

**B E T W E E N :**

**TELEDYNE UK LIMITED**

**Claimant**

**-and-**

- (1) JULIAN ALLEN GAO**
- (2) RUBY HAMILL**
- (3) DANIEL JONES**
- (4) NAJAM SHAH**
- (5) RICKY SOUTHALL**
- (6) AMAREEN AFZAL**
- (7) SERENA FENTON**

**(8) PERSONS UNKNOWN WHO ARE WITHOUT THE CONSENT OF THE CLAIMANT ENTERING OR REMAINING ON LAND AND IN OR ON BUILDINGS ON ANY OF THE SITES LISTED IN SCHEDULE 2 TO THE CLAIM FORM, THOSE BEING:**

- A. THE 'SHIPLEY SITE' (TELEDYNE UK LIMITED, AIREDALE HOUSE, ACORN PARK, SHIPLEY BD17 7SW);**
- B. THE 'LINCOLN SITE' (TELEDYNE UK LIMITED, 168 SADLER ROAD, LINCOLN LN6 3RS);**
- C. THE 'WIRRAL SITE' (TELEDYNE UK LIMITED, UNIT A, 6 TEBAY ROAD, BROMBOROUGH, BIRKENHEAD, WIRRAL CH62 3PA);**
- D. THE 'CHELMSFORD SITE' (TELEDYNE UK LIMITED, 106 WATERHOUSE LANE, CHELMSFORD CM1 2QU);**
- E. THE 'PRESTEIGNE SITE' (TELEDYNE UK LIMITED, BROADAXE BUSINESS PARK, PRESTEIGNE LD8 2UH); AND**
- F. THE 'NEWBURY SITE' (TELEDYNE UK LIMITED, REYNOLDS NAVIGATION HOUSE, CANAL VIEW ROAD, NEWBURY RG14 5UR).**

**(9) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING THE 'SHIPLEY SITE' (TELEDYNE UK LIMITED, AIREDALE HOUSE, ACORN PARK, SHIPLEY BD17 7SW) FROM THE HIGHWAY**

**(10) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING THE HIGHWAY FROM THE 'SHIPLEY SITE' (TELEDYNE UK LIMITED, AIREDALE HOUSE, ACORN PARK, SHIPLEY BD17 7SW)**

**(11) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE CAUSING THE BLOCKING, SLOWING DOWN, OBSTRUCTING OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON**

**TO, OFF OR ALONG THE ROADS LISTED AT SCHEDULE 3 TO THE  
CLAIM FORM**

**Defendants**

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**CLAIMANT'S SKELETON ARGUMENT**  
*for the Interim Application hearing*

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References to the Application Bundle are in the format **[page number]**

Suggested pre-reading:

- Witness statement of Nicholas James Wargent dated 13 December 2024 **[39-73]**
- Witness statement of Manan Singh dated 13 December 2024 **[314-334]**
- Draft Order **[22-38]**

**INTRODUCTION**

1. The Claimant seeks injunctive relief against seven Named Defendants and four defined categories of Persons Unknown to restrain apprehended acts of unlawful direct-action protest.
2. Specifically, the Claimant seeks injunctive relief to:
  - i. restrain acts of trespass at six of its sites (Shipleigh, Lincoln, Wirral, Chelmsford, Presteigne and Newbury). Three of these sites (Shipleigh, Lincoln and Chelmsford) hold Facility Security Clearance by reason of the Claimant holding contracts with the UK Ministry of Defence, which requires the Claimant to safeguard assets classified 'SECRET' or above on its premises;
  - ii. restrain interferences with its common law right to access the highway from the Shipleigh Site;
  - iii. restrain acts of public nuisance (obstruction of the highway) in relation to the adopted highway serving the Shipleigh Site (that road being known as 'Acorn Park').

3. The Claimant holds the freehold title to the Shipley, Lincoln and Chelmsford Sites, and the leasehold title to the Wirral, Presteigne and Newbury Sites.
4. The Named Defendants are all persons who have been arrested at one of the Claimant's sites throughout 2024 in connection with alleged acts of unlawful protest (see the witness statement of Nicholas James Wargent at paras 121-142 [65-67]).
5. The Claim and Application are also brought against four defined categories of newcomer Persons Unknown, which categories have been defined to capture the relevant causes of action and conduct that the Claimant seeks to prohibit. It is necessary to seek relief against newcomer Persons Unknown as it is not possible to identify and name all those persons who may attend the Claimant's sites and commit the unlawful acts apprehended.

### **Order sought**

6. This Application is made on short notice to the Named Defendants (for which, see below). Interim relief is sought until a return date hearing on 24 January 2025, with a time estimate of 1 day (to include 1.5 hours judicial pre-reading).
7. Ordinarily, a return date may not have been needed in relation to Persons Unknown. However, in the circumstances of this Application, it is suggested that the relief against Persons Unknown should, in the first instance, be granted until the return date, at which the Claimant will then seek a five-year order with an annual review.

### **NOTICE OF THIS APPLICATION**

8. This Application is made on short (informal) notice to the Named Defendants for the reasons set out in paragraph 11 of the witness statement of Manan Singh [318-319]. In summary, the Claimant apprehends that giving notice of the Application may accelerate the harm apprehended, causing that harm to be suffered prior to the securing of injunctive relief, and therefore undermining the Application. Further, the apprehended harm cannot be adequately remedied by an award of damages (with that harm including significant property damage, operational losses to the Claimant's business, impacts on national security and the risk of physical injury to both protestors and others).

9. The Claimant accepts that whilst it has given short informal notice of the Application to the Named Defendants, the Application should be treated (for the purposes of the obligations incumbent on the Claimant) as a without notice application.
10. The Court may grant interim injunctive relief on a without notice application if there are good reasons for not giving notice (**CPR 25.3(1)**).
11. Pursuant to the **Human Rights Act 1998, s12(2)** where the Convention right to freedom of expression is engaged:

*If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied –*

*(a) that the applicant has taken all practicable steps to notify the respondent; or*

*(b) that there are compelling reasons why the respondent should not be notified.*

12. It is submitted that the reasons offered by Mr Singh meet the threshold of ‘good’ (**CPR 25.3(1)**) and ‘compelling’ (**s12(2)(b)**) reasons.
13. In any event, it is submitted that, in the context of the claim in trespass, the Named Defendants’ Article 10 freedom of expression rights are not engaged, as Article 10 rights do not include a right to trespass on private land (see paragraphs 21 and 22 below). The same was recently held by Julian Knowles J in *London City Airport Limited & Anr v Persons Unknown* [2024] EWHC 2557 (KB) (*‘London City Airport Limited’*) at [8]. If Article 10 is not engaged, s12(2) is also not engaged (as per **s12(1)**).
14. As against newcomer Persons Unknown, the relief is technically always sought on a without notice basis: *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* [2024] 2 WLR 45 (*‘Wolverhampton’*) at [139], [142] and [143(ii)]. That said, there remains an obligation to take all reasonable steps to draw the Application to the attention of Persons Unknown (*Wolverhampton* at [167(ii)] and [226-229]).

15. In the circumstances of this Application, it submitted that the obligation to take all reasonable steps to give advance notification of the Application to Persons Unknown should be dispensed with, for the same reasons as set out above in the context of **CPR 25.3(1)** and **s12(2)(b)**.<sup>1</sup>

## **BACKGROUND**

16. The Claimant produces specialised components and subsystems for innovative solutions in medical, science, aerospace, defence and industrial applications. The Claimant, across its UK sites, mainly manufactures products for commercial use in a wide range of industrial markets, including defence and aerospace. The manufactured components and subsystems are incorporated by the Claimant's customers into their own products. Some products have military end-uses, and are manufactured for use by the UK Ministry of Defence, NATO member states and other allied nations. Some products are exported under licence to Israel.

17. By reason of its business, the Claimant has become a target for direct-action protest, especially by activists protesting at the conflict in the Middle East. In particular, and as explained in detail throughout the witness statement of Mr Wargent, the group known as 'Palestine Action' is an especially active direct-action protest group; the group encourages, incites and publicises unlawful acts of protest including (but not limited to) acts of (aggravated) trespass and criminal damage (see the 'Underground Manual published by the group at [202-215]). The Claimant has already suffered such acts committed by activists associated with the Palestine Action group (Wargent paras 67-119 [55-65]). Other groups (notably 'Bradford Friends of Palestine') have also undertaken acts of unlawful protest at the Claimant's sites; specifically, Mr Wargent's witness statement explains how activists associated with this group have, in recent months, started obstructing the entrance at, and preventing access to, the Shipley Site.

18. Injunctive relief, including on an interim basis, is being sought now as there has been an increased frequency of incidents of unlawful protest at the Claimant's sites throughout

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<sup>1</sup> For the avoidance of doubt, it is submitted that s12(2)(b) does not itself apply to the Application as against Persons Unknown, there being no 'respondent' to the Application: *Wolverhampton* [140-143]. Further, s12 only applies where Article 10 rights are engaged. It is submitted that (at least in the context of the claim in trespass), the Defendants' Article 10 rights are not engaged.

2024, with a notable increase in recent months. The Claimant has suffered unsustainable loss and harm as a result of those protests. Further, the Claimant apprehends further acts of protest throughout the Christmas holiday period when, typically, protestors will not be at work and will have more free time at their disposal; there also appears to be a correlation between holiday periods and incidents at the Claimant's sites, with unlawful acts of protest having occurred on Boxing Day 2023, around the Easter holiday of 2024 and during the October 2024 half-term.

## **CAUSES OF ACTION**

### **Trespass**

19. Trespass to land is the interference with possession or the right to possession, and includes instances in which a person intrudes upon the land of another without legal justification. The key and well-established features of trespass are:

- i. it is a strict liability tort, such that the defendant need not know that they are committing a trespass to be liable for the same; and
- ii. the tort is actionable per se, such that the claimant does not have to prove damage to establish liability for the tort.

20. A person does not commit a trespass where they enter onto the land of another pursuant to a licence, whether express or implied. However, where a person enters onto land pursuant to a licence, and proceeds to act in a way that exceeds the scope of that licence, or remains on the land after the expiration of the licence, a trespass is committed (*Hillen v ICI (Alkali) Ltd* [1936] AC 65 at 69 per Lord Atkin).

21. There is no balancing of the Claimant's rights as landowner and the Defendants' Convention rights Under Articles 10 and 11; Articles 10 and 11 do not include a right to trespass when exercising those rights: *Boyd v Ineos Upstream Ltd* [2019] 4 WLR 100 at [36]-[37] per Longmore LJ and *HS2 Ltd v Persons Unknown* [2022] EWHC 2360 (KB) at [81] per Julian Knowles J.

22. Further, trespass is a blatant and significant interference with the Claimant's rights under Article 1 of the First Protocol. The exercising of rights under Articles 10 and 11 cannot normally justify a trespass *Cuciurean v The Secretary of State for Transport and High Speed Two (HS2) Limited* [2021] EWCA Civ 357 at [9(1)] to [9(2)], per Warby LJ.

### **Common law right to access the highway**

23. The relevant elements of this cause of action have recently been summarised by Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) in *Arla Foods Limited & Anr v Persons Unknown & Ors* [2024] EWHC 1952 (Ch) ('*Arla*') at [88]-[93].

24. The owner of land adjoining the highway has a right of access to the highway from any part of his premises. The rights of the public to pass along the highway are subject to that right of access, just as the right of access is subject to the general rights of the public (*Marshall v Blackpool Corp* [1935] AC 16 at 22 per Lord Atkin).

25. The right to access the highway is also summarised at **paragraph 19-178** of *Clerk & Lindsell 24ed*. In that summary, it is noted that an interference with the right is actionable per se, and if an interference is such as to cause loss to business, damages can be obtained. Morgan J in *Ineos Upstream Ltd & Ors v Persons Unknown & Ors* [2017] EWHC 2945 (Ch) ('*Ineos*') acknowledged the existence of a private landowner's right to access the highway from his adjoining land as distinct from the right of the landowner to use the highway as a member of the public (see [42], [101], [107], [150]).

26. The Deputy Judge in *Arla* considered *Ineos* at [107] in light of *Marshall v Blackpool Corp* at 22, and found that a reasonable use of the highway by members of the public will not constitute an unlawful interference with a landowner's right to access the highway (see [91]).

### **Public nuisance (obstruction of the highway)**

27. The law in relation to the obstruction of the highway in the context of protestor injunctions has been recently reconsidered and summarised by the Deputy Judge in *Arla* at [75] to [87]

and Julian Knowles J in *Thurrock Council & Anr v Persons Unknown* [2024] EWHC 2576 (KB) (*Thurrock Council*) at [52] to [83].

28. It is well-established law that some obstructions of the highway will amount to a public nuisance. The cause of action was considered by Morgan J in *Ineos* at [42]-[46] and [64]-[65]. The parties in *Ineos* assumed that the same basic principles applied to both the tort and the criminal offence of obstructing the highway. To that end, at [65], Morgan J set out that, for there to be an offence under the **Highways Act 1980, s137** it must be shown that:

- i. *there is an obstruction of the highway which is more than de minimis; occupation of part of a road, thus interfering with people having the use of the whole road, is an obstruction...;*
- ii. *the obstruction must be wilful, i.e., deliberate;*
- iii. *the obstruction must be without lawful authority or excuse; 'without lawful excuse' may be the same thing as 'unreasonably' or it may be that it must in addition be shown that the obstruction is unreasonable.*

29. The question of whether assembly on the highway was lawful was considered by the House of Lords in *DPP v Jones* [1999] 2 AC 240 (*Jones*). At pp245G-255A, Lord Irvine said:

*The question to which this appeal gives rise is whether the law today should recognise that the public highway is a public place, on which all manner of reasonable activities may go on. For the reasons I have set out below in my judgment it should. Provided these activities are reasonable, do not involve the commission of a public or private nuisance, and do not amount to an obstruction of the highway unreasonably impeding the primary right of the public to pass and repass, they should not constitute a trespass. Subject to these qualifications, therefore, there would be a right to peaceful assembly on the public highway.*

30. At p257D, Lord Irvine concluded:

*I conclude therefore the law to be that the public highway is a public place which the public may enjoy for any reasonable purpose, provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right of the public to pass and repass: within these qualifications there is a public right of peaceful assembly on the highway.*

31. Accordingly, the law in relation to obstruction of the highway can now be summarised as follows (as per Julian Knowles J in *Thurrock Council* at [64]):



- (a) *There is a right to peaceful assembly on the highway, but it must be remembered that the highway is more than just the carriageway. The assembly on the highway in Jones, was concerned with the grass verge;*
- (b) *That right does not extend so far as to allow the committing of a public nuisance;*
- (c) *While the right to use the highway comprises activities such as assembly on the highway, such activities are subsidiary to the use for passage, and they must be not only usual and reasonable but consistent with the primary use of the highway to pass and repass, if a person is deliberately interfering with the primary use to pass and repass, they are obstructing the highway;*
- (d) *That public nuisance may arise by the unreasonable obstruction of the highway, such as unreasonably impeding the primary right of the public to pass and repass;*
- (e) *Whether an obstruction of the highway is unreasonable is a question of fact, but will generally require that the obstruction is more than de minimis, and must be wilful.*

32. Two Supreme Court decisions are especially relevant when obstruction of the highway is being considered: *DPP v Zielger & Ors* [2021] UKSC 23; [2022] AC 408 (*‘Ziegler’*) and *Reference by the Attorney General for Northern Ireland-Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32; [2023] 2 WLR 33 (*‘Abortion Services’*).

33. For context, in *Ziegler*, the protestors were opposed to the arms trade. They held a protest at the Defence and Security International arms fair at the Excel Centre in London by laying down on one side of, and ‘locking-on’ to, an approach road leading to the Excel Centre for approximately 90 minutes before they were removed by police officers. The Order directing convictions against the defendant protestors (under the **Highways Act 1980, s137**) were set aside, and the dismissal of the charges was restored.

34. In *Ziegler*, the Supreme Court was required to consider whether deliberately obstructive conduct was capable of constituting a lawful excuse for the purposes of s137(1). The relevant paragraphs of the judgment are [62]-[87], which makes it plain that any interference with a protestor’s Article 10 and 11 rights must be proportionate. It is apparent from [27]-[29] of Lord Reed’s Judgment *Abortion Services* that *Ziegler* may have been taken out of context, and may have been misunderstood to have weakened the protection for the primary rights of highway users.

35. The correct approach to the inter-relationship between *Ziegler* and *Abortion Services* is set out by the Deputy Judge at [82]-[86] of *Arla*, as approved at [79]-[80] of *Thurrock Council* by Julian Knowles J. Specifically, the proportionality requirements of *Ziegler* should be applied ([85] of *Arla*), but in relation to the injunction sought against Persons Unknown it is impossible to apply those requirements to any specific individual, and a proportionality test should instead be applied to the prohibitions sought with future protests in mind ([86] of *Arla*).

36. Accordingly, the Court in this Application must ask the five *Ziegler* questions (see [16] and [58]), those being:

- i. Is what the defendant did in exercise of one of the rights in Articles 10 or 11?
- ii. If so, is there an interference by a public authority with that right?
- iii. If there is an interference, is it ‘prescribed by law’?
- iv. If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Article 10 or 11, for example the protection of rights of others?
- v. If so, is the interference ‘necessary in a democratic society’ to achieve that legitimate aim?

37. That fifth question in turn requires the consideration of four sub-questions to assess whether the interference is proportionate (see [16] of *Ziegler*):

- i. Is the aim sufficiently important to justify interference with a fundamental right?
- ii. Is there a rational connection between the means chosen and the aim in view?
- iii. Are there less restrictive means available to achieve that aim?
- iv. Is there a fair balance between the rights of the individual and the general interests of the community, including the rights of others?

38. Further, their Lordships in *Zeigler* (at [72]) adopted the non-exhaustive list of factors set out by Lord Neuberger MR in *City of London Corporation v Samede* [2012] EWCA Civ 160; [2012] PTSR 1624 (*Samede*) at [39]-[41] that should be considered when evaluating proportionality. Paraphrasing that content, those factors are:

- i. the extent to which the continuation of the protest would breach domestic law;
- ii. the importance of the precise location to the protestors;
- iii. the duration of the protest;
- iv. the degree to which the protestors occupy the land;
- v. 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;
- vi. whether the views giving rise to the protest relate to ‘very important issues’ and whether they are ‘views which many would see as being of considerable breadth, depth and relevance’; and
- vii. whether the protestors ‘believed in the views that they were expressing’.

### **Submissions on proportionality**

39. The Court is respectfully reminded that injunctive relief to restrain obstruction of the highway is sought, at this time, in relation to the Shipley Site only (the relevant road being ‘Acorn Park’, as marked in purple on the map at Annexe 1 to the Draft Injunction Order). It is submitted that the that limited geographical scope itself speaks to the proportionality of the order being sought.

40. Prohibitions relating to obstruction of the highway are sought because:

- i. if the prohibitions relating to the common law right to access the highway are granted, it is possible (and it is submitted, likely) that the protests would be moved just a few meters away from the gate to the Shipley Site and onto the highway, such that the injunction prohibitions were not breached, but that such that access to the Site was still obstructed;
- ii. obstruction of the highway is a well-known and well-practised tactic of direct-action protest, including by Palestine Action (see for example two of the incidents cited by Mr Wargent at paragraph 51 of his witness statement [51], and also para 46 of Mr Singh’s witness statement [328]).

41. It is submitted that the first four *Ziegler* questions are clearly answered in the affirmative, such that it is the fifth question (and therefore the four sub-questions and the *Samede* factors) with which the Court should be concerned.

42. In light of the evidence given by Mr Wargent in particular, it is submitted that the prohibitions sought are proportionate, and strike a fair balance between the rights of the Claimant to pass and repass on the highway and the Article 10 and 11 rights of the Defendants. Specifically:

- i. The Claimant would accept a submission on behalf of the Defendants that they hold their views sincerely, and that the views relate to important issues. However, the prohibitions sought do not prevent the protestors engaging in lawful protest to make their views known. For example, the Defendants are not prevented from standing on the pavement outside the Shipley Site with banners and placards and making noise; relatedly
- ii. The Claimant would accept a submission on behalf of the Defendants that the location of the protest is important to the Defendants (given the motivating cause of their protest). However, the Defendants are not being excluded from the outside of the Shipley Site; they are simply prohibited from obstructing the carriageway of the road;
- iii. Acorn Park is a dead-end road which is accessed by turning off the A6038, the single point of access to the Shipley Site is off Acorn Park, and the road is also the only point of access to several neighbouring business (some of which receive frequent HGV deliveries) (Wargent paras 27-29 [47]). Obstruction to Acorn Park will affect not only the Claimant, but also those neighbouring businesses, and significant disruption could see traffic back-up to (and disruption being caused on) a significant A-road;
- iv. Acts of obstruction that have already occurred outside the Shipley Site have not been de minimis (and have been increasing in frequency throughout recent months). On 30 October 2024, access to the Site was obstructed for five hours (Wargent WS para 108 [63]), on 20 November 2024, access to the Site was obstructed for 2 hours

(Wargent WS para 113 [64]) and on 28 November 2024, access to the Site was obstructed for approximately 3 hours (Wargent WS para 116 [64]). During the course of these blockades, approximately 100 staff are unable to access the Site and conduct the Claimant's day-to-day business, factory deliveries and collections are missed and, depending on shipping schedules, up to £90,000 of revenue can be put at risk (Wargent WS para 108 [63]);

- v. The obstruction of the highway prohibitions are limited in that they are expressly tied to acts of protest (as is the definition of the relevant category of Persons Unknown) that occur for the purpose of disrupting vehicular access to the Shipley Site (see paras 2(iv) and 2(v) of the Draft Injunction Order [25-26]).

43. Further, the Court is respectfully asked to keep in mind that obstruction to access at the Shipley Site, which is one of the Claimant's sites that holds Facility Security Clearance, and which therefore services UK MOD contracts, affects productivity and business operations at the Site. Disruption to business operations at the Site can place serving personnel at increased risk of shortages and equipment failure (Wargent WS para 21 [45-46] and para 133(iii) [71]).

44. Finally, it is clear that the Defendants can protest in such a way that would be meaningful and not captured by the prohibitions in the Draft Injunction order. Mr Wargent exhibits to his witness statement a spreadsheet that details all of the protests that have occurred at the Claimant's sites since December 2022 [217-219]. That spreadsheet shows that there have been protests outside the Shipley Site that have been lawful (and which the Claimant has not relied upon when seeking relief), which the Claimant does not seek to prohibit.

### **RELEVANT LEGAL TESTS FOR THE GRANT OF INJUNCTIVE RELIEF**

45. Injunctive relief may be granted wherever the court considers it 'just and convenient' to do so (**Senior Courts Act 1981, s37**).

46. Following *Wolverhampton*, the test to be applied when considering whether to grant injunctive relief differs between the Named Defendants and Persons Unknown.

## **Named Defendants**

47. The *American Cyanamid* test should be applied, namely:

- i. Is there a serious question to be tried; if yes
- ii. Would damages be an adequate remedy for a party injured by the court's grant of, or its failure to grant, an injunction; and
- iii. If not, where does the balance of convenience lie?

48. A Defendant might argue that the correct test to apply is in fact that found in the **Human Rights Act 1998, s12(3)**:

*No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.*

49. It is however submitted that **s12(3)** does not apply to this Application as:

- i. as per **s12(1)**, s12 is only engaged when the relief might affect the exercise of the respondents' Article 10 rights. For the reasons set out in this skeleton argument (as approved by Julian Knowles J in *London City Airport Limited*), Article 10, and therefore s12, are not engaged in relation to the claim in trespass; and
- ii. the Claimant does not seek to restrain publication (even in its widest definition). Where injunctive relief applies restrictions on where a defendant may express themselves, as opposed to what the defendant may say, *American Cyanamid* and not s12(3) applies: *Shell UK Oil Products Limited v Persons Unknown* [2022] EWHC 1215 (QB) at [66]-[76] per Johnson J and *Thurrock Council & Anr v Adams & Ors* [2022] EWHC 1324 (QB) at [83] per HHJ Simon sitting as a Judge of the High Court.

50. The Claimant seeks precautionary relief (although the relief is not 'pure' precautionary relief, as the apprehended wrongs and resulting harms have already been suffered). Accordingly, the Court should have regard to the test set out by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 ('*Vastint*'), as approved by Vos MR in

***London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] EWCA Civ 13; [2023] QB 295** at [83] (and applied by the Deputy Judge in *Arla* at [94]). At [31] of *Vastint*, Marcus Smith J set out that the following two questions must be answered in the affirmative for injunctive relief to be granted:

- i. First, is there a strong possibility that, unless restrained by an injunction, the defendant will act in breach of the claimant's rights?; and
- ii. Secondly, if the defendant did act in contravention of the claimant's rights, would the resulting harm be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of the actual infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate.

51. Marcus Smith J, still at [31], proceeded to then set out multiple factors relevant to the assessment of each of those questions:

- i. In relation to the first question: if the infringement is purely anticipatory, what steps has the claimant taken to ensure that the infringement does not occur; the attitude of the defendants; where infringements have already been committed, it may be that the defendant's intentions are less significant than the natural and probable consequences of his or her act; the time frame between the application for relief and the threatened infringement may be relevant (the courts often use the language of imminence, meaning that the remedy sought must not be premature);
- ii. In relation to question two: how easily can the harm of the infringement be undone by ex post rather than ex ante intervention; the gravity of the anticipated harm.

### **Persons Unknown**

52. Following *Wolverhampton*, the Claim and Application against Persons Unknown is to be treated differently to the Claim and Application against the Named Defendants. The overarching consideration post-*Wolverhampton* is that the Claimant must show a 'compelling need' for the order sought (*Wolverhampton* at [167(i)] and [188]).

53. The requirements and guidance from *Wolverhampton* (which was a case concerning so-called ‘Traveller Injunctions’) have been interpreted and distilled in several protestor injunction cases throughout 2024, most notably by Ritchie J in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB) (*‘Valero’*) who, at [58], sets out a series of substantive and procedural requirements that must be met for the grant of newcomer Persons Unknown injunction (albeit in the context of an application for summary judgment), and also by Sir Anthony Mann in *Jockey Club Racecourses Ltd v Kidby & Others* [2024] EWHC 1786 (Ch) (*‘Jockey Club’*) who, at [18], sets out a series of 14 questions that must be considered when the grant of a newcomer Persons Unknown injunction is sought.

54. In effect, the substance of the law and the matters that must be considered are now well-settled, even if presented differently between *Valero* and *Jockey Club*. For the purposes of this skeleton argument, the structure of the [58] *Valero* requirements will be adopted for the purposes of submissions.

55. In summary, the *Valero* substantive requirements are:

- i. there must be a cause of action;
- ii. there must be full and frank disclosure by the claimant;
- iii. there must be sufficient evidence to prove the claim (although this requirement appears to be crafted with the summary judgment application in mind);
- iv. there must be no realistic defence;
- v. there must be a compelling justification for the remedy sought, and the court must take into account any balancing exercised that may be required if Article 10 and 11 rights are engaged;
- vi. damages must not be an adequate remedy.

56. In summary, the *Valero* procedural requirements are:

- i. Persons Unknown must be clearly and plainly identified by reference to the tortious conduct to be prohibited, and clearly defined geographical boundaries (if possible);



- ii. the prohibitions in the injunction must be set out in clear words and avoid legal terminology. Further, if any lawful conduct is sought to be prohibited, that must be made clear, and the Court must be satisfied that there is no other more proportionate way of protecting the claimant's rights;
- iii. the prohibitions must match the torts claimed;
- iv. the prohibitions must be defined by clear geographic boundaries (if possible);
- v. the injunction should be temporally limited to that which is reasonably necessary to protect the claimant's rights;
- vi. the proceedings and any order made must be served by alternative means (referred to as 'notification' and not service in *Wolverhampton*). The court should have regard to the Human Rights Act 1998 s12(2);
- vii. there must be a right to set aside or vary any order made;
- viii. provision should be made for the review of the injunction in the future.

## **APPLICATION OF THE LEGAL TESTS**

### **Named Defendants**

57. For context, the First to Fourth Named Defendants were arrested in relation to the protest at the Shipley Site on 2 April 2024, which was an aggravated trespass incident. The damage caused by the Defendants during this incident caused the Claimant to incur loss in the sum of £571,000 by way of repair and clean-up costs. Production at the Site was interrupted for five days, causing a loss of revenue in excess of £300,000 (Wargent paras 67-91 [**59-60**]). The Fifth to Seventh Named Defendants were arrested in relation to the protest at the Shipley Site on 15 May 2024, which was also an aggravated trespass incident. The damage caused by the Defendants during this incident caused the Claimant to incur loss in the sum of £68,000 by way of repair and clean-up costs. Production at the Site was interrupted for one day, causing a loss of revenue in excess of £60,000 (Wargent paras 92-96 [**60**]).

58. As to the first limb of *American Cyanamid*, it is submitted that there is a serious issue to be tried. It is submitted that the evidence of Mr Wargent and Mr Singh is such that the Claim is neither frivolous or vexatious, and that a strong (and not merely prima facie) case is made in relation to the causes of action (Singh paras 25-27 [**322-323**]).

59. The Claimant's submissions on the second limb of the *American Cyanamid* test are considered at paragraphs 28 to 34 of Mr Singh's witness statement. It is submitted that damages would not be an adequate remedy for the Claimant should injunctive relief be refused.

60. In particular, the losses apprehended by the Claimant are so significant that it is unlikely that the Named Defendants could satisfy an award of damages that is adequate to compensate for those losses. By way of example:

- i. to date, the Claimant has suffered cumulative loss in the sum of £2.25 million by reason of property damage caused by trespassing protestors at the Claimant's sites. Those costs are expected to increase, as the Wirral Site continues to undergo repairs (Wargent WS para 133(i) [71]; Singh WS para 30(i) [323]);
- ii. the Claimant has suffered significant loss of revenue by reason of the disruption to its day-to day-business as a result of incidents of protest (with many incidents forcing the closure of the relevant site both during the incident, and whilst repairs are undertaken) (Wargent para 133(ii) [71]; Singh para 30(ii) [323]). For example, the incident at the Prestegine Site in December 2022 meant that the business was unable to complete and ship US\$ 1 million of sales in December 2022, with approximately £266,000 of further loss incurred because of the disruption caused by the incident (Wargent paras 77-76 [57]). The incident at the Shipley Site on 2 April 2024 caused loss in excess of £300,000 by reason of interrupted production at the Site (Wargent para 90 [59]). The incident at the Shipley Site on 15 May 2024 caused loss in excess of £60,000 by reason of interrupted production at the Site (Wargent para 95 [60]). The incident at the Wirral site on 5 July 2024 caused loss in the sum of approximately £6,400 by reason of interrupted production at the Site (Wargent para 101 [61]). The incident at the Wirral Site on 2 October 2024 caused loss in the sum of approximately £14,000 by reason of interrupted production at the Site (Wargent para 106 [62]). Blockades at the Shipley Site can, depending on shipping schedules, place up to £90,000 of revenue at risk (Wargent para 108 [63]);

- iii. The Claimant has spent an additional c.US\$ 2.7 million on enhanced security at its Sites in the 2024 financial year because of the protests (Wargent para 136 [72]; Singh para 30(iii) [324]).

61. Further, significant harms may (and are likely) to be suffered that no award of damages could ever compensate. For example:

- i. Three of the Claimant's sites hold Facility Security Clearance, as assets are held on site that are classified as SECRET or above. The accessing of those assets by unauthorised persons cannot be adequately compensated for by way of damages (Singh para 30(v) [324]); relatedly
- ii. The Claimant's sites, and specifically the three with Facility Security Clearance, form a critical part of the UK defence supply chain. Disruption to production at those sites can weaken the UK's ability to protect its security and can place serving personnel at risk of shortages and equipment failure (Wargent para 21 [46] and 133(ii) [71]; Singh para 30(iv) [324]);
- iii. Many of the Claimant's sites, especially where research development and production occur, have additional sensitivities. For example, some areas must be kept sterile, and hazardous chemicals and highly specialised equipment are stored. It is dangerous to have unauthorised persons (such as trespassing protestors) roaming the sites. It places both the trespassers and those who have to remove them from the site at risk (Wargent para 22 [46]; Singh para 31 [324]). Physical risk and injury to the person cannot be adequately compensated by an award of damages;
- iv. Disruption to other highway users and neighbouring business at the Shipley Site cannot be compensated by an award of damages to the Claimant (Singh para 32 [325-326]).

62. It is further submitted that the Defendants suffer no loss by reason of the injunction sought, as only unlawful acts are prohibited. In any event, the Claimant offers a cross-undertaking in damages of £50,000.

63. As to the third limb of the *American Cyanamid* test, it is submitted that the balance of convenience falls in favour of granting the relief sought (see Singh paras 35-37 [325-326]). Specifically:

- i. The relief sought does not interfere with the Named Defendants' right to protest peacefully and lawfully;
- ii. The relief sought only restrains unlawful conduct;
- iii. Without the grant of the relief sought, the Claimant and its business will suffer further significant loss and harm.

64. As to the *Vastint* test, it is submitted that the two questions should be answered in the affirmative.

65. As to the first *Vastint* question, there is a strong possibility that, unless restrained by an injunction, the Named Defendants will act in breach of the Claimant's rights. As to the factors relevant to this question:

- i. The Named Defendants have already, throughout 2024, attended the Shipley Site and committed acts of aggravated trespass (causing significant loss and harm to the Claimant);
- ii. The attitude of the Named Defendants is such that they are clearly willing to engage in unlawful (and destructive) behaviour, as evidenced by their past conduct at the Shipley Site;
- iii. The Named Defendants, unlike other protestors who have attended the Claimant's sites, are not in custody at this time. It is not known if the First to Fourth Defendants are on bail at this time. The Fifth to Seventh Defendants are on bail, but it is not known what, if any, conditions that bail is subject to (Wargent para 121 [65-66]);

- iv. There is a correlation between the occurrence of protest incidents at the Claimant's sites and holiday periods (Wargent para 14 [43], para 132(v) [70-71]; Singh para 11(iii) [319]). The Christmas holiday period is imminent.
- v. Even though the relief sought is not purely anticipatory, the Claimant has sought to mitigate the occurrence of acts of unlawful protest and resulting harm by the introduction of heightened security measures at its sites, at a cost of \$US 2.7 million in the 2024 financial year alone (Wargent paras 134-139 [72-73]).

66. As to the second *Vastint* question, and for the reasons set out above in relation to the second limb of the *American Cyanamid* test, it is submitted that the harm resulting from the apprehended acts of protest would be so grave that they could not be adequately compensated for by an award of damages. The harm cannot be undone by ex post rather than ex ante intervention.

### **Persons Unknown**

67. At this hearing, the Claimant only seeks relief against Persons Unknown until the return date. At the return date hearing, the Claimant will seek a five-year order, subject to an annual review, as has become common in cases of this nature (see the orders exhibited at [337-359] [360-397] [398-413] and [414-425]). In the circumstances of this case, where there are Named Defendants and a return date therefore needs to be convened, the Claimant considered it appropriate to seek the 'quasi-final' order against Persons Unknown at that return date (at which the Court will have longer to consider the Application).

68. Applying the *Valero* substantive requirements, it is submitted:

- i. There are three causes of action, which have been clearly identified;
- ii. The Claimant has complied with its duty of full and frank disclosure. See in particular the witness statement of Mr Singh at paragraphs 55 and 56 [332-333], the witness statement of Mr Wargent at para 135 [72] and paragraphs 72 and 73 of this skeleton argument (below);

- iii. There is sufficient evidence to prove the Claim (although this is not an application for summary judgment, and the Claimant seeks only interim relief until the return date, at which the full extent of the Application against Persons Unknown will be determined);
- iv. There is no realistic defence. In relation to the claim in trespass, Articles 10 and 11 do not include a right to trespass, and the trespass is itself an interference with the Claimant's rights under Article 1 of the First Protocol (see the law cited at paragraphs 21 and 22 of this skeleton argument, above). As to the claim in public nuisance, it is submitted that there is no defence where the only conduct prohibited is unlawful conduct, and where the *Ziegler* proportionality assessment (in so far as it can be carried out in relation to Persons Unknown) falls in favour of making the order sought (see paragraphs 39 to 44 of this skeleton argument above). The same submission is made in relation to the Claimant's common law right to access the highway, following *Arla* at [91];
- v. There is a compelling justification for the remedy sought (and the Court has been directed to the appropriate proportionality assessment to be undertaken). In particular, in relation to Persons Unknown the Claimant apprehends further imminent acts of unlawful direct-action protest in circumstances where the group known as Palestine Action actively encourages and instructs activists how to engage in such acts, and avoid arrest and identification when doing so. See in particular the witness statement of Mr Wargent in this regard at paragraphs 54 to 58 ([52-53]) and the exhibited 'Underground Manual' at [202-215]. Further, Palestine Action continues to recruit and train new activists (Wargent para 53 [51-52]);
- vi. For the reasons set out in the submissions on the second limb of the *American Cyanamid* test and the second question in *Vastint*, it is submitted that damages are not an adequate remedy for the Claimant.

69. Applying the *Valero* procedural requirements, it is submitted:

- i. The categories of Persons Unknown are clearly defined by reference to the relevant tortious conduct to be prohibited, and also by geographical boundaries;

- ii. The Draft Injunction Order uses clear non-legal language, and prohibits only unlawful conduct. The Court may note the similarities in the language used in the Draft Injunction Order and those orders exhibited at [337-359] [360-397] (in which Counsel appeared);
- iii. The prohibitions match the torts claimed (the prohibition on depositing items on the Claimant's sites and the defacing of buildings being a facet of the trespass claim);
- iv. The prohibitions are defined by clear geographical boundaries;
- v. The Draft Injunction Order is temporally limited to that which is reasonably required to protect the Claimant's rights. At this time, an order is sought only until the return date. The 'ordinary' five-year order will be sought at the return date;
- vi. The Claimant has made provision for the alternative service of the proceedings and any order made, see also paragraphs 70 and 71 of this skeleton (below). For the reasons set out at paragraphs 8 to 15 of this skeleton (above), it is submitted that the **Human Rights Act 1998, s12(2)(b)** is met and that, in any event, that section does not apply to newcomer Persons Unknown;
- vii. The Draft Injunction Order includes a generous liberty to apply clause;
- viii. The Order, if made in the form of the Draft Injunction Order, will be subject to review at the return date. It is proposed that the five-year order sought at the return date should be subject to annual review.

### **ALTERNATIVE SERVICE**

70. The Draft Injunction Order makes provision for service of the Claim Form, Application for interim relief, evidence in support of the Claim and Application, the Injunction Order and any further documents in the Claim. It is submitted (see Singh paras 50-53 [229-331]) that the method proposed can be reasonably expected to bring those documents to the attention

of the Defendants (*Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6; [2019] 1 WLR 1471 at [21] per Lord Sumption).

71. Further, as explained by Mr Wargent (paras 125-127 [67-68]) and Mr Singh (para 54 [331-332]) in their witness statements, the Claimant is seeking contact details for the First to Seventh Defendants from West Yorkshire Police pursuant to CPR 31.17 (and the names and addresses of further Named Defendants from Merseyside Police). Counsel will update the Court at the hearing as to the status of those Applications.

### **FULL AND FRANK DISCLOSURE**

72. Mr Singh's witness statement deals with various factual matters that may be considered relevant to full and frank disclosure (see paragraphs 55 and 56 [332-333]). At various junctures throughout this skeleton, various relevant legal submissions have also been considered (most notably the applicability of the **Human Rights Act 1998, s12(3)** and the throughout the *Ziegler* proportionality assessment).

73. In addition to those points, counsel also draws the Court's attention to:

- i. It is common for defendant protestors to submit that a prohibition drawn in the terms of 'approaching, slowing down or obstructing any vehicle moving along' a road is drawn too widely and captures lawful acts (including slow marching, and holding a placard where a driver chooses the slow down to read the placard). These submissions were considered by Bourne J in *Thurrock Council & Anr v Adams & Ors* [2024] EWHC 2750 (KB) (*Thurrock Council v Adams*) at [81] to [84]. Both submissions were rejected. Specifically, Bourne J found that slow marching is a deliberate obstruction of traffic that can be prohibited, and is not just a side-effect. The example of a driver slowing to read a placard is a side-effect of protest, and does not fall within the scope of the prohibition;
- ii. There are now specific criminal prohibitions on acts such as locking-in contained in the **Public Order Act 2023**. Defendant protestors sometimes submit that these specific criminal provisions make injunctive relief that captures the same conduct unnecessary. Bourne J also considered this submission in *Thurrock Council v*



*Adams*, and reject the same at [80]. In any event, it is submitted that there is clearly no barrier to civil and criminal measures both capturing the same conduct, with the coterminous liability in tort and criminal law for obstruction of the highway being a prime example of the same;

- iii. The Defendants might question the imminence of the apprehended infringements of the Claimant's rights and resulting harm. As set out in this skeleton argument, the test for imminence is that the relief must not be premature. With that in mind, it is relevant that the apprehended infringements and harm have already been suffered, and the groups responsible for the organisation and encouragement of the same remain active. Further as explained by Mr Wargent (para 14 [43], para 132(v) [70-71]) and Mr Singh (para 11(iii) [319]) in their witness statements, there does appear to be a correlation between vacation periods and incidents of unlawful protest at the Claimant's sites. The Christmas holiday period is imminent.

## **CONCLUSION**

- 74. The Claimant respectfully asks the Court to grant the interim relief set out in the Draft Injunction Order; the relief sought is necessary and proportionate, such that it is just and convenient to grant the same.

**Natalie Pratt  
Radcliffe Chambers**

17 December 2024