Neutral Citation Number: [2022] EWHC 2457 (KB)

KB 2022 BHM 000044

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Birmingham Civil Justice Centre
Date: 23 September 2022

Before:

MR JUSTICE RITCHIE

- -

BETWEEN

HS2 (HIGH SPEED TWO LIMITED) (1)
THE SECRETARY OF STATE FOR TRANSPORT (2)

Claimants

- and -

WILLIAM HAREWOOD (18)
RORY HOOPER (31)
ELLIOTT CUCIUREAN (33)
DAVID BUCHAN (61)
LEANNE SWATERIDGE (62)
STEFAN WRIGHT (64)
LIAM WALTERS (65)

Defendants

M. FRY and **BRENDAN BRETT** instructed by **DLA PIPER** Solicitors for the Claimants.
ADAM WAGNER instructed by **ROBERT LAZAR** for the 33rd and 65th Defendants.
HARRIET JOHNSON instructed by **ROBERT LAZAR** for the 18th Defendant.
ADAM GREENHALL instructed by instructed by **ROBERT LAZAR** for the 31st and 62nd Defendants.

Hearing dates: 25 -27th July 2022 and 22 & 23rd September 2022

- -

APPROVED JUDGEMENT

Mr Justice Ritchie:

The Parties

[1] The Claimants are constructing a high speed railway line in England for the benefit of the public in accordance with the will of Parliament.

[2] The Defendants object to the construction of the HS2 railway line and have taken direct action against the construction.

Bundles

[3] For the committal claim which is the subject of this judgment I was provided with: the hearing bundle, an authorities bundle, a supplementary authorities bundle, various cases handed up on paper, various late served witness statements from some, but not all, of the Defendants and some other documents including character references.

[4] After an adjournment for the sanctions decision for D33 I was provided with an expert report from a psychologist and 2 emails from a trainee probation officer.

The Issues

[5] The first issue to be dealt with in this judgment is whether the Defendants breached a mandatory and prohibitory injunction granted by Mr. Justice Cotter on the 11th of April 2022 "the Cotter Injunction" which, in summary, ordered named Defendants and persons unknown to leave the land defined below and not to return. Only sanctions were dealt with because by the time of the start of the hearing all Defendants (save one: D61, who did not attend and D33 who took a technical defence) had admitted the pleaded breaches of the injunction.

[6] The second issue is to determine the appropriate sanctions for any admitted or proven breaches.

This Judgment

[7] This judgment was delivered in Court ex-tempore on 23 September 2022. It relates to all Defendants. I had delivered various decisions in the 4 day July 2022 hearing and also made findings of breach and imposed sanctions on the 6 other Defendants then and given an extempore judgment dealing with all those matters. This judgment brings together the breach and sanctions decisions into one place.

[8] I have attached to this judgment an appendix with the approved transcripts of various of the decisions made in July 2022.

[9] Some of the decisions I made relating to one Defendant (D33) were in two Private hearings relating only to him and only to his private medical information relevant to personal mitigation. The transcripts of those hearings and the judgment I made on the right to privacy relating to that personal information outweighing the need for the

whole hearing to be in open Court will not be released publicly and are subject to reporting restrictions.

The land

[10] This claim concerns the property at Cash's Pit Land which adjoins the A51 at Swinnerton, Staffordshire and is approximately 4 acres in size, rectangular in shape and contains a forest surrounded by farmers' fields, positioned South of Stoke on Trent. It includes a thin strip of land adjoining the northern verge of the A51. I shall refer to this land as "CPL".

Pleadings and chronology of the action

[11] By a notice of application dated the 25th of March 2022 the two Claimants applied for possession of CPL together with a prohibitory and mandatory injunction and declarations and alternative service orders. The application was made against 59 named Defendants and various persons unknown.

[12] The evidence in support of the application was provided in a witness statement of Richard Jordan dated the 23rd of March 2022 and in various other witness statements and affidavits.

[13] By an order made by Mr. Justice Cotter on the 11th of April 2022 at a hearing which was attended by some of the Defendants and both of the Claimants the Judge ordered possession of CPL be granted to the Claimants and granted an injunction which was interlocutory and was to last until the trial or a further order was made in the case or until the 24th of October 2022 (the Cotter Injunction).

[14] By paragraph 4a of the Cotter Injunction the relevant persons were forbidden from entering CPL or remaining there. By paragraph 4b the relevant persons were ordered not to enter CPL, not to interfere with the works at CPL, not to interfere with the fences or gates at CPL, not to damage the property of the Claimants at CPL or of their subcontractors and not to climb onto vehicles or machinery at CPL. By paragraph 4c various persons were ordered to cease tunnelling at CPL and not to encourage or assist tunnelling at CPL.

[15] By paragraph five of the Cotter Injunction it was expressly stated that the Injunction did not prevent the exercise of existing rights of way over CPL or public highways or the rights of the statutory undertakers (service providers). The Cotter Injunction declared that the Claimants were entitled to possession of CPL and alternative service provisions were set out because many of the named Defendants had not provided postal or e-mail addresses or other methods of communication and had not instructed lawyers to accept service on their behalf. The various methods of service were proscribed and included affixing documentation to wooden stakes in the ground at CPL and putting documents to be served in the post box constructed by protesters at CPL and fixing copies of the documents to the entrance at CPL and publishing the

documents on various websites. These various alternative service methods were deemed effective by the Cotter Injunction. In addition anyone affected by the Cotter Injunction was permitted to apply to vary but was required to notify the Claimants' solicitors 48 hours before any hearing of any such application to vary and to provide their names and addresses for service. A directions hearing was provided for to determine the steps required in future.

[16] By a Statement of Case also dated 8th of June 2022 and issued on the same day, the Claimants asserted that five named defendants: D18, 31, 33, 61 and 62 and two proposed Defendants namely D64 and D65 were in breach of the Cotter Injunction. The breaches were laid out extensively in the Statement of Claim together with the evidence in support of the assertions that the Defendants were in contempt of court. The Statement of Claim attached the Cotter Injunction and a plan of the site of CPL.

[17] By notice of application also dated the 8th of June 2022 the Claimants applied for an urgent directions hearing for the future conduct of the claim for committal to prison of the seven Defendants listed above for breaches of the Cotter Injunction.

[18] On the 14th of June 2022 an order was made by this Court which dealt with the directions governing the application for committal to prison of the seven Defendants. In that order I joined D64 and D65 to the proceedings on the Claimants' application. I granted permission to the Claimants to rely on the affidavits set out in paragraph 3 of the order. I granted permission to amend the application notice and Statement of Case. I made orders for alternative service on the Defendants because they had not provided postal addresses or electronic addresses and had not instructed lawyers. The alternative service provisions in paragraph five of that directions order were for postal service, electronic service, service on those thought to be hiding in the tunnels under CPL, service on lawyers and service at websites. I also ordered at paragraph 11 that any Defendant who wished to rely on evidence at the final hearing should serve and file the evidence by the 27th of June 2022. Tying the permission to rely on evidence to the direction I gave at paragraph 8, I ordered that the Defendants had to, by the 20th of June 2022, provide the Court and the Claimants' solicitors with a postal address or an e-mail address at which they could be served with documents relating to the proceedings. I also ordered that no evidence other than evidence filed in compliance with the directions order would be admitted at the hearing save with permission of the Court. An application would have to be made under CPR part 23 for such permission.

[19] The committal hearing was listed for four days starting on the 25th of July 2022 in that directions order. The Defendants were required to attend the hearing in person. The Defendants were warned that if the Court, at the hearing, was satisfied that the Defendants or each of them had been served in accordance with the alternative service provisions in the order then the Court could proceed in the absence of those

Defendants. I also ordered that evidence as set out in the witness statements filed by the parties would stand as evidence in chief at the committal hearing. I ordered the parties to file and serve bundles containing their evidence and any authorities by the 15th of July 2022 and any skeleton arguments by the 21st of July 2022.

[20] On 25th July 2022 at the hearing of the claim for committal to prison of the seven Defendants, D61 David Buchan and D64 Stefan Wright were not represented by solicitors or by barristers and did not attend. The other five Defendants did attend and were represented by solicitors and counsel.

[21] At the hearing Defendants D31 and D62 admitted the pleaded breaches of the Cotter Injunction and apologised to the Court and, through their lawyers, had negotiated undertakings which they offered to give to the Court. Those undertakings were accepted by the Claimants and those two Defendants and all parties recommended to me that those undertakings should be sufficient to deal with the breaches of the Cotter Injunction committed by those Defendants.

[22] I invited but did not require those Defendants to give evidence in addition to hearing their counsel provide mitigation. Both were brave enough to do so. Both impressed me with their commitment to conscientious objection to projects that they, in their own minds, considered were environmentally damaging. I made no findings in relation to their conscientious objections but I did provide, during the course of the hearing, a judgment accepting those undertakings. Both Defendants and their lawyers then left Court. The Appendices hereto contain the approved transcript of that judgment.

Rory Hooper and Leanne Swateridge (Above Ground)

[23] In relation to the undertakings, it may be helpful to those reading this judgment to know that Rory Hooper (who has no "also known as" or AKA as far as I am aware), who was D31, was aged 17 at the time of his breaches of the Cotter Injunction. He was 18 at the time of the hearing. He had no previous relevant antecedents, apologised to the court and gave a two year undertaking not to breach HS2 court orders or interfere with the HS2 construction in future. He accepted that he had wasted a great deal of taxpayers money. His protests were non violent and he did not endanger others. He happens to be the son of Daniel Hooper, a well known environmental objector who goes by the name of "Swampy", but his family history was not relevant to the decision I took to permit his undertakings to be given in exchange for the Court passing no other sanctions for breach of the Cotter Injunction.

[24] In relation to Leanne Swateridge, D62, (AKA Flowery Zerbra) I likewise accepted the parties' suggestion that the undertaking she provided to the Court was sufficient to deal with her breaches of the Cotter Injunction. She likewise gave evidence to this Court, apologised, promised never to breach an injunction relating to the HS2 project again and gave her reasons for her conscientious objections. She accepted that she had

wasted a great deal of taxpayers' money. Her protests were non violent and she did not endanger others.

The evidence in relation to the other 5 Defendants

[25] The hearing of this claim for committal to prison of the other 5 Defendants continued until the 27th of July and that part relating to D33 only was adjourned over to 22 September because D33 applied to submit more evidence in mitigation.

[26] The witness evidence from the Claimants which was accepted by the represented Defendants was as follows -

- An affidavit of James Dobson sworn on the 7th of June 2022;
- An after David of Karl Harrison sworn on the 9th of June 2022;
- An affidavit of Julie Dilcock sworn on the 9th of June 2022;
- An affidavit of Adam Jones sworn on the 12th of June 2022
- An affidavit of Mark Bennett sworn on the 8th of July 2022;
- An affidavit of David Joseph sworn on the 8th of July 2022;
- An affidavit of Vilaime Matakibau sworn on the 8th of July 2022;
- An affidavit of James Dobson sworn on the 11th of July 2022;
- An affidavit of Ian Dent sworn on the 11th of July 2022;
- A witness statement of Julie Dilcock sworn on the 8th of June 2022;
- A witness statement of Robert Shaw sworn on the 11th of July 2022;
- Multiple certificates of service from various witnesses set out at tab 33 of the hearing bundle.

[27] During the hearing I granted applications by D18, 33 and 65 for permission to rely on late served witness statements from those Defendants.

[28] I heard evidence in their own mitigation from the following Defendants: D18, D31, D33, D62 and D65.

[29] I also heard evidence from Ian Dent who was called by the Claimants and dealt with matters relating to the tunnels dug by and occupied by various of the Defendants.

[30] After the adjournment D33 served and filed the following additional evidence:

(1) two emails from D33's trainee probation officer;
(2) an expert Psychologist's report on D33; and
(3) a second witness statement from D33 relating to a private medical matter.

Findings of fact

[31] At the hearing the three remaining attending Defendants (D18, D33, D65) stated through their counsel that they did not dispute the main points of the Claimant's evidence set out in the various witness statements filed and served for the hearing.

[32] The findings I make below are made on the criminal standard so that I am sure as to these findings of fact.

[33] The opposers to the HS2 project consist of a broad range of groups including Extinction Rebellion, HS2 rebellion, Stop HS2 and others. The aims generally of these protesters were to obstruct and cause direct harm to the HS2 project, to increase the costs thereof and to delay it and to stop it.

[34] The HS2 organisation and the Secretary of State for Transport work together to construct the railway from London to the North of England. The whole project is funded by the taxpayer and so any increase in costs or delays are funded by each and every taxpayer in England and Wales.

[35] So far as a general figure for the security costs is concerned for the whole project the amount is approximately £121,000,000 to date.

[36] I find on the evidence that the security costs for the events at CPL alone amount to approximately £8,000,000. The Defendants before me at this hearing and the many other protesters who have attended at or lived at CPL are responsible for the vast majority of that £8 million and I so find as a fact.

[37] The direct action taken by protesters in relation to CPL, which is owned by HS2, included trespass, criminal damage, the construction of wooden living accommodation, the construction of tree houses, the digging of tunnels under the earth and various ancillary acts of obstruction to the works carried out by HS2 and their subcontractors in areas nearby.

[38] The occupants of CPL, or at least some of them, had come over from previous protester camps in Wendover and before that in Euston Square in London. They, or some of them, had been the subject of previous injunctions, whether named or not.

[39] Quite a few previous injunctions have been granted against HS2 protesters. For instance Mr. Justice Holland granted an injunction in 2019 under the reference EWHC 1437. Other injunctions were granted in relation to HS2 protester camps set-up at Harville Road, Hillingdon and at Cubbington in Warwickshire.

[40] The Claimants asserted and Mr. Justice Cotter accepted that there was a distinct risk of further illegal activity from the protestors at CPL. The evidence put before him included interviews by various Defendants posted on Facebook pages and in the national press including one in the Guardian newspaper on the 13th of February 2021. Various Defendants, including D33, asserted publicly that they tunnelled to stop roadbuilding and railway building. The Defendant protestors asserted that they had a "Go Fund Me" page. The protesters published online that in relation to CPL, HS2

would have to spend £4 million evicting them for their multiple trespasses on the land at CPL.

[41] As I have set out above I find that the Defendant protesters' estimate of the costs which they had forced upon the taxpayers in England and Wales were actually double what they estimated they would create through their direct action. None of the Defendant protesters are taxpayers so they are not paying the bill themselves.

[42] HS2 and the Secretary of State for Transport applied for a track wide injunction and that application was heard by Mr. Justice Knowles. Judgment was handed down on 20th September 2022.

[43] The Claimants' evidence, which I find was proven, showed that as a generality the protesters used various methods to force HS2 to incur taxpayers expenses as a result of their direct action. Those included "lock on" devices, tunnels, theft, staff abuse, access obstruction, criminal damage, spiking trees, fly tipping, occupying sites, at height protests and the like.

[44] The protesters established their camp at CPL in approximately March 2021. The protesters called CPL "Bluebell Wood". It is near a work area organised by Balfour Beatty, a subcontractor of HS2. Balfour Beatty obtained an injunction on the 17th of March 2022 against various protesters.

[45] Various structures were built at CPL by protesters including wooden accommodation and tree houses and a post box.

[46] In relation to CPL, James Dobson gave evidence that the Claimants and their staff and subcontractors were able to identify: William Harewood, Elliot Cuciurean, David Buchan, Stefan Wright and Liam Walters at the site. These Defendants were known to James Dobson from the previous sites.

[47] Mr Dobson gave evidence that after the possession order was made by Mr. Justice Cotter the writ of possession was issued and served. Then many verbal warnings were given to the protestors on the site. On the 10th of May 2022 enforcement officers went to the site, issued warnings, took videos and cleared the site of the protestors who were above ground. Those protestors included Rory Hooper, David Buchan, Leanne Swateridge and others.

[48] However I find that 4 Defendants stayed in the tunnel from 10 May 2022 onwards. Those were William Harewood; Elliott Cuciurean; Stefan Wright and Liam Walters. They stayed deliberately and in defiance of the Cotter Injunction and in defiance of the application to commit them to prison for breach of the Injunction. They stayed deliberately in defiance of the directions which I made for the case management of the committal application. They deliberately did not attend the pre-trial review to manage

the final hearing. They breached the directions order requiring them to provide contact details for service. They chose not to take part in the process until day 1 of the hearing and even then two did not attend. They served their evidence late.

[49] Earlier during the hearing I made findings of fact in relation to each Defendant. I was provided with evidence through the Claimants' witness statements and certificates of service which proved to me, so that I was sure, that each of the 7 Defendants had been served with: the Cotter Injunction, the claim for committal to prison for breach, the directions order which I made and all of the evidence in support provided by the Claimants. Reference should be made to those detailed findings which are in the transcript of the hearing. I shall incorporate those decisions into this judgment if the transcripts are made available to me at a later date. It should be said here that the following Defendants admitted that they were properly served with all of the above documents. Those admissions were provided by: William Harewood, Rory Hooper, Elliot Cuciurean, Leanne Swateridge and Liam Walters who are D18, D31, D33, D62 and D65.

[50] In addition, taking each Defendant in turn, earlier in the hearing I made findings of fact on the basis that I was sure in relation to each of the pleaded allegations of breach of the Cotter Injunction which were set out in the Statement of Claim that each was proven. I record here that the following Defendants admitted all of the breaches alleged against them in the Statement of Claim: William Harewood, Rory Hooper, Elliott Cuciurean, Leanne Swateridge and Liam Walters.

[51] As for the two Defendants who failed to attend the hearing, pursuant to the directions order dated 15th June 2022, in which I gave an express warning that I would proceed in the absence of Defendants who failed to engage, I made findings of fact in relation to their breaches of the Cotter Injunction based on the evidence put before the Court by the Claimants. My judgment in relation to those findings of fact was provided verbally during the hearing and will be inserted into the written version of this judgment or an appendix hereto if the transcript is made available to me.

[52] In summary the proven breaches fall into two categories. All seven Defendants were at the CPL site in breach of the Cotter Injunction and failed to leave it. The effects of being at the CPL site were that the taxpayer incurred enormous additional expense on security and other staff who had to deal with the protesters onsite. It also delayed the progress of this taxpayer funded construction.

[53] The second category of breach of the Cotter Injunction concerns the four men who descended into the tunnels under CPL and stayed there after the 10th of May 2022. This direct action was not only a deliberate flouting of the Cotter Injunction but also of the authority of the civil justice system and of Court orders generally. These Defendants knew that they had been ordered off the land and refused to go. These Defendants knew that they were putting the taxpayer through HS2 to very substantial

expense. These Defendants also knew that they were potentially putting the security staff of HS2 and the underground emergency workers at risk if any part of the tunnel system collapsed.

[54] I heard evidence from Ian Dent about the construction of the tunnels. He works with authorised High Court enforcement officers. He is a confined spaces specialist enforcement officer. He has 19 years of experience in removing persons from confined spaces. Some of that was experience gained at Euston Square Gardens in January and February 2021 and at Wendover in October and November 2021, both of which are HS2 sites. He was involved throughout the operation at CPL from 10th of May 2022 onwards.

[55] I find the following facts on the basis that I am sure arising from his evidence. Following the discovery of the main shaft into the tunnels an initial assessment of the spoil which had been removed from the tunnel was carried out.

[56] HS2, with advice from other experts, decided that the risk to emergency workers was too great for them to enter the tunnel and remove the protesters. At that time the four Defendants were not in need of rescue and so they were left in the tunnels. The ground at CPL is made-up of a mixture of sandstone and limestone bedrocks and a conglomeration of pebbles and sandy soils. That conglomerate was of concern because as it dried the risks of breaking up and collapsing would increase.

[57] HS2 provided a hard wired communication system and monitored the air quality of those in the tunnel and purged the air regularly when it became unsafe. This system was used to reduce the risk of drying the walls which would have arisen or been increased by a more regular changing of the air by HS2. Paramedics were brought on site and kept on site 24 hours a day seven days a week just in case any part of the tunnels did collapse. Warnings were issued to the tunnel occupants not only on the 10th of May but many many times thereafter. The four Defendants displayed a blasé attitude to health and safety and to the dangers they had created. They mocked the warnings given to them.

[58] Mr Dent considered that the dangers in the tunnel were quite exceptional. He made verbal and visual contact with the four Defendants on many occasions all of which were videoed or logged. He warned them many times. They laughed in his face many times.

[59] On the 18th of June 2022 Liam Walters left the tunnel. He had occupied it for 39 days.

[60] On the 25th of June 2022 security staff saw the three other Defendants emerge from a hole 4 metres past the fence on land adjoining CPL which was a field. These three

Defendants, William Harewood, Elliot Cuciurean and Stefan Wright had dug a wormhole from the tunnels on CPL to the field and escaped that night.

[61] After all the Defendants had left the tunnels Mr. Dent and his team entered the tunnels and I have seen photographs of the inside of the tunnel system and of the wormhole dug by the Defendants. The tunnel was stuffed with refuse and spoil. In Mr. Dent's opinion the tunnel was poorly shored up. Some sections were completely without shoring. The wormhole had a very tight diameter and was, in Mr. Dent's opinion, very dangerous. Mr. Dent considered the construction of "shaft one" was uniquely dangerous giving rise to a risk of collapse. Mr. Dent discovered that the very top of the tunnel had been capped with a concrete mix. He stated that *"this method of construction meant that any attempts to remove the concrete cap and to remove and or replace the ad hoc shoring with more robust shoring would have released in the region of two tonnes of loose earth upon anyone in shaft one and below*." Overall Mr. Dent's opinion was that the tunnels at CPL were of extremely poor and unsafe construction and were highly unstable. There was a serious risk of collapse at anytime. It was his opinion that the Defendants put themselves and any potential rescuers in danger and *"at risk of serious injury or death*". I accept Mr. Dent's evidence and find that the tunnel construction was very unsafe and put the lives of the four Defendants at risk and potentially the lives of the rescue services. It also put the life of Mr. Dent and his staff at risk of injury or death when clearing out the tunnel after the Defendants left.

[62] It is apparent from the evidence put before me that after the four Defendants left the tunnel various organisations boasted on social media and one Defendant gave an interview to the BBC boasting of this behaviour. I find it difficult to see how it can be a matter of pride for four men to put their lives at risk and to put the lives of emergency workers at potential risk and to waste millions of pounds of taxpayers' money.

The Law

[63] Contempt of Court proceedings have a procedure which is set out in CPR 81. That procedure governs the form of the application and the content of it and the form and content of the evidence. The Claimants in this case have studiously followed the relevant procedures. That procedure entitles but does not require the Defendants to speak before sentence and I gave each Defendant that opportunity and each who was present took it. It also entitles the Court to proceed in the absence of a Defendant which is the route I have had to take in relation to David Buchan (until he turned up) and Stefan Wright.

[64] All of the Defendants before the Court admitted their breaches and the two Defendants who were absent have been found to be in breach as pleaded.

[65] The punishment or sanction available to this Court for contempt of Court includes imprisonment of up to two years, a fine, confiscation of assets or other punishment permitted by law. The maximum sentence of imprisonment is 2 years. Any sentence of imprisonment may be combined with a fine. See the *Contempt of Court Act 1981.* In addition this Court is entitled to suspend any sentence of imprisonment pursuant to its inherent powers. Finally pursuant to the *Criminal Justice Act 2003* section 258 contemnors who are sent to prison are released after serving one half of the sentence.

[66] The factors that this Court should take into account are well known and are set out in the Supreme Court Practice and also in *National Highways Ltd v Ana Heyatawin & Ors* [2021] EWHC 3078. The President of the Queen's Bench Division and Chamberlain J. described the key general principles as follows:

> "(a)T he court has a broad discretion when considering the nature and length of any penalty for civil contempt. It may impose: (i) an immediate or suspended custodial sentence; (ii) an unlimited fine; or (iii) an order for sequestration of assets;
> (b) The discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely (i) punishment for breach; (ii) ensuring future compliance with the court's orders; and (iii) 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 should consider all the circumstances, including but not limited to:
> (i) whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy;
> (ii) the extent to which the contemnor has acted under pressure;
> (iii) whether the breach of the order was deliberate or unintentional;
> (iv) the degree of culpability;
> (v) whether the contemnor was placed in breach by reason of the conduct of others;
> (vi) whether he appreciated the seriousness of the breach;
> (vii) whether the contemnor has cooperated, for example by providing information;
> (viii) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea;
> (ix) whether a sincere apology has been given;
> (x) the contemnor's previous good character and antecedents; and
> (xi) 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: s. 14(1) of *the Contempt of Court Act 1981*. A person committed to prison for contempt is entitled to

> unconditional release after serving one half of the term for which he was committed: s. 258(2) of the *Criminal Justice Act 2003*;
> (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."

[67] When considering sanctions I also take into account the guidance provided in *HS2 v Maxey & Hooper* [2022] EWHC 1010, a decision of Linden J. That decision concerned Daniel Hooper, the father of Rory Hooper, D31 in these proceedings.

[68] I also take into account the decision of the Court of Appeal in *HS2 v Cuciurean* [2022] EWCA Civ 661 in relation to costs awards.

[69] I also take into account the decision of the Court of Appeal in *HS2 v Cuciurean* [2021] EWCA Civ 357 in relation to the ingredients for liability for contempt and the custody threshold. In particular paragraph 81:

> "81. I see no grounds for disagreement with the Judge's conclusion that the custody threshold was crossed in this case. Contrary to the submissions of Ms Williams, there is no precise read-across from the statutory custody threshold in criminal sentencing and the standard that applies in contempt: see [18] above. The Judge cited binding authority on the right approach in the present context, and applied it conscientiously. It is, with respect, untenable to suggest that this case could and should have been dealt with by some lesser sanction. The submission that a mere finding of contempt would have been sufficient pays no heed to the need for deterrence, and the importance of upholding the rule of law. I am not impressed with the submission that in arriving at the period of six months the Judge took too literal an approach to the number of contempts, given that there were several incidents close in time. Again, this is to examine the reasoning under a microscope, when what matters is the overall outcome."

[70] Furthermore I take into account the decision of Marcus Smith J. in *HS2 v Cuciurean* [2020] EWHC 2723 on sanctions for contempt of court. Those listening to and reading this judgment will realise that although there was a different judge that case concerned the same Claimants and D33 to this claim and involved the same solicitors and barristers. That decision on sanctions imposed on Mr. Cuciurean went up to the Court of Appeal and the suspended sentence of imprisonment was reduced from 6 to 3 months.

[71] When imposing the sanctions set out below I take into account the Defendants' Art 10 and 11 rights under the *European Convention on Human Rights* and consider the sanctions to be proportionate and necessary in the light of the facts set out above and

the rights of HS2 and the 2nd Claimant in relation to their land and staff and contractors and the public finances.

Sanctions

[72] The sanctions for all except for D33 were imposed on 27 July 2022 and took effect from that date. This judgment in writing was delivered in Court on 23rd September 2022 after the adjourned sanctions hearing dealing with D33.

David Buchan (Above Ground)

[73] **Lack of co-operation:** You were not in Court for the days 25 and 26 July. You took no part in these proceedings until today. You deliberately choose to flout the Court's Injunction (the Cotter Injunction) and the directions and the process. You arrived this morning.

[74] In evidence you accepted that you had known of the injunction and the committal application against you. I reject your evidence that you were unaware of the court proceedings. You told me that you received the court documents (via Facebook) and chose not to read them. Choosing not to read Court documents is foolish and unwise.

[75] **Breaches:** You entered and stayed in CPL on 4 occasions: 20th and 26th April 2022, 10th May 2022 and 28th May 2022. You ignored the multiple warnings given to you politely and verbally by the HS2 security staff. You were a regular and integral part of the direct action process.

[76] I judge that your breaches of the Cotter Injunction were serious and that you did not care about the orders made by the Court. You do not consider yourself bound by Civil Justice and do not recognise the authority of the Court. You deliberately and contumeliously breached the Court's Injunction.

[77] **Your culpability** is moderate in my judgment. You did not take part in the tunnel protest. You stayed above ground. You put no one's life at risk. You were not violent.

[78] **The harm** that you helped to cause is set out above and includes huge expense to the taxpayers in England and Wales via damage the HS2 project. That harm also involved wasting the time and effort of hundreds of HS2 staff and contractors, of the police and of the emergency services. The limited taxpayers' resources of our society would have been better spent on the NHS, social care, the environment, the underprivileged and other needy issues than on chasing around after you as you played your civil disobedience games in breach of the Cotter Injunction

[79] **Insight:** You have shown very little balance in your insight or understanding of the effects of your actions on society and taxpayers' funds, on the emergency services and on the Court system. You have shown no remorse and made no apology to the Court.

Quite the opposite you said you refused to apologise for the contempt. You asserted that you "don't read Court orders".

[80] You gave evidence to me in mitigation in a cocky and offhand way. You told me that you plan to continue your protests against HS2. Your "thumbs up" over Facebook in answer to the service of Court proceedings was grossly and intentionally unhelpful.

[81] **Mitigation:** you have provided very little. However, I work on the basis that you have no relevant antecedents. I accept you were non violent and non threatening. Having seen you give evidence to me I only just accept (on balance) that you appear to be a conscientious objector. I find as a fact that you are verging more towards being a chaos merchant instead of being a thoughtful protester.

[82] I also take into account that you did not promise to the Court to cease direct action involving breaches of civil law relating to HS2.

[83] **Admission:** You have admitted the breaches in full. I take that into account.

[84] I have taken into account the **Sentencing Guidelines**. I consider that your breaches take you well past the custody threshold.

[85] **Fine:** I consider that you should pay a fine of £1,500 as part of the sanction for your breaches.

[86] **Imprisonment:** I consider that a fine would not be a sufficient punishment for your breaches nor would it have sufficient effect on your thinking to prevent you repeating your contemptuous behaviour against HS2 and the taxpayers funding the project and the Courts in future.

[87] I pass a sentence of imprisonment on you David Buchan for a term of 100 days taking into account your mitigation.

[88] **Suspension:** I have considered suspending the term because this is your first contempt but your utter disregard for the Cotter Injunction and this Court process and your lack of insight and your lack of apology and your future implied threats of more action have prevented me from suspending the term.

[89] You will be entitled to release after serving half the term. You have the right to appeal by notice filed and served 21 days from today.

Stefan Wright (Tunnelling)

[90] You are absent. You failed to appear at this hearing. You have completely and deliberately ignored the Court process.

Breaches

[91] Your breaches consisted of being a tunnel dweller for 46 days in direct and deliberate contravention of the Cotter Injunction which I have found you were served with and knew about.

[92] I consider that your breaches were very serious indeed. They were long lasting. They were contumelious. They were potentially life threatening for you, your mates in the tunnel and the emergency services deployed to help you should the tunnel collapse occur. Your breaches caused real harm to taxpayers and the HS2 project and used up judicial time and resources.

[93] It is clear to me that the tunnel was occupied expressly to frustrate and delay the repossession of CPL in breach of the Cotter Injunction.

[94] **The harm** that you helped to cause is set out above and includes huge expense to the taxpayers in England and Wales and to HS2. That harm also involved wasting the time and effort of hundreds of HS2 staff and contractors, of the police and of the emergency services. The limited taxpayers' resources of our society would have been better spent on the NHS, social care, the environment, the underprivileged and other needy issues than on chasing around after you as you played your civil disobedience games in breach of the Cotter Injunction. The harm you caused also included the need for underground emergency service workers to be present on site throughout the occupation and thereafter to clear the tunnel and make it safe and to repair the ground in the ancient forest you have deliberately scarred and defiled.

[95] **Insight:** You have shown no adult, mature or balanced understanding of the effects of your actions on society and taxpayers funds, on the emergency services and on the Court system. You have shown no remorse and made no apology to the Court.

[96] **Mitigation:** you have provided none. However I work on the basis that you have no relevant antecedents. I accept you were non violent and non threatening.

[97] I have taken into account the **Sentencing Guidelines**. I consider that your breaches take you well past the custody threshold.

[98] **Fine:** I consider that you should pay a fine of **£3,000** as part of the sanction for your breaches.

[99] **Imprisonment:** I consider that a fine would not be a sufficient punishment for your breaches nor would it have sufficient effect on your thinking to prevent you repeating your contemptuous behaviour against the Court, HS2 and the taxpayers.

[100] I pass a sentence of imprisonment on you Stefan Wright for a term of **332 days.** I have calculated this by imposing 7 days for every day you spent under ground.

[101] **Suspension:** I have considered suspending the term because this is your first contempt but the danger you created by your "Heath Robinson" tunnel and your utter disregard for the Cotter Injunction and this Court process and your lack of remorse or insight has prevented me from suspending the term. A bench warrant will be issued for your arrest and detention.

[102] You will be entitled to release after serving half the term. You have the right to appeal by notice filed and served 21 days from today.

William Harewood aka "Satchel Baggins" – (Tunnelling)

[103] You have appeared at this hearing and are present now. You engaged late, ignoring the Cotter Injunction and ignoring my own directions order of 15 June 2022, but since late June 2022 you have engaged and taken part in the Court process.

[104] **Breaches:** Your breaches consisted of being a tunnel dweller for 46 days in direct and deliberate contravention of the Cotter Injunction which I have found you were served with and knew about.

[105] I consider that your breaches were very serious indeed. They were long lasting. They were contumelious. They were potentially life threatening for you, your mates in the tunnel and the emergency services deployed to help you should the tunnel collapse occur. You used up the public emergency resources who were on standby whilst you broke the Injunction sitting in the tunnel.

[106] It is clear to me that the tunnel was occupied by you expressly to frustrate and delay the repossession of CPL.

[107] **The harm** that you helped to cause is set out above and includes huge expense to the taxpayers in England and Wales and to HS2. That harm also involved wasting the time and effort of hundreds of HS2 staff and contractors, of the police and of the emergency services. The limited taxpayers' resources of our society would have been better spent on the NHS, social care, the environment, the underprivileged and other needy issues than on chasing around after you as you played your civil disobedience games in breach of the Cotter Injunction. The harm you caused also includes the need for underground emergency service workers to clear the tunnel and make it safe and to repair the ground in the ancient forest you have deliberately scarred and defiled.

[108] **Insight:** You gave evidence in mitigation and I was impressed. You have shown an understanding of the effects of your actions on society and taxpayers funds, on the emergency services and on the Court system. You have apologised and I judge that you apology really does spring from remorse and an understanding of your responsibilities in society and the adverse effects of your contempt of Court, not

merely a fear of punishment. I am sure of that. You are looking for other ways to pursue your causes and passions and you have a greater understanding now of the lack of a real or positive impact of your tunnel protest.

[109] **Mitigation:** You are an earth protestor. I find that you are a conscientious objector. You have provided character references. I have read them and take them into account. I should mention that without addresses for each witness they lose just a little part of their force, but not all of it.

[110] **Admission:** You have admitted the breaches in full.

[111] **Announcement:** I take into account the public announcement you have made, which was read onto the Court record, that you are going to focus on positive action instead of direct action. You will not be involved in any anti HS2 action in future.

[112] You have no relevant antecedents. I accept you were non violent and non threatening. Your witness statement served late, disclosed your determination to maintain that what you did was the correct way to protest. Court orders are not issued lightly or frivolously. They are issued carefully and within long established legal principles. However having heard your evidence to me I was convinced that you understand the seriousness of your breaches and why Court orders in a civil, organised, caring society are a vital part of the fabric keeping us all safe and secure.

[113] I take into account that you were a chef until Covid struck and that you wish to return to education in September to learn to build sustainable energy equipment.

[114] I take into account your admission of the breaches.

[115] I have taken into account the **Sentencing Guidelines**.

[116] I consider that your breaches take you well past the custody threshold.

[117] **Fine:** I consider that you should pay a fine of **£3,000** as part of the sanction for your breaches.

[118] **Imprisonment:** I consider that a fine would not be a sufficient punishment for your breaches nor would it send out the right message to others who use direct action to protest and seek to dig tunnels or for your contemptuous behaviour against HS2 and the taxpayers and the Courts.

[119] I pass a sentence of imprisonment on you for a term of **332 days.** I have calculated this by imposing 7 days for every day you spent under ground. I reduce that to **184** (46 days x 4) days as a result of the mitigation you have provided through you counsel Ms. Harriett Johnson.

[120] **Suspension:** I have considered suspending the term because this is your first contempt. Because you have gained insight and expressed that clearly. You showed real remorse and apologised sincerely. You engaged with the Court process. You promised to cease fruitless and grossly expensive direct action. You are determined to return to a somewhat more normal life.

[121] Your sentence is suspended for 2 years from today.

Liam Walters (Tunnelling)

[122] **Breaches** You breached the Cotter Injunction by staying in the tunnel at CPL from 10.5.2022 to 11.7.2022: 39 days. Then you climbed out of the entrance and gave yourself up.

[123] You admit that you committed the contempts of Court as set out in the Statement of Claim in paragraphs 54-59 in the full knowledge of the Cotter Injunction and deliberately.

[124] **Aggravating factors** You accept that you did not engage with the Courts or the lawyers for HS2 until after you came out of the tunnel. You did not serve your evidence in accordance with the Court's directions. However from then onwards you did engage, you served a witness statement, you gave evidence to me direct and you provided mitigation.

[125] **Culpability** No one forced you to breach the injunction you take full responsibility for your actions. You flouted a Court's order.

[126] It is clear to me that the tunnel was occupied by you expressly to frustrate and delay the repossession of CPL.

[127] **Aggravating factors:** You made a BBC interview in which you indicated that there was 1 person left in the tunnel. That was to mislead HS2 into waiting even longer before going in to clear it out perhaps. It was obstructive.

[128] **The harm** that you helped to cause is set out above and includes huge expense to the taxpayers in England and Wales and to HS2. That harm also involved wasting the time and effort of hundreds of HS2 staff and contractors, of the police and of the emergency services. The limited taxpayers' resources of our society would have been better spent on the NHS, social care, the environment, the underprivileged and other needy issues than on chasing around after you as you played your civil disobedience games in breach of the Cotter Injunction. The harm you caused also includes the need for underground emergency service workers to clear the tunnel and make it safe and to repair the ground in the ancient forest you have deliberately scarred and defiled.

[129] **Insight:** You gave evidence in mitigation and I was partially impressed. You have shown an understanding of the effects of your actions on society and taxpayers funds, on the emergency services and on the Court system. You have apologised and I judge that your apology sprang from some remorse and some understanding of your responsibilities in society and the adverse effects of your contempt of Court, not merely a fear of punishment. You told me that the HS2 direct action you took in the tunnel was "*a massive waste of resources for the Courts and was not a constructive way of going about things. I do not know if it has achieved our aims".* I take that into account.

[130] You are looking for other ways to pursue your causes and passions and you have a greater understanding now of the lack of a real or positive impact of your tunnel protest.

[131] **Mitigation:** In mitigation Mr Wagner raised that this was your first contempt, you have no previous relevant contempts and you are young, you are only 24. You admitted the breaches in full. You have apologised.

[132] I have taken into account the **Sentencing Guidelines**.

[133] I consider that your breaches take you well past the custody threshold.

[134] **Fine:** I consider that you should pay a fine of **£2,000** as part of the sanction for your breaches.

[135] **Imprisonment:** I consider that a fine would not be a sufficient punishment for your breaches nor would it send out the right message to others who use direct action to protest and seek to dig tunnels or for your contemptuous behaviour against HS2 and the taxpayers and the Courts.

[136] I pass a sentence of imprisonment on you for a term of **273 days.** I have calculated this by imposing 7 days for every day you spent under ground (39 x 7 = 273). I reduce that to **156 days** (39 days x 4) days as a result of the mitigation you have provided through you counsel.

[137] **Suspension:** I have considered suspending the term because this is your first contempt and you are young, because you have gained some insight and expressed that to me. You showed remorse and you apologised. You engaged with the Court process. You promised to cease fruitless and grossly expensive direct action. You are likely to return to a more productive life.

[138] Your sentence is suspended for 2 years from today.

Elliott Cuciurean, aka "Jellytot" (Tunnelling)

[139] **Breaches** You breached the Cotter Injunction by staying in the tunnel at CPL from 10.5.2022 to 25.6.2022, so for 46 days. Then you burrowed out with others by creating a dangerous worm hole and escaped across a field outside CPL.

[140] You admit that you committed the contempts of Court as set out in the Statement of Claim in paragraphs 35-39 in the full knowledge of the Cotter Injunction and deliberately.

[141] You were present in Court when Mr. Justice Cotter made the injunction.

Culpability

[142] No one forced you to breach the Cotter Injunction, you take full responsibility for your actions. You flouted this Court's order. You did so intentionally. You intended to cause massive expense to HS2, an organisation wholly paid for by the taxpayers in England and Wales. You have protested at other HS2 sites before many times. You have been bound by previous Court injunctions relating to HS2. You have previously been bound by a suspended sentence for contempt of Court orders. Evidence of your approach was posted by you on your own Facebook page on 24 October 2021 where you wrote: "*goodbye suspended sentence, injunction breaking here we come*". I consider such a statement is a reference to the expiry of the suspended sentence imposed by Mr. Justice Marcus Smith. That sentence resulted from you, D33 having been found in contempt of court for 12 separate breaches of an interim injunction, imposed by Mrs. Justice Andrews (as she then was) on 23 March 2020 to prohibit trespass on HS2 land.

[143] I find as a fact that you knew exactly what you were doing and intended to flout the Court's orders despite previous Court warnings relating to the consequences of doing so. You intended to encourage others by your actions. I consider that your culpability is high for these further contempts.

[144] It is clear to me that the tunnel was occupied by you expressly to frustrate and delay the repossession of CPL, to cause disruption to the construction and to cause huge expense and to waste the time of the emergency services. Tunnelling is one step beyond locking on which itself is one step beyond mere trespass when viewed in the scale of intentional obstructions to make removal more difficult for the emergency services and police or the Claimants in this case.

[145] **The harm** that you helped to cause is set out above in this judgment and included huge expense to the taxpayers in England and Wales through HS2. That harm also involved wasting the time and effort of hundreds of HS2 staff and contractors, of the police and of the emergency services. The limited taxpayers' resources of our society would have been better spent on the NHS, social care, the environment, the underprivileged and other needy issues than on chasing and waiting around after you

as you played your underground civil disobedience games in breach of the Cotter Injunction. The harm you caused also included the need for underground emergency service workers to clear the tunnel and make it safe and to repair the ground in the ancient forest you have deliberately scarred and defiled.

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

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

[148] **Previous contempts:** You were found guilty of contempt by Marcus Smith J. in October 2020. You were sanctioned with a term of imprisonment which was suspended for 1 year on conditions. That suspension ended in October 2021 and despite that a few months later you were in CPL, trespassing, causing trouble and flouting the Cotter Injunction.

[149] **Later suspended sentence:** You also have a previous conviction for aggravated trespass (see *DPP v Cuciurean* [2022] EWHC 736 – March 2022 and the subsequent Magistrates Court decision). That conviction related to a tunnel you dug in 2021 and occupied at Shaw Lane, Staffordshire forming part of HS2 land. You refused to leave despite verbal warnings and an underground team was called to the scene. The costs of the eviction process were £195,000. You were acquitted and involved as Respondent to the appeal from the acquittal in the Magistrates Court. In March 2022 the Divisional Court remitted the case to the Magistrates Court with a direction to convict you of the offence. You were actually convicted after the events which concern me but before the sanctions and breach hearing in this case. You were given another suspended sentence. You committed the relevant contempts of Court after that case had been remitted with a direction to convict you. Even that knowledge did not dissuade you.

[150] **Insight:** You gave evidence in mitigation in two witness statements. Despite your assertions, you have not shown to my satisfaction any real understanding of the effects of your actions on society and taxpayers funds, on the emergency services and on the Court system. You assert that you were not motivated by defiance of a Court

order but I find those words to be a hollow fallacy. In relation to the last contempt you assert you were very upset and did not consider yourself to have done anything wrong. That is a window into your muddled and utterly self centred thinking.

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

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

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

[154] It is right and clear that conscientious protestors may usually be entitled to a *Cuadrilla v PU* [2020] EWCA Civ 9, "discount" in contempt proceedings when the Court considers sanction. However in my judgment each such discount depends on:

(1) proof of conscientiousness;
(2) the insight of the objector;
(3) the activity carried out;
(4) the history;
(5) the dialogue between the Court and the objector;
(6) the involvement of the objector with the Court process;
(7) many other factors.

[155] In the case of you, Elliott Cuciurean, it is no longer a dialogue between the Courts and you. It is a monologue from the Courts with you, Cuciurean, refusing to listen and engage, show real remorse or responsibility and publicising your intent to continue to flout the orders of this Court.

[156] As the Supreme Court in *Attorney General v Crossland* [2021] UKSC 15 (Judgment of the whole Court) made plain at para. [47]:

> "there is no principle which justifies treating the conscientious motives of the protestor as a licence to flout court orders with impunity".

[157] I take into account the 5 character referees' witness statements you have put before the Court.

[158] **Apology**: I did not find your apology in your first witness statement either persuasive, heartfelt or insightful. The wording of it was mealy mouthed and it lacked persuasiveness.

[159] **Expert evidence:** I have taken into account the expert and other evidence put before me relating to a private medical issue. I take into account the contents of and conclusions in the report you rely on from Peter Pratt a clinical psychologist. He is not a consultant psychiatrist but he is experienced. You have not provided medical evidence from a suitably qualified consultant psychiatrist that you have any diagnosed medical or psychiatric condition. Peter Pratt did not diagnose any psychiatric condition the symptoms of which would include any self harm risk. However he was of the view that you are at risk of self harm if you are imprisoned.

I also heard from another experienced guide on prison policy and procedure whom I shall not name who worked with Peter Pratt on his report. I found that evidence helpful and relevant. The risk in the report from Mr Pratt was stated in a less exaggerated way than in his evidence in mitigation. I accept that there is a real risk for you of violence and self-harm in prison and the prison authorities will need to implement their protocols and policies to ensure you are assisted with protections and adjustments on arrival. It is not my role to enter into any discussion of the effectiveness or policies of the prison service. Nor do I wish to. It is clear to me that the arrangements to be made for your imprisonment, start to finish, are a matter for the prison service not this Court.

[160] I accept that if imprisoned you will find it particularly difficult. You provided private information during mitigation which I found persuasive concerning the effects which prison will have on you which are above and beyond what many will suffer. You are concerned about arrangements. You asked for a further adjournment for more time for a full pre sentence report from the probation service.

[161] However you have already been granted an adjournment of 8 weeks. Despite your assertion in July that your probation officer had been asked and offered to provide a report to the Court no such report has been provided. Instead two late emails were provided by a trainee probation officer which did not take your case forwards as you no doubt had hoped. For the reasons set out in the judgment given in the private hearing I refused the adjournment but heard your evidence on the private information. My judgment on the adjournment was provided ex-tempore.

[162] I also note that Peter Pratt recorded that you told him:

> "… that, despite this suspended sentence, he simply continued to engage in protest behaviour since he believed that the strict conditions of the suspended order was not to break an HS2 injunction, rather than not "*to break the law*". He therefore felt empowered to trespass on land without an injunction.
>
> Indeed, he added that he was actually in a tunnel on HS2 land on the day that his appeal came through."

Also:

> "Current Suspended Sentence
>
> He then informed us that he was now already under a suspended sentence, ten weeks suspended for a year, handed down in July 2022. This, it appears, has a history in its own right in that his original "not guilty" plea was accepted by the City of London Magistrates Court. However, this matter was appealed, and it appears that the original Sentencing Court were told that they had "got the law wrong", hence a further conviction.
>
> He believes that he had to pay £200 costs, and was again required to engage in 15 hours of "rehabilitation", which has not yet substantively started."

[163] I take into the Court of Appeal's approach in a potentially relevant and analogous case: *Regina v Catarina Illingworth* [2017] EWCA Crim 2722.

[164] **Admission:** I take into account that after your technical objection was dismissed you admitted all of your breaches of the Cotter Injunction. That admission was made as late in time as an admission can be made. You have gained some credit for it but less than you would have gained had you come clean at the first reasonable opportunity.

[165] Despite knowing that the hearing was to determine whether breach was proven and to determine sanction if it was, you failed to prepare and bring to Court the evidence you asserted that you needed in mitigation. You asked for an adjournment. More costs were incurred as a result.

Custody threshold

[166] I have taken into account the **Sentencing Guidelines**.

[167] I consider that your breaches were serious, the harm was moderate to high and your culpability was high. They take you well past the custody threshold. Your counsel accepted this in mitigation.

[168] **Fine:** I consider that you should pay a fine of **£3,000** as part of the sanction for your breaches.

[169] **Imprisonment:** I consider that a fine would not be a sufficient punishment for your breaches nor would it send out the right message to others who use direct action to protest and seek to dig tunnels or for your repeatedly contemptuous behaviour against HS2 and the taxpayers and the Courts. A fine alone would not reflect the seriousness of your breaches.

[170] I pass a sentence of imprisonment on you for a term of **332 days.** I have calculated this by imposing 7 days for every day you spent under ground (46 x 7 = 332). I reduce that to **268 days** (so by around 20%) as a result of all of the mitigation you have provided.

[171] **Suspension:** I have considered suspending the term, but this is not your first contempt. You have not gained insight into the seriousness of breaching Court orders. You have not shown insightful remorse and your apology, such as it was, I found unconvincing. I consider that there is a very real risk to the HS2 project and the public purse, the emergency services and the administration of justice that you will continue breaching Court orders. I will not suspend your term of imprisonment. The dialogue between you and the Courts in relation to conscientious objection has been far too one sided for far too long.

[172] You will be entitled to release after serving half the term. You have the right to appeal by notice filed and served 21 days from today.

Ritchie J
delivered extempore 23 September 2022
Approved 3.9.2022

Appendix attached

APPENDICES FOLLOW CONTAINING THE APPROVED TRANSCRIPTS OF 4 DECISIONS MADE EXTEMPORE DURING THE HEARINGS

DECISION 1 - ON D33'S UNPLEADED DEFENCE:

THE ISSUE IN THIS JUDGMENT

1. D33 asserts that he was not covered or bound by the injunction. D33 made the application at the hearing without any notice of application or pleading the case in a defence. D33 seeks a preliminary ruling in law on the facts as to whether D33 is bound by the terms of the injunction.

PROCEDURAL DEFAULT

2. Directions were given for the conduct of the claim for committal for alleged breaches of the injunction by the Defendants on 15th June 2022. The Defendants were ordered to provide addresses for service and the names of their lawyers. The Defendants were permitted to serve evidence by 27th June 2022 and to provide bundles of authorities and evidence by 15th July 2022 and skeleton arguments by 21st July 2022.

3. D33 ignored these directions entirely, save as to the Court receiving a letter from Robert Lizar dated 21st July 2022, which was received on 25th July 2022, and, as I understand it, an electronic communication was provided by Robert Lizar as to the skeleton argument, which was delivered on time.

4. No notice of application has been issued for this preliminary issue to be heard. It was not raised at the pre-trial review. It was not pleaded in a defence. It was first raised well out of time between the Parties, five days before the hearing. This is a last minute ambush by D33 on the Claimants.

5. I reject the application on the procedural basis that D33 has not issued any application for the trial of a preliminary issue or paid the fee for such application, failed to attend the pre-trial review, failed to raise the issue in a properly pleaded defence, failed to comply with the court's directions in relation to evidence and bundles of authorities and intentionally ambushed the Claimants.

6. The asserted delay in obtaining legal aid is not an excuse for breaching the Court's orders because D33 could and should have instructed lawyers after the service of the injunction, which occurred soon after it was made in April 2022. He chose not to do so.

7. I shall now deal with the substance of the application in case my decision on procedural irregularity is overturned on appeal.

PLEADINGS AND CHRONOLOGY OF THE ACTION

8. By a notice of application dated 25th March 2022, the Claimants sought possession of CPL and an interlocutory injunction to remove the protestors from CPL. This was part of a wider application for a track wide injunction, which was eventually heard by Knowles J and for which judgment is awaited.

9. On 11th April 2022, Cotter J granted the CPL injunction and made prohibitory and mandatory orders for the onsite protestors to leave and not to return to CPL and prohibiting new protestors from entering CPL. Cotter J also granted possession to the Claimants.

10. At that time, the relevant evidence was heard and read by the court and the issues relating to the granting of the injunction were aired. D33 was present at the hearing. It is admitted by D33 that he spoke to Cotter J in open court at the hearing.

TERMS OF THE INJUNCTION

11. Mr. Wagner, counsel for D33, relies on the drafting of the terms of the injunction to justify the application, acknowledging the prohibitory and mandatory terms which are not in dispute. The issue raised by Mr. Wagner arises from the wording of the categories of persons bound by the injunction. By the definitions in the order made by Cotter J, the injunction binds two categories of person:

    i) The Cash Pit land (CPL) Defendants who are named but did not include D33.

    ii) Persons unknown entering or remaining at CPL, who I shall call PUs.

12. In addition and separately, the annex to the injunction sets out various named Defendants to the whole track wide action. This list is much larger than the named list for the CPL injunction.

D33's APPLICATION

13. D33 asserts that the injunction does not bind him because he was not a named CPL Defendant and he was not and did not become a PU despite entering CPL or remaining at CPL after the injunction was granted. He makes this submission based on the facts that (a) he was in fact named in the annex to the injunction as a Defendant to the main action but (b) not named as a CPL Defendant, so it was submitted he was not a person unknown, not a PU. On the contrary, it was submitted he was a person known, a PK, and so cannot have been a person unknown, a PU.

THE EVIDENCE

14. I heard no live evidence from witnesses. I have read the witness statements served by the Claimants, none of which is disputed insofar as the facts are relevant to this application and I accept the contents thereof insofar as they are relevant to this

application, on the criminal standard of proof. I have also read the undated witness statement of D33, which I allowed into evidence despite it being served very late, in breach of the directions I had given, and being itself undated.

FINDINGS OF FACT

15. The witness statements of the Claimants prove so that I am sure that at the time the injunction was made by Cotter J, D33 was not believed by the Claimants to be or have been at CPL. That is why he was not a CPL named Defendant in the injunction.

16. Of course, he was a potential PU in the future should he choose to step onto the CPL land and take part in the protest and obstruct HS2 in their works and do so in the knowledge of and in breach of the terms of the injunction. He could also become a PU if he was already on CPL but hiding, for instance, in a tunnel and hence be a person unknown to the Claimants in the sense that they did not know he was on or under the land.

17. D33 has a long history of fighting the Claimants over the HS2 railway. The cases are set out in the authorities bundle. I list them here:
HS2 v Cuciurean [2020] EWHC 2614;
HS2 v Cuciurean [2020] EWHC 2723;
HS2 v Cuciurean [2021] EWCA Civ 357.
DPP v Cuciurean [2022] EWHC (Admin) 736.
HS2 v Cuciurean [2022] EWCA Civ 661.

18. Mr. Wagner has appeared in all of the cases for D33. D33 has been on legal aid for all of these cases and D33 has not paid the adverse costs orders made against him in full on any of them. This was confirmed to me at the hearing by counsel. It is therefore not surprising to me and was foreseeable to the Claimants that D33 was a potential PU in the terms of the injunction. However, properly and professionally, the Claimants did not name him or many of the other Defendants to the main action as a named Defendant to the CPL injunction because they did not have evidence that he was on the land at that time.

19. In his witness statement, D33 admitted that he was present in Court when the injunction was granted. He accepted that he was named as D33 in relation to the "route-wide injunction", his words. There is a confusing paragraph numbered 4 of his witness statement. He asserts that, "The Cotter order. This specifically excludes the named Cash's Pit Defendants". The opposite is true. It specifically binds the Cash's Pit Defendants. He then asserted, "I am not a Cash's Pit Defendant". He then went on to assert the following:

> "Reading the order now, it is unclear whether it binds me. I am not a persons unknown as clearly they are aware of my identity. I am a party to the injunction."

20. D33 admitted in his witness statement that after the injunction was granted, he decided to resist both the order and the eviction and he admitted that he breached the prohibitory and mandatory terms imposed which ordered possession and in effect for the protestors to leave CPL. Furthermore, he accepted that he had made the decision to do so long before the injunction was granted. He explained that his refusal to leave was based on conscientious grounds relating to the environment.

21. Through his counsel and in his witness statement, D33 admitted that he was in the tunnel at CPL from 5th May 2022, at the latest, and did not leave until 25th June 2022. I note that D33 did not and does not assert:-

    i) At the time he was served with the injunction, as proven by the Claimants' affidavits and accepted by D33 (by it being thrown down the entrance hole to the tunnel); or

    ii) At any time before he left CPL on 25th June 2022

    that he was confused about the terms of the injunction or that he considered he was not bound by it or that it was ambiguous to him as to its scope. On the contrary, he decided to resist it.

22. I find as a fact that D33 believed and knew very well that he was bound by the injunction after he was served and before he left CPL. I find as a fact, based on his own witness statement, that he only raised the "I am not bound" issue after he left CPL and after he gained legal advice. I should say here that it is to D33's credit that he has been frank about the facts. This is therefore not an application about injustice to D33 or about D33 asserting that he has been misled by any ambiguous injunction terms. It is a purely technical get out of jail free application based on legal argument constructed after the event.

THE LAW

23. In Mr. Wagner's 25 page skeleton, he raises the following submissions in relation to the issue:

    i) D33 is not a named CPL Defendant in the injunction and so not bound by being named.

    ii) Pursuant to *Canada Goose v Persons Unknown* [2020] EWCA Civ 303, per Sir Terence Etherton at para.82, there are three PU categories permitted in law for injunctions: (a) **PU current tortfeasors** (a term I will use loosely for trespassers or those in breach of an injunction as in this case) who are currently anonymous but **will be identifiable later**; (b) **PU current tortfeasors** who are anonymous and **will never be identified** (like a hit and run driver where no one has seen the registration plate of the car); (c) **PU future tortfeasors** who have not yet committed any tort but will do so in the future and will become bound by the

injunction. So one can imagine a man standing on the A51 near CPL wearing a balaclava with a placard but who has not yet entered the land. Mr. Wagner describes category (c) as "newcomers", a term which is easy to understand but does not cover the whole of the category.

iii) D33 was not a PU because he had been named in the main action for the track wide injunction so was not unknown.

iv) So it was submitted that because D33 was not a named CPL Defendant and cannot be a PU, he must, by definition, escape the injunction.

v) Mr. Wagner warns this court that case law has made it clear that the PU jurisdiction must be exercised with care and circumspection (see *GYH v Persons Unknown* [2017] EWHC 3360 para.10, approved in *Canada Goose* at para.87).

vi) In addition, the injunction hearing would and should have included an analysis of the Article 10 and Article 11 of the *European Convention on Human Rights* of D33 if he had been a named Defendant in the CPL injunction, whereas allowing him to be a potential PU was an easy route taken, whether by design or happenstance, by the Claimants to avoid balancing D33's rights at the injunction hearing, thereby depriving D33 of a proper hearing before the injunction was granted. In addition, it was submitted this route avoided an analysis by Cotter J of D33's rights under s.6 of the *Human Rights Act.*

vii) Alternatively, Mr. Wagner submits that the injunction was ambiguous as to the scope of those it bound, so should be found not to bind D33 under the principles in *Redwing v Redwing* [1947] 64 RCP paras.67 and 71 and *Bloomsbury v Publishing* [2003] 1 WLR 1633 and *Cuadrilla v Persons Unknown* [2020] EWCA Civ 9 at para.59 per Leggatt LJ.

viii) Mr. Wagner also relied on *Bennion on Statutory Interpretation* at paras.23.12 *et sequentes* to submit that the Latin maxim *expressio unius* principle applies. If the list of named CPL Defendants did not include D33, then he cannot be included and must have been excluded.

ANALYSIS

24. I consider that the *Bennion* submission is misguided. The categories of Defendants for the CPL injunction were not just (1) the named CPL Defendants but included (2) an additional category for PUs who were either onsite and unidentified or would arrive onsite in the future.

25. I rule that the Latin maxim does not apply to the PUs category and is irrelevant to that category. As to the application of the maxim to the first category of named Defendants,

the Latin maxim adds nothing to the facts. D33 was not named as a CPL Defendant at that time.

APPLYING THE LAW TO THE FACTS

26. In D33's presence, Cotter J granted possession and the interlocutory injunction governing CPL after hearing argument and taking into account the relevant convention rights. Such rights, as set out clearly by Linden J in *HS2 v Maxey & Hooper* [2022] EWHC 1010 at paras.45 to 46, do not prevail over private land ownership rights. There was no avoidance of the necessary balancing exercise. It was carried out.

27. It is fanciful to suggest that Cotter J should have considered the personal circumstances of all the other named Defendants in the annex on the off chance that they might choose to enter the CPL site in future and become bound by entering the PU category. A *quia timet* injunction is based on the factors necessary to found it at the time, not some fanciful future fears.

28. The legal framework for protests and injunctions and any committal applications arising from any breach of those injunctions was clearly set out by the Court of Appeal in *HS2 v Cuciurean* [2021] EWCA Civ 357 at paras.9 and 10, and in particular at 9(iv). Where the Court has conducted the balancing exercise and granted the injunction, the order must be obeyed unless it has been set aside and D33 did not apply to set it aside. Quite the opposite, he chose to resist it and now seeks to say it never applied to him.

29. D33, of all people, should understand the judgment in his own case, a case which he lost at first instance and on his appeal on liability. He succeeded in part on appeal in that the sentence was reduced. In my judgment, D33 should have been well aware of the vital importance of complying with an order of the Court having been sentenced to imprisonment for contempt of Court for three months in the case set out in the preceding paragraphs. The sentence was suspended for one year in October 2020, yet that suspended sentence did not alter his disregard for Court injunctions one jot when he arrived at CPL some months after the suspensions ended.

30. As to the alleged ambiguity, the lack of clarity in *Cuadrilla v PU*, para.59, related to the prohibited behaviour covered by the injunction, not the category of Defendant bound by it. In this case, D33 does not allege that at the time he was in Court making arguments to Cotter J and then listening to the making of the injunction or at the time when he was in the tunnel being served with the injunction he did not understand it to bind him. I find, so that I am sure, on his own evidence, that he thought he was bound by it and chose not to comply.

31. Turning then to the meat of the application in law, I consider that when the injunction was granted by Cotter J, he was right to identify two categories of persons to be bound:

    i) Those thought by the Claimants to be on the CPL by name; and

ii) Those who may, in future, trespass on the CPL as "PU" newcomers or were onsite but were not yet identifiable by name: current "PUs".

32. No one knew, at that time, who would become a newcomer. No one knew whether D33 or any other named Defendant to the main track wide claim, as distinct from those believed already to be onsite, would arrive and take up protest there. Not all the site dwellers had been identified. So I consider that it is completely clear from the wording of the injunction that anyone who was not believed to be on the site and hence was not named as a CPL Defendant would and could potentially fall into the PU category if they walked onto the site in the knowledge of the order nailed to a post at the front entrance or if they ignored the daily shouted warnings of the security guards and stayed on the site or if they broke through the fences or if they entered the tunnel.

33. In particular, those named Defendants in the main action who had been trespassers before elsewhere on HS2 land but had not yet appeared on the CPL site were bound by the PU category as soon as they entered on the site or remained there in the knowledge of the Cotter Injunction order.

34. I rule that the interpretation proposed by Mr. Wagner for the injunction on behalf of D33 is strained, subjective, inappropriate and wrong.

CONCLUSIONS

35. I dismiss the application by D33 for an order that the injunction does not bind him. I rule that the injunction did bind D33, who was a PU under the terms of the injunction. I make this ruling on the basis that the words of the injunction, when subjected to their natural and ordinary, objective interpretation cover all persons unknown who were already at CPL at the time of the injunction and those PUs who deliberately entered or remained on the CPL after the operative date of the injunction in the knowledge of the injunction. D33 was one such person as he admits. This is a simple question of dual capacity. In his capacity as Defendant to the track wide injunction, he was named. In his capacity as potential PU to the CPL injunction, he was not named.

36. A further argument was raised by the Claimants based on how D33 would be in breach of the injunction even if he had not been bound by it directly. *AG v Newspaper Publishing* [1988] 1 Ch 333 was relied upon. It was submitted by the Claimants that if D33 was not a PU, then he was in breach because he:

i) Carried out the acts knowing of the order;

ii) Aided others to breach the order;

iii) Interfered with the administration of justice.

37. I do not need to decide on these submissions in the light of my ruling on the proper interpretation of the injunction. In any event, Mr. Wagner complained that he had not

had enough time to answer them properly so asked for a few days to consider them so the issues would have needed to be dealt with later in the hearing in any event. In the event he never did make any further submissions on the point. As for the ambush point, I have some sympathy but D33 ambushed the Claimants with the unpleaded defence to start the process rolling so it is perhaps unsurprising that the counter arguments were received late in the day.

CONSEQUENTIALS

38. I did offer D33 the option to withdraw this application at the close of submissions yesterday and that offer was refused. The effect of that refusal shall be taken into account when sentencing for D33's admitted intentional and deliberate breaches of the injunction. The Claimants shall draw up the order and submit it to the court by 10.00 a.m. tomorrow, the 27th.

39. The Claimants' costs of D33's failed application shall be paid by D33 on the standard basis, to be summarily assessed at the end of the hearing herein if they are not agreed before then.

DECISION 2 - SANCTION – LEANNE SWATERIDGE - UNDERTAKING

40. Cash's Pit land is adjoining the A51 in Swynnerton, Staffordshire. It is about four acres. It is a rectangle of forest surrounded by farmers' fields south of Stoke-on-Trent. It also has a thin strip of land adjoining the north-side verge of the A51. It is that land which I will call "CPL" in this ruling.

41. In approximately March 2021, according to the evidence of the claimant, which as I understand it is not in dispute - I will be told as I go through this short ruling if anything I say is in dispute and I will deal with it there and then, otherwise the facts that I am going to set out here are found beyond reasonable doubt so that I am sure, but because I have not heard all of the detail of what may or may not be in dispute I am sensitive to counsel being able to stand up and say: "My Lord, no, that is not right".

42. CPL camp was established approximately in March 2021 by protestors against HS2. A year later on 25th March 2022 by a notice of application the claimants, HS2 and the Secretary of State for Transport, applied for prohibitory and mandatory injunctions, in layman's language those are "don't do it" and "do it" injunctions, obviously the "it" is different, the "don't" is "don't go on the land" and the "do" is "get off the land" but those are the legal terms for those injunctions. They also applied for possession and declarations. "Declarations" is a legal word for "these are our rights, judge, tell the world these are our rights". They also applied for alternative service orders. Legal fees were incurred on that because protestors were occupying CPL. The proceedings were issued against various named persons who have been involved in protests in relation to HS2 before and also persons unknown because HS2 and the Secretary of State did not know everybody who was on CPL at the time. Evidence was filed in support from

Richard Jordan in a witness statement dated March 2022 and from others, but much of the background I have taken roughly from Mr Jordan's affidavit. He was the Chief of Security at the time.

43. A history of the HS2 process was set out there which I do not need to go into in any detail. There was a broad range of groups involved, including apparently Extinction Rebellion (I do not know whether that is absolutely so) or HS2 Rebellion or Stop HS2, and there may have been others. The aim was to cause direct harm to HS2, that means financial harm, increased costs and increased delays for it, according to the groups. I am not saying that that was the aim of Flowery Zebra, who has expressed her own aim in court. There were, according to Mr Jordan, 1,007 incidents between October 2017 and December 2021 and the security costs so far, so he said, were £121 million, paid for by the taxpayer. I have divided that by 30 million taxpayers and it was a relatively small sum per taxpayer, but it is still money for every taxpayer in this country that every taxpayer is paying out.

44. There were assertions that others were involved in trespass, criminal damage and violence. That is not asserted against Flowery Zebra. Occupants of CPL came from previous camps, or some did, one a camp in Windover, another a camp in Euston Square. Previous injunctions had been granted in 2019 and 2020, various evidence was put before me of Facebook interviews, interviews with the national press and suggestions that some of the defendants, including D33, Mr Cuciurean, had been involved in tunnelling under various roads. That is what was set out in Mr Jordan's witness statement. I am not saying I am finding that as a fact; it was an assertion which was made. I would have to hear more evidence to be able to find that beyond reasonable doubt. In any event, there were multiple incidents in Euston and in other camps. As a result, when the HS2 organisation came to seek an injunction of CPL they set out the history to show that the protests would be relatively likely to continue.

45. The order that was made by Cotter J on 11th April 2022 did have two parts to it, mandatory and prohibitory. In layman's terms, possession was granted to HS2 of the land, that means that they can take possession of it, and the prohibitory part of the injunction prohibited the named defendants and all other unnamed defendants from entering CPL or remaining there. It also said that those defendants and unknown persons should not interfere with the works on CPL or the fencing or gating or damage the property or the belongings of the sub-contractors or climb onto vehicles and so on. It also said that the defendants and unknown persons should cease tunnelling at CPL and should not encourage or assist others tunnelling at CPL. It expressly did not prevent lawful protest and freedom of speech.

46. Service provisions were provided because it is tricky to serve those who are of no fixed abode, but that was coped with within the order by various mechanisms. The application came before me on directions and I was keen to ensure that those in court had a chance to speak and those that did turn up did have a chance to speak and I set out a timescale for the defendants and unknown persons who were at CPL to serve their

evidence and file it and file their lawyers' statements and the like before this application, for it is crucial for the courts to allow people to defend themselves. It is not our job just to steamroller people into committal proceedings. We take care to give opportunities to all those accused or otherwise who face potentially serious consequences, we give them a timescale and we give them opportunities and that is what occurred in this case. I have already granted to the defendants who are in court permission to file statements late, their solicitors have worked hard under limited financial arrangements provided by the taxpayer through Legal Aid, as have their counsel, and it seemed to me right, even though everything was done in breach of the orders that I set down, that the timescales were relaxed because those that actually left the tunnel on the 25th or the 18th had less time, as a result of their own decisions, to instruct lawyers and get their statements in.

47. However, in relation to Flowery Zebra she left on 10th May 2022 without any violence or abuse or creating difficulties for the men and women who were employed just simply to take possession of the CPL land. Flowery Zebra comes to court today showing integrity and respect in that she will stand up for herself, she has given evidence, she has answered questions honestly and she has given an apology to this court and she has given her reasons for what she does, and I will never wish to stand in the way of people expressing their views, or their right to protest or to exercise their Article 10 and 11 rights to associate and get across their views, however, not in breach of court orders. What holds society together is the criminal law and the civil law. The criminal law has its own function in its own way. In this court it is civil law and contracts do not work with builders, with care workers and others unless the court can enforce them with orders, then people know contracts work and society can keep going. If people are injured in road traffic accidents or other negligent events it is court orders that make insurance companies pay out and others realise that they need to be careful of each other. That is the purpose of civil law, and that is why I take seriously an application for committal to prison for people who have breached court orders for whatever reason.

48. I have to take into account the long established case law of the conscientious objector being treated in a slightly more lenient way than others because of the value that the courts place on freedom of speech. However, those cases also say that your conscientious objection should not be on other people's private land, and there are various other checks and balances and so there are limits and that is what has led to the injunction order in this case and the application to commit and the legal fees involved.

49. However, coming specifically to Flowery Zebra, the breaches which she admits occurred on 10th May 2022. When the enforcement men and woman came on the site and removed those who were occupying she went without difficulty or without abuse to the men and women who were just doing their job and I take that into account. I also take into account that she admits her breaches, that she was escorted from a tree house and she admits her breaches, she was aware of the court order and she left voluntarily. These matters are important matters, for if breach of court injunctions are aggravated

by violence or threats or other matters that make life more dangerous for those men and women just doing their job those aggravating matters are taken into account.

50. I take into account and find that Flowery Zebra is truly conscientious and is concerned about the environment, about the creatures that we are fortunate to live with here and the biodiversity. It does not mean she can win her argument, because we elect Parliaments to make decisions and Parliaments make decisions about infrastructure and then implement them. But I do consider that she is a conscientious objector and take that into account.

51. This brings me to the undertaking that has been negotiated between Flowery Zebra and HS2 and the Secretary of State. I commend both parties for negotiating no doubt possibly late into the night and at weekends to get this done, I am grateful to counsel and the solicitors for doing so. There is a penal notice on it, and it says you are going to get in big trouble if you do not do what you have said in your undertaking. But it is clear to me that Leanne Swateridge understands that, from what she said in the witness box, she has agreed to stay away from the HS2 land and not to enter or remain on it or obstruct it or interfere with business and I take her at her word on that. If, in fact, she does not mean what she has said to me frankly and honestly today then the next judge will probably, to use common parlance, bang her up, and that is not what the courts want to do. But I hope that she is telling me the truth and she will restrict her conscientious objections to non-violent peaceful lawful means, in which case I am sure more people will listen. I accept the undertaking; it has been signed and I also fully understand that Flowery Zebra has looked at the plans roughly and gets that it is the whole of HS2 so there is not going to be a misunderstanding in the future.

52. The application is granted on the findings that are made.

DECISION 3 - SANCTION – RORY HOOPER- UNDERTAKING

53. What I said in relation to the background in relation to Flowery Zebra applies equally to Rory Hooper and therefore I carry that part of the judgment over and deal only with the personal breach, aggravation and mitigating factors in relation to Rory Hooper.

54. Rory comes from a family with what might be called an honourable tradition of conscientious objection, his dad being Swampy, but he is a grown up and an individual and it is a matter for him now how he lives his life. When the events took place, which he admits, which were breaches of a court order on 10th May 2022 at CPL he was only 17; he is 18 how. When the men and women came who were to regain possession of the land he climbed a tree to frustrate repossession, he put a lock-on device in a tree house and it took an hour for the member of the possession security staff to take him out of the lock-on device and then to escort him from the site. That was an intentional nuisance and it is a serious thing, for if those that go up trees fall out of trees they can be injured and it showed a little bit more than just being present on the site, so Mr

Hooper is going to need to be careful going forward with that sort of behaviour for it is a potential aggravating factor.

55. He admits his breaches. He did not behave in a violent or abusive way to the men and women who were clearing the site.

56. His personal mitigation involves conscientious objection. One only has to see the direction in which he is heading as he grows into a man, environmentalism and an apprenticeship in forestry with which I wish him the greatest of luck and the greatest of success, he clearly is a conscientious objector.

57. The difficulty is he is using the wrong methods, illegal methods, particularly methods in breach of court orders, which are dangerous for him and could be dangerous for those who need to clear sites where he is occupying. However, he tells me he has no intention going forwards of continuing to breach any court order.

58. All the more important is the undertaking that he has given. He has undertaken in the form set out which has been put before me, it has a penal notice on it so he knows the effects of breaching this solemn promise to the court, and the promise is: D31 Rory Hooper accepting that he is a Cash's Pit defendant, as defined in the order of Cotter J, accepting that he has been properly served, admitting that he entered upon Cash's Pit Lane in breach of the order and failed to remove himself from there, he has promised, he has undertaken that he will not do any of the following: - enter or remain on HS2 land, obstruct or otherwise interfere with free movement of vehicles, equipment or persons accessing or egressing HS2 land or interfere with any fence or gate or perimeter of HS2 land where such conduct has the effect of damaging and/or delaying or injuring HS2 and the Secretary of State, their agents, servants, contractors, sub-contractors, group of companies, licensees, invitees or other employees.

59. In effect the undertaking is a promise not to muck with HS2 again on their land. He can protest all he wants elsewhere and legally is the thrust of what is being said.

60. I compliment both his barrister and Mr Fry for dealing with your case in the way that they have.

61. This time you have got away without paying any costs. Next time there will be substantial costs. I have a bill in front of me for £40,000 worth of costs that HS2 have had to run up. I will be paying that, albeit a small part, because I pay tax, and so will every other taxpayer in this country be paying towards the costs that you have run up, and that is one of the adverse effects of breaching court orders. Despite that, the undertaking is acceptable and I do accept it and there will be no costs order.

DECISION 4 - SERVICE OF DOCUMENTS AND BREACH

DAVID BUCHAN - SERVICE

62. The first step that I need to take in relation to the Claimants' claim for committal for breach of the Cotter injunction dated April 2022 in relation to David Buchan, aka David Holliday, Defendant 61 to the claim, is to consider whether David Buchan has been served with two bundles of documents. The first is the Cotter order and ancillary documents and the second is the application to commit him for contempt.

EVIDENCE

63. Factually, as to the background, Mr. Buchan has taken no part in these proceedings, has failed to instruct lawyers, has failed to attend. However, I have before me considerable evidence to show that he was onsite at CPL in April and May of 2022, leaving on 28th May 2022 when he was arrested and detained.

64. Those dates for his presence onsite are evidenced by the affidavits of Mr. Dobson and Mr. Harrison and are summarised in the Statement of Claim at paras.40 to 45. In slightly more detail, they assert that on 20th April 2022, Buchan entered CPL and stayed after being warned verbally of the injunction. On 2nd May 2022, he entered CPL and refused to leave despite warnings of the injunction. On 10th May 2022, he was remaining on CPL until he was escorted off by security and on 28th May 2022, he entered CPL and was arrested and was detained.

65. I have carefully been taken to and have carefully read the evidence in relation to service of the Cotter order, namely the injunction, in the affidavit of Mr. Harrison dated 13th April 2022. It is clear that a huge number of copies of the Cotter order and evidence in support thereof were distributed to the CPL site, put into the CPL post box, which was constructed by the protesters at the entrance and on various wooden posts, north, south, east and west of the site.

66. In addition, in accordance with the affidavit of Ms. Dilcock dated 9th June 2022, the documents were posted on the HS2 website. All of these methods were permitted for service on David Buchan by the Cotter order.

67. I also take into account the evidence of Dobson in the affidavit before me in the hearing bundle p.A077 that many oral warnings were given to Buchan and also in the affidavit of Mr. Harrison in hearing bundle A41 (that affidavit being 9th June 2022) that on 20th April, as I have summarised above, Mr. Buchan was seen and issued with a warning when he was in the vicinity of structure 1.

FINDING

68. Therefore, I find such that I am sure, that Mr. Buchan was aware of and was served with the Cotter order and the ancillary documents in accordance with the Cotter order and I accept the certificate of service.

69. The second matter is whether Mr. Buchan was served with the application to commit him to prison for contempt. I accept the certificate of service at bundle A516 of Robert

Shaw dated 20th June 2022. This method of service was required because Buchan had left CPL and had avoided providing any email address, postal address or other contact address, so the Claimants had researched and found a Facebook address for him, set up their own Facebook address and messaged him at his Facebook address in his aka David Holliday and that was a permitted method of service by Cotter J.

70. I accept that those documents were served by Facebook Messenger to Buchan's Facebook Messenger account and then take into account the most recent witness statement of Robert Shaw dated 23rd July 2022, which shows a receipt of a cheeky Facebook message back from Buchan's Facebook account, namely a thumbs up and a "LOL". I have been given two interpretations of "LOL", neither of which are relevant to my decision to accept the evidence of Mr. Shaw that the alternative service provisions set out in the directions order that I made on 15th June 2022 and the injunction order that Cotter J made in April 2022 have been complied with and I am sure that service has properly been effected on Mr. Buchan.

(For proceedings after judgment see separate transcript)

DAVID BUCHAN - BREACH

71. In relation to the claim against David Buchan, the next part of this judgment deals with the evidence of breach. I refer back to the earlier part of this judgment which dealt with evidence of service. In relation to the allegations of breach, the Statement of Claim sets out at paras.40 to 45 the following allegations against Buchan:

    i) That he wilfully breached para.4A of the Cotter order on Wednesday, 20th April 2022 by entering and remaining on CPL. D61 was seen next to and entering a large wooden structure that had been erected by activists on CPL. D61 was informed by the First Claimant's security contractors that he was on land subject to a High Court injunction and refused to leave CPL.

    ii) D61 wilfully breached para.4A of the Cotter order on Wednesday, 20th April 2022 by entering and remaining on the CPL. He had left the CPL land to use a latrine situated to the west and re-entered at 4.08 p.m.

    iii) On 26th April 2022, D61 wilfully breached para.4A of the Cotter order by entering onto CPL and was seen by the First Claimant's security contractors and was informed that he was on the land subject to a High Court injunction and refused to leave.

    iv) On 10th May, when the Claimant's security staff sought to clear the site of protestors having obtained a warrant for possession, D61 remained on the CPL and was found by the security contractors there and was walked off the site.

    v) On 28th May, Buchan entered the site again from the south, was intercepted, detained and arrested by the police.

72. I find, so that I am sure to the criminal standard, that those events occurred as set out in the affidavits of Dobson and Harrison but I also say, in relation to those breaches, that it is clear to me from this evidence that David Buchan, aka David Holliday, was non-violent, non-rude and simply was non-compliant with the court order, not going any further than that. So the breach has been established to the criminal standard and I so find.

(For proceedings after judgment see separate transcript)

STEFAN WRIGHT - SERVICE

73. In this part of my stop and start judgment, I am dealing with four matters. The first is proof of service of the directions order on Stefan Wright, D61.

74. I have read and considered the evidence of Karl Harrison in his certificates of service dated 15th June 2022 with the photos therein that show him putting down the entrance to the tunnel for the attention of William Harewood, Elliott Cuciurean, Liam Walters and Stefan Wright the documentation in relation to today's hearing and the directions order.

75. So then going back in time to proof of service of the Cotter order, I accept the certificate of service dated 13th April 2022 from Karl Harrison about his multiple methods of serving the Cotter order and the ancillary documents on the CPL site at the points of the compass, at the entrance and in the post box at the site. I also accept the evidence in Dobson's first affidavit of service of these documents at the relevant website set out and permitted by the Cotter order and I accept ancillary to this that warnings, as set out in Dobson's first affidavit, were shouted down the tunnels and to other CPL residents over the dates set out in Dobson 1.

76. Therefore I am satisfied, so that I am sure, that the Cotter order and ancillary documents were served on Stefan Wright.

77. Next, turning to service of the committal application pursuant to my own order dated 15th June of this year, four copies of the committal application and ancillary evidence were lowered down into the entrance of the tunnel, which was a permitted method of alternative service on the Defendants as evidenced by the certificate of service of Karl Harrison dated 9th June 2022 and, if I remember correctly, I have already found that I was satisfied that that service was good on other tunnel occupants and so all I am doing really is repeating a finding that I made earlier.

FINDINGS

78. So, therefore, in relation to Stefan Wright, I am satisfied, so that I am sure, that the Cotter order, the committal application, all ancillary documents to both of those and the directions order that I made which set out the date of this hearing in it were served on Stefan Wright, who, as far as the Claimants were aware, and the Court was aware, at

all times, was down the CPL tunnel. If he was not down the tunnel, then the various other methods of service that were permitted by putting up copies of these documents on various wooden posts north, south, east and west and in the postal box would have been sufficient to come to his **(For proceedings after judgment see separate transcript)**

STEFAN WRIGHT - BREACH

79. As a result of the evidence that I have read from Dobson in affidavit 1 and Dobson in affidavit 2 in the hearing bundle at A089 and A318, the second affidavit being sworn on 11th July 2022, I find and am sure that Stefan Wright, (who seems to have no aka) breached the Cotter order in the ways set out in the Statement of Claim at paras.49, 50, 51 and 52 and that the breach under para.51 continued until 25th June 2022, when the great escape occurred, when he and others left through a tight wormhole tunnel under the fence at CPL and ran off into the night. That is a total of 46 days.

80. I do mention here, although it is more a matter for sentence, that there is no evidence from the Claimants of violence by Stefan Wright to any of their staff or subcontractors or indeed in any way threatening or rudeness and I leave over any other matters in relation to danger, harm or risk as not dealt with in this part of the judgment but to be dealt with in relation to sentence if they are relevant and if they are proven so that I am sure.

(For proceedings after judgment see separate transcript)

WILLIAM HAREWOOD - BREACH

81. In relation to William Harewood, aka Satchel, the Eighteenth Defendant, the Claimants alleged in paras.23 to 30 of the Statement of Claim dated 8th June 2022 as follows, that:

> "Harewood wilfully breached on each day from 10th May 2022 to the date of this Statement of Case and is wilfully in continuing breach of para.4A of the Cotter order by remaining on the CPL and being present on the CPL and failing to remove himself from the land."

82. At 24:

> "D18 wilfully breached on each day from 10th May 2022 to the date of this Statement of Case and is wilfully in continuing breach of para.4B(i) of the Cotter order by being present on CPL with the effect of delaying and hindering the First Claimant by instructing and impeding the activities undertaken by the First Claimant's contractors and subcontractors to gain vacant possession of the CPL in connection with the HS2 scheme."

83. By para.25, it is alleged:

> "D18 wilfully breached on each day from 10th May to the date of this Statement of Case and is wilfully in continuing breach of para.4C(i) of the Cotter order by failing immediately to leave the tunnel which he occupies".

84. By para.26:

> "D18 wilfully breached para.4C(i) of the Cotter order on 10th May by re-entering the tunnel at 18.49 hours having left the tunnel shortly before."

85. Paragraph 27:

> "D18 wilfully breached para.4C(i) of the Cotter order on 10th May 2022 by re-entering the tunnel at 19.38 having left the tunnel shortly before."

86. Paragraph 28:

> "D18 wilfully breached para.4B(ii) of the Cotter order on 10th May 2022 at 19.51 by turning a surveillance camera installed by the Claimant's contractors away from the mouth of the tunnel, preventing them from monitoring the activities of those within the tunnel. This action constitutes an interference with activity on the CPL with the effect of delaying and hindering the First Claimant by interfering with the activities undertaken by the Claimant's contractors and subcontractors to gain vacant possession of the CPL in connection with the HS2 scheme."

87. Paragraph 29:

> "D18 wilfully breached para.4C(i) of the Cotter order on the night of 10th May 2022 or morning of 11th May by re-entering the tunnel after having moved the surveillance camera."

Details of these breaches are set out in paras.58 to 74 of Dobson 1.

FINDINGS

88. Having read the witness statements filed and served by the Claimants, I find the breaches proved and I also note that William Harewood admits the breaches in the Statement of Claim and therefore my finding beyond reasonable doubt matches the admissions that William Harewood has made.

89. The pleaded allegations are all a bit legal so I shall put this in plain language: it was being a tunneller and staying in the tunnel until the later evidence of Mr. Shaw informs this court that William Harewood was part of the "great escape" on 25th June 2022 via the wormhole, under the fence and out into the fields. So it was a 46 day stay in the

tunnel on the HS2 land which is really the root of the breach that William Harewood has been found to have committed. Popping out and tweaking the CCTV is a nuisance but by no means has the evidence shown that D18 has been violent or rude or threatening to the HS2 staff or subcontractors.

90. I am, however, concerned about the activities by unknown persons who were involved in tunnelling in putting concrete caps with bits of metal or glass into tunnel entrances. I am not holding that against any of the Defendants or William Harewood here because I do not have direct evidence to do so but if I had been given such direct evidence, if that had been caught on camera, I would have taken that very seriously indeed as a step away from protecting the environment and a step towards injuring human beings or animals or anything else, which would not be acceptable to me in any way, manner or form, but, in this case, these breaches that are proven are breaches of occupation in a particular way and those are the breaches in relation to Harewood that I find proven.

91. I do not need to deal with risk and other matters. They will be dealt with once I have heard submissions from the Defendants' counsel and from Mr. Fry, so risk and harm and other matters will be dealt with at that stage. So in relation to Satchel, breaches admitted and proof.

ELLIOTT CUCIUREAN - BREACH

92. In relation to "Elliott Cuciurean, the Statement of Claim in the application to commit for contempt of court deals with the asserted breaches at paras.35 to 39. Paragraph 35 states:

> "D33 wilfully breached on each day from 10th May to the date of this Statement of Case and is wilfully in continuing breach of para.4A of the Cotter order by remaining on the CPL and being present on the CPL and failing to remove himself from the land."

93. Paragraph 36 states the allegation that:

> "D33 wilfully breached on each day from 10th May to the date of this Statement of Case and is wilfully in continuing breach of para.4B(i) of the Cotter order by being present on the CPL within a tunnel, with the effect of delaying and hindering the First Claimant by obstructing and impeding the activities undertaken by the First Claimant's contractors and subcontractors to gain vacant possession of the CPL in connection with the HS2 scheme."

94. By para.37, it is alleged:

> "D33 wilfully breached on each day from 10th May 2022 to the date of this Statement of Case and is wilfully in continuing breach of para.4C(i)

> of the Cotter order by failing immediately to leave the tunnel which he occupied."

95. By para.38 of the Statement of Claim, it is alleged:

> "D33 wilfully breached para.4C(i) of the Cotter order on 10th May 2022 having left the tunnel at approximately 19.38 hours. He re-entered the tunnel at some point that same evening or on the morning of 11th May after D18 moved the surveillance camera."

Details of the breaches are set out in the various paragraphs of the affidavit of Dobson 1.

96. In addition, I have seen the additional evidence of Dobson from the affidavit or witness statement dated 11th July 2022, which states that Elliott Cuciurean was one of the "great escapees" through the wormhole on 25th June 2022, therefore he also was in breach of the Cotter order for a total of 46 days.

FINDINGS

97. I find so that I am sure that the pleaded allegations are proven.

98. I have not been taken to any evidence that would suggest violence or threatening behaviour by Mr. Cuciurean and so it is, if you will say, direct action by passive occupation rather than violent or threatening active occupation and that is the nature of the breaches that I find to have occurred beyond reasonable doubt and those breaches now, in accordance with Mr. Cuciurean's signed and dated witness statement, are admitted by Mr. Cuciurean, so he has not put the Claimants to proof of those.

LIAM WALTERS - BREACH

99. I have dealt with Rory Hooper and Leanne Swateridge by undertakings.

100. I have made findings of service and breach in relation to William Harewood, David Buchan, Stefan Wright and Elliott Cuciurean. So the final Defendant is D65, Liam Walters. Liam Walters does not benefit from an aka that I am aware of (unless he is one of the Ivans but that has not yet been made clear to me). In any event, Liam Walters is the 65th Defendant in these proceedings.

101. The Statement of Claim dated 8th June 2022 sets out allegations against D65 at paras.54 to 59. They are as follows. It is alleged that Liam Walters, in para.54:

> "At the date of this statement, D65 is not a named Defendant. He is bound by the terms of the Cotter order as he falls within the class of persons covered by the unknown persons provision".

102. Paragraph 55:

> "Having entered and remained on the CPL without the consent of the Claimants, D65 wilfully breached on each day from 10th May 2022 to the date of this Statement of Case and is wilfully in continuing breach of para.4A of the Cotter order by remaining on the CPL and being present on the CPL and failing to remove himself from the land."

103. Paragraph 56:

> "D65 wilfully breached one each day from 10th May 2022 to the date of this Statement of Case and is wilfully continuing in breach of para.4B(i) of the Cotter order by being present on the CPL land within a tunnel with the effect of delaying and hindering the First Claimant by obstructing and impeding the activities undertaken by the First Claimant's contractors and subcontractors to gain vacant possession of the CPL in connection with the HS2 scheme."

104. Paragraph 57:

> "D65 wilfully breached on each day from 10th May 2022 to the date of this Statement of Case and is wilfully in continuing breach of para.4C(i) of the Cotter order by failing immediately to leave the tunnel which he occupied."

105. Paragraph 58:

> "D65 wilfully breached para.4C(i) of the Cotter order on 10th May 2022 having left the tunnel at approximately 19.28 hours. He re-entered the tunnel at some point that same evening or on the morning of 11th May after D18 moved the surveillance camera."

FINDINGS

106. The evidence in support of the acts of contempt are set out in the affidavit of Dobson called affidavit Dobson 1 and the affidavit of Dobson 2 dated 11th July 2022. I accept the contents of both so that I am sure that Walters left the tunnel on 18th June 2022 and so he is a 39-day dweller as opposed to the 46-day dwellers in the other cases.

107. He has provided a signed and dated witness statement now in which he admits the breaches set out in the Statement of Claim and therefore I have no difficulty finding, so that I am sure, that those breaches are proven not only by the admission but also by the evidence that has been called before me.

108. It is likewise not alleged against Liam Walters that he was violent or threatened violence during his time and hence was an active protestor but not a threatening or violent protestor.

(For proceedings after judgment see separate transcript)

END