Neutral Citation Number: [2024] EWHC 566 (KB)

Case No: KB-2022-004333

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/03/2024

Before :

MR JUSTICE SOOLE

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Between :

NATIONAL HIGHWAYS LIMITED	**Claimant**
- and -	
ADELHEID RUSSENBERGER (D4) **ANDREW DAMES (D8)** **ANNA RETALLACK (D9)** **ANTHONY WHITEHOUSE (D10)** **ARNE SPRINGORUM (D11)** **CALLUM GOODE (D12)** **CATHERINE RENNIE-NASH (D13)** **CLARA O'CALLAGHAN (D15)** **DARCY MITCHELL (D23)** **DIANE HEKT (D25)** **ISABEL ROCK (D32)** **JANE TOUIL (D35)** **JESSE PRINCE (D36)** **MICHAEL DUNK (D45)** **NICULINA TIRPOCA (D49)** **RACHEL PAYNE (D55)** **TEZ BURNS (D61)** **LUCY COOPER (D68)**	**Defendants**

Michael Fry and Michael Feeney (instructed by **DLA Piper UK LLP**) for the Claimant
Owen Greenhall (instructed by **Hodge Jones & Allen**) for Defendants D8, 10, 23, 36, 55
Michael Goold (instructed by **Hodge Jones & Allen**) for Defendants D9, 13, 32, 45, 68
Audrey Mogan (instructed by **Hodge Jones & Allen**) for Defendants D4, 15, 25, 35, 49
Arne Springorum, Callum Goode and **Tez Burns** in person

Hearing dates: 5-6 March 2024

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Judgment Approved by the court
for handing down
(subject to editorial corrections)

Mr Justice Soole :

1. This is an application by the Claimant (NHL) dated 10 August 2023 to commit each of these 18 Defendants for contempt of court arising from their alleged breach of a precautionary injunction granted by Chamberlain J on 5 November 2022 (the Chamberlain Order) against Persons Unknown associated with the Just Stop Oil (JSO) protest group against trespassing on the structures (and in particular the gantries) of the M25.

2. Mr Michael Fry and Mr Michael Feeney again appear for NHL. Mr Owen Greenhall appears for D8, 10, 23, 36 and 55; Mr Michael Goold for D9, 13, 32, 45 and 68; and Ms Audrey Mogan for D4, 15, 25, 35 and 49. The Defendants Springorum, Goode and Burns were previously represented by the same solicitors Hodge Jones & Allen (HJA), but each shortly before this hearing withdrew their instructions and appeared in person.

3. The application arises from the same events which were subject of the contempt applications against 12 Defendants in this action which I determined by my judgment dated 30 October 2023 under the same claim number but titled as National Highways Limited v. Kirin & others and with neutral citation [2023] EWHC 3000 (KB): hereafter 'the Kirin judgment'.

4. That judgment discussed and determined a number of points of principle on both liability and sanction. Counsel for the represented parties helpfully made clear their acceptance of those principles, subject to reserving for any higher court their (and the unrepresented parties') position on the issue of knowledge and the burden of proof. Accordingly the Kirin judgment should be read together with and as necessary background to this judgment. For ease of reading, I shall in some respects repeat sections of that judgment verbatim.

5. On various occasions over 4 days commencing Monday 7 November 2022 protesters (including these Defendants) associated with JSO climbed onto and in some cases affixed themselves to the gantries with consequent massive disruption of the motorway. NHL is the highways authority and owner of the Strategic Road Network (SRN) which includes the M25 and its structures.

6. In apprehension of such protest activity, NHL applied to the High Court for an urgent interim precautionary injunction against Defendants described as 'Persons Unknown entering or remaining without the consent of the Claimant on, over, under or adjacent to a structure on the M25 motorway'.

7. By the Chamberlain Order NHL was granted an injunction until just before midnight on 10 December 2022 which restrained such Persons Unknown from (amongst other things) 'Entering or remaining upon or affixing themselves or any object to any Structure on the M25 motorway…'. 'Structures' were defined by the Order to include the gantries. Subsequent orders have continued that injunction. Before 5 November there had been previous injunction orders in respect of the M25 and many other motorways and roads in the SRN; and arising from activities of Insulate Britain, Extinction Rebellion and JSO. These included the Order of Bennathan J dated 9 May 2022 (the Bennathan Order) which was not confined to the 'structures' on the

motorways; but required personal service and so was ineffective against 'newcomers'. That Order continued in force at the time of this protest action.

8. In the absence of any named defendants, the Chamberlain Order included permission for its service to be effected by methods alternative to personal service, namely by emailing a copy of the order to two JSO email addresses; providing a direct link to the Order on the National Highways Injunction website; advertising the existence of the Order on the National Highways Twitter feed with a link to that website; and notifying the Press Association of the existence of the Order. There is no dispute by any Defendant that NHL complied with that order for alternative service.

9. As in Kirin, each of these Defendants was arrested by the police at the relevant scene; and was thereafter charged under s.78 Police, Crime, Sentencing and Courts Act 2022 with the statutory offence of public nuisance. In two of the present cases, the Defendant in question has pleaded guilty and been sentenced. In the other cases, the trial of those is listed for dates later this year and in 2025.

10. 13 of the present Defendants contend that they had no knowledge of the injunction before acting as they did; whether as a result of the permitted forms of alternative service or otherwise. NHL accept that 11 of the 13 did not have knowledge of the injunction. For the reasons set out in my judgment in Kirin, this is a matter which goes to sanction not breach ([15]-[30]) and the burden is on the defendant to establish, on the civil standard, absence of knowledge ([31]-[38]).

11. Following discussions between NHL and those 11 Defendants, agreement was reached, subject to the approval of the Court, on compromise of the committal application. The terms in each case are the same, namely that upon the Defendant in question giving undertakings as to their conduct in relation to NHL's Roads (as defined) for a period of two years, the contempt application would be discontinued and dismissed. I was satisfied that in each case those terms of compromise represented a fair and appropriate balance both between the parties and having regard to the public interest. In the absence of such an agreement, the Court would have had to hold that there was a technical breach of the injunction but to impose no penalty. Before accepting those terms, I obtained the personal assurance of each Defendant (in the case of Ms Cooper, who was unable to attend Court because of ill health, through her Counsel) that they understood the significance of an undertaking to the Court and the potential consequences of any breach.

12. In the case of the Defendants Goode (D12) and Burns (D61), their respective contentions, that they had no knowledge of the Chamberlain Order, are disputed by NHL. For other reasons, the determination of that issue has to be adjourned part heard until a further date to be fixed.

13. I therefore turn to the cases of the five remaining Defendants: Whitehouse (D10), Springorum (D11), Rennie-Nash (D13), Mitchell (D23) and Hekt (D25).

14. In each case, these Defendants accept that they were in breach of the injunction by climbing onto the relevant gantry and do not dispute actual knowledge of the Chamberlain Order. Accordingly liability is established and the issue is sanction.

15. The Defendants Whitehouse, Springorum, Rennie-Nash and Mitchell took their action on Monday 7 November. Diane Hekt took her action on Thursday 10 November. The relevant facts in each case can be taken shortly, from the affidavit evidence of the relevant police officers.

16. Anthony Whitehouse was seen on the gantry near Junction 6/7 from 7.30 a.m., moving across the gantry over lanes of traffic. In consequence 4 lanes on the carriageway had been stopped by the police. Members of the public were beeping their horns and shouting at him. The officer shouted to ask him if he was coming down. He refused to do so. Members of the specialist protester removal team brought him down by about 8.17 a.m.

17. Arne Springorum was seen on the gantry near Junction 13 at 8.16 a.m. Two lanes were closed. He was advised, what he already knew, that an injunction was in force and refused to come down. He was brought down by the removal team but acted as a dead weight and reached the ground at about 11.00 a.m. At that time a tailback went all the way to junction 9.

18. Catherine Rennie-Nash was seen on the gantry at or near Junction 11 from about 8.30 a.m. She refused to cooperate and had to be brought down.

19. Darcy Mitchell was seen on the gantry at or near Junction 12 at 11.20 a.m. He also refused and had to be brought down.

20. Diane Hekt (on 10 November) was seen on the gantry between Junctions 8 and 9 at 7.30 a.m. She did not refuse to come down; needed and was given assistance; and voluntarily walked down the ladder attached to the gantry. The interval between her being spoken to the police and coming down was about 20 minutes.

The principles on sanction

21. I take these directly from the Kirin judgment at [114]-[119]; and which derive from the summary by the Divisional Court in NHL v Heyatawin & ors [2021] EWHC 3078 (QB) at [48]-[53].

22. Thus: there is no tariff for sanctions for contempt of court, because every case depends on its own facts. The sanction has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed.

23. The key general principles are that (a) the court has a broad discretion when considering the nature and length of any penalty for civil contempt. It may impose an immediate or suspended custodial sentence, an unlimited fine, or an order for sequestration of assets; (b) the discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely punishment for breach; ensuring future compliance with the court's orders; and rehabilitation of the contemnor; (c) the first step in the analysis is to consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order; (d) the court shall consider all the circumstances including but not limited to: whether there has been prejudice as a result of the contempt and whether that prejudice is capable of remedy; the extent to which the contemnor has acted under pressure; whether the breach of the order was deliberate or unintentional; the degree

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

24. Further the conscientious motives of the protesters are relevant and there may be cases where the contemnor is a law-abiding citizen apart from their protest activities. In such cases a lesser sanction may be appropriate because the sanction can be seen as part of a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's activities are contrary to the protester's own moral convictions. This is one reason why an order for imprisonment is sometimes suspended.

25. In some contempt cases there may be scope for the court to temper the sanction imposed because there is a realistic prospect that this will deter further lawbreaking or, to put it another way, encourage contemnors to engage in the dialogue described above with a view to mending their ways or purging their contempt. However it is always necessary to consider whether there is such a prospect on the facts of the case. In some cases there will be. In some cases, not. Moreover it is important to add that there is no principle which justifies treating the conscientious motives of the protester as a licence to flout court orders with impunity.

26. In reaching my decision I also take account of the sentences imposed in similar protester cases: including Heyatawin and NHL v. Buse & ors [2021] EWHC 3404(QB); and of course the sanctions which I imposed in the Kirin judgment.

27. In presenting NHL's case on sanction, Mr Fry on this occasion cited Court of Appeal authority to the effect that an applicant for civil contempt, whilst of course subject to a high standard of fairness due to the potentially serious consequences for the respondent, including loss of liberty, does not play the role of an independent criminal prosecutor and is not required to act as a wholly disinterested party. The applicant has a legitimate private interest in the outcome of a contempt application; and it is appropriate for an applicant to advocate a particular sanction to be imposed: see Navigator Equities v. Deripaska [2021] EWCA Civ 1799 at [137]-[138] and Business Mortgage Finance v. Hussain [2022] EWCA Civ 1264 at [131]. I interpose that Mr Fry has presented his case with total fairness.

28. As to the facts generally applicable to each Defendant, he submitted that the material features were: the deliberate nature of the acts; the foreseeable risk of serious harm, including from traffic accidents and potential interference with emergency vehicles

and critical workers; the circumstances where the very objective of the protests was to cause harm and disruption to as many ordinary members of the public as possible so as to bring attention to the cause which was advocated; the fact of such harm, as set out in the undisputed affidavit evidence of Mr Martell on behalf of NHL; inevitable consequential economic loss to members of the public and to the police; and the harm to the public interest which results from the deliberate flouting of a court order.

29. I turn to the evidence and submissions relating to the particular defendants.

Anthony Whitehouse

30. Against the general submissions made on harm and culpability, Mr Fry particularly notes the evidence in Mr Whitehouse's witness statement that on the day after the incident (8 November) he pleaded guilty at the Magistrates Court to the statutory offence of public nuisance with which he had been charged; and that on 30 November 2022 he was sentenced to a term of 6 months imprisonment, suspended for two years and for that period subject to a prohibited activity requirement against disruptive protest on the M25. Having regard to that sentence, Mr Fry submitted that the Court might well conclude that it would be appropriate to impose no penalty for breach of the injunction. Mr Goold added that, on instructions, Mr Whitehouse offered an apology to the Court for his breach of the injunction and stated that he had no intention of doing so again. His witness statement says that he has a number of convictions for climate and environmental peaceful protest between December 2019 and August 2022.

Arne Springorum

31. Mr Springorum's witness statements show that he likewise pleaded guilty at the Magistrates Court on 8 November 2022 to the statutory charge of public nuisance; was in custody for 8 days pending satisfaction of certain requirements of his bail conditions; and on 22 December 2022 was also sentenced to a term of 6 months imprisonment, suspended for two years. Mr Fry submitted that his case was aggravated by the evidence that he had been re-informed of the injunction by the police officer and had still refused to come down. However, given the custodial term imposed by the magistrates, Mr Fry suggested that the Court might equally impose no penalty on this Defendant.

32. In his submissions, Mr Springorum stated that whilst on remand he had been without water for some 35 hours; and that he had in no way acted in breach of the suspended prison sentence which had been imposed. He is aged 50. As with other Defendants, he provided a number of impressive character references, testifying to his professional and personal qualities. He addressed the court with courtesy and quiet passion about the motivation for the protest. In answer to questions from the Court he acknowledged the public interest in the upholding of compliance with Court orders. At the very end of his submissions, and having been given further time to take advice and reflect, he expressed apology and remorse for his conduct and stated that he had no intention of breaking injunctions in the future.

Catherine Rennie-Nash

33. This Defendant is a retired teacher now aged 73. She remains in part time self-employment and is an active grandmother assisting with her daughter's children at weekends and in school holidays. She states that she has a number of convictions for what she describes as minor acts of civil disobedience. She has been charged with the statutory offence of causing a public nuisance and was remanded in custody until granted bail at Southwark Crown Court on 21 December 2022. Her trial is pending. The two character references provide warm support of her qualities both as a teacher and as a trusted friend.

34. In mitigation, Mr Goold submitted that the evidence (in video evidence not produced to the Court) shows that the traffic continued to flow while she was on the gantry; but he realistically acknowledged that the Court might look at the consequences of these protests by reference to the generality of the action rather than the specific circumstances relating to the particular defendant.

35. On instructions, he also made clear that Ms Rennie-Nash apologised for the inconvenience and distress that have been caused to motorists; and that (whilst not resiling from her belief that it had been the right thing to do) stated that she had no intention of breaking injunctions again.

36. Mr Fry submitted that the custody threshold was passed; but in the light of this Defendant's apology and statement of intent, she had now engaged in the dialogue to which the authorities referred. Accordingly the Court might think it right to make an order akin to those imposed on two defendants in Kirin, namely a short sentence of imprisonment, suspended on terms.

Darcy Mitchell

37. This Defendant is aged 48. His witness statement (dated 4 March 2024) records that he is married to a NHS doctor; was previously a civil servant and then teacher; but is now a full-time carer for their three young children. It states that he has a number of convictions for what are again described as minor acts of civil disobedience; but none since the M25 protests. Further, the statement expresses regret at the disruption caused to other members of the public; regret that he broke the Court injunction; and states that he does not intend to break the injunction, nor the law generally, again. Furthermore, his name was removed in May 2023 from an injunction relating to protests by Insulate Britain when NHL accepted his undertaking to the Court that he would not breach its terms; an undertaking with which he had complied.

38. Mr Fry submitted that this was a case where the Defendant had positively engaged in the dialogue and with success. The Court might consider that no sanction was necessary.

39. Mr Greenhall pointed to what he described as the particular additional protective factors of the May 2023 undertaking and compliance therewith; and of the concern expressed by Mr Mitchell's wife at the potential jeopardy to his role as a carer.

Diane Hekt

40. This Defendant is aged 69 and also has a number of convictions for what are again described as minor acts of civil disobedience. Her character references speak warmly

of her personal qualities and her long years of employment in the care sector, which has in particular included working with vulnerable individuals, and her work in various voluntary organisations.

41. On her behalf Ms Mogan pointed to the police evidence that she had cooperated in coming down from the gantry, as further demonstrated by the short interval of 20 minutes between the arrival of the police and her reaching the ground. On instructions, she apologised for breaking the injunction; was remorseful for its effect on other people; and stated that she would not act in breach again. Ms Mogan submitted that the Court could be sure that she would be as good as her word.

42. Mr Fry submitted that the case of this Defendant was akin to that of Rennie-Nash.

43. This Defendant and Arne Springorum also put in evidence the 'end of mission statement' dated 23 January 2024 of the UN Special Rapporteur for Environmental Defenders, M. Michel Forst, which expresses strong concerns about, amongst other things, the use of civil injunctions in this jurisdiction to ban protests. In my judgment, and with due respect to M. Forst, this document provides no assistance to my decision, because his statement is not concerned with the critically distinct question of the public interest in obedience to court orders.

Conclusion

44. In respect of each of these 5 Defendants, I consider that their culpability and the harm were high. This is for the essential and general reasons which I set out in the Kirin judgment when dealing with the case of Mair Bain: see at [138]-[139]. In each case their acts were deliberate and in defiance of the court. The overall aim and motivation was of course to draw attention to the climate change and fossil fuel issues; but the means to that end were to cause severe disruption on the motorway which would result in publicity for that campaign.

45. As the evidence shows, the protest caused massive disruption to the M25 and to members of the public. This is fully detailed in the affidavit evidence of Mr Martell. Notwithstanding the 'blue light' policy of JSO and protesters in respect of emergency vehicles there was evident risk that emergency vehicles and critical workers might be held up. There will have been inevitable economic loss and disruption to members of the public and the police who had to devote resources in anticipating and removing the protesters. In addition there is the risk of members of the public responding by taking the law into their own hands. The public interest firmly requires the upholding of orders of the court.

46. In each case the mitigating features, as summarised in the Kirin judgment at [140] include their conscientious motivation; their apology for their conduct and its consequence for others; their statements that they will not breach the injunctions in the future; and their various personal circumstances. They are each also entitled to full credit for their respective admissions of liability.

47. In each case I am satisfied that the Defendants should be taken at their word as to their apologies and future intentions of compliance with Court orders; and that they have thereby entered the dialogue to which the case-law refers.

48. Each case must of course be considered separately. However I consider that there is only very limited scope for distinguishing between the Defendants as to their conduct on the day of protest. Thus I am not persuaded that any distinction should be drawn on the basis of the relative extent to which traffic was held up in the vicinity of the gantry in question. They were all part of one deliberate and concerted disruption of the motorway. However I have drawn a measure of distinction in favour of the Defendant (Diane Hekt) who co-operated with police in coming down from the gantry.

49. As will be seen, in my judgment the critical distinction on sanction is in respect of the two Defendants (Whitehouse and Springorum) who have each been sentenced for the offence of public nuisance to which they pleaded guilty.

50. In the three cases which do not have that feature, I am satisfied that a fine would not be an appropriate sanction and that the custody threshold is passed. However in each case I conclude that it is appropriate to suspend the order for committal. In the cases of Whitehouse and Springorum, and in agreement with Counsel for NHL, I consider that in the light of the sentence imposed for the criminal offence of public nuisance no further penalty should be imposed for breach of the injunction.

Catherine Rennie-Nash

51. In assessing the appropriate term I also take into account the refusal to come down from the gantry and the consequent need to deploy the specialist removal team and the further delay which ensued. As to mitigating factors, in addition to the general factors identified above (and in particular the apology and statement of intent which demonstrates the necessary dialogue with the Court), I take account of this Defendant's age, personal mitigation and strong character references.

52. Before full credit for her admission of liability, I consider the appropriate term of committal is 60 days. With that one-third credit, the term is reduced to 40 days.

53. For the reasons stated, I conclude that the committal order should be suspended for 2 years, on the same terms as imposed in Kirin.

Diane Hekt

54. The same essential mitigating factors apply to this Defendant, but with the addition of her ready co-operation with the police in coming down from the gantry which I take into account. Before full credit for her admission of liability, the appropriate term is 48 days. With that one-third credit, the term is reduced to 32 days. The resulting committal order is to be suspended for 2 years, on the like terms.

Darcy Mitchell

55. In this case the Defendant also demonstrated his dialogue with the Court through his apology and his statement of future of intent. In contrast to the other Defendants, this appeared in his witness statement rather than in the course of mitigation in Court. That said, the witness statement is dated 4 March, i.e. the day before the start of the hearing, and is thus a limited point of distinction. In addition I take account of the undertaking given to the Court in May 2023; the compliance with that undertaking

and the protection which it provides; his responsibilities as primary carer for the three young children; and his wife's understandable concern – and therefore likely influence - that he should not jeopardise that role by a future breach.

56. However, I am not persuaded that there is sufficient distinction with the cases of Rennie-Nash or Hekt to justify the suggestion of imposing no penalty. The apology and statement of intent, welcome and highly relevant as they are, came only very shortly before the hearing. Further the undertaking to the Court in May 2023 matched that given by the Defendant Mair Bain in Kirin; as does his subsequent compliance with that undertaking. Nor do I consider that a fine would be an appropriate sanction.

57. I conclude that the custody threshold is passed. I take into account his refusal to come down from the gantry and its consequence; but set against this his responsibilities as primary carer. Before full credit for his admission of liability, I consider the appropriate term to be 48 days. With that one-third credit, the term is reduced to 32 days. The resulting committal order is to be suspended for 2 years, on the like terms.

Anthony Whitehouse

58. In the absence of the suspended sentence of imprisonment imposed by the Magistrates Court, I would have reached a similar conclusion, i.e. a short custodial term, suspended on terms, in respect of this Defendant. However, in the light of that sentence, I accept the approach, realistically supported by Mr Fry on behalf of NHL, that no penalty should be imposed. In reaching that conclusion I have of course given particular weight to his apology and statement of intent for the future.

Arne Springorum

59. My conclusion on his case was in doubt until the very end of his submissions when, having been given and taken further time for advice and reflection, Mr Springorum gave his apology and statement of future intent to comply with the law. As with all the others, I feel justified in taking him at his word. Accordingly, and having regard to the suspended prison sentence imposed on him by the Magistrates Court, I likewise accept, in agreement with Counsel for NHL, that it is appropriate to impose no penalty.

Conclusions on sanction

60. Catherine Rennie-Nash : committal for 40 days, suspended for 2 years, on the same terms as in the committal orders imposed by the Kirin judgment.

Diane Hekt: committal for 32 days, suspended for 2 years, on the like terms.

Darcy Mitchell: committal for 32 days, suspended for 2 years, on the like terms.

Anthony Whitehouse: no penalty.

Arne Springorum: no penalty.