was also consistent with the sanction imposed in recent cases. Depending on the circumstances of the case, a first time contemnor may receive immediate prison sentences of between 3 to 6 months: see *Heyatawin* and *Breen*. The appellant in this case was a serial contemnor with suspended sentences imposed in the past. He must therefore have expected a significantly longer custodial term than in those cases.
97. For those reasons, I consider that the appellant can have no complaints about the term imposed by the judge. It was in no way excessive or unreasonable. Save for quashing the fine of £3,000, I would dismiss this appeal.

## **LORD JUSTICE PHILLIPS:**

98. I agree with Coulson LJ, for the reasons he gives, that the Judge was wrong not to entertain the legal argument that the appellant was not caught by the terms of the injunction granted by the Cotter Order. I take a different view, however, as to the merits of that argument. For my part, I would allow the appeal on ground 4.
99. The Cotter Order is expressly addressed to the appellant, naming him as D33. Paragraph 6 grants relief against him (in common with all defendants) in the form of a declaration, including that, in the event that he enters the CPL, the respondents are entitled to possession as against him. The Cotter Order does not list him as one of the named defendants against whom an injunction is granted, first and foremost, against entering the CPL.

100. Contrary to the Judge’s alternative finding (having refused to entertain the objection), I see no basis for interpreting the Cotter Order so that, upon entering the CPL, the appellant became not only D33 but also a “person unknown” within the rubric describing D1 for the following reasons:
- i) It is plain that D33 is not only a “known” person for the purposes of the proceedings and the Order, but is “known” as a person who may subsequently enter the CPL, as expressly referenced (and for which relief is granted) in paragraph 6 of the Order. In those circumstances, I cannot see how D33 could fall within the definition of person unknown within the rubric of D1. Interpreting D1 as including the appellant would be directly contrary to the authoritative guidance provided by this Court in the *Canada Goose* case at [82] that “If they are known and have been identified, they must be joined as individual defendants in the proceedings”. There is a clear and principled distinction between unknown persons and those who are known about, a distinction which rules out, quite clearly in my judgment, interpreting D1 as including a known defendant such as D33. While the distinction may be most important in relation to questions of service, the fact that service does not in the event prove to be an issue does not remove the distinction which must be made (and understood to have been made) at the time an injunction is granted.
  - ii) The Order fully anticipates that the appellant (as D33) may subsequently enter the CPL, and grants declaratory relief in that regard, but not injunctive relief. In those circumstances, it would be bizarre, and in my judgment impermissible, to find that an injunction was not applied for or granted in respect of anticipated conduct by a known defendant, but came into effect by the back-door through the rubric defining D1. Orders should not, in my judgment, be interpreted in that way.
101. I appreciate that, as the appellant believed that he was bound by the injunction at the time it was made and served, the above analysis would exculpate him on a technical and (in the broadest sense) unmeritorious basis. However, such arguments are properly open to any defendant and require close attention, particularly in the context of applications to commit for contempt. The Judge was quite wrong not to entertain the argument and it is concerning that he indicated that it would be held against the appellant if the point was pursued. If the appellant was not, as I would find, subject to the injunction by virtue of a technical flaw in the drafting of the Order, it would be quite wrong to commit him nonetheless. The proper course might have been to apply to commit him on the basis that, whilst on notice of the Order, he assisted or procured its breach by those enjoined, but I make no comment on whether such an application would have been (or would in future be) justified or successful.
102. If the appellant’s liability for contempt is upheld notwithstanding my views, I am in full agreement with Coulson LJ as to the proper disposal of the issues arising in relation to the appropriate sanction to be imposed.

**LORD JUSTICE EDIS:**

103. I agree with the judgment of Coulson LJ. I would make the order he proposes for the reasons he gives. I add only two observations about sentencing in these cases.

104. First, I would respectfully endorse these observations made by Coulson LJ in *Breen and others v. Esso Petroleum Company Limited* [2022] EWCA Civ 1405 at paragraph 8.

“In accordance with general principles, any sanction for civil contempt must be just and proportionate. It must not be excessive. But in civil contempt cases, the purposes of sanctions are rather different from those in criminal cases. Whilst they include punishment and rehabilitation, an important aspect of the harm is the breach of the court’s order: see [17] of *Cuciurean*. An important objective of the sanction is to ensure future compliance with the order in question: see *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ 699 at [20].”

105. I would suggest that in civil contempts, as opposed to criminal contempts, punishment is probably a less significant aim of an order than securing compliance with the orders of the court. The distinction was examined by Lord Toulson in *R v. O’Brien* [2014] UKSC 23; [2014] AC 1246 at [42]:-

“The question whether a contempt is a criminal contempt does not depend on the nature of the *court* to which the contempt was displayed; it depends on nature of the *conduct*. To burst into a court room and disrupt a civil trial would be a criminal contempt just as much as if the court had been conducting a criminal trial. Conversely, disobedience to a procedural order of a court is not in itself a crime, just because the order was made in the course of criminal proceedings. To hold that a breach of a procedural order made in a criminal court is itself a crime would be to introduce an unjustified and anomalous extension of the criminal law. “Civil contempt” is not confined to contempt of a civil court. It simply denotes a contempt which is not itself a crime.”

106. Although some of the authorities refer to rehabilitation as a purpose of committal orders in cases involving breaches of orders it is not necessarily true that short orders of imprisonment such as are frequently found in such cases have any rehabilitative effect. They are amply justified where they are required in order to secure compliance with an order of the court even though they may not tend to promote rehabilitation. The court will always seek to impose the least onerous order it can, while at the same time securing compliance with its order. Where that requires immediate committal to prison that will be the result even though the effect is likely to be seriously adverse to the contemnor and not conducive to rehabilitation.
107. The civil court cannot impose community orders which are designed to promote rehabilitation. In some of the statutory schemes for civil injunctions there are powers to impose positive requirements, but in practice there is often no infrastructure to enable these orders to be made. Usually, the choice of sanction is limited to fines, costs orders and suspended or immediate committal orders.
108. The statutory purposes of sentencing established by section 57 of the Sentencing Act 2020 do not apply in the contempt jurisdiction.

109. The second observation I would make concerns the use of a fine in conjunction with a sentence of imprisonment. I agree with Coulson LJ that the fine in this case was wrong because the appellant does not have the means to pay it and enforcement attempts will be a further drain on public resources. However, I consider that there will be cases where a fine and a committal to prison may well be appropriate.
110. It is clear that no prison term should be imposed where the court concludes that a fine constitutes a sufficient sanction. The question arises where a court decides that the custody threshold is met and further decides that compliance with the order would be more effectively secured if a fine were also imposed on a person with the means to pay it.
111. *Arlidge Eady & Smith On Contempt* 5<sup>th</sup> Edition at [14-118] says:-

“It has long been established that the courts may impose fines for criminal contempt, either with or without sentences of imprisonment.”

In this respect there is no reason why the powers of the court should differ as between criminal and civil contempt. It may well be that orders for a committal to prison and a fine are rare and confined to cases of people with very substantial assets who show themselves to be prepared to lose their liberty but may be more concerned about those assets. In appropriate cases I would say that they should be available.