

Neutral Citation Number: [2022] EWHC 2777 (KB)

Case No: QB-2022-001236

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

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

Tuesday, 27 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) EL LITTEN
(2) CHARLOTTE KIRIN
(3) TEZ BURNS
(4) MICHELLE CHARLESWORTH
(5) SHEILA SHATFORD
(6) MARY ADAMS

Respondents

MR MANNING and **MS CROCOMBE** appeared on behalf of the Applicant
The Respondents appeared in person

APPROVED JUDGMENT

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LIABILITY JUDGMENT

1. JUDGE KELLY: This is an ex tempore judgment following the trial of an application by the claimant, North Warwickshire Borough Council, to commit El Litten, Charlotte Kirin, Michelle Charlesworth, Tez Burns, Sheila Shatford and Mary Adams for contempt of court.
2. The claimant is represented by Mr Manning and Ms Crocombe of counsel. All the defendants act in person. Each has been repeatedly advised during these proceedings that they are entitled to seek legal advice and representation, but each wished to proceed without legal representation. Each has undertaken their own advocacy during the course of the trial.

Background

3. Kingsbury Oil Terminal is a large inland oil terminal located near Tamworth in Warwickshire. In the spring of 2022, various protests took place at the site against the production and use of fossil fuels, leading the claimant to apply for an interim injunction to protect the terminal. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. None of the six defendants before the court today were named defendants. The “persons unknown” were defined as being those “who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels in the locality of the site known as Kingsbury Oil Terminal...” Pursuant to section 27 of the Police and Justice Act 2006, a power of arrest was attached to the injunction.
4. On 5 May 2022 an on notice hearing took place before Sweeting J. Some of the named defendants were represented at that hearing. Sweeting J amended the interim order of 14 April and removed what had been described as a 5 metre buffer zone around the perimeter of the terminal site. That variation was drawn into an order dated 6 May 2022. Sweeting J reserved judgment in relation to the remaining issues that had been raised at the hearing. That reserved judgment has not yet been handed down. For the purpose of this judgment I will refer to the order of 6 May 2022 simply as "the injunction".
5. The injunction has a penal notice attached in the usual terms. Paragraphs 1(a) and 1(b) of the order prohibit certain conduct. By paragraph 1(a):

"The defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):

(a) organise or participate in (whether by themselves or with any other person) or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels at Kingsbury Oil Terminal (the ‘Terminal’), taking place within the areas, the boundaries of which are edged in red on the map attached to the order at Schedule 1."

6. The map attached at Schedule 1 has a red boundary line running largely round the perimeter of the oil terminal adjacent to Trinity Road and on an additional site adjacent to Piccadilly Way. The area falling within the red line includes a private access road leading to the entrance of the oil terminals.

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

"The defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):

...

1(b) In connection with any such protest anywhere in the locality of the Terminal performing any of the following acts:

...

(iii) obstructing of any entrance to the Terminal.

...

(xi) instructing, assisting, encouraging any other person to do any act prohibited by paragraphs (b)(i)-(x) of this Order."

8. By paragraph 3 of the injunction the order and power of arrest shall continue until the hearing of the claim unless previously varied or discharged by further order of the court. The order has not been subsequently varied or discharged. Indeed, as I have already indicated, the reserved judgment from the hearing on 5 May has not yet been handed down.

9. Paragraph 5 of the injunction gives the claimant permission to serve the claim form and supporting documents and the order and power of arrest by alternative methods specified at Schedule 2. Paragraph 1 of Schedule 2 states:

"Service of the claim form and this order shall be effected by:

- (i) placing signs informing people of:
 - a. This claim,
 - b. This order and power of arrest, and the area in which they have effect and
 - c. Where they can obtain copies of the claim form, order and power of arrest, and supporting documents used to obtain this order

in prominent locations along the boundary of the buffer zone referred to at para. 1 of this order and particularly outside the terminal and at the junctions of roads leading into the zone.

- (ii) Placing a copy prominently at the entrances to the terminal.

- (iii) Posting a copy of the documents referred to at para. 1(i)(c) above order on its website and publicising it using the claimant's Facebook page and Twitter account, and posting it on other relevant social including local police social media accounts, and/or
 - (iv) any other manner as the claimant may decide to use to bring the claim form and this order and power of arrest to the attention of the defendants and other persons likely to be affected.”
- 10. It is not in dispute that on 14 September 2022 the six defendants, along with 45 others, were arrested on a private access road leading to the terminal, just off Trinity Way. All 51 of the defendants were produced before the court on 15 September when their cases were adjourned to various dates last week when more court time was available to progress the cases and to allow time for the defendants to obtain legal advice and representation. At the hearing on 15 September all 51 defendants were remanded in custody because they each adopted the same position, namely that they did not accept the authority of the court and each indicated that, if bailed, they would breach the injunction and not voluntarily return to court. Last week, 45 of the defendants admitted contempt. One defendant's case was further adjourned to allow further time for him to obtain legal advice. The remaining six defendants before the court today did not admit the alleged breach and thus a trial has taken place today.
- 11. On 15 September 2022 the claimant provided each defendant with written particulars of the alleged contempt together with details of their rights as summarised in CPR 81.4(2). There are four allegations but all arise out of the same facts:
 - “1. Participating in a protest at the terminal, and within the boundaries of the area demarcated in Schedule 1, against the production or use of fossil fuels, contrary to paragraph 1(a).
 - 2. Encouraging others to participate in the protest at the terminal, and within the boundaries of the area demarcated in schedule 1, against the production and use of fossil fuels, contrary to paragraph 1(a).
 - 3. Obstructing an entrance to the terminal, within the locality of the terminal and in connection with the protest against the production or use of fossil fuels, contrary to paragraph 1(b)(iii).
 - 4. Instructing, assisting or encouraging each other to obstruct an entrance to the terminal within the locality of the terminal and in connection with a protest against the production and use of fossil fuels, contrary paragraph 1(b)(xi).”
- 12. During the course of the trial the claimant indicated it did not wish to proceed with the second allegation of breach and thus I will not consider allegation 2 further.
- 13. Prior to today, the defendants had made no admissions to the allegations. However, in giving oral evidence, each of them has largely accepted the claimant's factual case. I therefore proceed on the basis that each defendant to puts the claimant to proof. Furthermore, the defendants submit that the court should not enforce the injunction on the basis that it is an unjust order made in breach of their Article 10 and 11 rights or otherwise not to be enforced in light of the climate emergency that each has described in their evidence.

Legal Principles

14. These are contempt proceedings and therefore I remind myself that the burden of proof rests upon the claimant to prove its case to the criminal standard of proof, namely beyond reasonable doubt. In other words, I must be sure that the claimant has proved its case.
15. A number of courts have considered the correct approach to take to contempt proceedings. I am mindful of the guidance given by the Divisional Court in *National Highways Limited v Buse* [2021] EWHC 3404. That again was a case which dealt with contempt proceedings in the context of a protest. At paragraphs 23 and 24 of the judgment, it was held as follows:

"23. In order to establish a contempt of court the claimant must make the court sure that the defendants: (1) knew of the order; (2) committed acts which breached the order; and (3) knew that they were doing acts which breached the order, see *Varma v Atkinson* [2020] EWCA Civ 1602."

24. Although articles 10 and 11 of the European Convention on Human Rights and Fundamental Freedoms, to which domestic effect was given by the Human Rights Act 1998, are engaged, this is not relevant to the issue of whether the protestors acted in breach of the order. This is because when imposing the order the judge will have taken into accounts the rights of the protestors to protest, and balanced those interests against the rights of others in deciding whether to make the order, breach of which has penal consequences."

The evidence

16. The claimant relies on four witnesses. Mr Clive Tobin, the claimant's head of legal services and three police officers, Trainee Detective Constable Miles, PC Rowton and PC Dunn. Earlier in the proceedings I gave permission for the claimant to rely on witness statement rather than affidavit evidence. Each of the four witnesses has given oral evidence today. I have also seen video footage taken from body worn cameras of PC Rowton and PC Dunn.
17. Mr Tobin's written evidence sets out the steps he took to ensure that service of the order was effected by the alternative means specified in the order by Sweeting J. He described placing laminated copies of the order and power of arrest in the vicinity of the site at 11 different occasions on 24 August 2022 and placing 16 A2 size laminated notices around the site on 26 August. He then detailed the steps he took on 2 September when he returned to the site with more durable copies of signage again providing details of the claim, the injunction, the power of arrest and where copies of the claim form could be obtained. He exhibited to his written evidence a number of photographs and details of the GPS coordinates as to where he placed the various copies. The claimant also relies on a certificate of service detailing the circumstances in which the injunction was served via the claimant's website and various social media accounts. Ms Shatford was the only

defendant to cross examine Mr Tobin. She sought clarification from Mr Tobin as to whether a grass verge was included in the area covered by the injunction. Mr Tobin stated that the private road was covered but there was an area of grass to the right of the entrance that fell outside the red boundary line.

18. Trainee Detective Constable Miles then gave evidence. The police officer's written statement exhibited copies of photographs and video footage that she had accessed from Just Stop Oil's website and social media platforms. Extracts of the video were played in court and which showed footage of a large number of protesters sitting in the roadway blocking the entrance to the oil terminal. An individual is heard to provide a commentary on one of the videos including reference to hearing hoots of support from some passing motorists and negative responses from other motorists. She was not cross-examined.
19. In his written evidence, PC Rowton explained that he attended the terminal site at about 3.30 in the afternoon on 14 September and saw multiple people sitting across the entrance to the oil terminal holding banners and wearing high viz jackets. He states he was the officer who arrested Tez Burns and then, later in time, Sheila Shatford, El Litten, Mary Adams and Charlotte Kirin. He exhibited his body worn camera footage showing the arrests. In his oral evidence he explained that the time shown on the body worn camera video footage was one hour behind the actual time.
20. Ms Adams cross-examined PC Rowton. The officer accepted that he had no previous experience in policing climate protests. He explained that police dog units had been called by the superintendent who had told any available police officer to attend the incident. The dogs were not there because there was any particular resistance from the protestors. He explained that the public roads in the vicinity had been closed for reasons of safety of the officers and of the protestors. Ms Shatford cross-examined PC Rowton about what, if any training, he had received as to policing environmental activism. The officer stated that stated that, as part of his officer safety training, he had been taught how to deal with groups and the five-step appeal process to adopt. He accepted he had not received specific training regarding environmental activism.
21. PC Dunn was the final police witness. In his written evidence he stated that he had arrived on site at about 12 noon by which point the protestors were sitting in the junction at the entrance to the oil terminal stopping people entering and exiting via car. He described seeing several banners with "Just Stop Oil" wording and a number of the protestors wearing orange bibs, again with the Just Stop Oil logo. He gave evidence that one site worker had told the protestors that they had a medical appointment around 2.30 and had asked Michelle Charlesworth whether they would move to facilitate the vehicle but that she had refused to allow the worked to leave in their vehicle. PC Dunn later arrested Michelle Charlesworth. Ms Charlesworth cross-examined PC Dunn. He stated that he had been an officer for some three-and-a-half years and had policed climate protests on one previous occasion. He accepted that the protest was entirely passive. He explained that he had not received any information or training about climate emergency in his capacity as a police officer.
22. In the course of their oral evidence, each of the police officer witnesses confirmed the location of the protest on the private access road by reference to the injunction plan. The location identified by each fell within the red boundary line referred to in the injunction.

23. The court heard oral evidence from each of the six defendants. Self-evidently, some of the defendants gave evidence before their co-defendants. The defendants indicated that, in addition to relying on their own evidence, in general each also adopts the evidence of their co-defendants.
24. Tez Burns was the first defendant to give evidence. She was frank with the court and accepted that she had broken the injunction when obstructing the oil terminal on 14 September. She gave a very eloquent explanation as why she had chosen to join the action on that day borne, in particular, out of her concern over government plans to drill more holes for the extraction of fossil fuels. She spoke at some length to a letter published by OnePointFive Degrees and signed by some 150 solicitors and barristers urging that climate conscious actions be taken by lawyers. She stated that she was not a criminal but was driven by what she thought was right. In cross-examination, Tez Burns was taken through the various allegations of breach and she accepted, very frankly, that she was involved in Just Stop Oil protests against the production and use of fossil fuels inside the red boundary line. She admitted she was obstructing an entrance to the terminal and that the volume of individuals participating in the protest meant that together they blocked road. She also accepted that the police had read the injunction to them and given them the chance to move but she chose not to.
25. Michelle Charlesworth adopted the evidence of Tez Burns and later asked to adopt the evidence of co-defendants who gave evidence after her. Ms Charlesworth made admissions as to her involvement in the protest on 14 September against the production and use of fossil fuels. She did not accept that she had encouraged the others and stated that all of the protestors involved on that day were there of their own volition and did not require the encouragement of any co-member of Just Stop Oil. Ms Charlesworth accepted that she was now before the court for a third breach of the injunction and also had an earlier finding of contempt in the face of the court for gluing herself to the dock. She admitted that she had told the site worker that the protestors would not move to allow him to leave in his vehicle for his medical appointment. She however explained that it had been made clear to him that he could leave on foot. She stated that the protestors would have been happy to pay for a taxi or that his employer could have found a way to assist. She stated that, whilst their policy was not to move, they would have done if there had been an ambulance with lights flashing or similar emergency situation.
26. Mary Adams also adopted the evidence of Tez Burns and again made admissions as to her activity on that day putting her in breach of the injunction. She told the court that she takes the view that the injunction prohibits her rights under Articles 10 and 11 whilst protecting the rights of the fossil fuels industry. Ms Adams gave a very eloquent explanation as to her rationale for acting in the way that she did and detailed a number of examples of recent climate emergencies. She urged the court not find the defendants in contempt of court, citing circumstances in which history has shown that laws can change according to changing societal values. In cross-examination she, in common with earlier defendants, accepted that she had been within the red boundary line, obstructing the entrance to the terminal, as part of a protest against the production and use of fossil fuels.
27. Sheila Shatford adopted the evidence of Tez Burns and Mary Adams. She told the court that she had retired two years ago after working for 50 years as a nurse and had not taken

the decision to protest lightly. She explained that her actions were motivated by climate crisis which was already affecting the world. Ms Shatford explained that she felt she had a moral duty to speak up. Whilst she accepted that their actions would have caused temporary but frustrating disruption and costs to public services, she considered those insignificant compared to the mass extinction. In cross-examination she too accepted that she had been involved in the protest against the production and use of fossil fuels within the red boundary line and that she was obstructing the entrance to the terminal.

28. Charlotte Kirin also adopted the evidence given by her co-defendants. She too acknowledged that she had been part of the protest at Kingsbury on 14 September explaining that she had done so to prevent greater harm. In cross-examination, she too admitted breach of the injunction.
29. The court finally heard evidence from El Litten. El Litten adopted the previous defendants' evidence and gave an eloquent explanation as to the reasons for acting borne of concern as to the crises that were hitting the planet on a global scale. El considered that the courts and judiciary should be holding the government to account. El Litten indicated they were not asking for leniency personally. In cross-examination, El Litten, as with the other defendants, admitted taking part in the protest within the boundary line, obstructing the entrance to the terminal, whilst being aware of the injunction.

Findings of Fact

30. The defendants do not challenge the claimant's factual case. Each has admitted that they were involved in the protest on 14 September 2022 against the production and use of fossil fuels and that, by doing so, were within the red boundary line and blocked the entrance to the oil terminal. Taken together with the evidence from the police officers, including the body worn camera footage, I am satisfied that the claimant has proved its factual case namely that each of the defendants was protesting within the red boundary line marked on the map at Schedule 1 to the injunction, that that protest was in relation to the production and/or use of fossil fuels and it blocked or obstructed the entrance to the oil terminal. By acting in such a large group, each individual protestor assisted others to achieve the aim of blocking the whole road leading to the entrance to the terminal.

Analysis

31. It is trite law that an injunction must be served in order for it to be enforced by way of committal for contempt unless service has been dispensed with. This is not a case in which service has been dispensed with. Having heard from and read the evidence of Mr Tobin, I am satisfied that the injunction was served by the alternative methods specified by Sweeting J. In the latter part of August 2022 and early September 2022 multiple signs highlighting the injunction were placed around the perimeter of the site, at the entrance to the site and at junctions of roads leading to the entrance to the oil terminal. Furthermore, I accept the certificates of service that evidence the publication of the injunction by digital means on 10 May 2022 and again by providing links on 23 August. Moreover, each of the defendants admit that they were already aware that the injunction was in force when undertaking the protest.

32. I turn to the particulars of alleged breach. The first allegation is that the defendants breached paragraph 1(a) of the injunction by participating in a relevant protest within the boundary of the area demarcated on Schedule 1. It will be apparent from the findings of fact I have made that each of the defendant's conduct on 14 September puts them in breach of paragraph 1(a). The same is also true as to the allegation that those actions amount to a breach of paragraph 1(b)(iii) in that the protest obstructed an entrance to the terminal. I am further satisfied that the defendants' actions, acting in unison to block the road, amounts to a breach of paragraph 1(b)(xi). It required more than one individual to achieve the blocking of the entire width of access road and each assisted the other in that aim.
33. I turn to the defendants' submission that the court should not use this as an opportunity to make findings of contempt, notwithstanding that the claimant has proved the individual elements of breach. Each of the defendants have addressed the court extensively as to their views on the climate emergency. It is generally acknowledged in society that there are very legitimate environmental concerns. It is also recognised that individuals are entitled to qualified (rather than absolute) rights to freedom of speech, to freedom of assembly and to protest, but that those rights have to be exercised within the rule of law. The injunction granted by Sweeting J was an order made by a court of competent jurisdiction. When Sweeting J imposed the order, due consideration will have been given to the defendants' Article 10 and Article 11 rights. In other words, the decision to grant the injunction balanced the interests of those seeking to protest with the rights of others affected by their conduct. As per the decision of the Divisional Court in *National Highways Limited v Buse* case, although Articles 10 and 11 are engaged in this contempt application, they are not relevant to the question of determination of breach because those consideration were already factored in when the interim injunction was made. I therefore reject the defendants' submission that their assertion that the injunction infringes their Article 10 and 11 rights amounts to a defence to the contempt proceedings.
34. The injunction remains in force but is an interim order only. At some point in the future there will be a final hearing. The defendants will have the opportunity, should they so wish, to attend the final hearing and make submissions as to their concerns as to Article 10 or Article 11 issues and the appropriateness of a final injunction. The claimant has indicated that each of these defendants is to be added to the substantive proceedings as named defendants.
35. In those circumstances, I conclude that the claimant has established to the necessary criminal standard of proof that the applications for committal for contempt against each of the defendants have been proved. Each defendant is found to be in breach of paragraphs 1(a), 1(b)(iii) and 1(b)(xi) of the order.
36. A transcript of this judgment on liability will need to be obtained at public expense on an expedited basis and published on the judiciary website. I will hear from the claimant and each of the defendants before determining the appropriate penalties for contempt.

[THE COURT HEARD SUBMISSIONS FROM THE PARTIES]

JUDGMENT ON SENTENCE

37. El Litten, Charlotte Kirin, Michelle Charlesworth, Tez Burns, Sheila Shatford and Mary Adams, it falls for the court to determine the appropriate sanction in light of the finding that each of you is in contempt of court arising out of your involvement in the protest on 14 September 2022.
38. I have already set out the background to the case, your actions and my findings in my earlier judgment on liability.
39. The claimant has prepared a sentencing note to assist the court with the approach to take in relation to the imposition of sanction for contempt. I largely agree with the approach advocated for by the claimant. These contempts of court are civil not criminal matters. The finding of contempt will not appear on any criminal record. There is, however, a penal element to the imposition of a sanction. When determining the appropriate penalty for a contempt of court, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:
- "the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."
40. The Sentencing Council produce guidelines for use in criminal cases. They do not produce guidelines for civil cases. However, the Court of Appeal, in a number of cases, including *Amicus Horizon v Thorley* [2012] EWCA Civ 817 has endorsed the use of the Sentencing Council guidelines in the civil courts by analogy. The appropriate guideline is that for breach of a criminal behaviour order. It is not however a complete analogy. Breach of a criminal behaviour order in the criminal courts attracts a maximum sentence of 5 years' imprisonment whereas the maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. I am also mindful that the injunction is not an antisocial behaviour injunction of the kind that is made under the Antisocial Behaviour Crime and Policing Act. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.
41. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. They were also prepared in respect of breaches of anti-social behaviour injunctions rather than in respect of breaches of protestor injunctions. I therefore adopt the criminal guideline as the best analogy.
42. The claimant referred in its opening to the Court of Appeal decision in *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I referred in my liability judgment to *National Highways Limited v Buse* [2021] EWHC 3404 (QB). In

both of those cases the court looked at the approach to be adopted when dealing with sanctions for contempt of court in protestor cases.

43. None of the defendants have legal representation today. Had you had been represented, I have no doubt that your legal representatives would have urged the court to adopt the guidance in *Cuadrilla Bowland* and have reminded the court that it should usually be reluctant to make an order for immediate imprisonment when a protestor acting for conscientious reasons first comes before the court. In *Cuadrilla Bowland*, Leggatt LJ considered the approach to sentencing protestors:

“[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.

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

44. I accept that all of six of you acted for conscientious reasons and that this was a wholly peaceful protest. At paragraph 98 of *Cuadrilla Bowland* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

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

45. I turn to the Definitive Guideline for breach of a criminal behaviour order. The claimant submits that all of these defendants, bar Michelle Charlesworth, fall into culpability category B, being a deliberate breach. I agree with that classification. The breach by each of the said five defendants was deliberate.
46. Ms Charlesworth, however, is in a different position. Ms Charlesworth, this now your third contempt arising from breach of the injunction with earlier contempt of court occurring on 27 April 2022 and 4 May 2022. There is an additional contempt within these proceedings when you glued yourself to the dock of the court on 5 May 2022. For those earlier three matters, you received a sentence of 33 days' immediate imprisonment which took account of the equivalent of 30 days' spent on remand in custody. Four matters of contempt within a period of five months moves your case into culpability category A as your actions are persistent.

47. When determining the category of harm, the guideline requires consideration of the “harm that has been caused or was at risk of being caused.” The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to exit the site using the access road you were blocking to attend a medical appointment.
48. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.
49. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.
50. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.
51. If this matter were in the criminal courts, the guideline would suggest the following sentences for all defendants save Ms Charlesworth,. A category 1 harm, culpability B matter would have a starting point sentence of 1 years’ imprisonment with a range of high level community order to two years’ custody. A category 2 harm, culpability B

case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody.

52. Ms Charlesworth is in a different position. A category 1 harm, culpability A offence in the criminal courts would have a starting point sentence of 2 years' custody, with a range of 1 to 4 years' custody. A category 2 harm, culpability A matter, would have a starting point of 1 year's custody with a range of a high level community order to 2 years' custody.
53. The penalties for contempt of court have to be reduced to reflect the lower maximum term of imprisonment in the civil court. The court has to take into account any aggravating or mitigating circumstances for each defendant. That requires individual consideration of each defendant's case.
54. I deal firstly with Ms Charlesworth's position. The three previous contempt of court matters are not taken into account as an aggravating factor because they have already been taken into account when determining the category of culpability. Ms Charlesworth does, however, have relevant previous convictions. In April 2022 she received an eight-week term of imprisonment, suspended for a period of 12 months, plus unpaid work in respect of a conviction for public nuisance. The suspended sentence element was thus still operational at the date of the contempt on 14 September 2022. She also has 2 further convictions for public nuisance as to which similar concurrent sentences were passed. In addition, she has a conviction for obstructing the highway as to which no separate penalty was passed. All the offences relate to protest activity occurring in the Autumn of 2021. The criminal convictions are an aggravating factor dictating some upward movement from the starting point.
55. Ms Charlesworth's personal circumstances are, however, very sympathetic. Prior to March 2022 she had a lengthy, highly respectable career in which she made valuable contributions to society. She had worked in a variety of human resource roles, in the domestic violence sector, in homelessness hostels, and in managerial positions in the various third sector organisations. She has co-founded a climate change emergency charity and is still heavily involved in that. I take her personal mitigation into account.
56. Tez Burns has two previous convictions from June 2022 for obstructing the highway for which she was fined. The offences themselves date to 2021. Ms Burns was not the subject of any suspended sentence or period of conditional discharge at the date of the contempt. In common with the approach I have taken in other cases of contempt arising out of this protest, I do not propose to take the two offences, which resulted in fines only, into account as an aggravating factor. Ms Burns also has good personal mitigation. Whilst she is not in employment at the moment, she is heavily involved in voluntary work with a charity and has taken significant steps to overcome previous battles with alcohol addiction to achieve degree level academic qualifications. As with all of these defendants, she was motivated on grounds of social conscience.
57. Mary Adams has two previous convictions in 2022 for obstructing a highway, again dating back to protest activity in 2021. She was fined for both matters. In common with the approach adopted in respect of Tez Burns and other co-defendants, I do not propose

to treat the two convictions as an aggravating matter. Ms Adams was in longstanding employment before she retired in 2014 and is now involved in a small charity supporting small environmental projects.

58. Sheila Shatford is of positive good character with has no previous convictions or cautions. She is retired, having worked as a nurse for approximately 50 years. Whilst she is in receipt of a private and state pension, she is of relatively modest income having a mortgage which will not be repaid until she is aged 75.
59. Charlotte Kirin is also of positive good character with no previous convictions or cautions. She is a qualified social worker and had worked in that role for some 20 years before leaving her job only recently as a result of a protest activity.
60. El Litten has a single previous conviction from May 2022 for obstructing the highway in the Autumn of 2021. The conviction resulted in a financial penalty. As with other defendants in a like position, I do not propose to take the single criminal conviction resulting in a fine into account as an aggravating factor.
61. El Litten has been very frank with the court and disclosed that she has been before the civil courts for breaching other civil injunctions, including the National Highways injunction. Whilst El Litten is to be commended for her frankness, I conclude it would not be appropriate to take her previous admitted contempt of court arising in other civil matters into account as an aggravating factor. Unlike in the case of criminal convictions and cautions, this court is not assisted by any national database of individual's previous findings of contempt of court. I do not therefore have details as to the previous findings of contempt, dates thereof or what sanctions were imposed. The details provided by Ms Litten are vague and unparticularised. In addition, I know nothing as to whether any of the other 50 defendants appearing in respect of the protest on 14 September also have previous findings of contempt. There is a risk of disparity if I approach El Litten's case in a manner different to others that may too have findings of contempt in other claims. Whilst the civil courts would be very much assisted by a national database of previous civil breaches, on this occasion I am not persuaded it is appropriate to take El Litten's past admitted contempt into account as an aggravating factor.
62. El Litten describes being employed one day per week and undertaking some freelance work for the remainder of time, producing a modest but not substantial income.
63. I turn to the cases of Ms Burns, Ms Adams, Ms Shatford, Ms Kirin and Ms Litten. In my judgment, the contempt of court arising out of each of your involvement in the protest on 14 September 2022 is so serious that only a custodial sentence is appropriate. The starting point for each of you, taking into account each of your personal circumstances, is one of 56 days' imprisonment. I will return to the issue of whether that sentence can be suspended in due course.
64. Unlike the co-defendants that appeared before the court last week and who made admissions, you are not entitled to any credit for an admission as your cases each required a trial.

65. In fixing the term of imprisonment in the civil courts, the court has to take into account any time that has been spent in custody on remand and deduct it from the term. You have each spent 13 days in custody. That equates to a sentence of 26 days. Therefore, the term of 56 days needs to be reduced by 26 days giving a term of 30 days' imprisonment.
66. I bear in mind the guidance in *Cuadrilla Bowland* and in *National Highways v Buse*. These are your first breaches of this injunction and your actions arose from civil disobedience. I am persuaded that it is appropriate in each of your cases to suspend the term of imprisonment on condition of compliance for a period of two years from today with the terms of any interim or final injunction order made in the claim in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022 but if that order was subsequently varied, it would be the form of any varied order with which you must comply. I make it clear, if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment would be implemented and you will be dealt with separately in relation to any future contempt.
67. I turn to the case of Michelle Charlesworth. In my judgment the contempt of court, being the fourth contempt in these proceedings, is so serious that only a custodial sentence is appropriate. Taking into account the higher categorisation of culpability and your aggravating and mitigating circumstances I have already referred to, a starting point sentence of 154 days' imprisonment is appropriate. As with the other defendants, I deduct 26 days to reflect the 13 days you have already spent in custody on remand. That reduces the term to 128 days' imprisonment.
68. I have considered the guidance in *Cuadrilla v Bowland* and *National Highways v Buse*. I have also taken into account the definitive guideline on the imposition of community and custodial sentences. Ms Charlesworth, you have a very poor history of compliance with this order having been before the court now on three occasions for contempt within the last five months and once in relation to contempt in the face of the court in the context of these proceedings. Against that background, I am not persuaded it is appropriate for the court to suspend and thus the 128 days will be an immediate term of imprisonment.
69. Although the defendants feel very strongly about the injunction, it does not prevent the conducting of protests, even in the locality of the terminal. There is an area which falls outside the red boundary line immediately adjacent to the entrance to the terminal where the protest on 14 September occurred. Protests can take place outside the red boundary line so long as they do not otherwise contravene paragraph 1(b) of the order. However, as has been said repeatedly by more senior courts than this, in a democratic society it is the duty of responsible citizens to obey the law and rights of others, even where those laws are contrary to their moral convictions.
70. The claimant has made an application for each defendant to pay a contribution to its costs. It quantifies that contribution as £320.77 each in respect of the hearings up to and including the directions hearings last week, and a further £1,095 each in relation to the costs of the trial.

71. The general rule in civil litigation is that the successful party is entitled to its costs from the unsuccessful party unless the court orders otherwise. The claimant has proved its case and is the successful party. In principle, the defendants will each pay a contribution to the claimant's costs.
72. At hearings last week, I deemed the sum of £320.77 a proportionate sum for the work up to and including the second hearing. As to the costs of the trial, the claimant's figure includes the costs for half a day's attendance yesterday. Yesterday was listed as the first day of trial but it could not proceed due to the prison failing to produce Charlotte Kirin. Neither the claimant nor defendants were at fault for the non-production of Ms Kirin. The defendants' failure to make admissions required a trial of these matters and one which was listed for two days. The vicissitudes of litigation are such that it is appropriate for those costs to fall at the door of the defendants who required the trial to be listed.
73. I am persuaded that the overall sums sought by the claimant I respect of the trial are proportionate and indeed relatively modest for litigation of this nature. I therefore summarily assess each defendant's contribution to the trial costs in the sum of £1,095. Adding the costs from last week gives rise to a total of £1,415.77 per defendant. As to payment of that sum, each defendant's financial circumstances have to be taken into account.
74. Tez Burns is in receipt of Universal Credit and of extremely limited means. Ms Burns shall pay the costs by instalments of £10 a month, the first payment to be made by 27 October 2022 and thereafter by the 27th of each month until the balance is discharged.
75. Michelle Charlesworth is of limited means having left her employment in March. However, she lives with her husband in a property subject to a mortgage. In Ms Charlesworth's case the instalments will be £50 a month. In light of the immediate custodial sentence, the first payment of £50 will not be due until 30 November 2022 and thereafter by the 30th of each month
76. Mary Adams is retired and derives her income from rental income and certain investments. She is in a better financial position than the other defendants and shall pay the £1,415.77 as a lump sum by 31 October 2022.
77. Sheila Shatford is a retired nurse and in receipt of a combination of private and state pension income. She does, however, still have a mortgage liability which will not be redeemed until she is aged 75. Ms Shatford will pay by instalments of £50 per month, again with the first payment by 27 October 2022 and thereafter by 27th of each month.
78. Charlotte Kirin is currently not in employment and is hoping that she will be able to obtain some work in the near future. She believes any income will be much reduced from that she received when a full-time social worker. She has a mortgage liability and lives alone with no savings. Ms Kirin will pay by instalments of £25 per month, the first payment by 27 October 2022 and thereafter by the 27th of each month.

79. El Litten has income of approximately £1,000 a month from a combination of employment for one day a week and some freelance work. She too is of modest means. El Litten will pay by instalments of £25 per month, the first payment by 27 October 2022 and thereafter by the 27th of each month.
80. Each defendant has a right to appeal the orders for committal. Any appeal must be made to the Court of Appeal Civil Division within 21 days of today.
81. As with the judgment on liability, a transcript of this judgment shall also be obtained at public expense and published in due course on the Judiciary website.
82. I thank each of the defendants for the dignified way in which they have conducted themselves throughout the trial. I was aware that each wanted to have their voice heard and their conduct ensured that the case proceeded without disruption such that all could participate.

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

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