

**NCN: [2021] EWHC 3080 (KB)
IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

The Royal Courts of Justice
Strand
London

Before THE HONOURABLE MR JUSTICE COTTER

IN THE MATTER OF

NATIONAL HIGHWAYS LIMITED (Claimant)

-v-

LOUISE LANCASTER (Defendant)

**MR M FRY, instructed by DLA Piper, appeared on behalf of the Claimant
MR J BRYANT, instructed by Amisu Robshaw (Solicitor), appeared on behalf of the
Defendant**

**JUDGMENT
7th OCTOBER 2022, 11.59-12.38
(FOR APPROVAL)**

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

MR JUSTICE COTTER:

1. This is the extempore judgment upon an application issued by the claimant, the National Highways Limited, on 19 August 2022 for an order pursuant to CPR 81, that the defendant knowingly and/or deliberately breached an order made by Mr Justice Bennathan on 9 May 2022, in this claim, and also claims, numbers 3626 and 3737, and is accordingly in contempt of court. The defendant is a named defendant in these claims within the number designated 55. The application concerns a single protest on 20 July 2022.

2. The defendant has today accepted that she was validly served with the order of Bennathan J. Further, that she has breached the order in the terms alleged by the claimant and that she is, therefore, in contempt of court, and, further and finally, that she has been validly served with the application under CPR 81. The remaining issue for the Court, is the penalty to be imposed in light of the contempt.

3. I turn to the material facts. There is little dispute about them. The National Highways Limited is the licence holder, the highways authority and the owner of the land that comprises the M25. Insulate Britain is a protest group and it has organised activity designed to disrupt daily life and thereby draw attention to its demand that the government creates hundreds of thousands of jobs, lower emissions and save lives. The protests are intended to highlight the climate energy crisis and require the government to insulate all houses and end fuel poverty.

4. Just Stop Oil is another protest group. On 15 February 2022 Insulate Britain, set out within a press release, that it had joined forces with Just Stop Oil and they were now a coalition of groups working together to demand that the government halt all future licencing and consents in relation to fossil fuels. The defendant has been a committed member of both groups.

5. It is readily apparent from all the evidence that the defendant is convinced of the need to take urgent action and to stop climate change and that she considers the government has taken inadequate steps to address what she considers to be a current emergency.

6. The background to the order of 9 May can be summarised shortly. The protests by Insulate Britain began on 13 September 2021 and involved the obstruction of the highways. The M25 had become a focus for demonstration. Indeed, it has been described by Just Stop Oil, in a text that I have seen in the evidence in this case, as a site of civil resistance.

7. Insulate Britain organised protests on 13, 15, 17, 20 and 21 September 2021. Each of these protests involved obstruction on the motorway. Some protestors sat down on the carriageway, some glued themselves to the road surface, others were holding banners across

the road, preventing vehicles from passing and causing traffic jams and tailbacks with substantial delays.

8. On 21 September 2021 Lavender J granted an order against the defendants, then specified as persons unknown, preventing them from blocking, endangering or slowing down, obstructing or otherwise preventing the free flow of traffic onto or along the M25 for the purpose of protesting.

9. The reaction to the order from Insulate Britain was set out by the President of the King's Bench Division, Sharp LJ, in *National Highways Limited v Heyatawin and Others* [2021] EWHC 3078 (QB) at paragraphs 15 to 18. In short, it was made clear by Insulate Britain that it intended to continue with its protests. Indeed, copies of the order were publicly burnt. The defendant was added to the order of Lavender J by the order of May J made on 1 October 2021.

10. Further protests took place on the M25 on 8 October 2021 and yet another one on 27 October 2021. These caused substantial traffic delays. However, there was no direct action on the strategic road network between 3 November 2021 and the protest the subject of this application (20 July 2022). It is not for me to speculate why there was compliance, rather to note, as submitted on behalf of the defendant, there were no material protests during this extended period.

11. In due course the claimant applied for summary judgment and other remedies in respect of the various claims, which were effectively consolidated by Bennathan J's order of 9 May. That order prohibited protestors, including the defendant, from blocking or endangering or preventing the free flow of traffic on the roads for the purposes of protesting by any means, including their presence on the roads or affixing themselves to the roads or any object, or otherwise causing, assisting, facilitating or encourage any of those matters, and also from entering on foot to those parts of the roads which are not authorised for access on foot other than in cases of emergency.

12. Roads are defined in paragraph 4 of the order as including the M25 and *inter alia* hard shoulders, carriageways, and, material for this application, gantries. The order is not complicated. It is supported by a clear penal notice.

13. I turn to committal proceedings. When dealing with the protest on 8 October 2021 in the case of *National Highways Limited v Heyatawin*, the President of the King's Bench Division stated as follows:

“In our democratic society all citizens are equal under the law and all are subject to the law. It is integral to the rule of law, and to the fair and peaceful resolution of disputes, first, that the

orders made by the court must be obeyed, unless and until they are set aside or subject to successful challenge on appeal, and, secondly, that a mechanism exists to enforce orders made by the court against those who breach them. In this jurisdiction that mechanism is provided by the law of contempt.”

14. She added at paragraph 56:

“In a democratic society which recognises the right to freedom of peaceful assembly, protests causing some degree of inconvenience are to be expected and up to a point tolerated. But the words “up to a point” are important. Ordinary members of the public have rights too, including the right to use highways. The public’s toleration of peaceful protest depends on the understanding that in a society subject to the rule of law the balance between the protestor’s right to protest and the right of members of the public to use the highway is to be determined not by the say-so of protestors, but according to the law, as applied in the circumstances of a particular case by independent and impartial courts.”

15. In this case that balance was struck by the Court, and the order was made. The rule of law demands every citizen obeys court orders, whether that be a government minister or a member of a pressure group or other organisation. Some may consider the aims of Insulate Britain or Just Stop Oil laudable, but if they can ignore a court order, so can anyone else, including those whose aims and intentions they may not think so laudable.

16. There have been a number of protests which were the subject of three earlier contempt applications in this claim and dealt with by the Divisional Court. They have laid out the principles, such that this case, concerning a single protestor and a single protest, can be dealt with by me as a High Court Judge without reference to the Divisional Court.

17. Nine individuals were involved in the protest of 8 October 2021. They were dealt with by the President of the King’s Bench Division, and Chamberlain J, sitting in a Divisional Court in *Heyatawin*. They were sentenced to imprisonment, ranging between three and six months.

18. A further application was made in respect of the protests on 8 and 27 October and that was heard by Dingemans LJ and Johnson J in the case of *National Highways Limited v Buse & Ors* [2021] EWHC 3404 (QB). In that case nine defendants were sentenced to imprisonment between two months and 30 days, with seven of the sentences suspended for two years.

19. A third application for contempt concerning three protests on 29 October 2021 and one on 21 November 2021, was dealt with by the Divisional Court, William Davis LJ and Johnson J in the case of *National Highways Limited v Arne Springorum & Others* [2022]

EWHC 205 (QB). In that case 16 defendants were found to be in contempt and sentences ranged from 24 to 60 days, with 11 of those sentences suspended.

20. It is not necessary to deal with the law of contempt in detail. Suffice to say that in an application such as this the burden of proof is on the claimant and the criminal standard of proof applies. In order to establish a contempt of court the claimant must make the court sure that the defendants (1) knew of the content of the order, (2) committed acts which breached the order, and (3) that they knew what they were doing when they did acts which breached the order.

21. Importantly, although Articles 10 and 11 of the European Convention of 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 took into account those rights and balanced them with the interests of others in deciding whether to make the order.

22. Insofar as breach in this case is concerned, the allegations of the claimant are supported by the affidavit of Laura Higson, the affidavit of Sean Martell and the affidavit of PC Gillian Brettel, together with footage from body worn cameras of the incident. As I have indicated, the material facts are not in significant dispute.

23. Matters took place on 20 July 2022. The breach occurred on a gantry over the M25 by junction 31 near to the Dartford Crossing. The defendant entered the motorway on foot, climbed on to the gantry at approximately 11 am and remained there, having hung a banner from the gantry, which read Just Stop Oil. She had in the process pushed or knocked one of the speed signs out of position and there was concern that they may be damaged and may fall. She also had a harness, so there was an obvious risk in the eyes of the police that she may choose to hang off the gantry.

24. In any event, the police and the highways authority were in no position to finally judge the likely actions of the defendant. Indeed, as I indicated during submissions, it appears to me that the police and highway authority could have been subject to significant criticism and potentially legal action arising out of their statutory duties and common law duty of care had they not closed the motorway, bearing in mind there was a protestor on the gantry above the road.

25. The police closed the motorway at junction 30. The defendant then had to be removed from the gantry using a method of lowering her down on a stretcher. There is some limited dispute as to the extent to which she offered to walk down but stated that when on the road she would become non-compliant or made no offer to walk down, but, in my view, it does

not materially affect the overall sentencing exercise. She was broadly non-complaint, as can be clearly seen by what happened when the stretcher was lowered to the tarmac and she refused to get up and walk to the car and had to be carried. The exercise to remove her, which was an impressive one, was akin to the rescue of a seriously injured person, requiring officers with specialist training working at heights.

26. It is my view that the defendant, having got to the top of the gantry and unfolded her banner, thereafter caused additional difficulty and risk to officers and others, by remaining on the gantry, notwithstanding the fact that she had already achieved the aim of putting a banner up. The reality is she must have known that the motorway was likely to be closed if she remained there.

27. It must have been deeply frustrating for all involved and I commend the patience and calmness of the officers involved. There were 18 officers present at a very considerable cost to the public purse and also the diversion of officers from their other duties. There will have been a significant knock-on effect on policing elsewhere, as the resources of the police are finite.

28. The M25 carriageway reopened at 5.43 pm and the traffic was free flowing again a little before 7.00. At its peak the protest caused queues of up to 14 miles. During the protest someone caused a video to be published of the defendant on the gantry giving a short speech about her aims.

29. The Defendant was arrested and charged with an offence contrary to section 78 of the Police, Crimes, Sentencing and Courts Act 2022, (the common law offence of public nuisance having been abolished by that Act). A person guilty of an offence under that section is liable upon summary conviction to imprisonment to a term not exceeding 12 months and on conviction to a term not exceeding 10 years.

30. The civil and the criminal jurisdictions are separate and distinct. This application has come on, as many contempt applications do, before the criminal matter has progressed to a conclusion. I am told by Mr Bryant that the matter has been sent to the Crown Court and awaits a plea and directions hearing.

31. It is important that cases of this nature are dealt with swiftly and, wherever possible, it is generally inappropriate to adjourn civil proceedings to await the outcome of criminal proceedings, see generally Arlidge, Eady & Smith on Contempt 5th Edition, paragraphs 12-9, and Bingham LJ in *N & N* [1997] 1 FLR 762. I canvassed the matter with Mr Bryant and it appears that there is no risk of prejudice if the contempt application proceeds.

32. When considering if the contempt proceedings should continue if there are also criminal proceedings arising from the same incident due regard should be given to the principle that ordinarily no-one should be punished twice for the same misconduct and, also, that the powers of the court on contempt are limited to imprisonment of two years on any one occasion. That means that consideration should be given to any potential sentence as a result of the criminal proceedings.

33. Accordingly, I have considered whether the penalty for contempt at its maximum would be manifestly discrepant with any potential criminal sentence. I am satisfied that it would not be. There is no appropriate guidance through guidelines, but I have considered previous cases concerning the common law offence, and, in particular, *Richard Roberts, Simon Blevins and Richard Loizou v R and (1) Liberty (2) Friends of the Earth* [2018] EWCA Crim 2739. I am satisfied in the circumstances that the civil proceedings should continue.

34. The claimant's submissions are straightforward. That the defendant has wilfully breached the order by, firstly, endangering or preventing the free flow of traffic onto or along or off the M25 for the purpose of protest in breach of paragraph 10 of the order. Secondly, by affixing herself to and remaining on the gantry in breach of paragraph 10.2 of the order, and, thirdly, entering onto the M25 on foot in order to access the gantry, for which purposes of the order falls squarely within the definition of roads, in breach of paragraph 10.3 of the order.

35. As I have already set out, the allegations are admitted by the defendant. In these circumstances, I am satisfied so I am sure that on 20 July 2022 the defendant deliberately breached the order of Bennathan J in the respects alleged and is, therefore, in contempt of court.

36. I turn to sanction. The legal principles in relation to sanction for contempt are now well established. The aims of the court in imposing a penalty for contempt are to punish the breach, ensure compliance with court orders, and insofar as it is possible rehabilitate the person in contempt.

37. Secondly, the court should adopt the approach to be taken in criminal cases as set out in the Sentencing Council guidelines which requires the court to assess the seriousness of the conduct by reference to culpability and harm caused, intended or likely to be caused. Regard should also be had to the sentencing guideline in relation to custodial sentences and the imposition of community and custodial sentences, and the guideline in relation to reduction for a guilty plea.

38. I have also had regard to the Civil Justice Council report in 2020 which provides useful guidance to the approach for the imposition of penalties for contempt, albeit focussed on anti-social behaviour.

39. 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. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment.

40. I need not descend into detail about the defendant's culpability, save to say that these were deliberate acts and the risk of foreseeable harm, including through traffic accidents, given the nature and location of the protest, was clear. Further, that the motorway was highly likely to be closed. Indeed, the very objective of the protest was to cause disruption to as many members of the public as possible and the protest did indeed cause considerable delays to traffic and as a result caused public disruption. The economic loss that will have been caused as a result of this protest will have been very significant, including, that arising from the police having to divert valuable resources.

41. The Defendant has been arrested 10 times for various offences as a result of taking part in Insulate Britain protests (she has been recorded as saying it is 12 times, but the difference matters not). The evidence before me is that these arrests occurred between 13 September and 27 October (it is noteworthy that the order of Lavender J was made on 21 September). No committal applications were brought, or breaches proved, in respect of the defendant's participation in protests on those occasions. However, these matters are highly relevant to the issue of the defendant's longstanding commitment to the aims of Insulate Britain and Just Stop Oil, her state of mind, and the likelihood of her further breaching the order.

42. The defendant's action effectively sacrificed the interests of other members of the public who wanted to get to work, keep appointments, see families and friends, to what she considered to be her own higher aim of achieving publicity for her cause.

43. I do not doubt the sincerity of the defendant's beliefs. However, it is not for her to determine the outer limits of the right to express those views or to protest or the degree of disruption that must be tolerated by others. That would make her a judge in her own cause. She is not. The defendant, and no other, can lawfully and unilaterally ignore the order of the court without sanction. Everybody must comply with the law.

44. I turn to harm, and I have given a brief overview. The congestion lasted for several hours. At its peak there was a queue of 14 miles. The total delay is estimated at nearly 15,500 hours affecting nearly 50,000 vehicles. The effect on those caught in this traffic jam

will, of course, have been significant. I have no specific details, but there was an obvious risk that emergency vehicles would be stuck in traffic and might not be able to respond to or be delayed in attending incidents. Workers, including emergency workers, carers and others, with vital roles might be late for work and their commitments, and certainly drivers and passengers would be late for appointments and meetings. The harm, intended and caused, was significant.

45. The defendant accepted that she breached the order of Bennathan J at the first reasonable opportunity, and she is entitled to full credit for that admission.

46. Mr Bryant, within his most helpful submissions to the court, gave an indication of the defendant's life before she was involved in protesting for Insulate Britain and Just Stop Oil. She was a pillar of the community and an upstanding person who had contributed greatly through her work as a teacher and her work in the community for the benefit of others. She is a mother to three and had an unblemished character. Candidly, it is conceded that she considered her protests were sufficiently important that she would breach the order. There is no other relevant reason for her having done so.

47. So, culpability for this offence was high, it is deliberate, and the harm caused significant. Mr Bryant submits that it was not a reckless, rather a considered, protest, and I accept that submission in that the Defendant took some steps, by way of the placement of the banner, not to cause immediate distraction to vehicles travelling directly underneath the gantry. However, it was clear that there would be a general risk of an accident being caused by distraction and, also, the harm to which I have referred.

48. I take into account that this was a single protest and there was no direct incursion into the live highway, as there had been on other occasions. However, balanced against that, there was a refusal to immediately move from the gantry and cooperate fully. There was a prolonged disruption, much longer than in some of the carriageway protests. It was non-violent, and for conscientious motives, but was a flagrant and direct breach of the court order.

49. I am satisfied that the least sanction that I can impose, commensurate with the gravity of the defendant's conduct, is an order for imprisonment. Put another way, the custody threshold is passed. I take as a starting point four months, having regard to the cases before the Divisional Court and general sentencing principles. By virtue of the prison operational guidance which converts months into days, I take it as 121 days. This is the least period which the seriousness of the defendant's breaches can properly justify.

50. I discount by one-third for the early admission, which is 80 days. I then take into account and further reduce for prison conditions at present. Albeit the time that has elapsed

since the height of the pandemic, I have no doubt that prison conditions are still extremely difficult. I take that into account, and I reduce the custodial penalty to 60 days.

51. Strictly speaking, there is no requirement to take a period spent in custody by virtue of arrest for a criminal offence into account. There was a period of nine days on remand arising from the arrest. However, I have to recognise that any criminal court subsequently considering this matter will have to take into account the sentence that is passed by this court. There is a danger that if a view were taken that it was no longer in the public interest to continue with the prosecution that the period on remand would not be something for which the defendant was given credit (she would be given automatic credit within any criminal sentence). Accordingly, I shall give her credit within this sentence. She spent nine days, which would be equivalent to a sentence of 18 days and she would serve only half. Therefore, the eventual result is 42 days or six weeks' imprisonment.

52. I now turn to the issue of suspension. I have had regard to the relevant sentencing guidance and to the guidance from the Divisional Court on this issue. In relation to the issue of suspension where contempt takes place in the course of a protest, it is a significant factor that Articles 10 and 11 are engaged, as was made clear in *Heyatawin and Others* and *Cuadrilla v Persons Unknown* [2020] EWCA Civ 9. The conscientious motives of the protestors are relevant. This is because they will not be conventional law breakers, as may be so described, but motivated by a desire to improve matters as they see it.

53. A lesser sanction may be appropriate if, as part of the dialogue with the court through the contempt process, the defendant has appreciated the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the right of others, even when the law or other people's activities are contrary to the protestors own moral convictions. The reason for this is because it would not be possible to co-exist in a democratic society if individuals chose the laws that they wished to obey.

54. Before me Mr Bryant has made two submissions. Firstly, that the effect of the bail conditions in the criminal matter is that the defendant is not to participate in any protest, and she has complied with those conditions and also that it is her intention to continue to comply with them. Secondly, on her behalf, and on her instructions, he made an unequivocal statement to the court that the defendant will comply in future with the order of this court. That was a very important aspect of the mitigation dialogue. In a case such as this the court will have very upmost regard to whether or not the order is going to be complied with.

55. The view that I take, having regard to all of the circumstances of this case, is that the sentence should be suspended. It is, however, by only a narrow margin that I have arrived at

this view. Had I not received the unequivocal statement that there would be future compliance with the order, there can be no shadow of a doubt that it is a path I would not have taken. Therefore, the sentence of 42 days will be suspended for a period of two years, the condition being compliance with the order. There can be no doubt whatsoever that any further protest in breach of that order will lead to the immediate activation of this sentence, plus an additional sentence commensurate with the culpability and harm and general circumstances of the further protest.

56. As can be seen in the other cases, others have not been so fortunate. I think that the defendant can consider the approach of the court today to be merciful. The view that I have ultimately taken, is that this is a lady who was hither to an upstanding and valuable member of the community, who has recognised how close she has come to being imprisoned. She has unequivocally acknowledged that her legitimate rights to protest must be carried out in compliance with the law and not in breach of this order.

57. As for a route of appeal it is not to the Supreme Court as the draft order suggested. That would be the case were the matter before the Divisional Court. Appeal from my decision is to the Court of Appeal and permission is not required.

58. I now turn to the issue of costs. The claimant seeks the costs of this application in the sum of £44,492. I should observe that the application has been prepared and conducted in a very highly professional fashion. No stone has been unturned, and it has greatly assisted the court to have the case so well presented. The point that Mr Bryant makes is, that the sum is not proportionate, and, in effect, that too good a job has been done in the circumstances and that a much lesser sum should be awarded by the court.

59. Mr Bryant also refers to the defendant's means and to references in *Cuadrilla* at first instance to the position were the defendant to have been before the Crown Court where the Legal Aid, Sentencing and Punishment of Offenders Act 2012 would apply. I make the following points clear. This is a contempt application for the purposes of CPR 81 and CPR 44 applies. Secondly, LASPO does not apply. Thirdly, in relation to taking into account legal aid means testing, legal aid is not means tested for a committal hearing.

60. In terms of a further submission, Mr Bryant submitted that there was a chilling effect from the sums sought and that, in effect, this was conduct that could be considered for the purposes of CPR 44. I reject that submission without hesitation. This was an order properly made after balancing of the rights of the protestors and the greater public. It was not appealed or in any way challenged. It was to be followed. This application was entirely

necessary by virtue of breach, deliberate and flagrant breach, of that order. I see in no way that the claimant can be criticised for its conduct.

61. Further, I should add this. Whilst I have taken into account the existence of parallel criminal proceedings, it is very difficult for anyone who is a claimant in civil actions to control, or indeed liaise with, the criminal courts and those engaged in a criminal prosecution. The second court can have mind to what the first court has done, and there can be no criticism of the claimant pursuing this application, although there were criminal proceedings ongoing.

62. I do, however, accept Mr Bryant's submission that the costs in the total sum is disproportionate. Very fairly, Mr Fry has drawn my attention to the fact that courts on other occasions have not awarded the full costs sought. That may be for a range of reasons. It may have affected only partial success. It may well have been proportionality; but I must consider this case on its own facts.

63. I have had regard to proportionality, to the work done, to the issues in this single protest, and the view that I take is that there should be an award of costs which is just under 50 per cent, of the sum sought, in the sum of £22,000.

64. Mr Bryant refers to means. Means are not something ordinarily taken into account by a civil court under CPR 44. They may become relevant at the second stage in any civil process, which is enforcement.

65. So, for the reasons that I have set out, the penalty that I impose is suspended imprisonment of 42 days for two years and costs in the sum of £22,000.
