



Neutral Citation Number: [2023] EWHC 3000 (KB)

Case No: KB-2022-004333

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30/10/2023

**Before :**

**MR JUSTICE SOOLE**

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**Between :**

**NATIONAL HIGHWAYS LIMITED**

**Claimant**

**- and -**

**CHARLOTTE KIRIN (D14)**  
**DANIEL JOHNSON (D19)**  
**GAIE DELAP (D28)**  
**JOSEPH LINHART (D37)**  
**LUKE ELSON (D42)**  
**MAIR BAIN (D43)**  
**PAUL BLEACH (D50)**  
**PAUL SOUSEK (D51)**  
**PAUL BELL (D52)**  
**ROSEMARY JACKSON (D57)**  
**THERESA HIGGINSON (D62)**  
**THERESA NORTON (D63)**

**Defendants**

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**Michael Fry and Michael Feeny** (instructed by **DLA Piper UK LLP**) for the Claimant  
**Owen Greenhall** (instructed by **Hodge Jones & Allen**) for all Defendants (on the issue of knowledge); for Defendants 14, 28, 37, 42, 50, 51, 57, 62 (on sanction)  
**Nadesh Karu** (instructed by **Hodge Jones & Allen**) for Defendants 19, 43, 52 (on sanction)  
**Theresa Norton** in person (on sanction)

Hearing dates: 23-25, 27, 30 October 2023

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**Approved Judgment**

**Mr Justice Soole :**

1. These are applications by the Claimant (NHL) to commit each of these 12 Defendants for contempt of court arising from their alleged breach of a precautionary injunction granted by Chamberlain J on 5 November 2022 (the Chamberlain Order) against Persons Unknown associated with the Just Stop Oil (JSO) protest group against trespassing on the structures (and in particular the gantries) of the M25.
2. On various occasions over 4 days commencing Monday 7 November 2022 protesters (including these Defendants) associated with JSO climbed and in some cases affixed themselves to the gantries with consequent massive disruption of the motorway. NHL is the highways authority and owner of the Strategic Road Network (SRN) which includes the M25 and its structures.
3. In apprehension of such protest activity, NHL applied to the High Court for an urgent interim precautionary injunction against Defendants described as ‘Persons Unknown entering or remaining without the consent of the Claimant on, over, under or adjacent to a structure on the M25 motorway’.
4. By the Chamberlain Order NHL was granted an injunction until just before midnight on 10 December 2022 which restrained such Persons Unknown from (amongst other things) ‘Entering or remaining upon or affixing themselves or any object to any Structure on the M25 motorway...’. ‘Structures’ were defined by the Order to include the gantries. Subsequent orders have continued that injunction. Before 5 November there had been previous injunction orders in respect of the M25 and many other motorways and roads in the SRN; and arising from activities of Insulate Britain, Extinction Rebellion and JSO. These included the Order of Bennathan J dated 9 May 2022 (the Bennathan Order) which was not confined to the ‘structures’ on the motorways; but required personal service and so was ineffective against ‘newcomers’. That Order continued in force at the time of this protest action.
5. In the absence of any named defendants, the Chamberlain Order included permission for its service to be effected by methods alternative to personal service, namely by emailing a copy of the order to two JSO email addresses; providing a direct link to the Order on the National Highways Injunction website; advertising the existence of the Order on the National Highways Twitter feed with a link to that website; and notifying the Press Association of the existence of the Order. There is no dispute by any Defendant that NHL complied with that order for alternative service.
6. However 10 of the defendants contend that they had no knowledge of the injunction before they acted as they did; whether as a result of the permitted forms of alternative service or otherwise. This gives rise to an important question of law to which I will return.
7. Each of these Defendants was arrested by the police at the relevant scene; and was thereafter charged under s.78 Police, Crime, Sentencing and Courts Act 2022 with the statutory offence of public nuisance. In each case the trial of those alleged offences is listed for dates in 2024 and 2025.
8. NHL issued these contempt applications on 27 April 2023. By Order dated 31 July 2023 I refused the Defendants’ application to stay these applications for contempt pending the conclusion of the criminal trials.

9. Until a late stage of the hearing the 12 defendants were all represented by solicitors Hodge Jones & Allen (HJA). Before the commencement of closing speeches the Defendant Theresa Norton withdrew her instructions from HJA and represented herself thereafter. For the purpose of the preliminary issue of law, all 12 defendants were represented by Counsel Mr Owen Greenhall. On the issue of sanction, Mr Nadesh Karu represented the Defendants Bain, Johnson and Bell; Mr Greenhall represented the other 8 defendants. Mr Michael Fry and Mr Michael Feeney appeared for NHL. I am grateful to all Counsel for the high quality of their submissions.
10. I return to the issue of knowledge on which the parties asked me to rule before any evidence was called. I considered that to be a sensible and appropriate course. At the close of argument I ruled against the Defendants. My reasons follow.
11. The issue raises two questions:
  - (i) Knowledge: whether (as the Defendants contend) it is a necessary ingredient for a finding of breach of an injunction that the Defendant in question had actual knowledge of the existence of the Order and its material terms before acting as they did; or whether (as the Claimant contends) the absence of such prior knowledge is relevant only to the issue of sanction.
  - (ii) Burden: in the latter event, whether (as the Defendants contend) the applicant bears the burden of proving knowledge to the criminal standard; or whether (as the Claimant contends) the Defendant in question has the burden of proving absence of knowledge to the civil standard.
12. Whilst other authorities have properly been cited and fall for consideration, the critical decisions are Cuciurean v. Secretary of State for Transport [2021] EWCA Civ 357 handed down on 16 March 2021; and London Borough of Barking and Dagenham v. Persons Unknown [2022] EWCA Civ 13 handed down on 13 January 2022. In Barking, an appeal was heard by the Supreme Court in February 2023 and judgment is pending.
13. Cuciurean was an appeal from a finding of contempt by a protester against the HS2 project. A helpful summary of the decision of the Court of Appeal is contained in the judgment of Nicklin J in MBR Acres Ltd v. McGivern [2022] EWHC 2072 (QB) at [70]: ‘*Cuciurean is therefore authority for the proposition that, providing there has been compliance with the terms granting permission to serve the injunction order by alternative means, the respondent will be taken to have notice of the terms of the injunction. There is no requirement of knowledge. Ignorance of the terms of the injunction is relevant only to penalty, not liability, although where the Court was satisfied that the respondent was ignorant of the relevant order or its terms, then no penalty would be imposed for what would amount to a wholly technical breach. Cuciurean was not apparently cited to, or considered by, the Court of Appeal in Barking.*’
14. Barking concerns the principle whereby a ‘newcomer’ may become a defendant party to an action against Persons Unknown (and bound by an injunction) as a result of their conduct after the grant of the injunction: following the decision in South Cambridgeshire District Council v. Gammell [2005] EWCA Civ 1429 (Gammell). As observed by Nicklin J in McGivern, various parts of the judgment of Sir Geoffrey Vos MR in Barking ‘...suggested that the Gammell principle operated to make a

*newcomer a party to the proceedings only when s/he had knowingly breached the injunction...*’ [67]; then citing Barking at [30], [31], [37] and [38].

### Knowledge

15. Mr Fry’s submissions were founded on 5 propositions:
  - (1) service is the critical action in respect of an injunction order;
  - (2) if there is good service (personal or alternative) the starting point is that the defendant is taken to have the necessary knowledge of the injunction;
  - (3) in this context knowledge, service and notice are sometimes used interchangeably by the courts in their decisions. However, where there has been specific reference to knowledge, that is usually where there has been service (personal or alternative) of the order;
  - (4) there is no requirement in the CPR authorities to show both service and knowledge in civil proceedings in general and committal applications in particular. The committal jurisdiction is not a special case in that respect;
  - (5) there is a single Court of Appeal authority directly on point: Cuciurean. That authority binds this court.
16. Mr Greenhall’s central contentions are that the Court is not bound by the observations in Cuciurean; that ‘notice’ of an injunction means ‘knowledge’ thereof; and that this is demonstrated by a host of earlier authorities with which Barking is entirely consistent. Impressive as was Mr Greenhall’s close analysis and presentation, I am unable to accept his arguments.
17. First, he submitted that the relevant statements of the law in Cuciurean do not form part of the ratio of that decision; in particular given the finding of the first instance judge (Marcus Smith J) that the evidence satisfied him to the criminal standard of proof that Mr Cuciurean had actual knowledge of the injunction and its material terms. I disagree. As the Court made clear, the grounds of appeal included the proposition that the applicant bore the burden of establishing that the alleged contemnor had actual knowledge of the injunction and its material terms: see at [7], [59] and [60]. The Court considered and rejected that contention. The binding authority of that conclusion is not diminished by the first instance finding of fact.
18. Next, he submits that the Court in Cuciurean had misunderstood the decision of the House of Lords in Attorney-General v. Times Newspapers [1992] 1 AC 191 at 217-218: the ‘Spycatcher’ case. The cited extract from the speech of Lord Oliver at 217-218 omitted a passage (217H-218B) which supported the requirement of knowledge. I disagree. That further passage (including ‘...for there has to be shown not only knowledge of the order..’) is a reference to the distinct ingredients for a finding of contempt by a third party ‘stranger to the litigation’: compare also the citation of principle for ‘strict liability’ contempt at p.205 C-F.
19. Next, that the statements in Cuciurean were at odds with earlier authorities which had not been cited to the Court of Appeal; and to which Nicklin J had subsequently referred to in MBR Acres Ltd. v. Maher [2022] EWHC 1123 (QB). These included Churchman v. Joint Shop Stewards Committee [1972] 1 WLR 1094; Hall & Co v Trigg [1897] 2 Ch 219; and R v. City of London Magistrates Court, ex parte Green [1997] 3 All ER 551; see also Varma v. Atkinson [2020] EWCA Civ 1602 where

Rose LJ (as she then was) referred to the many cases ‘...*which establish that once knowledge of the order is proved, and once it is proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his actions put him in breach of the order...*’: [54].

20. Mr Greenhall ultimately accepted that this Court is bound by the authorities (including Cuciurean) which identify the established ingredients of contempt liability for breach of a court order; namely that a person is guilty of contempt of court by disobeying a court order that prohibits particular conduct only if it is proved to the criminal standard of proof that the person (i) having received notice of the order did an act prohibited by it; (ii) intended to do the act; and (iii) had knowledge of all the facts which would make doing the act a breach of the order: see Cuadrilla Bowland v Persons Unknown [2020] EWCA Civ 9 at [25] and Cuciurean at [13]. However he submits that this leaves open the meaning of the word ‘notice’ in the first ingredient; and that notice in this context means actual knowledge. In the alternative he submits that the three ingredients are not exhaustive; noting that they are introduced in Cuadrilla by the words ‘only if’ not ‘if and only if’; and thus allowing the additional ingredient of actual knowledge in accordance with the language of earlier authorities.
21. In my judgment these citations do not advance the Defendants’ case for three interrelated reasons. First, because the authorities at times use language which does not distinguish the concepts of ‘notice’ and ‘knowledge’. Secondly, because the established ingredients of contempt liability for breach of a court order uses the language of ‘notice’: see Cuciurean at [13], citing Cuadrilla at [25]; which in turn cited the summary by Proudman J in FW Farnsworth Ltd v Lacy [2013] EWHC 3487. Thirdly, because, as Cuciurean made clear, ‘*The authorities indicate that...in this context “notice” is equivalent to “service” and vice versa*’: and that ‘*there is no further requirement of mens rea, though the respondent’s state of knowledge may be important in deciding what if any action to take in respect of the contempt*’ [58].
22. This clear distinction – in this context - between notice and knowledge is also seen in other recent decisions, e.g. in Varma where Rose LJ states ‘*Mr Varma’s lack of knowledge is relevant to the sentence to be imposed but is not relevant to the finding of contempt.*’: [55].
23. In my judgment the decisions and statements in Cuciurean, Cuadrilla and Varma put beyond doubt the distinction between service/notice and knowledge. As Cuadrilla continued after recitation of the three ingredients: ‘*It would not necessarily follow from proof of these facts that the person had knowingly disobeyed the order; but the judge took the sensible approach that, unless this further fact was established, it would not be appropriate to impose any penalty for the breach.*’: [25].
24. I add that the subsequent decision of the Court of Appeal in Business Mortgage Finance v. Hussain [2022] EWCA Civ 1264 contains nothing by way of disagreement with Cuciurean. Thus the Court noted the underlying requirement for due process before a person is committed to prison; which meant that there are certain procedural safeguards required for the benefit of the respondent; and that one of those safeguards is that the respondent should have proper notice of an injunction before he is at risk of being committed for breach: [78]. That same passage cites the historical survey of Nicklin J in Maher which in turn cites Cuciurean.
25. Mr Greenhall also referred to the judgment in NHL v. Lancaster where Cotter J included ‘knew of the content of the order’ as one of the necessary ingredients for a finding of contempt: [20]. However this was in a case where the defendant was taking no issue on breach; and the judge’s decision was in respect of sanction alone. The

judgment notes that Ms Lancaster accepted that she was validly served with the order; had breached it; and was ‘therefore in contempt of court’: [2]. In my judgment this is simply another example of the word knowledge being used as a synonym for notice/service.

26. Turning to Barking, I do not accept that this decision is applicable to this issue. Unlike Cuciurean where the issue was squarely before the Court, Barking was not concerned with the ingredients of liability for contempt by breach of a court order. No doubt for that reason it was unnecessary for the parties to cite or for the Court to consider the decision in Cuciurean. For the same essential reason I must reject the submission that Barking is to be treated as an implied overturning of the decision or reasoning in Cuciurean. I add that Lewison LJ was a party to both decisions; and also to Varma.
27. Further, whilst I of course accept that a finding of contempt, even if no sanction is necessary, is a serious matter (Sheffield City Council v. Brooke [2019] QB 48 per Males J at [48]), this does not overcome the binding effect of the decision in Cuciurean.
28. Cuciurean and previous decisions then provide potential safeguards for the alleged contemnor. First, by an application to set aside the order for alternative service on the basis that it should not have been made, i.e. ‘*on the grounds that the Court was misinformed or otherwise erred in its assessment of what would be reasonable*’: Cuciurean at [60]. If that application were successful, the applicant would have to prove that the alleged contemnor had actual knowledge of the injunction and its material terms in order to establish liability: compare the examples cited in Maher at [74] and [116] and further discussed in Hussain at [79]. Secondly, at the stage of sanction: ‘*...as this Court indicated in Cuadrilla, no penalty would be imposed.*’: [62].
29. In the present case, the Defendants have made no application to set aside the order for alternative service. Mr Greenhall submitted that the Court would nonetheless have jurisdiction to set aside the order of its own motion if it thought that necessary and appropriate. On the evidence before me (and in the absence of any submissions to such effect) I see no basis for the Court to conclude that the Chamberlain Order in respect of alternative service was the result of misinformation or a wrong assessment of what constituted reasonable steps to bring the injunction to the attention of the identified class of Persons Unknown.
30. From all of this it follows that in each case the Claimant has established liability, i.e. proof to the criminal standard of the three ingredients identified in the standard formulation. The relevant safeguard – if needed in any individual case – lies in the decision on penalty.

### Burden

31. If actual knowledge is a necessary ingredient of liability, it is of course common ground that the burden of proof falls on the applicant; and to the criminal standard. This will be the position in cases where the applicant is unable to prove service, whether personal or by an alternative means sanctioned by the Court: e.g. by presence in court when the order was made or by evidence of notice by other means: see Hussain at [79] and the authorities cited by Nicklin J in Maher at [74] and [116]. In each of the present cases there is no dispute that alternative service has been effected in accordance with the Chamberlain Order.

32. Mr Greenhall submits that there is the same burden and standard of proof if knowledge is relevant only to penalty. Thus if the applicant cannot establish to the criminal standard that the alleged contemnor had actual knowledge, the Court must impose no penalty for the breach. Mr Fry contends that once the applicant has established liability, the burden falls on the contemnor to establish absence of knowledge of the injunction and/or its material terms; but on the civil standard of proof.
33. Mr Greenhall submits that Cuciurean provides no support for that contention. I understood him to accept that the burden falls on the alleged contemnor in circumstances where s/he makes an application to set aside the order for alternative service: and consider that acceptance to be correct: see Cuciurean at [54]-[62].
34. However he submits that this does not apply where the safeguard is in respect of penalty. In that case, the position is akin to a Newton hearing in a criminal case where the defendant accepts guilt of the offence charged but disputes some of the facts of the prosecution case. In such cases the burden of proof remains on the prosecution. Alternatively the contemnor in question bears an initial evidential burden. Once that is satisfied, the burden shifts to the applicant. In the present cases the 10 Defendants who have given evidence disputing their knowledge of the injunction have thereby satisfied any evidential burden.
35. In support he again cited the decision in Sheffield City Council where Males J considered the burden of proof where an alleged contemnor was defending committal proceedings on the basis of s.3 Criminal Law Act 1967 and the use of reasonable force in defence of another. The judge contrasted a criminal case where it was for the prosecution to negate the defence of self-defence or defence of others and a civil case where the burden was on the defendant to establish the defence. He continued: *'In principle I am inclined to think that if the criminal test applies substantively, so too should the criminal burden of proof. However, as the question of burden of proof is not decisive in this case, I need not decide this.'*[51].
36. In agreement with Mr Fry, I conclude that the burden is on the defendant to establish, on the civil standard, that s/he did not have knowledge of the existence of the order and/or of its material terms.
37. That conclusion is clearly supported by the decision in Cuciurean. In that case the complaint was that the trial judge had wrongly reversed the burden of proof on the issue of knowledge [7]; and the Court rejected that criticism: [54]-[62]. The Court was explicit that the burden was on the defendant in respect of an application to set aside service. It was implicit that the same should apply to the other safeguard – mitigation of penalty. I can see no good reason why the two safeguards with the same essential objective of defeating injustice to the defendant should have differing burdens of proof.
38. I am also not persuaded that the position is analogous to a Newton hearing nor that the observations in Sheffield City Council on the burden of proof provide any support. To impose the burden of establishing knowledge onto the applicant would be tantamount to holding that, notwithstanding proof of service (personal or alternative), the applicant also has to establish actual knowledge; and that would be contrary to the decision in Cuciurean.

#### The evidence on knowledge

39. The evidence on behalf of the Claimant is contained in a number of affidavits which by consent were ordered to stand as evidence in chief. These comprised affidavits from Ms Laura Higson of the Claimant's solicitors; Mr Sean Martell of NHL; and 11 police officers. The Defendants did not require any of these witnesses to attend for cross-examination.
40. I start with the evidence of the Defendants (all save Bain and Norton) who say that they acted as they did in ignorance of the injunction; and who each gave evidence to the Court.
41. Whilst each case has to be considered individually, their evidence had broad common themes. This evidence showed their underlying passionate and conscientious concern and motivation arising from the issues of climate change and use of fossil fuels; that at some point they had engaged with JSO; that through this association they had discussed these issues and their response at meetings, by Zoom in particular, with others similarly concerned; that at some point they had heard of the plans for protest on the M25 gantries and had decided to volunteer; that having done so they had received an online legal briefing (in one case 2 briefings) and a separate training session on the use of the necessary equipment; that in due course they had been given the address of the safe house to which they were to go a day or so before their protest action on the gantry in question; that they had been told not to bring their own mobile phones in particular in order to avoid tracking of their location; that at the house they had been given a 'media phone' for the purpose of recording and in effect broadcasting their presence when on the gantry; and had been given some instruction in its use for that purpose.
42. In respect of the legal briefing they had been told of the potential criminal consequences of their intended actions, namely the potential commission of criminal offences and in particular the statutory offence of public nuisance. In that briefing they had not been told about civil injunctions generally or about the existence or risk of the grant of injunctions restraining such conduct or of the potential consequences of breach of such an injunction. In short the briefing was confined to the potential consequences under the criminal law. Further none was told of the Chamberlain Order following its grant on 5 November.
43. In respect of certain of the gantries, the Claimant's evidence was that warning notices of the fact and terms of an injunction – albeit of the Bennathan Order rather than the Chamberlain Order - were displayed at the site. Those Defendants who had attended the gantries in question said that they had not seen any such notice.
44. In a number of cases, the evidence from the police officers was that they had read out the fact and relevant terms of the injunction to Defendant protesters on the gantry. Those Defendants disputed hearing alternatively listening to these; and denied the acquisition of any knowledge about the injunction at this late stage.
45. Each Defendant stated that they had no intention of breaking Court orders in the future and apologised for being in even purely technical breach of the Chamberlain Order; albeit one or two, e.g. Ms Higginson, observed (not unfairly, if their account was true) that they found it difficult to apologise for breach of an injunction of whose existence they had been unaware.
46. Given the common themes, it is unnecessary to recite that general evidence in every case. However by way of example I set out the evidence of Ms Gaie Delap (D28). She is a retired teacher and therapist aged 76; lives in Bristol; over the years has done voluntary work for Oxfam and other such organisations; currently with a refugee



organisation. She has a long history of environmental and peace campaigning primarily through the Quakers.

47. She has no criminal convictions, has never breached an injunction and has had no previous proceedings against her in respect of injunctions. She had no previous involvement with earlier M25 protests by Insulate Britain but had been involved with Extinction Rebellion. She had been involved with JSO for a year or so before this action: ‘as a segue from Extinction Rebellion’. This involved meetings in particular through Zoom in an affinity group with people who had read the latest scientific reports and so forth. She had gone on marches and distributed leaflets. She became involved in this action a few weeks before. On a JSO Zoom discussion she heard a call for about 70 people to climb; but with no further details. She did not think she could do this at her age, but having thought about it decided to follow it up. She was then ascribed a mentor with a codename which she could not remember to whom she spoke at 2 or 3 Zoom meetings lasting about half an hour each. He ascertained her motives and physical status. Other activists were on these calls. The mentor explained the possible legal consequences of the actions but by reference only to criminal charges and their consequences. There was no mention of injunctions. She did not know about the Chamberlain Order or any other. Fairly shortly before the action she went to an in-person session of climbing training. This was very comprehensive.
48. Ms Delap took part in the action on 9 November 2022. For that purpose she went to the identified safe house on the afternoon/early evening of Monday 7 November. She made her way there from the house of family members in London where she had been staying; and in accordance with instructions left her mobile phone there before setting off. Its location was in a suburb of London; she knew it then but could not remember it now. She got there by overland train but could not remember which station. It might have been Basildon but she was picking a name out of a hat. She did not know who owned the house. She agreed that she would have been interested in how the protest had been going since they began on 7 November and that it was discussed. There was no “debrief” about the first 2 days, just general discussion.
49. At the safe house there was no access to social media. She did not think that there was a television or radio. She was not made aware at the house of anything about injunctions. On the night before the action, i.e. on 8 November, she was given the media phone and a short training. She was not as technically adept as she might wish. Its purpose was to record the event and to send it to the media team. She understood at the time but did not manage to achieve this when on the gantry.
50. On the Tuesday (8th), they got nice food and did grounding exercises to achieve a calm state of mind. There was a lot of sorting out of climbing equipment.
51. On the early morning of 9 November, she was driven to the allocated gantry, with a buddy to help. She got onto the gantry via a ladder. She did not see any warning notice. Two motorcycle police officers soon arrived. She could not hear what they were saying. Then one policeman came followed by another. One of them asked if she was on her own; she said yes; he expressed some surprise; she showed him that she was perfectly safe and no danger. She was arrested. Nothing was said to her about an injunction. She had no awareness of an injunction when on the gantry. She was subsequently charged with the offence of public nuisance and made subject to a doorstep curfew.
52. The police evidence shows that she had displayed a JSO banner; that at 9.02 she was arrested on suspicion of conspiracy to cause a public nuisance; and that she was co-operative in coming down. The evidence also states that a warning notice (in respect

of the Bennathan Order) had been affixed to this gantry at 7.40 a.m. i.e. before the Chamberlain Order had been made; but had at some point been ripped off; and exhibits a picture of the notice when affixed. Taken to this picture in cross-examination Ms Delap did not think it was the same gantry; but in any event confirmed that she had not seen any notice.

53. Mr Fry put to Ms Delap that it was ‘not credible’ that she had never heard injunctions being discussed; and in particular in the circumstances where her own action had not taken place until the third day, 9 November, by which time news of the events of the previous two days must have been received. She disagreed.
54. Distinctive features in the evidence of the other 9 Defendants can be traced through the written and oral submissions of Mr Fry in respect of those individuals. I take these in turn.

#### Rosemary Jackson

55. Age 25; she took part on 7 November. She stated that in the course of her legal briefing, someone did ask about the effect on a criminal sentence if they had previously breached an injunction. That was the only reference to injunctions and she had no knowledge of any injunction being in place. This was all in the context of people talking about their personal circumstances. It was not a discussion about injunctions. She had previously been found guilty of a breach of the peace in respect of a JSO action in Scotland. After the event, but before 7 November 2022, she had been aware of the protest of 17/18 October 2022 when two individuals had climbed the suspension cables of the Queen Elizabeth II Bridge and suspended themselves and a JSO banner high above the carriageway. She had not seen any JSO Instagram posts about injunctions.
56. She could not remember the location of the safe house or the name of the town. Luke Elson had been in that house; but she did not recognise any of the other Defendants as having been there. Taken to the exhibited gantry notice, she had not seen it at the time.

#### Luke Elson

57. A support worker, aged 30. His action was on 7 November, together with Ms Jackson. He had attended two legal briefings; and both concerning criminal matters only. In the past actions he had been aware of press releases by JSO but had not read them. He had assumed that there was a press release for this action but he had not seen it. He did not know that there was an injunction in force. He had not seen any warning notice on the gantry. In closing submissions reference was made to BBC, ITV and newspaper stories on 6 November 2022 which referred to the grant of the injunction but neither he nor any other witness was taken to these in cross-examination.

#### Charlotte Kirin

58. She was a social worker employed by Cambridgeshire County Council. Her action was on 8 November 2022. The police evidence is that it began at about 7 a.m. She had unfurled a JSO banner. PC Wilkinson climbed up at about 7.45 in order to speak with her. He conducted the ‘five-step-appeal process’ to try and encourage her to come down. As is agreed, that process relates to criminal proceedings alone. She refused to come down and was arrested and in due course brought down.

59. Her evidence was of travelling to London and staying at a Travelodge at King's Cross. The safe house was somewhere in Greater London, maybe to the east. She thought she travelled by train and bus but could not remember more. On Monday 7<sup>th</sup> there was no discussion, beyond speculation, as to how the protests had gone that day. She denied that one of the reasons for being at the safe house was to avoid being served with an injunction. She did not see a computer, radio or TV; and did not know if there was internet access. Taken to the image in the police evidence of an injunction warning notice attached to the gantry, she did not think it was the same gantry that she had climbed; but in any event she had not seen the notice.

Paul Bleach

60. A gardener and carer based in Portsmouth, aged 56. His action was on 8 November. He was taken to two different safe houses, moving to the second on the Monday morning. He understood that this move was because the person in charge had felt uncomfortable after a conversation with a neighbour. The Defendant Joseph Linhart had been in the first house. Having looked at a map the evening before he gave his evidence, he believed its location was within the area of Chigwell; and that he had taken a train to get there. The address was given to him on a piece of tissue which was then destroyed. The second house was a lot further south and someone did talk about Wembley. He gave rough descriptions of each property.
61. On the gantry, he was '100% not aware' of the injunction. There was communication from the police but he could not hear what was being said. His sole concern was for his safety; and not to make a mistake. He was taken to the s.9 statement of DC Bettis which stated that when on the gantry he had read him the notice of the injunction and that throughout he understood 'either verbally or with a nod'. DC Bettis' statement continues that 'a short time later' other officers arrived, climbed up to the gantry and facilitated his removal. Mr Bleach said that he obviously nodded but had no idea what he was nodding to. He did not hear what he said. His job was to resist as long as he could. He did not take it in. His priority was to be safe and to continue as long as he could.

Paul Bell

62. A PhD student at Exeter University, then aged 22, a Quaker. He had no previous convictions and had never before breached an injunction. His action was on 8 November. His evidence is that his first knowledge of the injunction was when it was read to him by a police officer on the gantry. He had first noticed police officers shouting something up to him; as he was moving along the gantry just above the hard shoulder. He did not know what they were saying. Then the removal team arrived and an officer climbed up to him; and prevented him from climbing further by grabbing his karabiner. He stayed where he was and glued himself to the gantry. At that point, and in an 'air of calm', he listened to what the police were saying. He recalled an officer both delivering the 'five-step-appeal' and speaking the words of the injunction. He had not heard the words of the injunction until after he had glued himself to the gantry. He thought the glue had potentially delayed his removal by 5-10 minutes. By contrast the evidence of PC Wells is that he read out the five-step-appeal process from below but received no response; then the injunction, again receiving no response. He later repeated these while the heights team was 'working to bring him down', again with no response. He asked one of the team to direct Bell's attention to him. He then told him that he was under arrest for causing a public nuisance; and at that point Bell glued himself to the gantry.

Daniel Johnson

63. A part-time carpenter aged 25; undertaking a Masters degree at UCL. No previous convictions nor previously breached an injunction. His action was on 9 November. His journey to his safe house started by train from Cambridge where he had been staying to Liverpool Street. Having now also looked at a map, his recollection was that he had taken a train to Sidcup and then to the address he had been given. Having found the address he had destroyed the piece of paper. He could not now recall the address. This was the biggest action he had ever taken part in. He had previously taken part in two road blocks and filmed his brother taking action at Madame Tussauds. When at the safe house he had heard one piece of information about people getting arrested; mostly gleaned from drivers getting back and reporting.
64. His first knowledge that there was an injunction was when on the gantry and PC Hennessey read it out. As that officer stated in his evidence, he had been wearing ear plugs. This was mostly to calm himself; but the officer's job was to persuade him to come down; so he was trying to be distracted. He agreed that this was at about 8.00 and that he was finally brought down at 10.56 when he was arrested.

#### Paul Sousek

65. A retired farmer, previously in market research, aged 72; living in Cornwall. He first heard of the action about 2 weeks beforehand and so missed out on some earlier meetings. He attended a climbing session but not a legal briefing. He had no knowledge of the existence of any injunction. However he stated that injunctions had been discussed at various points, but he had never been informed of an injunction that can be breached without being personally named. In cross-examination he continued that he knew of injunctions being used to stop activists since he joined Insulate Britain and Extinction Rebellion, e.g. on the HS2 protest against individual named defendants. He knew this from all types of websites and Facebook and that it was 'general knowledge in the circle of activists'. However he did not know that there could be injunctions against Persons Unknown and he was astonished to find this out when, about 4 weeks after his release from remand, he received the contempt papers from the Claimant's solicitors.

#### Joseph Linhart

66. Age 22, took part on 7 November 2022. He had no previous convictions nor previously breached an injunction. His journey to the safe house on 6 November had been from East Finchley where he had been staying with a friend to High Barnet. He had been told that someone would meet him there. Someone eventually arrived and drove him to the house. When on the gantry, he remembered being shouted at from afar by police but there was live traffic beneath. He did not listen to the whole of what the police were saying with a serious ear. He was aware that police officers were trying to talk to him. He was not listening because a fellow defendant had mentioned the '5-step-appeal process'. In his experience of prior action it was not something to listen to. His objective was to be on top of the gantry. He was removed from the gantry by the police and arrested. Throughout the whole period he did not know that he was in breach of an injunction. He first knew about an injunction when he received papers from the Claimant's solicitors. In cross-examination he was taken to the affidavit of PC Kelly Walker and its exhibited s.9 statement of PC Willis which records a period when traffic was passing beneath Linhart on the motorway but then a period when the motorway had been closed and traffic had come to a halt. At this time it was 'rather quiet'. He could hear Linhart talking into his phone so was confident he too could be heard. He started by speaking to him and asking him if he could hear and he acknowledged he could. Having read out the High Court document he asked if Linhart had heard him and "he acknowledged that he could hear then but stated that

he did not hear anything prior to that but confirmed he could hear me now". He had been speaking loudly and there was nothing in terms of surrounding noise to prevent Linhart hearing him. In cross-examination on this material, he said that he did not think he was listening to the police officer. He had no memory of a High Court injunction being read to him.

### Theresa Higginson

67. Aged 25, she took part in the action on 9 November. She had only been involved with JSO so since October 2022 in London. She had some vague awareness that people had got involved with injunctions. She knew and was told nothing about any injunction in respect of this action; and did not believe that she could be in breach of an injunction if not named. She had been involved in a few campaigns but not discussed this in any detailed manner. It was something she had overheard.
68. She was at the safe house with Paul Bleach; and his evidence had jogged her memory of being taken to a park one evening for the training with the media phone. Likewise she now recalled the move to a second house because the neighbours were suspicious. At the gantry she started climbing but did not get far because within 2 minutes she heard a crash. Minutes later the police came and shouted at her to come down. She was arrested. Her total time on the gantry was a matter of minutes. She saw no warning notice.

### Claimant's submissions on knowledge

69. Mr Fry submits that none of the Defendants has discharged the burden of proof in respect of knowledge of the injunction. It amounted to a bare denial of knowledge which was not sufficient.
70. In any event the evidence was not credible. It was not credible that a campaigning organisation like JSO had failed to tell the Defendants about injunctions; at the very least once the Chamberlain Order had been granted on 5 November 2022. The evidence showed that the JSO took tight control of its volunteers. By that date those in control were aware of the Order; and their press releases on 7, 8, 9 and 10 November included specific reference to injunctions: 'we will not be stopped by private injunctions sought to silence peaceful people'.
71. Further between September 2021 and May 2022 4 injunctions had been granted against protesters on the M25 against Persons Unknown associated with Insulate Britain and JSO: 21 September 2021 (Lavender J); 24 September 2021 (Cavanagh J); Bain and Norton being added as Defendants on 1 October 2021; 2 October 2021 (Holgate J) in respect of feeder roads to the M25 and Insulate Britain. Ms Bain had been served with the Lavender and Cavanagh Orders on 29 September 2021 and the Holgate Order on 6 October 2021. Ms Norton had been served with the first two Orders on 3 October and the Holgate order on 6 October 2021. Ms Norton had subsequently (2 February 2022) been found in breach of the Lavender Order and committed to prison for 28 days: NHL v Springorum & ors: [2022] EWHC 205 (QB); William Davis LJ and Johnson J.
72. On 9 May 2022 the 3 orders had been amalgamated into one order by Bennathan J (the Bennathan Order).
73. There had been 4 contempt applications in respect of the Lavender Order, between 22 October 2021 and 19 August 2022; the latter resulting in the order for committal of

Ms Lancaster for 42 days suspended for 2 years: NHL v Lancaster [2021] EWHC 3080 (QB): Cotter J, 7 October 2022.

74. On 2 November 2022 there had been a JSO video meeting for the gantry protest, the video and transcript of which had been before Chamberlain J on 5 November. Ms Lancaster has spoken at this; another speaker had referred to the duty of care and ‘the fact that they don’t want people to be taking part in actions unless they are aware of the legal consequences’. This document was not put to any of the Defendants in cross-examination.
75. As already noted, the JSO press releases on 7-10 November had stated that they would not be stopped by private injunctions.
76. Mr Sousek had been open and honest about the discussion of injunctions in the activist community. This went straight to the credibility of the other Defendants who were being evasive and not telling the truth.
77. Further support was provided by the high level of communication within JSO; which in turn reflected the high level of coordination needed to arrange the protests.
78. It was not credible that the legal briefing had been limited to the consequences under the criminal law; and thus no reference to civil injunctions. In the circumstances of a potential 2-year prison term and an unlimited fine for breaching an injunction it would be a significant failure and breach of trust for JSO not to have told volunteers of these potential consequences.
79. Nor had any Defendant expressed surprise anger or upset at the injunction which had been granted. The reason was because they had been previously warned of this possibility.
80. The general approach of the Defendants in their evidence was evasive. Notwithstanding the importance of the decision and the expression by many that it was the biggest action in which they had taken part, they struggled on basic details of where they went and what they saw or heard. In particular their difficulty in recalling the location and address of the safe house in question had not been credible.
81. Given that the purpose of the action was publicity for the cause, it was not credible that none of the Defendants had tried to find out how the action had gone via their media phones. Each knew that if they admitted that they had seen television in the house the injunction would have been mentioned.
82. Mr Fry then made a range of comments about the individual Defendants drawing on the points of evidence noted above; particularly pointing to the evidence of Sousek, Jackson and Higginson as demonstrating a wider knowledge of injunctions in the activist community.
83. In any event, Mr Fry submitted by reference to the police evidence of events on the gantry that those defendants who had been notified thereon of the fact and terms of the injunction had in each case been in breach by thereafter remaining on the gantry for the identified period of time.
84. In the course of argument I questioned Mr Fry as to whether his case really was, as advanced, simply that the defendants in each case had not satisfied the civil standard of proof. Whilst it had not been squarely put to any defendant that they had lied about their knowledge – questions having been largely expressed in terms of their evidence

not being credible – I enquired whether that was the reality of the Claimant’s case. By contrast, it was not being suggested that e.g. they had perhaps forgotten about some aspect of their legal briefing or otherwise of their knowledge of the existence of the injunction. Mr Fry ultimately responded that his case was that the defendants had deliberately given false evidence on the point to the Court.

### Defendants submissions

85. On behalf of his clients Mr Greenhall submitted that the crucial issue was of each Defendant’s knowledge at the point of going onto the gantry. As viewed at that point, he submitted that the Claimant’s case could only be considered on the basis that each Defendant in question had lied about actual knowledge of the existence of the injunction.
86. The knowledge of others ‘higher up’ in JSO could not be enough. The effect of the Claimant’s case was that each of these Defendants ‘must have known’. However the organisation wanted a large number of volunteers for this action. If JSO were to spell out the injunction risk they would not get the volunteers they wanted. Likewise JSO had reason not to disseminate the emails which it received from the Claimant on 5 November and onwards. Further the JSO press releases which included reference to injunctions began on 7 November, after the action had started. The Chamberlain Order had only been made on 5 November; and all the legal briefing had been before that date.
87. As to other sources of information, it was inherently unlikely that information on the Claimant’s website would attract the attention of individual activists. The BBC and ITV website references were to local areas; and there was no evidence that any Defendant had been looking at the newspaper websites. It was unsurprising that there was no access to social media in the safe house. This was a well-planned operation with strict rules. The volunteers were told not to bring their mobile phones or to go on to social media and these Defendants stuck to those rules.
88. The 3 multi-defendant sets of proceedings had been in 2021 and early 2022, sometime before this action. The case of Ms Lancaster was determined in October 2022 but involved only one person (and Insulate Britain) and there was no evidence of any extensive publicity.
89. As to the warning notices on the gantry, these had been put up on 5 November prior to the Chamberlain Order. It was not clear that they had remained in situ. In the case of Ms Delap the Claimant accepted that it was not on the gantry when police attended. In any event it was quite understandable that the Defendants were focused on getting to the gantry in the morning dark. The notices provide no support for the case on knowledge.
90. As to knowledge of the safe houses, many of the Defendants came from a considerable distance; the address was typically on a piece of paper which was then destroyed; and they only visited the property once. In some cases they had triggered their memory by looking at maps. There was nothing suspicious or surprising in the limits of their recollection.
91. Standing back from all the evidence, each Defendant had given a very clear account on the issue of knowledge. They had not sought to shy away from their conduct. On the contrary they had given a lot of information about the planning and organisation of the protest, including their knowledge of the consequences of the criminal law. This was all in the context of people who were facing criminal proceedings and giving

evidence which could be used against them. Their evidence should be accepted. Mr Greenhall then made submissions on particular points of evidence concerning particular Defendants.

92. On behalf of Paul Bell and Daniel Johnson Mr Karu made a range of submissions to similar effect both general and as to the specific evidence in their cases.

#### Conclusion on knowledge

93. I deal first with the question of knowledge before each of these 10 Defendants got to their respective gantry. In my judgment Mr Fry was right to acknowledge that the challenge to their denial of knowledge of the injunction can only be made on the basis that, in each case, they have come into the witness box and lied about what they knew. This is not a case where there is any potential halfway alternative case to the effect that their denial is the product of misunderstanding of what they were told or forgetfulness. Whilst in principle a case of deliberate dishonesty should always be squarely put to any witness before the court can be invited to reach that conclusion, I approach the case on the basis that this is what I have to decide.
94. Having observed and listened to each of these Defendants, my conclusion is that each of them has told the Court the honest truth on the issue of whether before going onto the gantry they had actual knowledge of the injunction. I do not accept that they have lied to the court. Accordingly they have each discharged the burden of proof which is placed on them.
95. In reaching that conclusion I have of course have taken full account of all the points made by Mr Fry on behalf of the Claimant which are said to undermine any such conclusion.
96. As to the failure of JSO to include reference to the possibility of injunctions, it is indeed surprising that a so-called legal briefing did not include reference to existing injunctions (in this respect the Bennathan Order; albeit this did not bind newcomers), the prospect of injunctions and the penal consequences in the event of breach; but in my judgment it is not incredible. Having heard these witnesses I am satisfied that the legal briefing was lacking in that respect. It is unnecessary to surmise as to JSO's reasons for its decision to focus only on the potential consequences in criminal law.
97. In this respect I also consider that the veracity of the Defendants' account is strengthened by the fact of their acknowledgment that the briefing had extended to the consequences of the criminal law, including the statutory offence of public nuisance for which their trials are pending in the Crown Court.
98. I am unequally unpersuaded that their accounts are rendered incredible by the history of injunction and contempt applications relating to the M25 in 2021 and 2022; the JSO video meeting of 2 November 2022; or the fact of the injunction granted by Chamberlain J on 5 November. As to the latter, I accept their evidence (where challenged) that they had no knowledge of that Order from JSO or television, radio, social media or from others staying at their respective safe houses. I also accept their evidence as to the absence of TV and radio or of their use of social media whilst in those houses.
99. I am also unpersuaded that the evidence of Mr Sousek, Ms Jackson or Ms Higginson about general knowledge of injunctions in any way weakens the individual accounts (including of those three) as to their absence of knowledge of this injunction and its material terms.



100. I find it unsurprising that these Defendants' recollection of the location of the safe houses was limited; given in particular the distance from which many had come; the overall secrecy of the operation; and the focus of their attention on the action which they were to undertake.

101. In this and other respects, I also reject any implicit suggestion that these Defendants were acting with what is sometimes called 'Nelsonian blindness' as to the existence of an injunction. That form of blindness amounts to actual knowledge; and I am satisfied that these Defendants did not have such knowledge.

#### Warning notices

102. I equally accept the evidence of each of the relevant Defendants Delap, Jackson, Elson, Kirin and Higginson that they did not see the notices about the Bennathan Order which it seems had been put on some of the gantries early in the morning of 5 November. For these purposes I assume without deciding that the photographs are of the correct gantries. As to Ms Delap, it appears in any event that the notice had been pulled down before she arrived.

#### On the gantry

103. I accept that the language of the charges in the Statement of Case is wide and clear enough to embrace the allegation that certain of the Defendants in any event 'remained upon' their gantry after being informed of the injunction by police officers who came to the scene.

104. I therefore turn to the evidence of such notice in respect of some of the Defendants.

#### Paul Bleach

105. Although I accept the honesty of his evidence on this point, the unchallenged police evidence is that the injunction notice was read to him by DC Bettis at 8.14 a.m. on the gantry and that he indicated that he heard and understood. I accept that he was distracted by concern about his safety but I am not persuaded that the officer's action did not bring the injunction to his notice. Other officers arrived 'after a short time'; he evidently co-operated and was brought down at 10.38.

#### Paul Bell

106. Mr Bell does not dispute that he heard the police officer (PC Wells) read the injunction to him from below; and accordingly had knowledge at that point. However there is a dispute as to whether this was before or after he glued himself to the gantry. I again accept the honesty of Mr Bell's present account. However when set against the detailed and unchallenged evidence of PC Wells, I conclude that through the drama of these events Mr Bell has misremembered the sequence of events. The first reading of the injunction finished at 7.04 and – following the arrival of the heights team - he reached the ground at 9.15.

#### Daniel Johnson

107. Mr Johnson accepted knowledge of the injunction from when it was read to him at 8.00, albeit he was wearing ear plugs to distract himself. He was brought down at 10.56.

#### Joseph Linhart

108. Whilst I again accept the honesty of Mr Linhart's present account of what he recalls about events on the gantry, it has to be set against the unchallenged evidence of PC Willis. I am not persuaded that Mr Linhart did not hear the injunction notice being read to him. Whether or not he was paying attention, from that time he had actual knowledge of the injunction and its terms. The reading was completed at 9.42 and he was brought down at 10.47.

### Sanction

109. I deal first with those defendants who have satisfied me that they at no time before they were brought down from the gantry had knowledge of the existence of the Chamberlain Order. These are: Gaia Delap; Rosemary Jackson; Luke Elson; Charlotte Kirin; Paul Sousek; and Theresa Higginson.
110. Mr Fry submitted that in circumstances where the Defendant has discharged the burden of establishing the absence of knowledge of the injunction and its material terms, the observations of the Court of Appeal in Cuciurean and Cuadrilla do not mandate the non-imposition of any penalty. There remains a discretion in the court to impose a penalty. In this respect a distinction could properly be drawn between a case where a person trespassed inadvertently, e.g. on some remote rural land, in breach of an injunction; and a case such as this where the trespass was deliberate.
111. I disagree on all counts. In my judgment the effect of the decisions in Cuciurean and Cuadrilla leave no such discretion; nor can I see how it could be just to impose any penalty on a person who has established that at the time of the conduct in question s/he had no knowledge of any injunction restraining that conduct. Further the effect of the suggested distinction between deliberate and inadvertent trespass would be to introduce a new criminal offence for the former.
112. Accordingly in each of these cases no penalty will be imposed for the purely technical breach of the injunction.
113. I turn to the principles which apply in circumstances where the breach has occurred with knowledge of the existence of the injunction and its material terms.
114. These are uncontroversial and can be taken from the summary by the Divisional Court in NHL v Heyatawin & ors [2021] EWHC 3078 (QB) at [48]-[53].
115. Thus: there is no tariff for sanctions for contempt of court, because every case depends on its own facts. The sanction has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed.
116. The key general principles are that (a) the court has a broad discretion when considering the nature and length of any penalty for civil contempt. It may impose an immediate or suspended custodial sentence, an unlimited fine, or an order for sequestration of assets; (b) the discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely punishment for breach; ensuring future compliance with the court's orders; and rehabilitation of the contemnor; (c) the first step in the analysis is to consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order; (d) the court shall consider all the circumstances including but not limited to: whether there has been prejudice as a result of the contempt and whether that prejudice is capable of remedy; the extent to which the contemnor has acted under pressure; whether the breach of the order was deliberate or unintentional; the degree of culpability; whether the contemnor was placed in breach by reason of the conduct

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

117. Further the conscientious motives of the protesters are relevant and there may be cases where the contemnor is a law-abiding citizen apart from their protest activities. In such cases a lesser sanction may be appropriate because the sanction can be seen as part of a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's activities are contrary to the protester's own moral convictions. This is one reason why an order for imprisonment is sometimes suspended.
118. In some contempt cases there may be scope for the court to temper the sanction imposed because there is a realistic prospect that this will deter further lawbreaking or, to put it another way, encourage contemnors to engage in the dialogue described above with a view to mending their ways or purging their contempt. However it is always necessary to consider whether there is such a prospect on the facts of the case. In some cases there will be. In some cases, not. Moreover it is important to add that there is no principle which justifies treating the conscientious motives of the protester as a licence to flout court orders with impunity.
119. In reaching my decision I also take account of the sentences imposed in similar protester cases: including Heyatawin and NHL v. Buse & ors [2021] EWHC 3404(QB); Dingemans LJ and Johnson J.
120. Mr Greenhall and Mr Karu submit that in the event of the Court concluding that a particular case meets the custody threshold, determination of the length of sentence should take account of the time served on remand or curfew in respect of the criminal charge of statutory public nuisance which they face. This was the course taken by Cotter J in NHL v Lancaster where he stated "'There is a danger that if a view were taken that it was no longer in the public interest to continue with the prosecution that the period on remand would not be something for which the defendant was given credit (she would be given automatic credit within any criminal sentence). Accordingly, I shall give her credit within this sentence.'": [51]. Ms Lancaster had spent 9 days on remand which was equivalent to a sentence of 18 days. The judge gave credit to that extent. In the present cases Counsel point to the very much more substantial periods of remand and subsequently qualifying curfew which most of these Defendants have served.
121. I am not persuaded that this is the right course to take. The criminal cases and these applications are distinct proceedings; the prospect of the criminal proceedings not being continued is purely speculative; and the counter possibility is that the periods on remand/curfew will be credited twice.

122. With these principles in mind I turn first to the two Defendants who admit knowledge of the injunction at all material times of their protest on the gantry: Mair Bain and Theresa Norton.
123. Mair Bain accepts that she had the requisite knowledge through personal service of the Bennathan Order (which included the Structures of the M25) and otherwise. She is the only one of the Defendants whose action was on 10 November 2022. The affidavit of PC Glensman shows that at about 6.45 a.m. she was seen climbing the relevant gantry and appeared to be climbing to the top. The officer scaled a concrete wall and then a fence in order to access the bottom of the structure. He climbed from the concrete base platform and onto a large metal electric box. From this point he grabbed Ms Bain and prevented her climbing further. Whilst awaiting assistance from the heights team he arrested her for public nuisance. He asked her if she had glue on her and she told him it was in her pocket and handed it over. The ‘heights team’ brought her down at about 7.12. When cautioned, she said that she ‘wouldn’t have to do this if the government wasn’t breaking climate laws’.
124. By e-mail from HJA dated 2 October 2023 the Claimant’s solicitors were advised that she was not contesting the allegation of contempt.
125. Ms Bain did not give evidence from the witness box but provided two witness statements dated 25 October 2023 and 27 October 2023 each verified with a statement of truth. She is 36 and works as a self-employed science communicator and volunteers with environmental and conservation groups along with homelessness charities and refugee groups. She accepts that she was a named defendant to the injunction initially granted by Lavender J and was subsequently served with the Bennathan Order. She was the subject of an Order of Cotter J made on 5 May 2023; but in consequence of a written undertaking dated 9 May 2023 given and accepted by the Court was removed from that injunction by the same judge’s order of 24 July 2023.
126. That undertaking promises to the court that for a period of 2 years she will not engage in conduct including “Blocking or endangering or preventing the free flow of traffic on the roads identified in [the Bennathan Order] for the purposes of protesting by any means including their presence on the roads, or affixing themselves to the roads or any object or person, abandoning any object, erecting any structure on the roads or otherwise causing, assisting, facilitating or encouraging any of those matters”.
127. There is no suggestion that Ms Bain has not complied with that undertaking to the Court.
128. Ms Bain also exhibits her email to Cotter J dated 28 April 2023 in which she explains that her main reasons for not engaging in future protest activity “in case there are any doubts” are that “After 12 arrests for climate protests in the last 3 years (Oct 2019 to Nov 2022) and experiencing first-hand the changes in criminal law regarding protests I’m at a point where if I engage in any more civil disobedience, I will be likely imprisoned (either remanded for breaking court bail or receiving a lengthy custodial sentence) and will lose my job, possibly my home and further damage my health and relationships”.
129. Her first statement concludes with an apology for breaching the Chamberlain Order and states that in line with the May 2023 undertaking she promises not to do this in the future. She has no previous convictions nor breach of a civil order.
130. Following her arrest on 10 November 2022 she was remanded in custody for 40 days and was then on qualifying curfew for 178 days thereafter. As a result of her remand

she lost much of her work. She also provides evidence of other personal circumstances including her mental health.

131. Theresa Norton is now aged 65. Her action took place on 7 November. The affidavit of PC Batchelor states that she was first seen on the top of the relevant gantry at 7.48 a.m. She was arrested at 8.50 but refused to leave the gantry. With the assistance of the removal team she was brought back to the ground at about 9.49.
132. By e-mail dated 2 October 2023 her then solicitors HJA advised the Claimant's solicitors that she was not contesting the allegation of contempt. In skeleton remarks prepared by Mr Karu dated 26 October 2023 before his instructions were withdrawn, he noted the acceptance of the contempt and the entitlement to the full reduction in sanction. Throughout her life she had acted for the benefit of others. She had been a carer for her mother who had died in August 2023.
133. By Order dated 2 February 2022 in NHL v. Springorum & ors the Divisional Court committed Ms Norton to prison for 28 days for contempt of court. This was for the breach of the Lavender Order of 21 September 2021 in respect of protest on the M25 carried out by members of Insulate Britain. In her case she had not entered onto the live motorway. The judgment records at [56] that Ms Norton apologised to the people who were inconvenienced and disrupted by her actions but stated that she would do it again. She would continue to fight for climate and social justice and was willing to serve a prison sentence in solidarity with those sentenced before her. In mitigation she was the primary carer for her 92-year-old mother and had other volunteering commitments. The Court took a starting point of 9 weeks, reduced to 6 weeks for the admissions; but reduced the term to 28 days in light of her caring responsibilities.
134. Ms Norton did not give evidence but addressed me from her place in court. She began with a statement of the reasons for her actions, stating that the only reason she was ever on the M25 was the climate emergency. She had taken action before. She stated that she was not aware of the gantry injunction, i.e. the Chamberlain Order, but accepted responsibility for her actions as she always did.
135. In the light of that statement of unawareness of the gantry injunction, I interpose that in the combined circumstances of valid alternative service, the HJA email of 2 October 2023 and the absence of any evidence from the witness box in discharge of the reverse burden of proof, I proceed on the basis that Ms Norton must be treated as having had actual knowledge of the Chamberlain Order. The same applies to Ms Bain.
136. At the end of her submissions I asked Ms Norton what her intentions were for the future. She told me that she had no intention of breaking any injunctions in the future. I then asked Counsel for any observations on this response. Mr Fry very properly responded that he accepted that this was the dialogue to which the authorities refer. That is my own conclusion.
137. I start with the sanctions in the cases of Mair Bain and Theresa Norton.

#### Ms Bain

138. There can be no doubt that her culpability and the harm were high. Her acts were deliberate and in defiance of the court. The overall aim was of course to draw attention to the climate change and fossil fuel issues which is their motivation; but the means to that end were to cause disruption on the motorway which would result in publicity for that campaign.

139. As the evidence shows the protest caused massive disruption to the M25 and to members of the public. This is fully detailed in the affidavit evidence of Mr Martell. Notwithstanding the 'blue light' policy of JSO and protesters in respect of emergency vehicles there was evident risk that emergency vehicles and critical workers might be held up. There will have been inevitable economic loss and disruption to members of the public and the police who had to devote resources in anticipating and removing the protesters. In addition there is the risk of members of the public responding by taking the law into their own hands. The public interest firmly requires the upholding of orders of the court.
140. The mitigating features include her conscientious motivation; her apology for her conduct; her undertaking to the Court in May 2023 and compliance therewith; her reiterated statement that she will not breach Court injunctions in the future; and her various personal circumstances. She is also entitled to full credit for her admissions.
141. I do not consider that a fine is an appropriate sanction; and am satisfied that the custody threshold is passed. However I conclude that it is right to suspend the order for committal.
142. As to the length of the custodial term, I consider that the starting point is 2 months, expressed in days as 60 days. Ms Bain is entitled to one-third credit for her admission of breach, which reduces the period to 40 days.
143. In the light of the mitigating features and the true engagement with the Court which this has demonstrated, I consider that suspension of the order is appropriate. I conclude that the committal should be suspended for a period of 2 years on terms of compliance with the same terms as the Chamberlain Order.
144. I turn to Theresa Norton. This is a much more difficult case to assess because of the aggravating feature of the previous finding of contempt in respect of a similar order concerning the M25 and against the background of her previous statement to the Divisional Court that she intended to continue with her protest regardless; and thus to defy the Court.
145. The critical mitigating feature is her statement in Court that she has no intention of breaching any injunction in the future; to which I will return.
146. The custody threshold is plainly satisfied. The question for me is whether the appropriate custodial term should be served immediately or whether it should be suspended. After very considerable thought I have concluded that it should be suspended.
147. In my judgment the starting point for the custodial term in her case must be higher than that of Mair Bain because of the previous finding of contempt. I conclude that the starting point is 4 months, expressed as 120 days. Ms Norton is again entitled to full credit for her admissions which reduces that to 80 days.
148. In the absence of the statement which Ms Norton made in answer to my question I would not have suspended the order for committal. With all weight to be given to the motives of a conscientious protester, in the absence of any indication of dialogue or of learning from her previous court proceedings, the Court would have been driven to conclude that there was unrepentant defiance of Court orders. However having listened to Ms Norton, I take her at her word when she states that she has no intention of breaching court injunctions in the future. This is the dialogue to which the authorities refer and justifies the course of suspension.

149. The committal period of 80 days will be suspended for 2 years on the same terms as the Chamberlain Order.

The Defendants who acquired knowledge on the gantry

150. I turn to the defendants who by admission or my finding obtained knowledge of the injunction as a result of the oral notice given to them by the police when they were on the gantry. These are Paul Bleach; Paul Bell; Daniel Johnson; and Joseph Linhart.

151. In each case I keep in mind my finding that they had no prior knowledge of the injunction until notified thereof by the police officer in question. It was thereupon requisite that each should cease to remain on the gantry and the police officer and public were put to further trouble by the delays before they were brought down. However their culpability was distinctly less than for those Defendants who went on their gantry with knowledge of the order.

152. In each case I also take note of their admissions of liability in the respective e-mails from HJA on their behalf. In the case of Johnson and Bell these were unqualified. In the case of Bleach and Linhart they were subject to the issue of knowledge. Given the dispute on knowledge before entry onto the gantry and the legal argument that was properly and reasonably pursued on their behalf, I consider that they should equally receive full credit for their admissions.

153. This again has not been an easy decision. However I have concluded that in each case it is sufficient for the Court to have concluded and recorded that the Defendant in question acted in knowing breach of the Order by remaining on the gantry for a period of time after receiving notice of the injunction. In my judgment it is not necessary to impose a penalty on this occasion.

Conclusions on sanction

154. In the case of Theresa Norton there is a committal order for the term of 80 days suspended for 2 years on terms of compliance with the current successor to the Chamberlain Order.

155. In the case of Mair Bain there is a committal order for the term of 40 days suspended for 2 years on the same terms.

156. In respect of each of the other 10 Defendants, no penalty is imposed.