Neutral Citation Number: [2023] EWHC 1073 (KB)

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

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/05/2023

Before :

MR JUSTICE COTTER

- -

Between :

The National Highways Limited	**Claimant**
- and -	
(1) Persons Unknown	**Defendant**
(2) Alexander Roger and 139 Others	**Defendant**

- -
- -

Myriam Stacey KC & Michael Fry (instructed by **DLA Piper LLB**) for the **Claimant**
A number of Defendants appeared in person and/or filed written submissions

Hearing dates: 24 April 2023

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Approved Judgment

This judgment was handed down at 10.30am on 5th May

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MR JUSTICE COTTER

Mr Justice Cotter:

Introduction

1. This is the Judgment on an application issued by the Claimant, National Highways Limited ("NHL") for the extension and variation of an injunctive order made on 9th May 2022 by Mr Justice Bennathan as amended by the Court of Appeal by the order of 14th March 2023.

2. The background facts and Bennathan J's reasoning are set out with his Judgment; **NHL-v-Persons Unknown** [2022] EWHC 1105 (QB). The Claimant successfully part of the order. The citation for the judgment of the Court of Appeal is **NHL-v- Persons Unknown** [2023] EWCA Civ 182.

3. The Claimants are represented by Ms Stacey KC and Mr Fry of counsel.

4. The following named Defendants made oral and/or representations prior to or at the hearing.

    (a) David Crawford (written and oral submissions at the hearing)
    (b) Mair Bain (written and oral submissions at the hearing)
    (c) Virginia Morris (written and oral submissions at the hearing)
    (d) Matthew Tulley (oral submissions at the hearing)
    (e) Ruth Jarman (oral submissions at the hearing)
    (f) Jerrard Latimer (oral submissions at the hearing)
    (g) Giovanna Lewis (oral submissions at the hearing)
    (h) Julia Mercer (written submissions)

5. At the hearing I stressed the importance of engagement with the Court and indicated that I would consider any further written submissions concerning the giving of an undertaking to the Court (I shall return to both issues in due course).

6. Following the hearing I received written submissions from a number of Defendants as set out in detail below.

The background facts

7. NHL is the licence holder, highways authority and owner of the land that comprises the strategic road network which includes the M25 motorway, certain Kent strategic roads and the feeder roads into the M25.

8. Insulate Britain ("IB") is an environmental activist group, founded by members of the environmental movement known as Extinction Rebellion. The aim of IB is to persuade the Government to improve the insulation of all social housing in the UK by 2025 and retrofit all homes with improved insulation by 2030. Members/supporters of IB believe that improved insulation of homes would likely reduce the use of fuel, such as natural gases and oil, mitigate the effects of fuel poverty, create jobs and help address the climate change crisis and save lives. Due to frustration with what they perceived to be Government's failure to address their concerns/demands members/supports of IB

organised activities designed to disrupt daily life and thereby draw attention to these issues.

9. The M25 became a focus for demonstration. IB organised protests on 13th, 15th, 17th, 20th and 21st 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. The demonstrations spread to other highways forming part of the strategic road network.

10. NHL made urgent applications for interim injunctions to restrain the conduct of the protesters arguing that the protests created a serious risk of danger and caused serious disruption to the public using the strategic road network and more generally. Most directly relevant to the application before me, three sets of proceedings were commenced and orders granted as follows:

    (a) In QB-2021-003576, Mr Justice Lavender granted an interim injunction (an interim injunction is intended to prevent injustice before a trial can take place) on 21st September 2021 in relation to the M25 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".

    (b) In QB-2021-3626, Mr Justice Cavanagh granted an interim injunction on 24th September 2021 in relation to parts of the strategic road network in Kent;

    (c) In QB-2021-3737, Mr Justice Holgate granted an interim injunction on 2nd October 2021 in relation to M25 "feeder" roads.

11. The reaction to the order from Insulate Britain was described by Dame Victoria Sharp, President of The Kings Bench Division in **Heyatawin and others** [2021] EWHC 3078 (QB) 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 2012 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.
>
> ..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 2021there 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."

12. The leaders/co-ordinators of IB made it publicly known that they did not intend to be prevented from taking what they considered necessary action by the orders of the Court. In so doing they notified anyone who read their statements (or associated media/social media coverage) of the existence of the prohibition against demonstrations of the type which had taken place.

13. Each of the injunctions was originally made only against persons unknown, but contained an express obligation on NHL to identify and add named defendants. To enable that to occur a number of disclosure orders were made, providing for Chief Constables of the relevant police forces to disclose to NHL the identity of those arrested during the course of the protests, together with material relating to possible breaches of the injunctions.

14. On 1 October 2021, Mrs Justice May ordered that 113 people arrested for participation in the protests be added as named defendants. NHL continued to add further named defendants as protests continued.

15. A further protest took place on the M25 on the 8th October 2012. This protest was the subject of the contempt applications in **Heyatawin and others**.

16. When the hearings in relation to the interim injunctions next came before the Court (what is referred to as "a return date") on 12th October 2021, the three injunctions were continued until trial or further order and the claims were ordered to proceed together.

17. There was a further protest on 27th October 2021. 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.

18. In October and November 2021 the claims were served on named defendants as identified through the information disclosed to NHL by the police as required by the order of the Court.

19. On 22nd October 2021, NHL filed a single Particulars of Claim in the three actions. The case was pleaded on the basis that the conduct of the protesters constituted

    a. trespass;
    b. private nuisance; and/or
    c. public nuisance.

20. The pleading described the protests that had already taken place and contended that they exceeded the rights of the public to use the highway and that the obstruction and disruption caused by the protests was a trespass on the SRN which endangered the life, health, property or comfort of the public and/or obstructed the public in the exercise of their rights. Paragraphs 18 and 19 of the pleading set out the basis for an anticipatory injunction. This is an injunction sought before a party's rights have been infringed on the basis of a fear that a wrong will be committed if an order is not made[1]. An anticipatory injunction was sought because

    > "there is a real and imminent risk of trespass and nuisance continuing to be committed across the SRN including to the Roads"

    and references were made to open expressions of intention by IB/persons unknown/named Defendants to continue to cause obstruction to the SRN, unless restrained. Although a claim for damages was made in the pleading, that has not been pursued by NHL.

21. On the same day as the pleading was filed, NHL made its first contempt application in relation to breaches of the M25 Injunction. This was determined on 17th November 2021. In the interim on 2 November 2021, approximately 60 IB protestors disrupted traffic on Junction 23 of the M25.

22. Two further contempt applications in relation to breaches of the M25 injunction were made on 19th November 2021 and 17th December 2021 they were determined on 15th December 2021 and 2nd February 2022 respectively.

23. As a result of these applications 24 of the defendants ("the contemnor defendants") were found to have been in contempt of court.

24. On 23rd November 2021, defences were served on behalf of three of the named defendants.

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[1] Bennathan J stated in his judgment in this case [2022] EWHC 1105 "In Vastint Leeds BV v Persons Unknown [2018] EWHC 2456 (Ch) Marcus Smith J summarised the effect of 2 decisions of the Court of Appeal on this topic, and I adopt his summary with gratitude. The questions I have to address are: (1) Is there a strong possibility that the Defendants will imminently act to infringe the Claimants' rights? (2) If so, would the harm be so "grave and irreparable" that damages would be an inadequate remedy. I note that the use of those two words raises the bar higher than the similar test found within American Cyanamid". Mr Justice Knowles stated in HS2 Limited-v-Persons Unknown and Named Defendants [2022] EWHC 2360 (KB); "99. Where the relief sought is a precautionary injunction (formerly called a quia timet injunction, however Latin is no longer to be used in this area of the law, per Barking and Dagenham, [8]), the question is whether there is an imminent and real risk of harm: Ineos at [34(1)] (Court of Appeal) and the first instance of Morgan J ([2017] EWHC 2945 (Ch), [88]"

25. Mr Horton and Mr Sabitsky stated in identical terms that they had never trespassed on the SRN and had no intention of doing so. Proceedings against them were discontinued.

26. Mr Tulley admitted being involved in protests on the M25 on three days in September 2021. He asserted that he was not involved in the IB protests covered by the injunctions but admitted being involved in IB protests not covered by the injunctions. He has remained a defendant. No other defences have been served.

27. On 24 March 2022, NHL issued a summary judgment application. This type of application is brought when one party believes he/she/it has an overwhelmingly strong case and the opponent has no real prospect of success in the litigation. The procedural rules which bind the court; the Civil Procedure Rules ("CPR") provide as follows;

> "24.2 The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –
>
> (a) it considers that –
>
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) that defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

28. Although it NHL would have been entitled to apply for default judgment against all the remaining named defendants other than Mr Tulley (as they had filed no defences contesting the claim) it was explained in the witness statement in support of the application (the statement of Ms Laura Higson, an associate at DLA Piper UK LLP, NHL's solicitors) that this procedure was adopted to afford the defendants the opportunity to engage with the merits of the claim.

29. The summary judgment application was served on the named Defendants.

30. Ms Higson's witness statement set out details of the protests which had already occurred and what was considered to be the risk of future protests. This included quoting an IB press release of 7th February 2022 on its website which stated:

> "We will continue our campaign of civil resistance because we only have the next two to three years to sort it out and prevent us completely failing our children and hitting climate tipping points we cannot control.
>
> Now we must accept that we have lost another year, so our next campaign of civil resistance against the betrayal of this country must be even more ambitious. More of us must take a stand. More of you need to join us. We don't get to be bystanders. We either act against evil or we participate in it.
>
> We haven't gone away. We're just getting started."

31. The suggestion that the supporters/members of IB had "not gone away" was repeated within the application before me by Ms Stacey KC.

32. On the 15th of February 2022 IB announced by press release that it had joined "Just Stop Oil" in coalition with "Animal Rebellion". Ms Higson referred to a presentation by Roger Hallam, a leading figure within both organisations, who said:

> "Thousands of people will be going onto the streets and onto the motorways to the oil refineries and they will be sitting down."

33. At paragraph 60-61 of her witness statement Ms Higson summarised the evidence before the Court and stated that on the basis of that evidence, there was a real and imminent risk of further unlawful acts of trespass and nuisance on the parts of the strategic road network covered by the interim injunctions and that risk was unlikely to abate in the near or medium future.

34. On 17th March 2022 Mr Justice Chamberlain extended the duration of the injunctions.

35. At the hearing before Bennathan J on 4th and 5th May 2022 of its application NHL sought:

(a) A summary judgment against 133 named Defendants (the Defendants had all been arrested by various police forces in operations connected to IB protests, after which their details were notified to the Claimant under disclosure provisions of the interim injunctions).
(b) A final injunction in terms similar, but not identical to, to those granted in the interim orders.
(c) A declaration that the use of the SRN for protests is unlawful.
(d) Damages, though the Claimant stated in its Skeleton Argument that it was not pursuing damages against any of the Defendants, and
(e) Costs.

36. On 9th May 2022 Mr Justice Bennathan[2] made an order consolidating claims and granting interim and final precautionary injunctions. He granted a final injunction against 24 of the 133 named defendants, consisting of those who had been found to be in contempt of Court but otherwise refused to grant a final injunction, although he did grant an anticipatory injunction on an interim basis against the remaining 109 named defendants and against persons unknown on essentially the same terms as the final injunction.

37. At paragraph 13 of his judgment Bennathan J stated;

> "Ms Higson reported a further IB posting spoke of plans for a "Rave on the M25" on Facebook, beginning at 12pm on 2 April 2022 and ending at 4am on 3 April 2022. This event does not seem to have taken place. Ms Higson then set out a series of news releases that mainly concern another group, "Just Stop Oil"

[2] None of the named Defendants were represented before Mr Justice Bennathan but Ben Horton, who had been a named Defendant, attended at Court and made some submissions about costs. The Judge also heard argument from Owen Greenhall of Counsel, who appeared to make submissions on behalf of a person who took an interest in the litigation.

> ["JSO"] with whom IB wrote of having formed an alliance. The focus of the JSO posts was very much on acting so as to interfere with various parts of the oil industry and while there have been many such protests reported in the press and other media, and the Courts have dealt with a number of applications by Oil companies for injunctions, few have targeted the SRN."

And at paragraph 16

> "16. In a further statement dated 25 April 2022, Ms Higson deals with three topics: ……..(3) Ms Higson also sets out further reasons why, on the Claimant's case, there is a sound basis to fear further actions by the Defendants and persons unknown: the various press releases are almost entirely those of JSO and speak of actions at oil terminals and such premises rather than the SRN. There have, however, been distinct and more recent signs of the threat of a renewal of the type of protests that would be caught by the injunction sought. Interviews in the media in March and April spoke of vowing "to cause more chaos across the country in the coming weeks" and that there was going to be "a fusion of other large-scale blockade-style actions you have seen in the past."

38. Bennathan J granted summary judgment against those who had been found to be in contempt of the order. However in relation to the other 109 Defendants he stated:

> "33. The position of the 109 is different. The only basis offered by the evidence supplied by the Claimant was within the witness statement of Laura Higson [at her paragraph 51]. The 28 sub-paragraphs are similar, so I take only the first 2 to illustrate their general nature:
>
> 51.1 On 13 September 2021, 18 of the Named Defendants were arrested by Hertfordshire Constabulary in connection with a protest which took place under the banner of IB. Of those arrested, all were arrested under suspicion of wilful obstruction of the highway, and 6 under suspicion of conspiracy to cause a public nuisance. I am not personally presently aware of the current status of any prosecutions.
>
> 51.2 On 13 September 2021, 10 of the Named Defendants were arrested by Kent Police in connection with an IB protest. Each of the 10 individuals were arrested under suspicion of wilful obstruction of the highway and conspiracy to cause a public nuisance. All have been charged with conspiracy to cause a public nuisance.
>
> 34. At no stage in this part of her witness statement does Ms Higson identify which defendant was arrested on what date. There are no details of the activities that led the police to arrest. There has been one conviction in Kent for an offence of criminal

> damage but there is no description of what the unidentified arrestee had done. In other sub-paragraphs Ms Higson states that the police took no further action against some of those arrested on some occasions. Ms Stacey sought to support Ms Higson's evidence by pointing out that none of the defendants, with 2 exceptions I will come to shortly, had served a defence to NHL's claim. In the hearing I was told that the reason [or at least one reason] for the lack of specificity was "GDPR": I struggled to understand that explanation given that there have been 3 successful contempt applications wherein defendants were named and their detailed activities set out, given the terms of the disclosure orders previously made allow for arrestees' details to be deployed in this litigation, and given that in her second witness statement Ms Higson gives the names, dates and [at least some] details of 3 of those who were arrested but later did respond with defences to the claim. Ultimately, however, the reasons for how the Claimant chose to present their case is a matter for them, not me."

And at paragraph 35(3)

> "One of the defendants who has replied states that she is a film maker who was videoing protestors blocking the M25 as part of a media project. She attached a letter to her reply which showed the Crown Prosecution Service have discontinued prosecuting her on the basis that it is not in the public interest to do so. Her situation is both a case that clearly raises an issue for any trial and one that serves as an example that might apply to some of the other 109.
>
> In the third committal application [NHL v Springorum and others, at 21-24] the Court dismissed the application in respect of 3 defendants on the basis that they had been arrested while on a pavement and had not caused any obstruction of any traffic; I am conscious that the Court was dealing with breaches of an injunction, not tortious liability, but I doubt that the activities of those 3 could amount to the latter. Once more, this serves as an obvious example that the mere fact of an arrest does not necessarily establish the tortious conduct."

39. In relation to the issue of future risk Bennathan J stated:

> "Mr Greenhall pointed out that the IB protests described by NHL were all in 2021 and there has been no repetition this year. This is a fair point, but it is outweighed by some of the public declarations made on behalf of IB. Once a movement vows "to cause more chaos across the country in the coming weeks" and threatens "a fusion of other largescale blockade-style actions you have seen in the past", the Claimant must be entitled to seek the Court's protection without waiting for major roads to be blocked.

> In my view the scale of the protests being discussed, and those that have already occurred, are sufficient to meet the heightened test of harm so "grave and irreparable" that damages would be an inadequate remedy."

40. The Judge also considered the circumstances in which injunctions could be granted against unidentified defendants and also the balance between the competing rights of protestors and others. In respect of the first issues he concluded:

> "41. Injunctions against unidentified defendants were considered by the Court of Appeal in the cases of Ineos Upstream Ltd v Persons Unknown [2019] 4 WLR 100 ["Ineos"] and Canada Goose Retail Ltd v Persons Unknown [2020] 1 WLR 2802 ["Canada Goose"]. I summarise their combined affect as being: (1) The Courts need to be cautious before making orders that will render future protests by unknown people a contempt of court [Ineos]. (2) The terms must be sufficiently clear and precise to enable persons potentially effected to know what they must not do [Ineos and Canada Goose]. (3) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights [Canada Goose]."

41. He considered the relevant authorities and concluded.

> "To draw together the various legal threads: in deciding the terms of the injunctions I had to be conscious of the right to protest which may, on occasions, mean a protest that causes some degree of interference to road users is lawful [DPP v Jones and DPP]. I should not ban lawful conduct unless it is necessary to do so as there is no other way to protect the Claimant's rights [Canada Goose]. The consequence of my banning protests that should be permitted would be to expose protestors to sanctions up to and including imprisonment, as there is no human rights defence by the time of contempt proceedings [NHL v Heyatawin].
>
> 49. My decision on the terms of the injunctions was communicated in discussion at the end of the hearing and in drafts sent between the parties and myself since. As the detail can be seen in the order, I confine my explanation to broader principles. The general character of the views held by IB protestors are properly described as "political and economic" and as such are at the "top end of the scale", as described in *Samede*[3], and the protests are non-violent; these matters weigh in favour of lawfulness. There are a number of matters, however, that go the other way. Having regard to the sort of criteria described in both Samede and Ziegler, there is no particular

[3] See paragraph 106 below

> geographical significance to the protests, they are simply directed to where they will cause the most disruption. The public were completely prevented from travelling to their chosen destinations by previous protests; there was normally not, in contrast to the facts in Ziegler, an alternative route for other road users to take. While the protestors themselves have been uniformly peaceful, the extent of previous protests has caused an entirely predictable reaction from other road users, as described in Ms Higson's statement, above. Judging the future risks of protests against IB's past conduct I approved the terms of the draft injunctions that would ban the deliberate obstruction of the carriageways of the roads on the SRN but would not eliminate the possibility of lawful protests around or in the area on those roads."

42. The order made by the Bennathan J retrained the defendants from various acts (e.g. blocking, or endangering, or preventing the free flow of traffic on the roads for the purposes of protesting …) on either an interim or final basis (in relation to the Contemnor Defendants) until 23.59 on 9th May 2023.

43. He made orders in relation to substituted service and Third Party disclosure (which I shall return to) and provided (at paragraph 19) for a hearing in April 2023

> "at which the court shall review whether it should vary or discharge this order or any part."

44. The Claimant appealed on the single ground that the Judge made a mistake in law in concluding that a final injunction should not be granted against the 109 named defendants (and the unnamed defendants).

45. In July 2022 a JSO direct action protest took place on the M25. I subsequently found that on 20th July 2022 Louise Lancaster (Defendant number 55) had deliberately breached the order of Bennathan J in the respects alleged, and was in contempt of court. The Judgment can be found at [2021] EWHC 3080 (KB). Ms Lancaster accepted that she had been validly served with the order and that she had breached it. I stated:

> "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."

And

> "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."

46. Also in relation to dialogue with the Court (another subject to which I shall return) I stated (in the context of the imposition of a penalty) I stated;

> "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…..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."

47. I imposed a suspended penalty i.e. I did not impose an immediate prison sentence.

48. On the 17th and 18th of October 2022 two protestors, who have been subsequently referred to as the "bridge protestors" attached themselves to cables approximately 200 feet above the carriage way of the Queen Elizabeth bridge at the Dartford crossing. It was estimated that nearly 630,000 vehicles were impacted by this action with a total economic impact of nearly £1million pounds. The claimant attempted personal service of the order made by Mr Justice Bennathan order on the bridge protestors but found it was not possible to safely do so[4].

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[4] On the 3rd of November 2022 there was a hearing to consider retrospective alternative service on the bridge protesters. The claimant did not continue with the application after the court giving an indication that it should be dealt with within the committal proceedings. These proceedings have not been determined and are defended on the basis that the alleged contemnors were not served personally with the order.

49. In November 2022 JSO activists targeted gantries on the M25 and as a result of issues with service, which had been highlighted by the protest undertaken by the bridges protestors, the Claimant made an urgent application for a further interim injunction to protect gantries and other structures on the M25. An order was granted by Mr Justice Chamberlain on 5th November 2022 ("the Structures Injunction"). The order provided for alternative service of the claim form and injunction order as against persons unknown.

50. By the return date 65 defendants had been identified and the order was amended by Mr Justice Soole on 28th November 2022 to require personal service on those named Defendants. In her statement prepared for this hearing Ms Higson stated that:

> "As has been the case since the inception of the protests in September 2021, the Claimant experienced significant difficulties in effecting personal service of the Soole order and it was not possible to serve 25 of the named Defendants, despite in some cases 7 separate attendances being made at their addresses for service by HCE."

51. Following on from the order made in May 2022, on the 16th of January 2023, Mr Justice Bennathan made a further order which dealt with the costs of the application which he had determined. I shall return to this order in due course.

52. On the 28th February 2023, in light of difficulties set out by Ms Higson in relation of service the claimant made an application for permission to serve the structures injunction and documents in those proceedings by alternative service upon the 65 named defendants on account of the difficulties in serving 25 of the named defendants.

53. Mr Justice Fraser granted an alternative service order in respect of the structures injunction on the 1st March 2023.

54. On the 14th March 2023 the Court of Appeal allowed the Claimant's appeal against the order made by Mr Justice Bennathan and made an amended order. Mr David Crawford and Mr Matthew Tulley, two of the named Defendants, addressed the Court on behalf of the 109 named Defendants.

55. The Court found that Bennathan J had correctly identified the test for granting anticipatory injunctions. However, he had then fallen into error in considering whether the injunction should be final or interim. His error was in making the assumption that, before summary judgment for a final anticipatory injunction could be granted, NHL had to demonstrate that each defendant had committed the tort of trespass or nuisance and that there was no defence to a claim that such a tort had been committed. It was not a necessary criterion for an anticipatory injunction, whether final or interim, that the defendant should have already committed the relevant tort. Rather, the essence of that form of injunction, whether interim or final, was that the tort was threatened and for some reason the claimant's cause of action was not complete. Importantly Sir Julian Flaux Chancellor of the High Court stated:

> "35. At the hearing of the appeal, some 20 of the named defendants attended Court. Three of those were contemnor defendants against whom the judge granted a final injunction and

> in respect of whom there was no appeal before the Court. The other 17 were some of the 109 defendants. One of them, David Crawford, was deputed to address the Court on their behalf. He made polite and measured submissions explaining his own motives in participating in IB protests and denying that there was any imminent and real risk of further protests. Similar points about the absence of risk were made shortly by one of the other 17 named defendants, Matthew Tulley, who had served a defence and who also spoke.
>
> 36. The difficulty which the named defendants face is that none of their points was made before the judge, because they simply failed to engage in the proceedings. In relation to the test for the grant of an anticipatory injunction, the judge considered the evidence which was before him and concluded that there was a real and imminent risk of the torts of trespass and nuisance being committed so as to justify the grant of the injunction against the 109 named defendants, albeit on an interim basis. There was and is no cross-appeal by the defendants against any part of the judgment dealing with the grant of an injunction. The matters which Mr Crawford and Mr Tulley put forward cannot be relied upon before this Court as a basis for challenging the judge's conclusion as to real and imminent risk and as to the appropriateness of granting an injunction."

56. The Court held that the Judge should have applied the standard test under CPR r.24.2, namely whether the defendants had no real prospect of successfully defending the claim:

> "40. The test which the judge should have applied in determining whether to grant summary judgment for a final anticipatory injunction was the standard test under CPR Part 24.2 , namely whether the defendants had no real prospect of successfully defending the claim. In applying that test, the fact that (apart from the three named defendants to whom we have referred) none of the defendants served a defence or any evidence or otherwise engaged with the proceedings, despite being given ample opportunity to do so, was not, as the judge thought, irrelevant, but of considerable relevance, since it supported NHL's case that the defendants had no real prospect of successfully defending the claim for an injunction at trial.
>
> 41. It is no answer to the failure to serve a defence or any evidence that, as the judge seems to have thought (see [35(5)] of the judgment), the defendants' general attitude was of disinterest in Court proceedings. Whatever the motive for the silence before the judge, it was indicative of the absence of any arguable defence to the claim for a final injunction. Certainly it was not for the judge to speculate as to what defence might be available. That is an example of impermissible "Micawberism" which is deprecated in the authorities, most recently in *King v Stiefel.* If

> the judge had applied the right test under CPR 24.2 and had had proper regard to CPR 24.5 , he would and should have concluded that none of the 109 named defendants had any realistic prospect of successfully defending the claim at trial and that accordingly, NHL was entitled to a final injunction against those defendants."

57. The Court also stated:

> "23. It is worth noting at this point that, under regulation 15 of The Motorways Traffic (England and Wales) Regulations 1982 , pedestrians are not allowed on a motorway save in cases of accident or emergency (which these protests did not constitute) so that the defendants had no right to be on the M25 or other motorways and a lawful excuse defence would not have been available. Although we drew the attention of Ms Stacey KC to that provision, it was not relied upon by NHL either before the judge or before this Court."

58. The Court also considered the position in relation to Persons Unknown

> "42. Although *Barking* was cited to the judge and he refers to it at [36] of the judgment, albeit in a different context, the judge did not consider specifically in his judgment whether to grant a final injunction against the persons unknown. Given that the decision of the Court of Appeal in that case represents the current state of the law and we have no means of discerning what the Supreme Court will decide, it seems to us that we should grant a final injunction against the persons unknown as sought by NHL. The alternative would be to adjourn that part of the appeal until after the Supreme Court has handed down judgment, but since, as we have said, there is to be a review hearing in the High Court in April to determine whether the injunctions should be continued or discharged, it seems preferable to leave the High Court to determine the consequence in the event that the Supreme Court reverses the decision of the Court of Appeal.
>
> 43. The only aspect of the final and interim injunctions granted by the judge and the final injunctions sought by NHL which caused us any concern is the reference in [10.1] and [11.1] of the Injunction Order dated 12 May 2022 to "tunnelling within 25m of the Roads". We are not aware of any such tunnelling having occurred or having been threatened by the IB protesters and Ms Stacey KC was not able to identify any such threats. In the circumstances, it seems to us that these words should be expunged from the injunctions granted by the judge and from the final injunction which we will grant. Subject to that one point, the appeal is allowed."

59. As well as ordering a final injunction against the balance of the Defendants, the order made by the Court of Appeal;

(a) Provided for alterative service of the order in materially the same terms as those set out by Bennathan J. It is notable that the Claimant (the Appellant before the Court) did not seek to persuade the Court to vary order as regards service despite the difficulties which have been outlined in the statement of Ms Higson.
(b) Contained the same provisions in relation to Third Party disclosure as were set out in the order made by Bennathan J.
(c) Set out that;

> "17. There will be no variation of the costs order dated 16th January 2023 of Bennathan J and no order of the costs of this appeal."

Issues

60. Ms Stacey KC submitted that the issues for determination by the Court were;

a) Whether the injunction should be extended (i.e. extended beyond the 9th May 2023)?
b) Should the court permit amendments to the schedule of Defendants?
c) Should the court permit alternative service?
d) Should the court award the claimant costs of securing the order and of this review hearing (the appeal costs having been separately dealt with)?

In my view an additional issue arises:

e) Should the Court continue the third party disclosure order?

Evidence

61. In addition to the statements previously served in the proceedings the Claimant relied upon the evidence sets out in the witness statements of;

(a) Sean Martell (statement of 13th April 2023).

(b) Laura Higson (statement of 13th April 2023).

62. Whilst I had submissions made by and on behalf of Defendants, there were no statements signed with a statement of truth. I will deal with relevant content of the submissions when considering the issues in turn.

Should the injunction should be extended?

63. Although the Court of Appeal order transformed the order of Mr Justice Bennathan into a final order it expressly enshrined a liberty to apply to extend, vary or discharge the order (and clearly intended the Court to deal with the issue of costs at any review of the order)

64. It is first necessary to consider what test is to be applied at a hearing to extend an injunctive order. The Court is obviously entitled to review any aspect of the merits of claim and the entitlement to the order sought, given what has transpired since the order was made.

65. Mr Justice Bennathan's order was time limited with a review hearing set within the final month. He was faced with a state of affairs which could quickly and radically change. For example, if the Government had announced that it would consider the need for a national programme of home insulation, those who were only prepared to protest to achieve this limited aim may have, at last temporarily, publicly stated that they would cease demonstrations. Further the Judge may well have had in mind the references to the court's ongoing supervisory jurisdiction made to by the Master of the Rolls in **Barking and Dagenham LBC-v-Persons Unknown** [2022] 2 WLR 946:

> "89. As I have already said, there is no real distinction between interim and final injunctions, particularly in the context of those granted against persons unknown. Of course, subject to what I say below, the guidelines in *Canada Goose* need to be adhered to. Orders need to be kept under review. For as long as the court is concerned with the enforcement of an order, the action is not at end."

66. Although there has been no direct action on the strategic road network since November 2022, Ms Stacey KC submitted that there was a compelling case for the injunction order to be continued. She relied upon the fact that there have been a number of broader incidents of direct action protests since the autumn of 2022 which have been designed to cause disruption on other roads and bridges in central London. IB amalgamated with JSO and the activities of that group/organisation; now the JSO coalition (see further below) since October 2022 were instructing and illuminating of the continuing, imminent and real risk of deliberate disruption to the strategic road network which remained. The members/supporters of IB had not "gone away". She referred to the summary of the relevant history given by Mr Justice Cavannagh in **TfL-v-Lee** [2023] EWHC 402 (Judgment date 24th February 2023) at paragraph 12-13:

> "12. The claimant accepts that JSO activity involving blocking roads in London has slowed down somewhat since its peak in October 2022. The claimant believes that the injunction granted by Freedman J and other similar such interim injunctions have had the effect of pausing and/or reducing such protests. The claimant's evidence is also that a factor which temporarily pauses or reduces the intensity of such protests is the cold weather from around mid-December to around the end of March. Experience has shown that the absence of, or reduction in, protests during this period should not be interpreted as a sign that the protesters have stopped for good. Furthermore, the claimant says that the public statements made on behalf of JSO make clear that JSO has no intention of bringing its campaign of protests to an end. At paragraph 50 of his witness statement, Mr Ameen referred to 12 specific occasions, in which JSO (now also the JSO Coalition) and/or its individual protesters have said that they will not cease their deliberatively disruptive protests until their

demands are met. For example, on 16 October 2022, in a response directed to the Home Secretary, JSO stated "We will not be intimidated by changes to the law, we will not be stopped by injunctions sought to silence nonviolent people. These are irrelevant when set against mass starvation, slaughter, the loss of our rights, freedoms and communities." On 1 November 2022, JSO stated that it would temporarily pause its disruptive protests to give the government time to reflect on JSO demands. But JSO said that if it did not receive a response by the end of 4 November indicating compliance with its demands then it would escalate its legal disruption against what it called a treasonous government. In late December 2022, JSO stated that it will continue its deliberately disruptive protests notwithstanding Extinction Rebellion saying on 31 December 2022 that it will be temporarily ceasing theirs.

13. There have, in fact, been a considerable number of JSO protests since Freedman J granted his injunction. There have been the following:

i. On 7 November 2022, JSO started 4 days of protest on the M25. JSO protesters (including one named defendant in the TfL JSO Claim) climbed onto M25 overhead gantries in at least 6 locations clockwise and anti-clockwise, causing the police to have to halt traffic on the M25. JSO stated that it would continue to protest on the M25 and urged National Highways Limited to implement a 30mph speed limit on the whole M25.

ii. On 8 November 2022, around 15 JSO protesters (including a named defendant in the TfL JSO Claim) climbed onto M25 overhead gantries at multiple locations clockwise and anti-clockwise, causing the police to have to halt traffic on the M25.

iii. On 9 November 2022, around 10 JSO protesters, along with Animal Rebellion protesters, climbed onto M25 overhead gantries at multiple locations clockwise and anti-clockwise, causing the police to have to halt traffic on the M25. The disruption resulted in two lorries colliding and a police officer, who had been trying to set up a roadblock, being injured when he was thrown from his motorcycle.

iv. On 10 November 2022, JSO protesters (including a named defendant in the TfL JSO Claim), along with Animal Rebellion protesters, climbed onto M25 overhead gantries at multiple locations clockwise and anti-clockwise, causing the police to have to halt traffic on the M25.

v. On 11 November 2022, JSO said it was ceasing its protests on the M25 to give the government time to reflect on JSO's demands. In the 4 days of protest on the M25, 65 JSO protesters were arrested, 31 of whom were remanded in custody including 13 named defendants in the TfL JSO Claim. In combination with the 5 JSO protesters already in prison this meant on 11 November 2022 there were 36 JSO protesters in prison. Another 6 of the named defendants in the TFL JSO claim were also involved in the JSO M25 protests.

vi. On 14 November 2022, JSO protesters threw orange paint over the Silver Fin building which is the headquarters of Barclays Bank in Aberdeen. This was expressly in connection with a national day of action by Extinction Rebellion aimed at Barclays, with over 100 of the banks' offices and branches targeted with paint, posters, fake oil and crime scene tape.

vii. On 28 November 2022, JSO began a new tactic of slowly marching on roads in London in order to disrupt and delay traffic without necessarily bringing it to an absolute stop. 13 JSO protesters walked onto the road at Shepherds Bush Green and proceeded to march slowly in the road, causing traffic delays. Two were arrested for obstruction of the highway, albeit the Police have since stated on 6 December 2022 that this new tactic makes arrest and prosecution less likely because the protesters have been small in number and traffic is able to move around them.

viii. Also on 28 November 2022, similar JSO 'slow march' protest action was taken at Aldwych delaying motor traffic.

ix. On 30 November 2022, 10 JSO protesters walked onto Aldersgate Street in the City of London and proceeded to march slowly along London Wall, causing traffic delays. The march continued on major roads through the City, followed by at least 7 police vehicles and up to 20 police officers, but there were no arrests.

x. Also on 30 November 2022, similar JSO 'slow march' protest action was taken on Upper Street and Holloway Road near Highbury and Islington station, delaying motor traffic.

xi. On 3 December 2022, 4 JSO protesters occupied beds and sofas in Harrods Department Store.

xii. On 6 December 2022, around 15 JSO protesters walked onto the road at Bricklayers Arms roundabout in South London and proceeded to march slowly along the Old Kent Road, causing delays to motor traffic. The march continued through South London, followed by at least 3 police vehicles and up to 10 police officers.

xiii. Also on 6 December 2022, similar JSO 'slow march' protest action took place at Bank junction in the City, delaying motor traffic.

xiv. On 8 December 2022, and including in response to the recent government decision to consent to a new coalmine at Whitehaven in Cumbria, around 15 JSO protesters walked onto Whitechapel Road, East London and proceeded to march slowly east and then west causing delays to traffic. The march continued on Commercial Road.

xv. On 12 December 2022, around 20 JSO protesters (including one of the named defendants in the TfL JSO Claim) walked onto the A24 near Clapham South and proceeded to march slowly Northwards, delaying traffic. They continued along Clapham High Street accompanied by around 7 police officers.

xvi. Also on 12 December 2022, similar JSO protest action was taken in Camden Town, delaying motor traffic.

xvii. On 14 December 2022, 17 JSO supporters (including one named defendant in the TfL JSO Claim) walked onto Green Lanes, Finsbury Park, and proceeded to march slowly northwards accompanied by around 7 police officers, delaying traffic. This protest reportedly delayed a people carrier vehicle carrying 9 cancer patients by 30 minutes.

xviii. Also on 14 December 2022, similar JSO protest action was taken in Camden Town.

xix. On 19 January 2023, JSO undertook a 'slow march' protest in Sheffield which delayed traffic an led the police to have to close a road.

xx. On 28 January 2023, JSO protesters (including one named defendant in the TfL JSO Claim) undertook a 'slow march' protest on a road(s) in Manchester causing traffic delays. JSO stated that further such protest action would take place across in the North in the coming months.

xxi. On 11 February 2023, JSO protesters undertook a 'slow march' protest in Islington starting outside Pentonville Prison, delaying motor traffic, and

xxii. On 18 February 2023, in total over 120 JSO protesters (including two named defendants in the TfL JSO Claim) undertook a 'slow march' protest in Liverpool, Norwich, and Brighton, delaying motor traffic and causing tailbacks through those city centres.

67. Cavanagh J continued at paragraph 21-22

> "21. ……... The activities of JSO have continued, albeit with a change of tactics, and in my judgment the justification for interim injunctive relief to restrain unlawful activities on the JSO roads is as great as it has ever been.
>
> 22. It is true that the protests are less frequent than before the end of October 2022, but there has been no change to JSO's position that it will continue its protests indefinitely, and there have been a substantial number of protests on the roads in London since that time, including one in February 2023. The reduction in protest may be the result of a tactical decision, or it may be a result of the Winter weather, or it may be the result in part of some reduction in appetite because of the earlier injunctive relief, or a combination of all of these things, but in any event the evidence that protests will take place unless restrained by injunctive relief is as strong now as it was before Freedman J. The mere fact that some people have chosen to act in breach of the injunctions is not, of course, a reason for declining to grant a continuation (*South Buckingham DC v Porter [2003] 2 AC 558; [2003] UKHL 26 at paragraph 32*)."

68. In his witness statement prepared for this hearing Mr Martell explained fears at paragraph 31–35 of his witness statement. He stated:

> "(a) There is now an intersection between the groups IB, JSO and Extinction Rebellion and others; indeed JSO self identifies as "a coalition of groups" and an individual associated with one of the groups can become affiliated with one or more of the other groups;
>
> (b) JSO has made clear its intention to continue its campaign of civil resistance and has threatened to further escalate its campaign if the government did not meet with the group's demands (as delivered to 10 Downing Street on 14 February 2023) by 10th April 2023. It was stated;
>
> > "If you do not provide such assurance… We will be forced escalate our campaign-to prevent the ultimate crime against our country's humanity and life on earth"

(c) JSO continues to actively recruit new members.

(d) On 13 March 2023 regarding newspaper published an article about a new design for motorway gantries which had been announced by the claimant in the wake of the November 2022 protests. A spokesman for JSO is quoted as saying

> "Just Stop Oil have always said the disruption will end immediately when the government agrees to end new oil and gas. Until then we look forward to the challenges the new gantry designs provide"

(e) On 4 April 2023 after defendants who had carried out the protest on the Queen Elizabeth II bridge were found guilty of causing a public nuisance, a JSO member saying "just stop oil will not stop.""

69. Mr Martell continued:

> "Whilst the Bennathan Order has not wholly prevented unlawful disruption, it has been broadly successful and remains of great assistance to NHL's activities and its ability to ensure that the roads it is responsible for as highways authority can be safely and properly used by other road users. Whilst the injunctive relief granted by the Bennathan Order has not been wholly effective, NHL is aware that it has acted as a deterrent for some of the individuals who are associated with IB and JSO."

70. In this regard Mr Martell placed reliance on the comment made by Mr Tully at the hearing of the appeal in this matter that the order had had an impact on the defendants who were named on it;

> "In fact 109 of us did listen and take note of the injunction and we didn't do further protests at the injunction sites. We might have done the protest at other sites but we didn't do injunctions (sic) at the injunction sites precisely because the injunction was in place."

David Crawford also addressed the court and stated:

> "I chose not to break the injunction once the injunction was issued."

71. Ms Stacey KC submitted that there was no indication that the direct action protest had "reached its zenith". Rather the public statements made on behalf of JSO make it clear that the movement operating under that umbrella description had no intention bringing its campaign of protests to an end. The strategic road network continues to be a prime location for direct action for protest activities.

72. Ms Stacey KC described it as telling that no evidence or pleadings against variation had been received and that their absence was indicative of the absence of any arguable objection to the extension of the final injunction.

73. Further, although some defendants had provided undertakings that they would not engage in unlawful conduct prohibited by the injunction order; many had not. She invited the court to draw an inference that a person refusing to provide the undertaking which had been suggested by the claimant was someone who posed a risk of direct action protest (such protest/s consisting of actions currently prohibited by the injunction).

74. Finally, she prayed in aid the Court of Appeal's reference to regulation 15 of the Motorways Traffic (England and Wales) Regulations 1982. Pedestrians are not allowed on the motorway save in cases of accident or emergency so no lawful excuse was available to the protesters who ventured onto the M25 or its associated infrastructure.

75. As for the harm caused by the activities restrained by the injunction Ms Stacey KC submitted that the importance of maintaining the safe functioning strategic network (its name describing its nature) is obvious and the gravity of potential harm does not need to be addressed in any detail (it is set out within the statements of Mr Martell and Ms Higson).

76. I now turn to the submissions made by and on behalf of the defendants. I shall not set out all of the content of the emails/representations which I have received, rather I will focus upon the salient points raised

Submissions sent in before the hearing

77. Mr Crawford provided a statement that was headed "Statement from Insulate Britain". It stated:

> "we are some of the named defendants in this matter and we are supporters of the insulate Britain campaign. We are people drawn from many walks of life. We include but are not limited to: clergy, builders, scientists, carers, teachers, local councillors, artists, engineers and GPs." (*underlining added)*

He continued;

> "we wished through our civil disobedience to draw the public's attention to a simple and practical way in which the government could and should (act)."
>
> "the government alone (as evidenced by a publicly-disclosed instruction to the claimant) has chosen to seek to obtain and to use civil court orders, in order to suppress peaceful, legitimate and justified public protest on roads".
>
> "…..To our knowledge, none of the 109 named defendants…has been arrested on an injuncted road while it has been subject to this injunction. We believe that no evidence has been presented by the claimant to the court that any one of the 109 named

defendants constitutes a "real and present threat" to the operations of the claimant. We respectfully suggest that it cannot be reasonable in the above circumstances the claimant to be awarded any costs order against any named defendant who has not been arrested on an injunctive road whilst it is subject to this injunction."

"We have come to this hearing to make ourselves known to the High Court and to represent ourselves. None of us can afford to incur the extra ordinary magnitude of costs of employing lawyers to represent our interests in these proceedings. We have come to make representations about what we see as near continuous harassment for 18 months by the claimant, over this matter, and to ask the court to bring the matter urgently to a completion….

Which we bring before the High Court today are

1. The injunction obtained on the strategic road network by the claimant has had an effect of stifling lawful protest….

2. 24 of us have been found guilty of contempt of court. We have been given immediate or suspended custodial sentences. We have been subjected to enormous court costs…..

3.153 of us are being repeatedly threatened by the claimant with extortionate cost applications even though 109 of us have not broken the injunction

4….The roads do not belong solely to the claimant, but they belong to all the people. They are a legitimate site for peaceful protest and assembly.

5. It is impossible for us to appeal against the injunction, as the costs would be prohibitive….We are not on an equal footing, when faced with the vast financial resources of the claimant. We believe that these injunctions are being used to silence and intimidate people who do are to speak out to protest…

6. We and our families have had our privacy invaded by having our personal details publicised by the claimant on its website. This was an illegal data breach, which potentially endangered us and our families, as well as causing mental distress.

We advise the court that far from being "a real and imminent threat" to the claimant, we are, in fact, public spirited people, prepared to take costly, personal action to do what we can to avert or at least to slow imminent climate catastrophe. We accept that we may incur penalties under the criminal law as a result of our actions….However some named defendants have been pursued under the criminal law and the civil law for the same offence. We are not content also to be subjected to plain injustices of civil prosecution and unjust costs orders, which have been affected by the Government.

> This abuse of civil law, as we see it, brings the civil legal framework into disrepute. We urge the court to put a stop to this manifestly unjust action, one which plainly aims to try and punish further peaceful, public spirited people whose aim is to try and protect all life."

> "Acting out of compassion and a sense of moral responsibility, we interrupted traffic on roads, during 2021, in order to draw attention to the governments criminal inaction on reducing greenhouse gas emissions and on reducing avoidable deaths from cold homes….We believe that we have the right and the duty to act as we did….."

78. In my judgment the statement did not contain an unequivocal promise that those Defendants who had contributed to, and agreed, with its content, would not do what the injunction prevented them from doing and would abide by its terms in the future. Rather the view expressed is that all roads, including those within the strategic network are "a legitimate site for peaceful protest and assembly", what was done in 2021 was "peaceful, legitimate and justified public protest" and "lawful protest" which the order had stifled.

79. As Ms Stacey KC pointed out there had been an offer of acceptance of an undertaking which had not been taken up and fact that not one of the 109 defendants had been arrested "on an injunctive road…whilst...subject to this injunction", simply evidences the effectiveness of the order. It did not mean that if it were lifted there would be no further action on the strategic road network. The statement that those covered by the content are:

> "public spirited people, prepared to take costly, personal action to do what we can to avert or at least to slow imminent climate catastrophe…we accept that we may incur penalties under the criminal law as a result of our actions."

tends to support Ms Stacey KC's submission that views of IB members/supporters have not changed in way, other than as a result of a realisation that it is most unwise to breach an order of the Court as severe sanctions may follow.

80. Ms Bain (Defendant no 57) sent to the court a lengthy e-mail dated 21st April 2023. She stated that she objected

> "to the reasons inferred from defendants not engaging with the injunction legal proceedings. Many other defendants and myself did not engage in proceedings previously as the majority of us can't afford solicitors while also not qualify for legal aid and were concerned that engaging would increase extortionate costs claimed by DLA Piper."

And

> "I object to the reasons inferred not signing the undertaking. DLA Piper is conveniently ignoring the reasons I gave……I said I am not planning to do any civil disobedience road blocking

> protests in the next three years for various personal reasons but are not signing the undertaking is an act of protest against DLA Piper's actions…"

81. Ms Virginia Morris (Defendant 123) sent in a submission on her own behalf and on behalf of her sister; Ms Rebecca Lockyer (Defendant 120). She requested the removal from the injunction;

> "…On the grounds that neither myself nor my sister have protested on or been arrested on any NHL roads or highways."

She suggested that their names had been provided in error by the Police. She annexed an e-mail exchange in which she pointed this out to the Claimant's solicitors. She stated that whilst she had been arrested on 13th October 2021 on A1090, Thurrock (together with her sister) this was not a strategic road. Also Ms Lockyer had not been arrested on M25 on that date. She added:

> "We contend that alleged mere support for IB protests generally clearly does not meet the test in the injunction for police to pass on your details to NHL."

She also set out that

> "we have not broken NHL's various injunctions regarding protests by Insulate Britain and we do not intend to do so."

82. Julia Mercer sent an e-mail to the Court dated 20th April 2023 setting out that she did not in fact break the injunction at the time of taking part in the action by insulate Britain which briefly blocked the approach road junction 14 M25 on 27 September 2021. She stated that the legal action now been taken was totally disproportionate and was imposing blanket injunctions on increasingly large parts of the road network.

Submissions made at the hearing.

83. I explained the central role of the rule of law in society and the independence of the judiciary. Further that, judges must implement the laws enacted by democratically elected parliament and will not be drawn into "political" adjudication. Any personal views which a Judge may hold on political/topical issues must be left at the door of the Court building, and this should be borne in mind by the Defendants when making submissions. I was addressed on this issue and that given the history of the common law I could and should "take a stand".

84. I also explained the procedural position and what an undertaking meant.

85. The point was repeatedly made within the seven oral submissions that the process created by the injunction seemed "never-ending" and that most defendants had not breached the order once they were made aware of it. They felt locked into the process which meant that they would be "back here next year" (with consequential costs incurred) despite the fact that they had not breached the order. There was widespread dismay at the sum of costs claimed (and ordered to be paid) and

misunderstanding/mistrust of the offer made by the claimant solicitors to accept an undertaking.

86. I indicated that I would consider any offer of an undertaking by a defendant given what they had heard at the hearing.

Submissions received after the hearing

87. A letter dated 1st May 2023 was signed by a number of Defendants. It stated:

> We are named defendants on this injunction. Those of us who were present at the Review Hearing, in The High Court on April 24th, Monday, should like to acknowledge the courteous, open and patient manner in which you conducted the hearing. We write in response to your generous invitation, given at the hearing, to advise you under what terms we should be content to enter an undertaking to the court in this matter.
>
> Any undertaking to be offered to named defendants by the claimant or by the court, in order to be considered for approval by the court, should include the following components:
>
> - the scope of prohibitions in the undertaking should not exceed those of The Bennathan/CoA Final Injunction
> - on signing, the particulars of a named defendant would be removed from the Final Injunction
> - on signing, a named defendant's liability to be subject to any costs order in the case would cease.
>
> We respectfully request that any proportion of costs assessed as part of any new Order for costs should not fall disproportionately or unreasonably on any remaining named defendant, whose particulars may, for any reason, remain on the Final Injunction.
>
> We also respectfully request that the court does not make any costs order against any remaining named defendant, for whom there is no evidence that they pose a real, current and continuing threat of breaking the injunction or who has not broken an NHL injunction since the end of October 2021.
>
> We have attached for your information and reference observations on experiences of being an unjustified party to multiple and ongoing claims, submitted by The Government, via NHL, since September 2021.
>
> The Court of Appeal refused to make any costs order in favour of NHL for its appeal costs. Its grounds for refusal were that NHL claimed to be acting in the public interest. We too believe

> that we were acting in the public interest, because The Government had manifestly failed to adequately limit greenhouse gas emissions and excess winter deaths from hypothermia in the home.
>
> The review hearing was an example of a case where moral behaviour and lawful behaviour are engaged but are conflicted. The Final Injunction prohibits unauthorised access on foot to 'the Roads' except in the event of an emergency. Our actions on roads in general *were* in response to a real, present and worsening emergency. Current usage of 'emergency' has expanded to describe 'a loss of our life support systems' and 'an incipient, Sixth Mass Extinction'. We acted out of necessity. An accurate and appropriate meaning of 'imminent', in a case of acting to try to avoid imminent harm, is no longer limited to: seconds, minutes or hours. In the context of our life support systems, imminent means 'within the next few years'. What each of us chooses to do over this steadily shrinking period 'will determine the future of humanity'.
>
> We request that sufficient time may be allowed for the undersigned to make contact with all of the named defendants in order to give them an opportunity to sign an acceptable undertaking. Some named defendants are in prison."

88. The letter was signed by David Crawford, Goivanna Lewis and Diana Warner and stated "there follows a schedule of all of those named defendants with whom contact could be established by April 30th and who have read and support the above letter". The Schedule is at Annexe A to this judgment. It consists of 105 names. Obviously this letter a very significant development.

89. Following the hearing Ms Bain (Defendant no 57) sent in an e-mail dated 28th April in which she set out that;

> "I have no intention to protest on the SRN in future but objected to signing the Claimant's undertaking on multiple grounds. However I am happy to give a personal undertaking to the court promising I will not protest on the roads."

As for the reason why she would not be engaging further in protest activity she explained:

> "(after 12 arrests for climate protests in the last three years) I would struggle to do even conventional, uncontroversial types of campaigning for climate change if I'm in prison, so I will be focusing on other methods of change making now."

90. Ms Marguerite Doubleday (Defendant No 59) sent an e-mail to the Court on 28th April 2023 stating that she was "an ordinary person who is terribly concerned at the situation (climate change)" and that she had already paid costs and fines due to criminal proceedings (and still faced public nuisance trials). She explained;

> "I do not intend to break the injunction but am very concerned at the costs that DLA Piper are seeking."

91. Ms Susan Hagley (Defendant 98) sent an e-mail to the Court on 28th April 2023 stating:

> "I am prepared to give a promise to you that I will not obstruct the strategic road network again. I have not caused obstruction to the strategic road network since 21 September 2021 or since the injunction has been in place. I have been unable to sign DLA Piper's version as I did not understand the consequences of it for me. I have been unable to engage legal advice for this is as I am a state pensioner on a fixed income and do not have the means to do this. I think that DLA Piper have really played fast and loose with us by not offering an undertaking to us within the first few weeks of the injunction. I would have taken it up then if I had any idea of the costs that would be accruing to all of us…"

92. Ms Sarah Hirons (Defendant No 89) stated that she wanted to add an individual response beyond the group letter. She stated that she had fully complied with the injunction to prevent further obstruction of the highway. She stated that she had not been able to fully understand the paperwork which she had received and could not bear the costs of employing legal representation to get a clearer picture or challenge the injunctions so had not made an initial response. As she had fully complied "it is not reasonable and proportionate for me to pay costs"

93. Ms Giovanna Lewis (Defendant 133) sent in an e-mail on 27th April 2023. She stated that DLA Piper had advised her that she had been included as a named defendant due to an arrest on 2 November 2021, however this took place on a pavement (and not a strategic road) and did not proceed to a charge. She stated that it recently came to her attention that the other three people in the group who had been arrested at the same time that had their names removed from the injunction as a result she should not have stayed as a named defendant. She added:

> "The campaign had a beginning, middle and end and is over. It was never going to continue. It has done its job. The insulation industry have told us that our campaign did more for insulation in a few weeks than they have ever deemed able to do in decades. And I see that Labour has pledged to insulate 9 million homes – strikingly different to the government's latest scheme….I confirm that I never broke the injunction, I never intended to and I never would."

94. Mr Sargison (Defendant 39) sent in an e-mail dated 27th April 2023. He stated that he had fully complied with the terms of the injunction would have given an undertaking if he had understood what was being asked. He stopped his actions with insulate Britain as soon as the first injunction paperwork was sent out. He did not understand the process at all and it was unfair to assume that his lack of participation suggested that he was planning to break the injunction. He stated it would not be reasonable or proportionate to now expect him to pay the exorbitant and disproportionate costs of DLA Piper.

95. Mr David Squire (Defendant No 24) sent an e-mail to the Court on 28th April stating that he had pleaded guilty for his "so called criminal activity" and

> "I see no reason to sign a document to say that I will not do (break their injunctions), that which I have already chosen not to do…"

96. Ms Virginia Morris (Defendant 119) sent in a submission. She stated that since attending Court on 24th April, she had been in contact with Defendant Number 126, Mr Ben Horton who had been removed from the NHL injunction by Mr Justice Bennathan at a hearing on 4-5th May 2022 on similar grounds to hers (and by a subsequent order the Judge required the Claimant to pay his costs). She believed this may set a precedent and used his skeleton argument and reference to his case to help structure her submission. She argued;

> "Ms Stacey claimed that this road (the A1090, St Clements Road, Thurrock, which falls under the jurisdiction of Thurrock Council) was approximately 0.9 miles away from the M25 feeder injuncted road (the A1306) where another IB protest occurred on the same day.
>
> Ms Stacey appeared to infer that, due to the close proximity, we presented a very real risk or threat, and were thus rightly named on the NHL injunction.
>
> …….
>
> We contend that Ms Stacey's argument is not supported by the Injunction Order (which contains no reference to proximity) and therefore has no lawful basis for its application.
>
> It is not part of our defence and we say nowhere in our filed defence that we have not participated in an IB protest. Clearly, we have. Our defence does not deny any participation in IB protests. But we do deny having ever protested on any of the Roads (as defined) or any roads owned by NHL including any roads in the SRN.
>
> In summary, we argue that there were no grounds for our names being added to the list of defendants on the NHL injunction in October 2021."

And

> "We only became aware that we might have been incorrectly named on the injunction when I read DLA Piper's skeletal argument for the 16th February 2023 Appeal hearing and saw that some defendants were applying to be removed. We were not aware that this was even an option up to this point.
>
> Ms Stacey's argument during the hearing 24 April 2023, that we could have sent a 'simple email' is not supported. We were totally

> unaware of this option and, even had we been aware, would have been too cautious to do so considering that any information sent to the claimant's solicitor might have been used against us. As noted at (ii) we were advised to take no action, and we followed this advice in good faith.

97. Mr Biff Whipster (Defendant 12) sent in an e-mail stating that he wished to give such a personal undertaking to the Court and that he considered the undertaking which he has already signed, drafted by DLA Piper, was "rather one sided" and "thus (I) much rather await your thoughts on the letter my co-defendants have drafted and sent to you before my earlier undertaking is considered by the courts"

98. A submission was e-mailed in on behalf of:

a) Gwen Harrison (Defendant No 34)
b) Margaret Reid (Defendant No 134)
c) Simon Reding (Defendant No 90)
d) Amy Pritchard (Defendant No 4),

which stated

> "We write in response to your invitation, given at the Review Hearing in the High Court on April 24th, to advise you under what terms we should be content to enter an undertaking to the court in this matter. Any undertaking to be offered to named defendants by the claimant or by the court, in order to be considered for approval by the court, should include the following components:
>
> - the scope of prohibitions in the undertaking should not exceed those of The Bennathan/CoA Final Injunction
>
> - on signing, the particulars of a named defendant would be removed from the Final Injunction
>
> - on signing, a named defendant's liability to be subject to any costs order in the case would cease
>
> We request that any proportion of costs assessed as part of any new Order for costs should not fall disproportionately or unreasonably on any remaining named defendant, whose particulars may, for any reason, remain on the Final Injunction.
>
> We also request that the court does not make any costs order against any remaining named defendant, for whom there is no evidence that they pose a real, current and continuing threat of breaking the injunction or who has not broken an NHL injunction since the end of October 2021."

99. An e-mail was sent in by "Lex - CASP Legal" which stated:

> "I am writing on behalf of two individuals who have been listed as served defendants to be added to the proceedings, namely Marcus Decker and Morgan Trowland.
>
> Both individuals are currently serving custodial sentences for their protest which took place on the Queen Elizabeth II bridge (Dartford Crossing) in October 2022. Subsequently, they are serving sentences of 2 years and 7 months and 3 years, respectively.
>
> On 21 April 2023, both of the named defendants made submissions to HHJ Collery KC that neither of them will take part in disruptive nonviolent protests as a result of their already six month period on remand in HMP Chelmsford. Neither of the individuals have access or legal representation to make submissions to the civil courts regarding the injunction proceedings (which neither of them were aware of by the time the last hearing took place 24 April) within the suggested time restrictions and such are also unable to take part in the signing of any undertaking.
>
> As a result of both defendants submissions at their sentencing hearing, the assumed preventative nature of an injunction is clearly no longer necessary. I hope that both the claimant and the courts can find that is the case and work to remove both defendants from the proceedings, or at least, giving them the opportunity to sign a relevant and reasonable undertaking protecting themselves from costs related to proceedings which they can themselves not be part of."

100. Elizabeth Smail (Defendant No 114) sent in an e-mail stating that there was:

> "sufficient Law in existence to deter me from wanting to obstruct the roads, I do not think it is necessary or fair to add my name to the injunction." and
>
> I do not accept that I should have been included in the injunction, and indeed may not be lawfully included, as my name repeatedly appears in Capital letters.
>
> And
>
> "I have not been invited to have my name removed at an earlier time, when costs were lower."

101. Mrs Rosemary Webster (Defendant No 85) sent in an e-mail which stated she had been involved in IB protests which had resulted in her being before the criminal Courts and that it was her understanding that the injunction(s) were granted on the 21st Sept 21

> "which is four days after I had gone home, with no intention of going back…since then, I have received untold amounts of paperwork and legal letters, all of which I do not understand and all completely unnecessary… I emailed DLA Piper last June, to ask why they had included me in their injunctions. I felt that the answer I received was (intimidating) gobbledegook and as I am not in a financial position to pay for a solicitors assistance, I decided that further engagement with DLA Piper was not going to solve anything."

And

> "Time events have proved that I am not a risk to any injunction. I do not feel I should have to sign anything from NHL/DLA Piper as I feel it is wrong that I was included in the injunction in the first place, which is obviously a politically motivated process, initiated by the then Minister for Transport. I certainly do not feel I should be included in any costs, as they stand now or any potential costs in the future."

102. Anna Heyatawin ((Defendant No 5) sent in an e-mail which stated that she had previously served a prison sentence arising from her participation in the Insulate Britain protests. She asked the Court to allow the Defendants who are in prison to engage in the process and that she be removed from the action as she was willing to sign a personal undertaking.

103. Mr Buse (Defendant No 11) sent in an e-mail which stated:

> "Further to my email to the court on the 24th and please accept my apologies for not attending, I understand dialogue has started regarding an undertaking. I ask the Judge to ensure a reasonable and fair undertaking can be drafted to ending punitive liability to costs. The offences took place late 2021.
>
> The costs to DLA Piper in addition to criminal sentencing has created substantial hardship and seems excessively punitive given my resources and ceasation to represent a threat following the first committal hearing committal resulting in a custodial sentence and purge of contempt, and the important issue affecting millions of people, climate breakdown, at stake.
>
> Any undertaking I would ask not to exceed terms of The Bennathan/CoA Final Injunction; that I would be removed from the injunction and any cost liability would cease.
>
> Insulate Britain direct action campaign was of limited duration running until beginning of COP26, dealing with very important issues, determining the future for thousands of years."

Analysis

104. It is necessary to make some general observations about some of the points made by, and on behalf of, the Defendants about the role of the Court and to expand upon what I said at the hearing in relation to the rule of law.

105. In judgment in relation to the committal application for Louise Lancaster for breach of the order of Bennathan J I stated[5]:

> "13.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."

[5] [2021] EWHC 3080(KB)

106. In assessing the balance between competing rights in protest cases, it is not for the Court to choose between different political causes. In **City of London Corporation v Samede** [2012] PTSR 1624 Lord Neuberger, M.R., stated as follows:

> "As the judge recognised, the answer to the question which he identified at the start of his judgment [the limits to the right of lawful assembly and protest on the highway] is inevitably fact sensitive and will normally depend on a number of factors. In our view, those factors include (but are not limited to) the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public……The Convention rights in play are neither strengthened nor weakened by a subjective response to the aims of the protest itself or by the level of support it seems to command…..the court cannot, indeed, must not, attempt to adjudicate on the merits of the protest. To do that would go against the very spirit of articles 10 and 11 of the Convention . . . the right to protest is the right to protest right or wrong, misguidedly or obviously correctly, for morally dubious aims or for aims that are wholly virtuous…..Having said that, we accept that it can be appropriate to take into account the general character of the views whose expression the Convention is being invoked to protect. For instance, political and economic views are at the top end of the scale, and pornography and vapid tittle-tattle is towards the bottom."

107. I recognise that the Defendants passionately believe that there is a climate crisis and the that the Government is failing to adequately address it. However the Government in this country is democratically elected to govern, Judges are not. It is the role of the courts to be independent and impartial and apply the laws as enacted.

108. Turning to the merits of the Claimant's application in my judgment it would be wrong, approaching a year after the order was, to treat the Defendants as a homogeneous group. The case for the continuation of an injunction again each named Defendant requires individual analysis.

109. I start with Virginia Morris, Rebecca Lockyer and Giovanna Lewis. Each stated that they had not been arrested after a protest on a strategic road. Ms Morris and Ms Lockyer stated that they were arrested on a non-strategic road and Ms Lewis whilst demonstrating on a pavement.

110. As regards Ms Morris' actions the facts do not seem to be in dispute. She was not arrested after a demonstration on a strategic road but on a road approximately 0.9 miles away from the M25 feeder injuncted road (the A1306) where another IB protest occurred on the same day. In my judgment the details of her arrest should not have been provided to the Claimant and she should not have been a named Defendant. I will not

continue the injunction against her or order that she is subject to either the costs liability to be borne by the 109 Defendants or the costs of the review hearing.

111. The position in relation to Ms Lockyer and Ms Morris is less straightforward. They have made assertions (not in statements accompanied by a statement of truth) which have not been expressly accepted as correct by the Claimant. If the assertions are correct it seems that they also should not have been added as named Defendants. I will not continue the injunction against either or order that they are subject to either the costs liability to be borne by the 109 Defendants or the costs of the review hearing, but make this subject to the right of the Claimant to set out within a short statement why it is said that they were properly named as Defendants. If such a statement is filed I will allow Ms Lockyer and Ms Morris to respond with a statement verified by a statement of truth and then consider how to determine the matter.

112. I turn to the submissions made by/on behalf of the other named Defendants. It necessary to separate out the Defendant's arguments about whether there should be liability for costs and the necessity in the past for obtaining an order and consider the matters set out in the context of future risk. As a generality the submissions made orally, and in writing, by those who have not breached the order (since becoming aware of it) explained that taking a principled stance had led to consequences which they did foresee. As is readily apparent there was widespread mistrust of and/or a failure to consider, the offer of an undertaking made by the Claimant's solicitors, but a greater willingness to engage directly with the Court. Nothing that has been said to me so far has led me to be believe that promises offered to the Court not to breach the terms of the injunction in the future (provided the terms were not expanded in some way) are likely will be breached. I recognise (and take into account) that Ms Stacey KC has not had the opportunity to consider/respond to the submissions lodged after the hearing, but as she indicated the acceptance of an undertaking is ultimately a matter for the Court.

113. When assessing the extent of future risks posed by Defendants during the consideration or whether to grant an extension of an existing order (and/or as part of the Courts supervisory function as envisaged by the Master of the Rolls in **Barking**) the Court should offer the opportunity to Defendants to provide a suitable undertaking; after explaining what such a step means. As I indicated in Court an undertaking is a formal promise to the Court and if breached then potentially leads to the same penalties as if an order were broken; a person may be held in contempt and may be imprisoned, fined or have their assets seized. It is a serious step not to be taken lightly or without careful consideration. However if such an undertaking is accepted in circumstances such as the present by the Court then a person may be released from being a Defendant going forwards.

114. However, the Court accepting an undertaking is not part of a settlement or compromise of the claim (or any part of it). Settlements/compromises are agreements reached between the parties and a Court cannot force parties to agree. Rather it is a step that regulates the position going forwards. So in the present case if the Court were to accept an undertaking from a Defendant (something which would be recorded within the order itself) then it may order that the injunction is not continued against that Defendant but that would not affect the existing rights/liabilities of the parties given the history of the case to date e.g. any liability for costs. It also leaves open any issues as to how the costs of the review hearing should be dealt with.

115. Turning to the period of the undertaking, the offer made by the Claimant to the named Defendants (by letter dated 15th March 2023) was to accept an "unretractable and unconditional" signed undertaking with a duration of three years. In my judgment given the time that has elapsed since the order was made an undertaking for two years would be sufficient.

116. Given the matters set out above and the indication by the large majority of the Defendants that they are willing to provide an undertaking if any named defendant signs an undertaking (promise) in the terms set out below (and not as varied), then, subject to something happening in the interim to change my view, I will not order that the injunction continue against them as a named Defendant. That means any costs liability going forward will cease and they will not be "back next year".

117. It is necessary for each Defendant who wishes to give and undertaking to sign and file a copy. The undertaking which is at annexe B to the order to make matters easier is as follows:

> "I promise to the Court that for a period of two years (up to 10th May 2025) I will not engage in the following conduct
>
> (a) Blocking or endangering, or preventing the free flow of traffic on the roads (as specified and defined at paragraph 4 of the order of Mr Justice Bennathan made on 12th May 2002) for the purposes of protesting by any means including their presence on the roads, or affixing themselves to the roads or any object or person, abandoning any object, erecting any structure on the roads or otherwise causing, assisting, facilitating or encouraging any of those matters
>
> (b) causing damage to the surface of or to any apparatus on or around the roads including by painting, damaged by fire, or affixing any structure thereto
>
> (c) Entering on foot those parts of the roads which are not authorised for access on foot other than in cases of emergency.
>
> I understand what is covered by that the promises which I have given and also that that if I break any of my promises to the court I may be fined, my assets may be seized or I may be sent to prison for contempt of court
>
> Signed …….
>
> Date……..."

118. I will give the named Defendants the opportunity to provide an undertaking by extending the current order against them but allowing a period of just over two weeks (to 4.00pm on 22nd May 2023) for the provision of undertakings at the end of which I shall amend the order to remove those who have signed an undertaking from the list of named Defendants.

119. Several Defendants expressed annoyance or dismay that they were not offered the opportunity to give an undertaking at an earlier stage. Also, as set out above, most Defendants feel that a costs order against them would be unjust. These matters highlight the importance in a case such as this of engagement/communication with the Claimant and the Court which may enable an understanding of a person's view about the order which is being sought against them (including whether they would agree not to repeat any relevant conduct). Some Defendants expressed gratitude to the Court for matters being explained to them and also the opportunity to address the court on relevant matters. However this is what can be expected of any Judge. The Judiciary is an independent constitutional body and strives at all time to be fair to all who are involved in litigation. The keystone in the procedural code for all civil Courts (the "CPR") is the "overriding objective" (CPR1) which is the requirement to deal with deal all cases justly and at proportionate cost which includes, so far as is practicable, ensuring that the parties are on an equal footing and can participate fully in proceedings. The duty on the Court to further this objective includes actively managing cases by (amongst other things)

    (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;

    (b) identifying the issues at an early stage;

    (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

    (d) helping the parties to settle the whole or part of the case;

    (e) dealing with the case without the parties needing to attend at court;

    However it is very difficult to do any of these things if one party will not engage at all. A Judge will take into account that a person does have legal representation and will explain matters accordingly (although no Judge can give legal advice to any party). In nearly 40 years of working in the civil courts I cannot remember an example of a party's position being improved by ignoring proceedings and/or not engaging with the Court. This case is a paradigm. The failure to respond to the Claimant when served with proceedings, or at subsequent stages, or to file any documents with the court (such as a defence or evidence), or to appear at Court hearings has clearly not benefitted any of the Defendants at all. Many could have been spared stress and expense by engaging with the process, daunting though it may seem. As I shall set out Mr Justice Bennathan stated (in the context of the Claimant's application for costs) if a defendant chooses not to provide any submissions to the court they cannot not properly complain at a later stage that their voices were not heard.

120. I now turn to the position of those Defendants wo are not prepared to give an undertaking (or engage with the Claimant or the Court) and also to persons unknown.

121. Having carefully considered the history of all relevant matters to date (as set out above), including the public statements of intent as recently made, the evidence of Mr Martell[6]

[6] See paragraph 68 above

and the analysis of Mr Justice Cavanagh[7] I accept Ms Stacey KC's analysis that many individuals previously associated with/members of IB and now aligned with the JSO coalition of groups/causes still pose a real and imminent risk of serious harm through disruption of the strategic road network. Put simply "they have not gone away"; rather they are as committed to their cause as ever. The success of the order in halting protests on the strategic road network underlines the importance of continuing the protection whilst the likelihood of protest action remains and does not mean that the underlying threat were no restraint to be in place has diminished. Refusal to give an undertaking gives an insight as to future intention.

122. I repeat and endorse the analysis of Mr Justice Bennathan (and in so far as it differs the analysis of the Court of Appeal) set out above[8] as regards the necessary balancing exercise of the rights of the Claimant and of protestors ; named and unknown.

123. In my judgment the injunction should be extend against those unprepared to give an undertaking for a year with a review in the month before it expires.

Amendments to the Schedule

124. The Claimant wishes to remove as named Defendants, 11 people who have already signed an undertaking and one who has sadly died. An agreement has been reached with the Defendants who signed an undertaking as to costs of the review hearing. Obviously these amendments should be permitted and the agreements reached are very welcome.

125. The Claimant also wants to add six Defendants. These Defendants will have no liability for the costs incurred in respect of the hearings before Bennathan J but will have a liability for the costs of the review hearing. These defendants are stated to have engaged in direct action protest on the strategic road network since the order of May 2022 was made. The statement of Laura Higson explains that these proposed Defendants are the two individuals who took part in the Queen Elizabeth II bridge protest on 17th and 18th October 2022 and four individuals who took part in the July 2022 gantry protests. I allow these defendants to be added.

Alternative service

126. The Claimant seeks to amend the service provisions set out within the order of Mr Justice Bennathan in respect of both the First Defendant ("Persons Unknown") and the named Defendants.

127. I have not received any submissions or representations in relation to service by or on behalf of any defendant or interested person, save for a plea to the Court to consider the position of those in custody.

128. Bennathan J held

> "50. Service on the named Defendants poses no difficulty but warning persons unknown of the order is far harder. In the first

[7] See paragraphs 66-67 above
[8] See paragraphs 40-41above

> instance judgment in **Barking and Dagenham v People Unknown** [2021] EWHC 1201 (QB) Nicklin J [at 45-48, passages that were not the subject of criticism in the later appeal] stated that the Court should not grant an injunction against people unknown unless and until there was a satisfactory method of ensuring those who might breach its terms would be made aware of the order's existence.
>
> 51. In other cases, it has been possible to create a viable alternative method of service by posting notices at regular intervals around the area that is the subject of the injunctions; this has been done, for example, in injunctions granted recently by the Court in protests against oil companies. That solution, however, is completely impracticable when dealing with a vast road network. Ms Stacey QC suggested an enhanced list of websites and email addresses associated with IB and other groups with overlapping aims, and that the solution could also be that protestors accused of contempt of court for breaching the injunction could raise their ignorance of its terms as a defence. I do not find either solution adequate. There is no way of knowing that groups of people deciding to join a protest in many months' time would necessarily be familiar with any particular website. Nor would it be right to permit people completely unaware of an injunction to be caught up with the stress, cost and worry of being accused of contempt of court before they would get to the stage of proceedings where they could try to prove their innocence.
>
> 52. In the absence of any practical and effective method to warn future participants about the existence of the injunction, I adopt the formula used by Lavender J that those who had not been served would not be bound by the terms of the injunction and the fact the order had been sent to the IB website did not constitute service. The effect of this will be that anyone arrested can be served and, thus, will risk imprisonment if they thereafter breach the terms of the injunction."

129. The Claimant did not appeal this aspect of the order or ask the Court of Appeal to adopt a different approach as regards service of its order (this despite the fact that all the difficulties relied upon now in support of the application to vary the service provisions were known to the Claimant at the time of the hearing on 16th February 2023 before the Court of Appeal). So the Court of Appeal order was served in a manner which the Claimant believed to be unsuitable yet the issue was not raised and the Court was not addressed on the matter. This is surprising and, given the tension between the approaches of Mr Justice Bennathan and Judges in other claims with the same or similar issues, was unfortunate. It would have provided the opportunity for appellate guidance.

130. On the 28th February 2023, in light of difficulties set out by Ms Higson in her witness statement in relation of service, the Claimant made an application for permission to serve the structures injunction and documents in those proceedings by alternative service upon the 65 named defendants on account of the difficulties in serving 25 of the

named defendants. Mr Justice Fraser granted an alternative service order in respect of the structures injunction on the 1st March 2023.

131. Ms Stacey KC argued that the approach of Mr Justice Bennathan (and the Court of Appeal as regards its order) was at odds with the approach taken by Mr Justice Knowles in **HS2 -v- Persons Unknown** [2022] EWHC 2360**.** Issues in relation to service had troubled me at an earlier hearing in the same case. Mr Justice Knowles received detailed submissions considered the matter in detail in a comprehensive and most helpful judgment. For ease of reference (given the number of people who may read this Judgment) I will set out a lengthy extract from his judgment:

> "143…..It is a fundamental principle of justice that a person cannot be subject to the court's jurisdiction without having notice of the proceedings: *Cameron v Liverpool Victoria Insurance Co Ltd [2019] 1 WLR 1471, [14]*.
>
> 144. The essential requirement for any form of alternative service is that the mode of service should be such as could reasonably be expected to bring the proceedings to the attention of the defendant: *Cameron* , [21], and *Cuciurean v Secretary of State for Transport and High Speed Two (HS2) Limited [2021] EWCA Civ 357, [14]* – [15], [25] – 26], [60] and [70]; *Canada Goose* , [82]. Posting on social media and attaching copies at nearby premises would have a greater likelihood of bringing notice of the proceedings to the attention of defendants: *Canada Goose*, [50]:
>
> > "50. Furthermore, it would have been open to Canada Goose at any time since the commencement of the proceedings to obtain an order for alternative service which would have a greater likelihood of bringing notice of the proceedings to the attention of protestors at the shop premises, such as by posting the order, the claim form and the particulars of claim on social media coverage to reach a wide audience of potential protestors and by attaching or otherwise exhibiting copies of the order and of the claim form at or nearby those premises. There is no reason why the court's power to dispense with service of the claim in exceptional circumstances should be used to overcome that failure."
>
> 145. There is a difference between service of proceedings, and service of an injunction order. A person unknown is a newcomer, and is served and made a party to proceedings, when they violate an order of which they have knowledge; it is not necessary for them to be personally served with it: *Barking and Dagenham,* [84]-[85], [91], approving *South Cambridgeshire District Council v Gammell [2005] EWCA Civ 1429, [34]……*
>
> 146. Service provisions must deal with the question of notice to an unknown and fluctuating body of potential defendants. There

may be cases where the service provisions in an order have been complied with, but the person subject to the order can show that the service provisions have operated unjustly against him or her. In such a case, service might be challengeable: *Cuciurean v Secretary of State for Transport [2021] EWCA Civ 357, [60]*.

And

"218. Finally, I turn to the question of service and whether the service provisions in the injunction are sufficient.

219. The passages from [82] of *Canada Goose* I quoted earlier show that the method of alternative service against persons unknown must be such as can reasonably be expected to bring the proceedings (ie, the application) to their attention.

….

221. The injunction at [7]-[11] provides under the heading 'Service by Alternative Method – This Order'

> "7. The Court will provide sealed copies of this Order to the Claimant's solicitors for service (whose details are set out below).
>
> 8. Pursuant to CPR r.6.27 and r.81.4:
>
> a. The Claimant shall serve this Order upon the Cash's Pit Defendants by affixing 6 copies of this Order in prominent positions on the perimeter of the Cash's Pit Land.
>
> b. Further, the Claimant shall serve this Order upon the Second, Third and Fourth Defendants by:
>
> 1. Affixing 6 copies in prominent positions …
>
> 2. Advertising the existence of this Order in the Times and Guardian newspapers, and in particular advertising the web address of the HS2 Proceedings website, and direct link to this Order.
>
> 3. Where permission is granted by the relevant authority, by placing an advertisement and/or a hard copy of the Order within 14 libraries approximately every 10 miles along the route of the HS2 Scheme. In the alternative, if permission is not granted, the Claimants shall use reasonable endeavours to place

advertisements on local parish council notice boards in the same approximate locations.

4. Publishing social media posts on the HS2 twitter and Facebook platforms advertising the existence of this Order and providing a link to the HS2 Proceedings website.

c. Service of this Order on Named Defendants may be effected by personal service where practicable and/or posting a copy of this Order through the letterbox of each Named Defendant (or leaving in a separate mailbox), with a notice drawing the recipient's attention to the fact the package contains a court order. If the premises do not have a letterbox, or mailbox, a package containing this Order may be affixed to or left at the front door or other prominent feature marked with a notice drawing the recipient's attention to the fact that the package contains a court order and should be read urgently. The notices shall be given in prominent lettering in the form set out in Annex B. It is open to any Defendant to contact the Claimants to identify an alternative place for service and, if they do so, it is not necessary for a notice or packages to be affixed to or left at the front door or other prominent feature.

d. The Claimants shall further advertise the existence of this Order in a prominent location on the HS2 Proceedings website, together with a link to download an electronic copy of this Order.

e. The Claimants shall email a copy of this Order to solicitors for D6 and any other party who has as at the date hereof provided an email address to the Claimants to the email address: HS2Injunction@governmentlegal.gov.uk

9. Service in accordance with paragraph 8 above shall:

a. be verified by certificates of service to be filed with Court;

b. be deemed effective as at the date of the certificates of service; and

c. be good and sufficient service of this Order on the Defendants and each of them and the need for personal service be dispensed with.

> 10. Although not expressed as a mandatory obligation due to the transient nature of the task, the Claimants will seek to maintain copies of this Order on areas of HS2 Land in proximity to potential Defendants, such as on the gates of construction compounds or areas of the HS2 Land known to be targeted by objectors to the HS2 Scheme.
>
> 11. Further, without prejudice to paragraph 9, while this Order is in force, the Claimants shall take all reasonably practicable steps to effect personal service of the Order upon any Defendant of whom they become aware is, or has been on, the HS2 Land without consent and shall verify any such service with further certificates of service (where possible if persons unknown can be identified) to be filed with Court."

222. Further evidence about service is contained in Dilcock 3, [7], et seq, and Dilcock 4, [7] et seq. I can summarise this as follows.

223. Before I made my order, Ms Dilcock explained that the methods of service used by the Claimants as at that date had been based on those which had been endorsed and approved by the High Court in other cases where injunctions were sought in similar terms to those in this application. She said the methods of service to that date had been effective in publicising the application.

224. She said that there had been 1,371 views (at 24 April 2022) of the Website: Dilcock 3 **,** [11]; By 17 May 2022 (a week or so before the main hearing, and after my directions had come into effect) there had been 2,315 page views, of which 1,469 were from unique users: Dilcock 4 **,** [17]. So, in round terms, there were an additional 1,000 views after the directions hearing.

225. Twitter accounts have shared information about the injunction application and/or the fundraiser to their followers. The number of followers of those accounts is 265, 268: Dilcock 3, [16].

226. A non-exhaustive review of Facebook shows that information about the injunction and/or the link to a fundraiser has been posted and shared extensively across pages with thousands of followers and public groups with thousands of followers. Membership of the groups on Facebook to which the information has been shared amounts to 564,028: Dilcock 3, [17].

227. Dilcock 4, [7] – [17], sets out how the Claimants complied with the additional service requirements pursuant to my

> directions of 28 April 2022. Those measures are not reliant on either notice via website or social media. The Claimants say that they complement and add to the very wide broadcasting of the fact of the proceedings.
>
> 228. The Claimants submitted that the totality of notice, publication and broadcasting had been very extensive and effective in relation to the application. They submitted that service of an order by the same means would be similarly effective, and that is what the First Claimant proposes to do should an injunction be granted.
>
> 229. I agree. The extensive and inventive methods of proposed service in the injunction, in my judgment, satisfy the *Canada Goose* test, [82(1)], that I set out earlier. That this is the test for the service an order, as well as proceedings, is clear from Cuciurean v Secretary of State for Transport [2021] EWCA Civ 357, *[14]* -[15], [24]-[26], [60], [75]."

132. In **TfL -v-Lee** [2023] EWHC 402 (judgment delivered on 24th February) Mr Justice Cavanagh stated:

> "31. I am satisfied that the claimant has made out grounds for the continuation of alternative service under CPR r6.15 and r6.27 of all documents in this Claim, including the sealed interim injunction order as extended, thereby also dispensing with personal service for the purposes of CPR r81.4(2)(c)-(d). I will therefore permit alternative service in the terms of the draft TfL Interim JSO Injunction Order.
>
> 32. The reasons for alternative service are set out in paragraph 19 of Mr Ameen's witness statement. Similar orders have been made in other cases of a like nature. Alternative service is necessary for the relief to be effective. Moreover, as Mr Ameen points out, the Defendants already have a great deal of constructive knowledge that the TfL Interim JSO Injunction may well be extended: the extent and disruptive nature of the JSO protests since March 2022 (and the Insulate Britain protests which began in September 2021); the multiple civil and committal proceedings brought in response to those protests by National Highways Limited, TfL, local authorities and energy companies and the frequent service of documents on defendants within those proceedings including multiple interim injunctions; the extensive media and social media coverage of the protests, their impact, and of the legal proceedings brought in response; the large extent to which, in order to organise protests and support each other, JSO protesters are in communication with each other both horizontally between members and vertically by JSO through statements, videos etc. shared through its website and social media. These are not activities that single individuals undertake of their own volition. In my judgment, in the perhaps

> unusual circumstances of this case, it is very unlikely, perhaps vanishingly unlikely, that anyone who is minded to take part in the JSO protests on JSO roads in London is unaware that injunctive relief has been granted by the courts. An order for alternative service has already been made in identical terms in this litigation, by Freedman J. For these reasons, I do not consider that it is necessary to adopt the step adopted by Bennathan J in the **NHL v Persons Unknown** case of directing that those who had not been served would not be bound by the terms of the injunction and the fact the order had been sent to the relevant organisation's website did not constitute service. However, Mr Fraser-Urquhart KC has said that in practice the claimant adopts and will continue the practice of not commencing committal proceedings against a person unknown unless that person has previously been arrested and has been served with the order.

133. Ms Stacey KC relied on the content of a note (which she said could be verified with a statement of truth if necessary) in relation to media coverage. As set out above in November 2022 JSO activist targeted gantries on the M25 and as a result of issues with service which had been highlighted by the protest undertaken by the bridges protestors, the Claimant made an urgent application for a further interim injunction. An order was granted by Mr Justice Chamberlain on 5th November 2022 ; the structures injunction or "Gantries injunction". The order provided for alternative service of the claim form and injunction order as against persons unknown. By the return date 65 defendants had been identified and the order was amended by Mr Justice Soole on 28th November 2022 to require personal service on those named Defendants. After the publishing of the order of Soole J, the National Highways Facebook Page (which has 60,000 followers) had 6,208 impressions excluding private accounts (so most protestor accounts would not register in this data). The webpage publicised in the injunction has had 2,753 unique views.

134. NHL media monitoring suggests that articles discussing "National Highways" and "injunction to deter protestors on the M25" were mentioned in 1,590 articles in the short period between 6th–12th November 2022 alone with a total reach of over 31 billion. Search terms "M25" and "injunction" between the 5th–30th November 2022 returned 2,549 articles (2,217 online) with a reach of 48 billion. An NHL press release was covered widely within the daily media and on television channels

135. In my judgment, given what has occurred since early September 2021; including statements made by IB/the JSO coalition[9], the media and social media coverage in relation to making of the orders in relation to protests on the road network and subsequent committals, there is very widespread knowledge that an injunction against protesting on strategic roads, and especially the M25, is in force. This provides what Cavanagh J referred to as constrictive knowledge. I also respectfully agree with his analysis in relation to the large extent to which, in order to organise protests and support each other, protesters within the JSO coalition are in communication with each other both horizontally between members and vertically through its website and social media. It is my view to echo his phrase that "it is very unlikely, perhaps vanishingly unlikely",

[9] See paragraph 12 above

that anyone who is minded to take part in a protests on the strategic roads network is unaware that injunctive relief has been granted by the courts. When considering service provisions it is necessary consider all relevant circumstances including how relevant information has been disseminated and not to make the perfect the enemy of the good. It will always remain open to a person on any proceedings in relation to breach of the order to present evidence that they were unaware of the existence of an order.

136. Accordingly I do not consider it necessary or appropriate at this stage to continue with the approach adopted in the order of Mr Justice Bennathan (and continued with the order of the Court of Appeal) as it is my view that there now are "practical and effective methods to warn future participants about the existence of the injunction" given the level of constructive knowledge.

137. I also have the benefit of evidence as to how the service provisions in the orders made to date have operated in practice. Alternative service will prevent what is referred to by Ms Stacey KC as "a free pass" to breach the order without sanction notwithstanding knowledge of the existence of an injunction.

138. Ms Stacey correctly conceded that an application for prospective alterative against named defendants faces a high bar. The procedural position is that in order to dispense with personal service and to make an order for service by alternative method the Court requires good reason. CPR 6.15 provides:

> "(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place."

139. However I accept that the statement of Mr Higson (paragraphs 3-16) has set out sufficiently good reasons. As Ms Higson observes:

> "The Claimant has suffered acute difficulties in effecting personal service of any documents pertinent to the proceedings."

When effecting service of the order of Mr Justice Bennathan it was only possible for the Claimant to serve personally only 49 of the 132 Named Defendants and 40 of the 65 named defendants identified in the Order of Mr Justice Soole despite, in some cases seven separate attendances being made at addresses.

140. In my judgment the comprehensive proposed variations set out in the draft order can reasonably be expected to bring the existence of the order to the attention of any named defendant and any other interested person who may be considering a form of protest prohibited by its terms. My only concern is in relation to those in custody. I amend the draft order proposed by the Claimant to add the wording contained in the order of Mr Justice Fraser at paragraph 10 as suitably amended.

Costs

141. The Claimant seeks to vary/extend the costs order made by Mr Justice Bennathan made on 16th January 2023 so that it applies to the 109 Defendants as well as the 24 Defendants against whom it was made.

142. The claimant sought costs in the sum of £727,573.84 in respect of the three sets of claims leading up to and including the hearing in May 2022.

143. Within his reasons for his order of 16th January 2023 Bennathan J stated:

> "I have not received any submissions from the 133 named defendants but as they have consistently taken no part, and expressed no interest, in this litigation that is neither unexpected nor any basis for me to refuse an order, they are entitled to take no part but then cannot complain about the voices being heard on this application"

144. He stated that the claimant had proposed a reduced total of £600,000 in light of the dismissal of the summary judgment application against the other 109 Defendants and the "persons unknown aspect", but he considered that inadequate and arrived at a figure of £580,000 which he divided amongst the 133 named Defendants arriving at a figure of £4360 per Defendant. He ordered that the 24 defendants who had been subject to an order for summary judgement were to pay the claimant's costs on the standard basis but not exceeding £4,360 for each Defendant to be assessed if not agreed. Further that each of the 24 defendants was to pay £3000 "costs on account". In respect of the other 109 Defendants he ordered that costs were "in the case". This order ordinarily means that the party which is eventually successful will be entitled to recover the costs.

145. The Court of Appeal set aside the part of Bennathan J order of May 2022 which treated the 24 defendants as in a separate category to the 109. Ordinarily where a costs order follows on from a substantive order which is the subject of a successful appeal, an appellate court will consider whether it is necessary to set the costs order aside (as the Court below is likely to have made the order having regard to the effect of the incorrect substantive order). I presume that submissions to this effect were made to the court (I do not have a transcript). However the court ordered:

> "There will be no variation of the costs order dated 16 January 2023 of Bennathan J and no order as to the costs of the appeal."

146. Within paragraphs in the order headed "reasons" it is stated:

> "The court sees no reason to vary the costs order made by the judge. It will be for the High Court at any review hearing to determine what if any costs order to make in the case."

147. Ms Stacey KC submitted that the final words "in the case" is a reference to the order made by Bennathan J that the costs of the 109 would be "costs in the case". However, given that the Court of Appeal had made a final order against the 109 it is perhaps surprising that an order was also not made setting aside the consequential costs provision which gave them separate consideration. This would have resulting in an award of costs against all named Defendants, not to exceed £4360 per Defendant, which is the order which the Claimant now seeks. The claimant does not seek to set aside 20% deduction which the judge applied to reflect the (incorrect) failure of the applications against the 109 (and the claims against persons unknown). It is in effect a windfall reduction (not that any of the Defendants are likely to view it as such).

148. Mr Crawford, who attended at the appeal hearing submitted (in a document filed after the hearing entitled "Observations on being a named Defendant");

> "The CoA refused to issue any costs order against any named defendant. It refused to make a costs order in respect of NHL's claimed appeal costs (of ~ £120,000), as NHL claimed to be acting solely in the public interest. Given The Court of Appeal's ruling on costs in the case, The High Court is bound also to consider any extent to which there are any reasonable grounds for awarding NHL any of its claimed, considerable costs in the case against any of the currently 133 named defendants."

149. My judgment Mr Crawford is not right when he states that the Court of Appeal refused to issue any costs order against any named defendant. Rather Ms Stacey KC is correct in her analysis. The Court did not set aside the order in relation to the 24 defendants because it clearly intended that the High Court at a review hearing would deal with what order to make against the 109 defendants given what had occurred "in the case".

150. Given that I am not an appeal court from Bennathan J I have no jurisdiction to vary his determination in relation to costs in respect of the 24 defendants. Even if I did have jurisdiction there has been no material change in circumstances concerning the merits of the order made. As I have already observed it is very regrettable that the Defendants did not engage with either the claimant or the Court.

151. In respect of the 109 Defendants I fully appreciate that the sums involved are very large indeed and that many Defendants are of limited means. However it is in my view unarguable that if Bennathan J had approached the summary judgment application in respect of these claims as the Court of Appeal held that he should have done, he would have made a final order and the same cost provisions as he made in respect of the group of 24 defendants in respect of which the application was successful (save that he would have ordered a larger sum as the 20% deduction would not have been applicable). His decision was clear as to the principle of costs (i.e. who should pay them) and followed the guidance in CPR 44.2

> **44.2**
> (1) The court has discretion as to –
> (a) whether costs are payable by one party to another;
> (b) the amount of those costs; and
> (c) when they are to be paid.
>
> (2) If the court decides to make an order about costs –
> (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
> (b) the court may make a different order (underlining added).

The Claimant had been a successful party having obtained interim and then final injunctions.

152. I have carefully considered submissions made by the Defendants in relation to the costs order sought. However the order of Bennathan J has not been the subject of appeal on behalf of the defendants and I must respect its reasoning and conclusions. It was his view that the Defendants "could not complain" given that they had not engaged with the Court or the Claimant. In my judgment it would be wrong in principle not to order

that the 109 Defendants pay the costs of action up to and including the hearings before Bennathan J.

153. Where I do think that matters have changed is in respect of the amount of the interim payment as to costs. I have had submissions from, and on behalf of, the Defendants, which were not made to Bennathan J. CPR 44.2 (8) sets out that;

> "(8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

154. In a document submitted after the hearing Mr Crawford stated

> "The current costs application made by NHL is excessive. In the case of North Warwickshire Borough Council v Persons Unknown, in relation to protests at Kingsbury Oil Terminal, a similar number of defendants and duration of protests were involved. However, solicitors' fee-rates quoted in the case are a fraction of those claimed in NHL's DLA Piper-led case.
>
> At the Review Hearing on 24th April 2023, eight attendees for the claimant were noted. It appeared that just two of these took any active role in the proceedings. It is perplexing to try to understand to what extent such an apparently large number of attendees for NHL, with their likely, associated travel and other costs, could be reasonably claimed against the named defendants.
>
> If a costs order is to be made, then NHL's statement of costs should first be scrutinized for accuracy and reasonableness. On what grounds can charging thousands of pounds, simply for sending emails and letters, be justified? On what grounds does it require four people, charged for at a rate of £349 - £230 per hour, to do basic administrative work?
>
> How efficiently and effectively have NHL's costs been contained? Several named defendants elected to receive correspondence and documents electronically but also received duplicated bundles via post.
>
> On what grounds can a claimed charge of over £1,000 for assembling a statement of costs be justified?"

155. At first blush these are perfectly respectable arguments which may find favour on assessment. Other Defendants also challenge the amount of costs claimed. Taking all matters into account I order a payment on account of £1,500 in respect of the costs up to and including the hearings before Bennathan J.

Costs of the review hearing

156. Ms Stacey KC submitted that if an extension of the order is granted (which it has been) the costs of the review hearing should also "follow the event" i.e. the Claimant should receive its costs of (and caused by) the hearing as it had been the successful party. There had been a reasonable offer made to accept an undertaking and the Defendants who had done so were not the subject of a costs application in respect of the hearing (i.e. in addition to the costs order set out above). Those who had not accepted the offer and had come to court should pay the Claimant's costs. A schedule was submitted in the sum of £75,891.84.

157. It is correct to say that the Claimant has obtained an extension of the injunction against all those who are not prepared to sign an undertaking. Further that undertakings have only been offered by some Defendants at or after the hearing.

158. I have carefully considered the objections to an order for cost raised by the Defendants but I cannot see how they would alter the starting point mandated by the rules (that the successful party should pay the unsuccessful party's costs). Many of the objections are to the amount of the claim for costs, and these matters can be raised in the assessment. As a result I order that the relevant Defendants pay the Claimant's costs of the review hearing.

159. I originally intended to summarily assess costs. However given:

(a) the large sum of costs at stake,
(b) issues of proportionality;
(c) the submissions made by Mr Crawford which apply to the entire conduct of the claim (and also the need for the Claimant to have an opportunity to respond to them in detail);
(d) The need to ensure that costs referrable to the conduct of proceedings against those in respect of whom a costs order is not sought (because they signed an undertaking) are not passed onto the remaining Defendants;

I order that the costs be the subject of detailed assessment (if not agreed).

Police duty to disclose information

160. Some of the submissions made by the Defendants have raised the issue surrounding the disclosure of details of arrests to the Claimant (including the three Defendants who say that their details were wrongly provided[10]). If applied prospectively the terms of the existing order affects as yet unidentifiable people who have not yet been arrested and documents not yet in existence. Obviously people who have not yet decided to protest/attend a protest cannot object to the terms of the order.

161. Anthony Nwanodi, a lawyer with conduct of this matter on behalf of the Claimant made statement on 30th September 2021in support of an application (pursuant to CPR 31.17) for an order that a number of Chief Constables disclose the names and address of "protestors removed from the M25 and additionally "all material relevant to the

[10] See also the filmmaker and those protesting on a pavement referred to at paragraph 38 above

enforcement of the injunction order made by Mr Justice Lavender on 21st September". He stated that the application was "made at the request of the police" and

> "Stephen Bramley CBE is the director of legal services of the Metropolitan police. In this case he has worked through NPoCC to coordinate the approach being taken to the court's interim injunctions by the police. In particular, he has been liaising with the claimant as to the correct approach to be taken to providing information to the claimant so as to allowing (sic) the claimant's representatives to serve the injunctions of protesters, and to evidence breaches of the injunctions."

> "While some of these names have now been provided by some of the forces, Mr Bramley remains concerned as the scope of information that can be shared with national highways and it is not been possible therefore to obtain all the information as to identities held by the police."

162. It appears that the Police had some reservations about supplying the information/personal data requested. I do not know the extent to which the issue was the subject of argument before Bennathan J. It was not challenged before the Court of Appeal and does not appear to have been the subject of any argument before or consideration by the Court.

163. This aspect of the order (which has been sought in other cases) has recently caused concern amongst some High Court Judges given the nature and extent of the obligation imposed on third party in respect of future confidential information/ data concerning people who have been arrested, but not necessarily charged with any offence (and the fact that a person who is arrested is not afforded the right to challenge the provision of the information to the Claimant before it is provided). As far as I am aware, although raised in court in at least one case, the issue has not been the subject of any detailed consideration by any Judge. Given the general supervisory duty of the Court in respect of orders[11], I am not prepared to continue this aspect of the order in the longer term without understanding the basis upon which it is said the Court has, and should use, any power to make such an order and I invite further written submissions on the issue on behalf of the Claimant if this continuation of this part of the order is pursued. As the named Defendants have all been arrested and their information provided they are likely to have little interest in the issue and I see no reason for them to be individually served with the material (and accordingly there should be no costs consequences for them).

Conclusion

164. I formally make the order in the terms now circulated. As I indicated in Court in order to ensure total transparency and equality of arms (and contrary to normal practice) neither this Judgment nor the terms of the order have been circulated to any party in advance of the hand down to enable them to suggest corrections (obvious mistakes, spelling mistakes, grammar etc). Also this Judgment has had to be prepared within a very short time frame (which also included two other complex one day hearings). As a result I have included a liberty to apply provision out of an abundance of caution. This

[11] See Barking and Dagenham LBC-v-Persons Unknown [2022] 2 WLR 946

must not be used to re-argue matters which were covered at the hearing and addressed within this judgment.

165. I invite the Claimant to take all reasonable steps to make this judgment available to as many people as possible.

Annexe A

2	Alexander RODGER
5	Ana HEYATAWIN
7	Anne TAYLOR
8	Anthony WHITEHOUSE
9	Barry Mitchell
11	Benjamin BUSE
12	Biff WHIPSTER
13	Cameron FORD
15	Catherine EASTBURN
17	Christian ROWE
18	Cordelia ROWLATT
19	Daniel Lee Charles SARGISON
20	Daniel SHAW
21	David CRAWFORD
22	David JONES
24	David SQUIRE
25	Diana Elizabeth BLIGH
26	Diana HEKT
27	Diana Lewen WARNER
30	Elizabeth ROSSER
31	Emma Joanne SMART
32	Gabriella DITTON
33	Gregory FREY
35	Harry BARLOW
37	Ian Duncan WEBB
38	James BRADBURY
39	James Malcolm Scott SARGISON
40	James THOMAS
41	Janet BROWN

42	Janine EAGLING
43	Jerrard Mark LATIMER
44	Jessica CAUSBY
45	Jonathan Mark COLEMAN
48	Judith BRUCE
49	Julia MERCER
50	Julia SCHOFIELD
54	Louis MCKECHNIE
55	Louise Charlotte LANCASTER
56	Lucy CRAWFORD
57	Mair BAIN
58	Margaret MALOWSKA
59	Marguerite DOUBLEDAY
60	Maria LEE
61	Martin John NEWELL
62	Mary ADAMS
63	Matthew LUNNON
65	Meredith WILLIAMS
66	Michael BROWN
67	Michael Anthony WILEY
68	Michelle CHARLSWORTH
70	Nathaniel SQUIRE
71	Nicholas COOPER
72	Nicholas ONLEY
73	Nicholas TILL
75	Paul COOPER
77	Peter BLENCOWE
78	Peter MORGAN
79	Philippa CLARKE
80	Priyadaka CONWAY
81	Richard RAMSDEN
82	Rob STUART

83	Robin Andrew COLLETT
84	Roman Andrzej PALUCH-MACHNIK
85	Rosemary WEBSTER
86	Rowan TILLY
87	Ruth Ann COOK
88	Ruth JARMAN
89	Sarah HIRONS
91	Stefania MOROSI
93	Stephen Charles GOWER
94	Stephen PRITCHARD
95	Susan CHAMBERS
96	Sue PARFITT
97	Sue SPENCERLONGHURST
98	Susan HAGLEY
99	Suzie WEBB
101	Theresa NORTON
102	Tim SPEERS
103	Tim William HEWES
104	Tracey MALLAGHAN
106	Venitia CARTER
107	Victoria Anne LINDSELL
109	Bethany MOGIE
110	Indigo RUMBELOW
112	Ben NEWMAN
113	Christopher PARISH
114	Elizabeth SMAIL
116	Rebecca LOCKYER
117	Simon MILNER EDWARDS
118	Stephen BRETT
119	Virginia MORRIS

120	Andria EFTHIMIOUS-MORDAUNT
122	Darcy MITCHELL
123	David MANN
124	Ellie LITTEN
125	Julie MECOLI
126	Kai BARTLETT
127	Sophie FRANKLIN
129	Nicholas BENTLEY
130	Nicola STICKELLS
131	Mary LIGHT
132	David McKENNY
133	Giovanna LEWIS
134	Margaret REID

Annexe B

"I promise to the Court that for a period of two years I will not engage in the following conduct

(a) Blocking or endangering, or preventing the free flow of traffic on the roads (as specified and defined at paragraph 4 of the order of Mr Justice Bennathan made on 12th May 2022) for the purposes of protesting by any means including their presence on the roads, or affixing themselves to the roads or any object or person, abandoning any object, erecting any structure on the roads or otherwise causing, assisting, facilitating or encouraging any of those matters
(b) causing damage to the surface of or to any apparatus on or around the roads including by painting, damaged by fire, or affixing any structures thereto
(c) Entering on foot those parts of the roads which are not authorised for access on foot other than in cases of emergency.

I understand what is covered by that the promises which I have given and also that if I break any of my promises to the court I may be fined, my assets may be seized or I may be sent to prison for contempt of court

Signed …….

Dated ……..."