Neutral Citation Number: [2021] EWHC 3404 (QB)

Case No: QB-2021-003576, QB-2021-3626 and QB-2021-3737

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/12/21

Before :

LORD JUSTICE DINGEMANS
Vice-President of the Queen's Bench Division
and
MR JUSTICE JOHNSON

- -

Between :

NATIONAL HIGHWAYS LIMITED **Claimant**

- and -

(1) BENJAMIN BUSE
(2) BIFF WHIPSTER
(3) DIANA WARNER
(4) PAUL SHEEKY
(5) RICHARD RAMSDEN
(6) RUTH JARMAN
(7) STEPHEN GOWER
(8) STEPHEN PRITCHARD
(9) SUE PARFITT **Defendants**

Myriam Stacey QC and Joel Semakula (instructed by DLA Piper UK LLP) for the Claimant
Owen Greenhall (instructed by Hodge Jones & Allen) for the First Defendant;
Catherine Oborne for the Third Defendant;
The other defendants appeared in person

Hearing dates: 14 and 15 December 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Lord Justice Dingemans:

Introduction

1. This is the judgment of the Court to which we have both contributed. The claimant, National Highways Limited, seeks an order determining that the defendants are in contempt of court and providing for their committal or other sanction. It does so because, on 27 October 2021, each of the defendants walked onto the carriageway of the A206 at its junction with the A282/M25 and obstructed the flow of traffic. The second defendant did the same thing at junction 25 of the M25 on 8 October 2021. This is said to be in breach of an injunction granted by Lavender J on 21 September 2021.

2. The defendants have each accepted that they were validly served with the order of Lavender J, that they breached that order in the terms alleged by the claimant, and that they are therefore in contempt of court. The remaining issue for the court is the sanction that should be imposed on each of the defendants. We record, in that respect, that an application for costs against each defendant has been made which is relevant to overall sanction, but we will deal with that after determining the sentence to be imposed on each defendant.

3. In *National Highways Limited v Ana Heyatawin and others* [2021] EWHC 3078 (QB) the Divisional Court (Dame Victoria Sharp P and Chamberlain J) dealt with nine defendants who had, on 8 October 2021, breached the order made by Lavender J. The breaches of the injunction were found proved and the defendants were sentenced to terms of imprisonment of between 3 months and 6 months. One of the defendants in *Heyatawin and others* was the first defendant in these proceedings, Benjamin Buse. He was sentenced to four months imprisonment, and therefore is still serving his sentence of imprisonment at the time of the hearing before us.

Some procedural issues

4. Although an order was made for the production of the first defendant from prison, at the beginning of the hearing on 14 December 2021 he had not been produced from prison. Efforts were made to obtain his delivery to Court, but he was not produced until 3.30 pm on 14 December 2021. Mr Greenhall had not had an opportunity to speak to the first defendant and so the proceedings relating to the first defendant were adjourned to and took place today on 15 December 2021.

5. At the commencement of the hearing on 15 December 2021 Mr Greenhall applied to make an application on behalf of Mr Buse to purge his contempt of Court, and he asked to make it to this court. He pointed out that prison had been a very sobering experience for the first defendant, and the first defendant was in his cell for 23 and a half hours a day because of the impact of the COVID-19 pandemic and the Omicron variant, and we were alerted to medical issues for a close family member. The first defendant was now prepared to apologise for his breach of the order, and undertook not to breach the order again.

6. CPR Part 81.10(2) provides that an application to discharge a committal order "shall be made by an application notice under Part 23 in the contempt proceedings". We were referred to *CJ v Flintshire Borough Council* [2010] EWCA Civ 393; [2010] 2 FLR

1224 at paragraph 21, and *Swindon Borough Council v Webb* [2016] EWCA Civ 15; [2016] 1 WLR 3301 at paragraph 45.

7. In circumstances where there have been difficulties in arranging legal visits to the first defendant we might have been prepared to accept an undertaking to file an application notice if we were to deal with the application. However we do not consider that we should deal with this application. This is because we consider that issues of purging this contempt should be heard by the original court which imposed the sentence, or at least some part of the constitution of the court which imposed the sentence.

8. The third defendant, Diana Warner, was not present at the start of the hearing, although Ms Oborne was present to represent the third defendant. It did not appear that there was any good reason for the third defendant's absence and Ms Higson, a solicitor for the claimant, produced a tweet showing videos of the third defendant saying that she "had decided to defy the court summons by not appearing in court this morning. She has instead taken part in action in Yorkshire to disrupt a train headed for the Drax power station".

9. In these circumstances the court issued a warrant for the arrest of the third defendant requiring her to be brought before court on 15 December 2021. In the early part of the afternoon on 14 December 2021 the third defendant attended court. Ms Oborne was able to take instructions and the third defendant came into court. In circumstances where the third defendant was now at court we discharged the warrant for the third defendant's arrest. It meant however that we had to hear the third defendant's case in the morning of 15 December 2021, and we record that she attended court promptly, when we had managed to hear the cases for and against the second and fourth to ninth defendants on 14 December 2021.

The material facts

10. There is no dispute about the material facts. National Highways Limited is the licence holder, highways authority and owner of the land that comprises the M25 motorway and the A206 at the junction with the M25.

11. Insulate Britain is a protest group that has organised activities designed to disrupt daily life and thereby draw attention to its demand that the government "create hundreds of thousands of jobs, lower our emissions, and save lives." The protests are intended to highlight the climate emergency, require the Government to insulate all houses, and end fuel poverty. We were told in the oral submissions on sanction made by the Defendants in person, that Insulate Britain had been formed before the COP 26 climate change conference to ensure that the Government took proper action to prevent climate change. It was apparent from all of the evidence before us that all of the defendants had become convinced of the need to take urgent action to stop climate change and they considered that the Government was taking inadequate steps to address the climate change emergency.

12. Insulate Britain organised protests on 13 September 2021, 15 September 2021, 17 September 2021, 20 September 2021 and 21 September 2021. Each of these protests involved disruption and obstruction to the M25. This included some protestors sitting down on the carriageway, gluing themselves to the road surface, holding banners across the road, preventing vehicles from passing, and causing traffic jams and tailbacks with substantial delays.

13. On 21 September 2021, Lavender J granted an order against defendants specified as "persons unknown causing the blocking, endangering, slowing down, obstructing or otherwise preventing the free flow of traffic onto or along the M25 motorway for the purpose of protesting". The order contained, at the start, a "penal notice" in bold capitalised text, stating that if a defendant breached the order then they may be held to be in contempt of court and may be imprisoned, fined or have their assets seized. The order states that the defendants specified in the order are forbidden from:

> "2.1 Blocking, endangering, slowing down, preventing, or obstructing the free flow of traffic onto or along or off the M25 for the purposes of protesting.
>
> …
>
> 2.3 Affixing themselves ("locking on") to any other person or object on the M25.
>
> …
>
> 2.6 Entering onto the M25 unless in a motor vehicle.
>
> …
>
> 2.8 Refusing to leave the area of the M25 when asked to do so by a police constable, National Highways Traffic Officer or High Court Enforcement Officer.
>
> 2.9 Causing, assisting or encouraging any other person to do any act prohibited by paragraphs 2.1-2.8 above.
>
> 2.10 Continuing any act prohibited by paragraphs 2.1-2.9 above."

14. Each of the defendants to the present application has been joined to the proceedings and has been served with the order, together with the claim form and a covering letter. This service took place between 29 September and 4 October 2021. Each of the defendants accepts that they were validly served with the order. The order made it clear that any defendant could apply to vary or discharge the order. None of the defendants sought to do so.

15. The reaction to the order from Insulate Britain was described by Dame Victoria Sharp P in *Heyatawin and others* at paragraphs 15 to 18:

> "15. On various dates and in various locations, Insulate Britain protestors publicly burned copies of the M25 Order.
>
> 16. On 28 September 2021, Insulate Britain posted an article on its website in these terms:
>
> "INJUNCTION? WHAT INJUNCTION?

> …Yesterday, 52 people blocked the M25, in breach of the terms of an injunction granted to the Highways Agency on 22nd September.
>
> A second injunction was granted on 24th September covering the A2, A20 and A2070 trunk roads and M2 and M20 motorway, after an Insulate Britain action outside the Port of Dover last Thursday.
>
> Insulate Britain says actions will continue until the government makes a meaningful commitment to insulate all of Britain's 29 million leaky homes by 2030, which are among the oldest and most energy inefficient in Europe."

17. On 29 September 2021, there was a further post as follows:

> "THE SECOND TIME TODAY
>
> …Insulate Britain has returned for a second time today to block the M25 at Swanley (Junction 3).
>
> …Today's actions are in breach of a High Court injunction imposed on 22nd September, which prohibits 'causing the blocking, endangering, slowing down, preventing, or obstructing the free flow of traffic onto or along or off the M25 for the purposes of protesting.'"

18. On 30 September, Insulate Britain posted that it had blocked the M25 "for the third day this week" and that it was now "raising the tempo". It added that its actions were in breach of a High Court injunction."

The protest on 8 October 2021

16. A protest took place on 8 October 2021. This protest was the subject of the contempt applications in *Heyatawin and others.* Dame Victoria Sharp P described what happened as follows, at [19]-[20]:

> "19. On the morning of 8 October 2021, at 8.35am, police were alerted by construction workers that a large group of protestors were running on to the road at the Waltham Cross Interchange roundabout at Junction 25 on the M25. When they arrived they found a group of 15 to 20 protestors sitting or lying in the road wearing high visibility vests, some of whom were holding Insulate Britain banners. Both lanes of the carriageway leading from the M25 slip road to the roundabout were blocked. By the time the police arrived, there was a long line of traffic leading to the protestors' location.
>
> 20. Part of the evidence relied on by the claimant in support of this application is bodycam footage from the police officers who attended. The footage shows a somewhat chaotic scene with the

> defendants very close to traffic, and in some instances moving traffic, and the police attempting to restrain them from continuing with their protest and re-entering the road. The police cleared one lane relatively quickly, but not because the defendants complied willingly with efforts to remove them. Roman Paluch-Machnik tried to move into the oncoming traffic after being removed. Emma Smart and Ben Buse (who had glued themselves together) ran back into the road from the verge to which they had been removed. James Thomas was removed to the verge and then had to be removed and/or restrained from re-entering the road on two further occasions. The second lane was blocked until 9.55am because two of the defendants, Ben Taylor and Louis McKechnie, had managed to glue themselves to the road."

17. The second defendant took part in that protest. He does not dispute this description of what occurred. He sat down on the live carriageway, holding an Insulate Britain banner, before being removed by the police and arrested. The second defendant told the officer that he intended to continue to block the public highway until the government addresses the issue that he is protesting about.

The protest on 27 October 2021

18. A further protest took place on 27 October 2021 which gives rise to these proceedings. We have seen footage of the incident and relevant arrests captured by body worn cameras. Protestors, including each of the defendants, entered the road at the A206 junction with the A282/M25 at some point before 9am, probably around 8.40am. They sat on the road in a line across the westbound carriageway of the A206 which formed part of the overbridges of the M25 was accessed by a slip road, roundabout and then carriageway leading to this roundabout. The police arrived at 9am. The protestors were all removed by 9.51am. Traffic was flowing freely by 10.48am. The actions of the protestors interfered with traffic entering the M25 anti-clockwise from the A206, and with traffic exiting the M25 clockwise onto the A206. This caused substantial traffic delays.

19. The claimant makes the following allegations against the defendants:

> "(a) Benjamin Buse sat down on the live carriageway, holding a banner and glued himself to the surface before being removed by the police and arrested. That was a breach of paragraphs 2.1, 2.3, 2.6 and 2.8 of the Order;
>
> (b) Biff Whipster later walked onto the carriageway to film other protestors and attempted to sit down before being removed by the police and arrested. That was a breach of paragraphs 2.1, 2.6, 2.8, 2.9 and 2.10 of the Order;
>
> (c) Diane Warner sat down on the live carriageway, holding a banner and glued herself to the surface before being removed by the police and arrested. That was a breach of paragraphs 2.1, 2.3, 2.6 and 2.8 of the Order;

> (d) Paul Sheeky sat down on the live carriageway, holding a banner, and directed Richard Ramsden to sit down in order to fill in a gap in the protest line, before being removed by the police and arrested That was a breach of paragraphs 2.1, 2.6, 2.8 and 2.9 of the Order;
>
> (e) Richard Ramsden sat down on the live carriageway, holding a banner and glued himself to the surface, before being removed by the police and arrested. That was a breach of paragraphs 2.1, 2.3, 2.6 and 2.8 of the Order;
>
> (f) Ruth Jarman sat down on the live carriageway, holding a banner and assisted Sue Parfitt to glue herself to the surface, before being removed by the police and arrested. That was a breach of paragraphs 2.1, 2.3, 2.6 2.8 and 2.9 of the Order;
>
> (g) Stephen Gower sat down on the live carriageway, holding a banner. That was a breach of paragraphs 2.1, 2.6 and 2.8 of the Order;
>
> (h) Stephen Pritchard sat down on the live carriageway, holding a banner before being removed and subsequently re-entered the live carriageway after having been removed by the police, before being removed again and arrested. That was a breach of paragraphs 2.1, 2.6, 2.8 and 2.10 of the Order;
>
> (i) Sue Parfitt sat down on the live carriageway, holding a banner before being removed by the police and arrested. That was a breach of paragraphs 2.1, 2.6 and 2.8 of the Order."

20. These allegations are established on the evidence. They are supported by the affidavits of two police officers – DS Andrew Jennings and PC Stacey Batterbee, by the hand-written police notes, and by the police body-worn camera footage.

21. The seventh defendant, Steven Gower, gave a live-streamed interview to "Resistance TV" on 8 December 2021. He said "if there is no substantial response to [our] demands by 1 September we will make further announcements about what actions we will next be forced to take." He also said "we will continue." He said that since the judgment in *Heyatawin and others* more than 120 protestors had been arrested, the majority being arrested for the very first time. He also said, "God willing, I will probably end up in jail this time next week."

The proceedings in *Heyatawin and others*

22. The Divisional Court heard proceedings against the nine defendants on 16 and 17 November 2021. By a judgment dated 17 November 2021 Dame Victoria Sharp P found the nine defendants were in contempt of court and imposed the sentences set out above.

Breach of the order

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

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

25. So far as the breach in this case is concerned, the allegations made by the claimant are supported by affidavit evidence which has not been challenged and body worn camera evidence. The allegations are admitted by the claimants.

26. In these circumstances we are sure that on 8 October 2021 the second defendant, Biff Whipster, deliberately breached the order of Lavender J, in the respects alleged, and is in contempt of court. We are sure that on 27 October 2021 each of the defendants, including Biff Whipster, deliberately breached the order of Lavender J, in the respects alleged, and that each claimant is in contempt of court.

Sanction for contempt of court

27. The legal principles relating to sanctions for contempt of court are now well established. There was no material dispute about these principles, although Ms Stacey QC, Mr Greenhall and Ms Oborne, to whom we are grateful for their helpful submissions, emphasised different dicta. Relevant authorities include *Secretary of State for Transport v Cuciurean* [2020] EWHC 2723 (Ch) at paragraphs 9 to 20 at first instance, *Cucicurean v Secretary of State for Transport* [2021] EWCA Civ 357 at paragraphs 16 to 18 on appeal, *Cuadrilla Bowland-Lawrie Ltd v Persons Unknown* [2020] EWCA Civ 9 [2020] 4 WLR 29 at paragraphs 97-99 and 102 to 104, *Liverpool Victoria Insurance Co Ltd v Zafar* [2019] EWCA Civ 392; [2019] 1 W.L.R. 3833 at paragraphs 57-71 and *Attorney General v Crosland* [2021] UKSC 15; [2021] 4 W.L.R. 103 and *Heyatawin* at paragraph 49.

28. So far as is relevant to this application the relevant principles are first the purpose of imposing a sanction for contempt is to punish the breach, ensure compliance with the court orders and rehabilitate the person in contempt. Secondly the court should adopt an approach analogous to that in criminal cases where the Sentencing Council Guidelines require the court to assess the seriousness of the conduct by reference to culpability and harm caused, intended or likely to be caused. Thirdly, in light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty. Fourthly, if the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt and is proportionate. A deliberate breach of a court order is very likely to cross the custody threshold. Fifthly, due weight should be given to matters of mitigation, such as genuine remorse, positive character and similar matters. Sixthly, due weight should be given to the impact of committal on persons

other than the contemnor, such as children or vulnerable adults in their care. Seventhly, there should be a reduction for an early admission of the contempt, to be calculated consistently with the approach set out in the Sentencing Council Guidelines on reduction in sentence for guilty pleas. And, eighthly, once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term, such that there is no powerful factor making suspension appropriate, but a serious affect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension.

29. In relation to the issue of suspension where a contempt takes place in the course of a protest, that is a significant factor. Articles 10 and 11 of the European Convention on Human Rights are engaged. As was made clear in *Heyatawin and others* and *Cuadrilla* the conscientious motives of protestors are relevant. This is because most will not be conventional law breakers but motivated by a desire to improve matters, as they see it. A lesser sanction may be appropriate because the sanction can be seen as part of a dialogue with the defendant so that they may appreciate "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 protestor's own moral convictions". The reason for this duty is because it would not be possible to co-exist in a democratic society if individuals chose which laws they decided to obey.

30. *R v Jones (Margaret))* [2006] UKHL 16; [2007] 1 AC 136 at paragraph 89 referred to the fact that it is a mark of a civilised community that it can accommodate protests and demonstrations. Lord Hoffmann referred to conventions which were generally accepted, namely that "the protesters behave with a sense of proportion and do not cause excessive damage or inconvenience" and the police and prosecutors "behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account". There are dicta suggesting that non-violent crimes in the course of peaceful protest does not generally impute high levels of culpability. A form of "bargain or mutual understanding" operates between protestors and the court: where the former exercise a sense of proportion (for example in avoiding excessive danger or inconvenience) then the court may take a "relatively benign approach", see Lord Burnett CJ at paragraph 34 of *R v Roberts (Richard)* [2018] EWCA Crim 2739; [2019] 1 WLR 2577. These principles, from criminal cases, have been applied in cases involving sanctions for contempt of court, see *Cuadrilla* at paragraph 98, but it is very important to note that in cases for contempt of court the court has already balanced the rights of protesters and the rights of others in deciding whether to grant the injunction.

31. Although there are nine defendants who are being sentenced for their actions on the same day each individual defendant must be assessed separately and each case must turn on its own facts. It is appropriate to have measured regard to similar cases, in this case the decision of the court in *Heyatawin and others*. Finally it is relevant to record that, if imprisoned, the defendants will be serving their custodial sentences in the COVID-19 pandemic, which makes conditions in prison difficult.

Culpability

32. So far as culpability is concerned it is apparent each of the nine defendants deliberately decided to breach the order which had been served on them on 21 October 2021, and

the second defendant also breached the order on 8 October 2021. Further, whatever the actual harm caused on the relevant days (to which we will turn under harm) their action was deliberately designed to cause very significant disruption and inconvenience, so that publicity might be obtained. This must have been on the basis that all publicity is good publicity because it is apparent from the submissions made by the defendants acting in person that there were very critical of the press coverage of their actions which had concentrated on the effect of their actions on others and not their motivations.

33. The deliberate decision to impact as many ordinary members of the public as possible breached the convention identified by Lord Hoffmann because the defendants behaved without restraint and had targeted as many members of the public as possible. The defendants had effectively sacrificed the interests of other members of the public, who wanted to get to work, keep appointments, see friends and family, to their own desire to get publicity for their cause and their sincerely held beliefs about what needs to be done. The court was struck by the statement made by the second defendant in his submissions that when he had been part of the system, as he put it, he had made decisions which wrecked other people's lives. It is apparent that he has sincerely changed his views and is desperate to highlight the climate emergency. It was apparent, however, that he was prepared to cause very severe disruption to other people's lives, because he thought he was right and had decided for himself that disrupting other people's lives was a permissible way of highlighting his views.

34. Nobody can doubt the sincerity of the defendants' respective beliefs. However, it is not for them to determine the outer limit of the right to express those views or to protest, or the degree of disruption to the rights of others that must be tolerated. That would make each of them a judge in their own cause. It is for a court to rule on that issue and that is what Lavender J did. It was open to each of the claimants to apply to vary the order. None of them did. If they had, then they could have advanced their arguments and a judge would have ruled on the issue. What they cannot lawfully do is unilaterally ignore an order of the court. Like everybody else, they must comply with the law. They cannot simply disregard an order because they think it is wrong. If the court let that happen, it would mean that they were above the law. It is a hard won, and established, constitutional principle that no one is above the law.

Harm

35. So far as harm is concerned on 27 October 2021 the disruption to other members of the public was very substantial, as appears from the affidavit and the oral evidence of Nicola Bell. The Queen Elizabeth II Bridge was disrupted from the time of the protest which started at about 0900 hours to 1030 hours. At one time the length of queueing traffic measured about 4 km. There were substantial queues of traffic on the roundabouts and the slip roads which then backed up to the M25, although it is fair to record that the peak flows of traffic were before the protest started and were caused by usual traffic conditions. It is apparent that more widespread disruption was avoided by the speed and excellence of the police response to the protest that morning. However the costs of the police response must have been very substantial. The protesters have caused the resources of the police to be diverted from other police work to the policing of the protests.

36. So far as harm on 8 October 2021 it is apparent that there was very substantial disruption at the Waltham Cross Interchange as set out in the judgment in *Heyatawin and others*.

37. The effect on those marooned in the traffic is not difficult to contemplate. There is a risk that emergency services will not be able to respond. This is so even though the defendants operated what they called a "blue light" policy, which was to move from one lane if they saw a blue light approaching. This does not deal with the emergency workers stuck in traffic on their way to work, or the emergency vehicles stuck at the back of the queue. Workers will be late for work. Drivers and passengers will be late for appointments or meetings. The time of every normal driver and passenger stuck on the roads was treated by the defendants as not counting enough to outweigh the protesters' own view of how people should be alerted to their view. This might be considered to be the antithesis of the individual rights which are still to be provided to the nine defendants by this court. This is because it has never been the law that one wrongful action justifies another.

Acceptance of breach at first reasonable opportunity

38. It was common ground that all of the defendants had accepted that they had breached the order made by Lavender J. at the first reasonable available opportunity. It does not appear that this was the case in *Heyatawin and others* and the defendants are entitled to full credit of one third for their admissions.

39. It is apparent that all of the defendants, save for the third defendant at the start of this hearing, have co-operated with this process.

Individual circumstances of the defendants

40. We heard from each of the unrepresented defendants, and were addressed by Mr Greenhall on behalf of the first defendant and Ms Oborne on behalf of the third defendant.

41. The first defendant, who is aged 36 years, is employed by a university working in earth sciences, involved in his local Church, and volunteers in society. He is now in prison with an Earliest Date of Release of 17 January 2021. He is only out of his cell for 30 minutes a day. He is at risk of losing his employment if he is imprisoned for a further period of time. A close family member is unwell. He has now declared that he will not breach this order in the future and apologised for his actions.

42. The second defendant, who is now aged 54 years, had worked hard throughout his life and had been a good person who had done bad things in his work. He had now altered his priorities in the light of seeing the countryside that he saw as a boy inert and devoid of insects. He volunteered with charities and was of previous good character. We have seen character references showing his positive good character, and concerns with injustice. We consider having regard to principles of totality that a sentence of 45 days imprisonment is the lowest sentence that we can impose, before giving full discount for plea.

43. The third defendant, is now aged 62 years. She was a former GP, having qualified in 1982, and worked for 37 years. Character references show that she was a competent and well-respected general practitioner. She has no present intention to breach the order. As appears above the third defendant deliberately decided not to attend court on the first day. This was because she had decided to prioritise another protest and so that she could make a campaign video to publicise her defiance of the court. This meant that there had to be a hearing on Thursday morning to deal specifically with her case,

although it is only fair to the third defendant to record that there had to be a hearing on the Thursday morning in any event because the first defendant had not been produced from prison on time for the hearing on Wednesday. It is, however, apparent from the third defendant's actions that the third defendant is deciding not to engage in a dialogue with the court and this, in our judgment, makes a critical difference to the penalty to be imposed by this court.

44. The fourth defendant was aged 46 years. He provided blood platelets on a regular basis to his local hospital. He was particularly concerned about the future for young children.

45. The fifth defendant was aged 75. He was a retired civil engineer who had specialised in drainage matters. He considered that the Government had been condemned by its own committee on Climate Change. He was of previous good character. He provided a private letter to the court, shown also to Ms Stacey, which demonstrated that a close family member had serious medical problems and he was critically concerned about the effect of any immediate custodial sentence on that family member.

46. The sixth defendant was aged 58. Character references show that she was an exemplary employee, and had been a board member of a charity, and was considered honest, straightforward and trustworthy. The sixth defendant felt that she could not be silent in the face of evil and had no contempt for the court, but had contempt for the system in which all worked, and felt that the current economic system threated life on earth.

47. The seventh defendant was aged 54 years, was now retired and survived on very limited means. He was on universal credit. He was in arrears with council tax and tv licence payments. He had previously been homeless and volunteered assisting the most vulnerable in society throughout the week. He said that figures showed that 8,500 people had died because of fuel poverty in 2019.

48. The eighth defendant was aged 62 years. He was a parish councillor who considered that home insulation had been proved to be the most cost effective way of reducing carbon emissions.

49. The ninth defendant was aged 79 years. She had been a Church of England priest. She considered that the world was heading for extinction because of greed. She referred to the global warming which was inevitable by at least 2.4 degrees centigrade. She considered it her duty to ensure that children and grandchildren had a future. She considered that the principled verdict of the court should be a declaration that she was not guilty, but said that she had been complicit in the past for her overconsumption and deserved the maximum penalty (two years) that the court could impose.

The sentence

50. In the present case, and in respect of each individual defendant, we consider that the custody threshold is passed. We have considered relevant aggravating and mitigating factors and consider that the four month (16 weeks) sentence imposed in *Heyatawin and others* represents a proportionate sentence, save for the first and second defendants where issues of totality arise because of their separate sentences for the breach on 8 October 2021.

51. Each defendant admitted the breaches and are entitled to a third discount (which is 5 and a third weeks), and we take account of the conditions in custody for a further reduction. This gives a sentence of 2 months for the protest on 27 October 2021.

52. Further, it is particularly important to note that at the time of the decision in *Heyatawin and others* protests organised by Insulate Britain were continuing over the road network in breach of injunctions granted by the court. In the course of the proceedings before us it became clear that there have been no further protests by Insulate Britain or the defendants in breach of the orders made by the court. It is also apparent, if only from the request that Mr Buse be permitted to make an application to purge his contempt this morning, that the "dialogue" referred to in *Cuadrilla,* has begun to take place.

53. It is also apparent, on the best information available to the claimant, that no further protests are planned at the moment, although the claimant's understanding on intelligence is that further protests might be planned for Spring 2022. In circumstances where it is common ground that the defendants in this case are all conscientious protesters the fact that the protests has stopped is a particularly relevant issue for sanction. This is because a principled aim of the sentencing is to ensure compliance. We have considered whether in these circumstances to suspend the sentences of imprisonment that we will impose. The answer is different for different defendants.

54. So far as the third defendant is concerned although Ms Oborne, in realistic and measured submissions, said that the third defendant does not have a current intention to breach the order, in our judgment the third defendant's actions in not attending yesterday's hearing so that she could go to another protest show that she is not prepared to engage in the dialogue referred to in the cases. We recognise all the good that the third defendant has done in her life, but do not consider that there is any principled basis on which we can suspend the order for imprisonment in her case. We therefore order that she should be imprisoned for two months.

55. So far as the first defendant is concerned he is currently in custody and it does not seem to us to be right to impose a suspended sentence which in practice will only be effective after his release. We do bear in mind issues of totality, prison conditions, and all the information we have been provided about his family circumstances. We will take a starting point of 45 days for the breach on 27 October 2021, before applying full discount for plea. This gives an additional sentence of 30 days, to be served consecutively with his current sentence. In the event that the first defendant makes an application to purge his contempt that includes all of the penalties imposed on him, any such application should be heard by a court whose constitution includes, if possible, at least one member of the court in *Heyatawin and others*.

56. So far as the second defendant is concerned he is to be sentenced for his actions on 8 October 2021 and 27 October 2021. We consider it right to reflect the same issues of totality as affect the first defendant in the same way. For the offence of 8 October 2021 we therefore impose a sentence of 2 months imprisonment (because he has the benefit of a plea which the other defendants in *Heyatawin and others* did not have) and a consecutive sentence of 30 days for the offence on 27 October 2021, mirroring the sentence imposed on the first defendant.

57. We then turn to the issue of suspension for the second, and fourth to ninth defendants. We do consider that, because the protests are not continuing, because it is apparent that

the "dialogue" has started for these defendants, and because of what we have heard in each individual case that there is a principled basis to suspend the sentence of imprisonment for two months in each of their cases. We will suspend the sentence of two months imprisonment on terms. In each case we direct that the order for committal shall be suspended for 2 years so that the committal to prison shall not take effect so long as, during the next 2 years, the defendant does not take any of the steps that are forbidden by paragraphs 2.1-2.10 of the order of Lavender J dated 21 September 2021 (the "M25" for the purposes of those paragraphs, being defined in the same way as paragraph 1 of that order). This condition will apply whether or not the order of Lavender J remains in force.

Routes of appeal

58. It may be that the defendants will wish to appeal this order and, in any event, we are required to set out the routes of appeal in the order for committal. It is apparent that the notes in the White Book at 3C-39 suggest that the route of appeal is to the Court of Appeal and other notes state that there is an unrestricted right of appeal. These are not accurate statements for the reasons set out below.

59. Section 13 Administration of Justice Act 1960 states:

> "Appeal in cases of contempt of court.
>
> (1) Subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.
>
> (2) An appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie—
>
> …
>
> (b) … from an order or decision (other than a decision on an appeal under this section) of a single judge of the High Court, or of any court having the powers of the High Court or of a judge of that court, to the Court of Appeal;
>
> (c) ….<u>from an order or decision of a Divisional Court… to the Supreme Court</u>." (emphasis added)

60. This shows that the route of appeal from this Divisional Court is to the Supreme Court.

61. Further it is apparent that permission to appeal is required. This is because section 1(1) of the 1960 Act provides a right of appeal to the Supreme Court from a decision of the High Court in a criminal cause or matter. Section 1(2) provides that leave to appeal is required. It restricts the circumstances in which leave to appeal may be granted: it may not be granted unless (a) it is certified by the court below that the decision raises a point of law of general public importance is and (b) that court, or the Supreme Court, consider

that the point out to be considered by the Supreme Court. Section 13(4) of the 1960 Act states:

> "Subsections (2) to (4) of section one and section two of this Act shall apply to an appeal to the Supreme Court under this section as they apply to an appeal to the Supreme Court under the said section one, except that so much of the said subsection (2) as restricts the grant of leave to appeal shall apply only where the decision of the court below is a decision on appeal to that court under this section."

62. The effect of these provisions is that leave to appeal to the Supreme Court is required, but there is no restriction on the circumstances in which leave to appeal may be granted.