

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Claim No. KB-2024-004175

B E T W E E N :

TELEDYNE UK LIMITED

Claimant

-and-

(1) JULIAN ALLEN GAO

(2) – (7) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE
CLAIM FORM

(8) – (11) VARIOUS DEFINED CATEGORIES OF PERSONS UNKNOWN

(12) – (20) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1
TO THE CLAIM FORM

Defendants

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Senior Courts Act 1981 c. 54

s. 37 Powers of High Court with respect to injunctions and receivers.



Law In Force

Version 2 of 2

22 April 2014 - Present

Subjects

Administration of justice; Civil procedure

Keywords

Appointments; High Court; Injunctions; Jurisdiction; Receivers

37.— Powers of High Court with respect to injunctions and receivers.

(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

(3) The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction.

(4) The power of the High Court to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in land; and that power—

(a) may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under [section 1](#) of the [Charging Orders Act 1979](#) for the purpose of enforcing the judgment, order or award in question; and

(b) shall be in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.

(5) Where an order under the said [section 1](#) imposing a charge for the purpose of enforcing a judgment, order or award has been, or has effect as if, registered under [section 6](#) of the [Land Charges Act 1972](#), [subsection \(4\)](#) of the said section 6 (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made either—

(a) in proceedings for enforcing the charge; or

(b) by way of equitable execution of the judgment, order or award or, as the case may be, of so much of it as requires payment of moneys secured by the charge.

[

(6) This section applies in relation to the family court as it applies in relation to the High Court.

] ¹

Notes

- 1 Added by Crime and Courts Act 2013 c. 22 [Sch.10\(2\)](#) [para.58](#) (April 22, 2014: insertion has effect as SI 2014/954 subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8 and transitional provision specified in SI 2014/954 arts 2(d) and 3)
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*Part II JURISDICTION > Chapter 002 THE HIGH COURT > Powers
> s. 37 Powers of High Court with respect to injunctions and receivers.*

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Human Rights Act 1998 c. 42

s. 12 Freedom of expression.



Law In Force

Version 1 of 1

2 October 2000 - Present

Subjects

Human rights

Keywords

Freedom of expression; Human rights; Relief; Treaties

12.— Freedom of expression.

- (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
- (2) 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.
- (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.
- (4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—
- (a) the extent to which—
 - (i) the material has, or is about to, become available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published;
 - (b) any relevant privacy code.
- (5) In this section—
- “*court*” includes a tribunal; and
- “*relief*” includes any remedy or order (other than in criminal proceedings).

Other rights and proceedings > s. 12 Freedom of expression.

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A

House of Lords

Cream Holdings Ltd and others v Banerjee and another

[2004] UKHL 44

B

2004 June 14, 15; Lord Nicholls of Birkenhead, Lord Woolf CJ, Lord Hoffmann,
Oct 14 Lord Scott of Foscote and Baroness Hale of Richmond

Confidential information — Breach of confidence — Injunction — Claimants seeking interim injunction to restrain publication of confidential information supplied by former employee — Whether claimants “likely” to establish that publication should not be allowed — Whether interim injunction to be granted — Human Rights Act 1998 (c 42), s 12(3)

C

The claimants sought an interim injunction to restrain the publication of confidential information obtained without permission by the first defendant, a former employee of the claimants, who had supplied it to the second defendants, the publishers of a local newspaper with a reputation for investigating stories of local public interest, to support her allegations of financial irregularities. The judge granted an injunction restraining the defendants until trial or further order from publishing, disclosing or using certain confidential information as defined in a confidential schedule save to certain specified bodies, on the ground that the claimants had a real prospect of successfully establishing at trial that publication should not be allowed. The defendants appealed on the ground that when considering whether the claimant was “likely”, within the meaning of section 12(3) of the Human Rights Act 1998¹, to establish at trial that publication should not be allowed, the judge had erred in applying the test of “a real prospect of success” rather than the test of “more likely than not”. The Court of Appeal held that the judge had applied the correct test and by a majority dismissed the appeal.

E

On the defendants’ appeal—

Held, (1) that the principal purpose for which section 12(3) was enacted was to buttress the protection afforded to freedom of speech at the interlocutory stage by setting a higher threshold for the grant of interlocutory injunctions against the media than the previous test of a real prospect of succeeding at trial in the claim for a permanent injunction; but that to construe “likely” in the subsection as meaning “more likely than not” in all situations would be to set the test too high; that there could be no single rigid standard governing all applications for interim restraint orders and some flexibility was essential; that Parliament’s intention was that “likely” should have an extended meaning which set as a normal pre-requisite to the grant of an interlocutory injunction a likelihood of success at trial which was higher than the previous test but which permitted the court to dispense with that higher test where particular circumstances made it necessary; that on its proper construction the effect of section 12(3) was that the court should not make an interim restraint order unless it was satisfied that the applicant’s prospects of success at trial were sufficiently favourable to justify the order being made in the light of all the other circumstances of the case; that in general the threshold that the applicant had to cross before the court embarked on exercising its discretion was to satisfy the court that he would probably succeed at the trial; but that there could be cases where it was necessary for the court to depart from that general approach and a lesser degree of likelihood would suffice as a prerequisite; that the weight to be given to the likelihood of success at trial when deciding whether to grant the application depended on all the other circumstances and that approach gave effect to the parliamentary intention that the courts should have particular regard to the importance of the right to freedom of

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¹ Human Rights Act 1998, s 12(3): see post, para 1.

expression and at the same time was sufficiently flexible to give effect to countervailing Convention rights (post, paras 15, 16, 20–23, 27–30).

(2) Allowing the appeal, that from the content of the confidential information contained in the private judgments of the courts below it was clear that the judge had misdirected himself in a material respect when exercising his discretion, and since the Court of Appeal had not exercised its discretion afresh it fell to their Lordships to do so; that, given that the disclosures the defendants wished to publish were clearly matters of serious public interest, the claimants' prospects of success at trial were not sufficiently likely to justify making an interim restraint order; and that, accordingly, the injunction was discharged so far as it related to the information already supplied by the first defendant to the second defendants (post, paras 24, 25, 27–30).

Decision of the Court of Appeal [2003] EWCA Civ 103; [2003] Ch 650; [2003] 3 WLR 999; [2003] 2 All ER 318 reversed.

The following cases are referred to in the opinions of their Lordships:

American Cyanamid Co v Ethicon Ltd [1975] AC 396; [1975] 2 WLR 316; [1975] 1 All ER 504, HL(E)

H (Minors) (Sexual Abuse: Standard of Proof), *In re* [1996] AC 563; [1996] 2 WLR 8; [1996] 1 All ER 1, HL(E)

Harris Simons Construction Ltd, In re [1989] 1 WLR 368

Primalaks (UK) Ltd, In re [1989] BCLC 734

The following additional cases were cited in argument:

Attorney General v Parry [2002] EWHC 3201 (Ch); [2004] EMLR 223

Bladet Tromsø v Norway (1999) 29 EHRR 125

Bonnard v Perryman [1891] 2 Ch 269, CA

Campbell v MGN Ltd [2004] UKHL 22; [2004] 2 AC 457; [2004] 2 WLR 1232; [2004] 2 All ER 995, HL(E)

Douglas v Hello! Ltd [2001] QB 967; [2001] 2 WLR 992, [2001] 2 All ER 289, CA

Imutran Ltd v Uncaged Campaigns Ltd [2001] 2 All ER 385

Observer, The, and The Guardian v United Kingdom (1991) 14 EHRR 153

Reynolds v Times Newspapers Ltd [2001] 2 AC 127; [1999] 3 WLR 1010; [1999] 4 All ER 609, HL(E)

APPEAL from the Court of Appeal

By leave of the House of Lords (Lord Bingham of Cornhill, Lord Hoffmann and Lord Millett) granted on 20 May 2003, the defendants, Chumki Banerjee and The Liverpool Daily Post and Echo Ltd, appealed from a decision of the Court of Appeal (Simon Brown, Sedley and Arden LJ) on 13 February 2003 dismissing the defendants' appeal from a decision of Lloyd J on 5 July 2002 granting an application by the claimants, Cream Holdings Ltd, Chadmead Ltd, Cream Liverpool Ltd, CI Events Ltd, Cream Events Ltd, Gridstone Ltd and Harvey Recordings Ltd, for an injunction restraining the defendants, until trial or further order, from publishing, disclosing or using certain confidential information as defined in a confidential schedule save to certain specified bodies.

The facts are stated in the opinion of Lord Nicholls of Birkenhead.

Richard Spearman QC and *Catrin Evans* for the defendants. The legislative intention underlying section 12 of the Human Rights Act 1998 is to enhance or buttress the Convention right to freedom of expression. In particular the legislative intention of section 12(3) is to raise the threshold for the grant of prior restraint against publication and/or to make the grant

A of relief before trial more difficult in cases where it might affect the exercise of the Convention right to freedom of expression than in other cases. The use of the word “publication” shows that the section applies to, but is not restricted to, the media.

B The legislative intention is met by giving the word “likely” in section 12(3) its primary meaning of “probable” or “more likely than not”. That intention would not be met and on the contrary would be thwarted by giving the word “likely” the meaning of “real prospect of success”. There is no compelling reason why “likely” should be read down to mean “real prospect of success”.

C The pre-Human Rights Act case law does not suggest that free speech enjoys automatic priority over all other rights. That case law makes clear that the test for granting an injunction is higher than the test in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 and that it is a test of necessity. Even if the Court of Appeal’s construction of section 12(3) requires the court, when evaluating whether a claimant has a real prospect of success, to undertake some fuller evaluation than the *American Cyanamid* approach, that does not reflect any enhancement or buttressing of the Convention right to freedom of expression in comparison to the pre-Human Rights Act state of the law. The effect of the Court of Appeal’s approach is to lower rather than to raise the threshold for the interim restraint on freedom of speech in comparison to the pre-Human Rights Act state of the law. That approach renders section 12(3) nugatory. [Reference was made to *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127; *Douglas v Hello! Ltd* [2001] QB 967; *Imutran Ltd v Uncaged Campaigns Ltd* [2001] 2 All ER 385; *Attorney General v Parry* [2004] EMLR 223; *Campbell v MGN Ltd* [2004] 2 AC 457 and *In re Harris Simons Construction Ltd* [1989] 1 WLR 368.]

E The judge accepted that on the evidence there was a breach of confidence and a defrauding of the revenue. In deciding whether a given interference with freedom of expression is necessary in a democratic society the court is faced with the principle of freedom of expression which is subject to exceptions which must be narrowly interpreted. In a case involving the media, the court must take into account the essential function that the press fulfils in a democratic society to inform the public of matters of genuine public interest. The press performs a very different role from that undertaken by regulatory bodies and the police. The press should not be an arm of the law or government and is entitled to communicate directly with the public. If the only function of the press were to investigate and pass on its findings to the relevant authorities, the vital role of the press as the public watchdog would be undermined and the public interest would be damaged.

G Any interference with the freedom of the press has to be justified, even when there is no public interest in publication, because it inevitably has some effect on the ability of the press to perform its role in society. The existence of a free press is in itself desirable and prima facie the court should not interfere with publication. The existence of a public interest in publication strengthens the case for not granting an injunction. Whether a public figure has courted publicity or not, he may be the legitimate subject of public attention. Moreover, where the image projected is untrue or incomplete the media is generally entitled to set the record straight (*Campbell v MGN Ltd* [2004] 2 AC 457). Although the appellants are entitled to succeed on their other arguments without relying on the contention that the respondents have deliberately fostered a false public image such that there is a public interest

in it being corrected, in fact the appellants are entitled to rely upon that point as well, because that is what the respondents did. A

It is an important right and function of the press to express criticism of companies such as the claimants where that is warranted by their conduct. There is a strong public interest in members of society obeying the law and being publicly exposed if they do not. While the right to confidence is a recognised exception to article 10(1) of the Convention the onus of proving that freedom of expression must be restricted is on the applicant seeking the relief. B

Edward Bartley Jones QC and *Kelly Pennifer* for the claimants. Section 12 was formulated as a threshold clause and section 12(3) has to be construed as a threshold clause. Section 12(3) involves two elements. First, the court must be “satisfied” of a postulate. Second, the postulate of which the court must be satisfied is that the applicant is “likely” to establish that publication should not be allowed. As to the first element, the court can only be satisfied on a balance of probabilities. Anything less does not involve satisfaction. If therefore a balance of probabilities is introduced into the first element it is difficult to see why “likely” should mean “more likely than not” in the second. The reality must be that “likely” does not mean “more likely than not”. Although section 12(3) looks forward to what will occur at trial, the court will no doubt carefully scrutinise and consider, at the interim stage, all relevant factors, including the importance of the rights under article 10(1) of the Convention to freedom of expression. C D

The primary remedy for breach of confidence should be an injunction. The 1998 Act is a constitutional instrument and must be given a generous and purposive interpretation, suitable to give individuals the full measure of the fundamental rights and freedoms guaranteed by the Convention. A generous and purposive approach to the true construction of the 1988 Act would involve recognition and justification of all Convention rights and not merely article 10(1) as interpreted by the Strasbourg jurisprudence. Overly concentrating on the pre-1998 Act cases is of little use. Some of the earlier cases have to be reassessed. Freedom of expression is only a qualified right and is subject to judicial control. In performing the balancing exercise the court must look at the distinction between the public interest and what interests the public. There is nothing in the Strasbourg jurisprudence which supports the interpretation of section 12(3) as contended for by the defendants. [Reference was made to *Bladet Tromsø and Stensaas v Norway* (1999) 29 EHRR and *The Observer and The Guardian v United Kingdom* (1991) 14 EHRR 153.] E F G

The rule in *Bonnard v Perryman* [1891] 2 Ch 269 applies to trade libel, injurious falsehood and related claims but does not apply to other causes of action, in particular breach of confidence. The rule itself is in no way in conflict with section 12(3) and simply affords an additional reason why interim relief should be refused. The rule does not require section 12(3) to be construed as the defendants contend. “Likely” means “a real prospect of success”. H

There are no grounds for discharging the interim injunction granted by the judge or for reversing the decision of the Court of Appeal. The judge adequately took into account the question whether damages would be an

- A adequate remedy for either side and what the consequences would be to either side were he to grant or refuse the interim injunctive relief sought.

If it is held that the judge misdirected himself as to the interpretation of “likely” in section 12(3) then the discretion becomes available for the appellate court to exercise.

- B The documents taken from the claimants and handed to the newspaper were obviously confidential documents and hence there was, *prima facie*, a major breach of confidence by an employee who had a high level of duty of confidence. The issue for the court when deciding whether to grant an injunction was whether the employee, in the role of a whistle blower, was acting in good faith. The employee never went to the Custom and Excise or to the revenue authorities, and any suggestion of wrongdoing after the employee left is pure speculation. All dealings between the claimants and the revenue were confidential. If the claimants are entitled to confidentiality as against the Revenue they must be entitled to a duty of confidentiality as against their employee. The mere fact that a claimant is a public company does not mean that all its affairs are matters of public interest.

Spearman QC replied.

- D Their Lordships took time for consideration.

14 October. LORD NICHOLLS OF BIRKENHEAD

- I My Lords, the Human Rights Act 1998 introduced into the law of this country the concept of Convention rights. Section 12 made special provision regarding one of these rights: the right to freedom of expression. When considering whether to grant relief which, if granted, might affect the exercise of the Convention right to freedom of expression the court must have particular regard to the importance of this right: section 12(4). Additionally, section 12(2) set out a prerequisite to the grant of relief against a person who is neither present nor represented. The court must be satisfied the applicant has taken all practicable steps to notify the respondent or that there are compelling reasons why the respondent should not be notified.
- F Further, section 12(3) imposed a threshold test which has to be satisfied before a court may grant interlocutory injunctive relief:

“No such relief [which might affect the exercise of the Convention right to freedom of expression] 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.”

- G 2 On this appeal your Lordships’ House is concerned with the meaning and application of the word “likely” in this provision.

The factual context

- H 3 The context in which this question arises on this appeal is as follows. The plaintiffs in this action are the Cream group of companies. These companies began as the Cream nightclub in Liverpool in 1992 and then expanded and diversified their business. They opened other clubs elsewhere and began to stage large events such as dance festivals. Now they also carry on a substantial business franchising their brand name and logo and merchandising clothes and other items. They are an important business in

Liverpool featuring both on general news pages and financial pages of newspapers. A

4 The first defendant, Chumki Banerjee, is a chartered accountant. She was the financial controller of one of the companies in the Cream group for three years from February 1998 to January 2001. Before then Ms Banerjee worked for a firm of accountants and was responsible for dealing with the Cream group's financial affairs between 1996 and 1998. The second defendant, which I shall refer to simply as the "Echo", is the publisher of Merseyside's two long-established and leading daily newspapers, the "Daily Post" and the "Liverpool Echo". B

5 In January 2001 Cream dismissed Ms Banerjee. When she left she took with her copies of documents she claims show illegal and improper activity by the Cream group. She passed these to the "Echo" with additional information. She received no payments for this. On 13 and 14 June 2002 the "Echo" published articles about alleged corruption involving one director of the Cream group and a local council official. On 18 June 2002 the Cream group sought injunctive relief to restrain publication by the newspaper of any further confidential information given it by Ms Banerjee. C

The proceedings

6 The defendants admitted the information was confidential. Their defence was that disclosure was in the public interest. Lloyd J held there were seriously arguable issues both ways on whether this defence would succeed. Cream had established the "necessary likelihood" of a permanent injunction for the purposes of section 12(3): "I do not say it is more likely than not, but there is certainly a real prospect of success." The balance of convenience test favoured the grant of an interim injunction. Cream was likely to suffer irreparable loss of an unquantifiable nature if the story were published. Restraint of publication would delay the "Echo's" story but not necessarily preclude its publication altogether. Given the undoubted obligation of confidentiality inherent in Ms Banerjee's employment contract, the disputes of fact on some matters, and the possibility that Ms Banerjee's complaints of defaults by the Cream group might be met adequately by disclosure to certain regulatory authorities as distinct from publication at large by the press, the right course was to freeze the position and direct a speedy trial if desired. On 5 July 2002 Lloyd J granted an interlocutory injunction prohibiting the defendants until trial from publishing, disclosing or using information defined as confidential information in a confidential schedule. In order to prevent the immediate loss of confidentiality Lloyd J set out part of his judgment in a private appendix. D E F G

7 The defendants appealed. The judge, they said, had applied the wrong test under section 12(3), that of a "real prospect of success" rather than "more likely than not". Further, on the basis of his factual conclusions the judge erred in deciding Cream was likely to succeed at the trial.

8 The Court of Appeal, comprising Simon Brown, Sedley and Arden LJ, dismissed the appeal: [2003] Ch 650. Sedley LJ dissented. Again, in order to maintain privacy for the information separate confidential judgments were delivered by two members of the court. H

9 All three Lords Justices agreed the judge was correct in his interpretation of "likely" in section 12(3), although they differed in their reasoning. As to the facts, Simon Brown LJ held the judge was entitled to

- A conclude Cream has a real prospect of success at the trial. The judge was also entitled to decide that in all the circumstances he should exercise his discretion in favour of making an order involving prior restraint. Simon Brown LJ, however, expressed reservations about the latter point. Not every judge would necessarily have reached the same conclusion as Lloyd J, and he himself might well not have done so. Arden LJ was also lukewarm in her view of the judge's decision, noting that in all the circumstances it could not be said to be perverse.
- B

10 On this point Sedley LJ dissented. Lloyd J erred in his conclusion that there is likely to be no public interest justification for the disclosure of the story which Miss Banerjee gave the "Echo" and the "Echo" wishes to publish. The principal matter the "Echo" wishes to publish is "incontestably" a matter of serious public interest. The essential story was one which, whatever its source, no court could properly suppress.

- C 11 Ms Banerjee and the "Echo" appealed to your Lordships' House, raising arguments along the same lines as those they presented to the Court of Appeal.

Section 12(3) and "likely"

- D 12 As with most ordinary English words "likely" has several different shades of meaning. Its meaning depends upon the context in which it is being used. Even when read in context its meaning is not always precise. It is capable of encompassing different degrees of likelihood, varying from "more likely than not" to "may well". In ordinary usage its meaning is often sought to be clarified by the addition of qualifying epithets as in phrases such as "very likely" or "quite likely". In section 12(3) the context is that of a statutory threshold for the grant of interim relief by a court.
- E

13 The legal background against which this statutory provision has to be interpreted is familiar. In the 1960s the approach adopted by the courts to the grant of interlocutory injunctions was that the applicant had to establish a *prima facie* case. He had to establish this before questions of the so-called "balance of convenience" fell to be considered. A *prima facie* case was understood, at least in the Chancery Division, as meaning the applicant must establish that as the evidence currently stood on the balance of probability he would succeed at the trial.

- F 14 The courts were freed from this fetter by the decision of your Lordships' House in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396. Lord Diplock said, at pp 407–408, that the court must be satisfied the claim "is not frivolous or vexatious; in other words, that there is a serious question to be tried". But it is no part of the court's function at this stage of litigation to try to resolve conflicts of evidence on affidavit nor to decide difficult questions of law calling for detailed argument and mature consideration. Unless the applicant fails to show he has "any real prospect of succeeding in his claim for a permanent injunction at the trial", the court should proceed to consider where the balance of convenience lies. As to that, where other factors appear to be evenly balanced "it is a counsel of prudence" for the court to take "such measures as are calculated to preserve the status quo".
- G
- H

15 When the Human Rights Bill was under consideration by Parliament concern was expressed at the adverse impact the Bill might have on the freedom of the press. Article 8 of the European Convention, guaranteeing the right to respect for private life, was among the Convention rights to

which the legislation would give effect. The concern was that, applying the conventional *American Cyanamid* approach, orders imposing prior restraint on newspapers might readily be granted by the courts to preserve the status quo until trial whenever applicants claimed that a threatened publication would infringe their rights under article 8. Section 12(3) was enacted to allay these fears. Its principal purpose was to buttress the protection afforded to freedom of speech at the interlocutory stage. It sought to do so by setting a higher threshold for the grant of interlocutory injunctions against the media than the *American Cyanamid* guideline of a “serious question to be tried” or a “real prospect” of success at the trial.

16 Against this background I turn to consider whether, as the “Echo” submits, “likely” in section 12(3) bears the meaning of “more likely than not” or “probably”. This would be a higher threshold than that prescribed by the *American Cyanamid* case. That would be consistent with the underlying parliamentary intention of emphasising the importance of freedom of expression. But in common with the views expressed in the Court of Appeal in the present case, I do not think “likely” can bear this meaning in section 12(3). Section 12(3) applies the “likely” criterion to all cases of interim prior restraint. It is of general application. So Parliament was painting with a broad brush and setting a general standard. A threshold of “more likely than not” in every case would not be workable in practice. It would not be workable in practice because in certain common form situations it would produce results Parliament cannot have intended. It would preclude the court from granting an interim injunction in some circumstances where it is plain injunctive relief should be granted as a temporary measure.

17 Take a case such as the present: an application is made to the court for an interlocutory injunction to restrain publication of allegedly confidential or private information until trial. The judge needs an opportunity to read and consider the evidence and submissions of both parties. Until then the judge will often not be in a position to decide whether on balance of probability the applicant will succeed in obtaining a permanent injunction at the trial. In the nature of things this will take time, however speedily the proceedings are arranged and conducted. The courts are remarkably adept at hearing urgent applications very speedily, but inevitably there will often be a lapse of some time in resolving such an application, whether measured in hours or longer in a complex case.

18 What is to happen meanwhile? Confidentiality, once breached, is lost for ever. Parliament cannot have intended that, whatever the circumstances, section 12(3) would preclude a judge from making a restraining order for the period needed for him to form a view on whether on balance of probability the claim would succeed at trial. That would be absurd. In the present case the “Echo” agreed not to publish any further article pending the hearing of Cream’s application for interim relief. But it would be absurd if, had the “Echo” not done so, the court would have been powerless to preserve the confidentiality of the information until Cream’s application had been heard. Similarly, if a judge refuses to grant an interlocutory injunction preserving confidentiality until trial the court ought not to be powerless to grant interim relief pending the hearing of an interlocutory appeal against the judge’s order.

A 19 The matter goes further than these procedural difficulties. Cases may arise where the adverse consequences of disclosure of information would be extremely serious, such as a grave risk of personal injury to a particular person. Threats may have been made against a person accused or convicted of a crime or a person who gave evidence at a trial. Disclosure of his current whereabouts might have extremely serious consequences. B Despite the potential seriousness of the adverse consequences of disclosure, the applicant's claim to confidentiality may be weak. The applicant's case may depend, for instance, on a disputed question of fact on which the applicant has an arguable but distinctly poor case. It would be extraordinary if in such a case the court were compelled to apply a "probability of success" test and therefore, regardless of the seriousness of the possible adverse consequences, refuse to restrain publication until the C disputed issue of fact can be resolved at the trial.

20 These considerations indicate that "likely" in section 12(3) cannot have been intended to mean "more likely than not" in all situations. That, as a test of universal application, would set the degree of likelihood too high. In some cases application of that test would achieve the antithesis of a fair trial. Some flexibility is essential. The intention of Parliament must be taken D to be that "likely" should have an extended meaning which sets as a normal prerequisite to the grant of an injunction before trial a likelihood of success at the trial higher than the commonplace *American Cyanamid* standard of "real prospect" but permits the court to dispense with this higher standard where particular circumstances make this necessary.

21 Similar problems have arisen with other statutory provisions imposing a statutory threshold on the grant of relief by a court. Two E instances may be mentioned. A prerequisite to making a care order under section 31 of the Children Act 1989 is that the child in question is suffering or "is likely to suffer" significant harm. Your Lordships' House has held that in this context "likely" is used in the sense of a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case: see *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, 585. So the degree of likelihood differed F according to the circumstances of the case. Again, a prerequisite to making an administration order under section 8(1) of the Insolvency Act 1986 is that the court considers making such an order "would be likely to achieve" one of the statutory purposes. Following the lead given by Hoffmann J in *In re Harris Simons Construction Ltd* [1989] 1 WLR 368, in *In re Primplaks (UK) Ltd* [1989] BCLC 734, 742, Vinelott J held this required the court to be G satisfied there is a "prospect sufficiently likely in the light of all the other circumstances of the case to justify making the order".

22 In my view section 12(3) calls for a similar approach. Section 12(3) makes the likelihood of success at the trial an essential element in the court's consideration of whether to make an interim order. But in order to achieve the necessary flexibility the degree of likelihood of success at the trial needed H to satisfy section 12(3) must depend on the circumstances. There can be no single, rigid standard governing all applications for interim restraint orders. Rather, on its proper construction the effect of section 12(3) is that the court is not to make an interim restraint order unless satisfied the applicant's prospects of success at the trial are sufficiently favourable to justify such an order being made in the particular circumstances of the case. As to what

degree of likelihood makes the prospects of success “sufficiently favourable”, the general approach should be that courts will be exceedingly slow to make interim restraint orders where the applicant has not satisfied the court he will probably (“more likely than not”) succeed at the trial. In general, that should be the threshold an applicant must cross before the court embarks on exercising its discretion, duly taking into account the relevant jurisprudence on article 10 and any countervailing Convention rights. But there will be cases where it is necessary for a court to depart from this general approach and a lesser degree of likelihood will suffice as a prerequisite. Circumstances where this may be so include those mentioned above: where the potential adverse consequences of disclosure are particularly grave, or where a short-lived injunction is needed to enable the court to hear and give proper consideration to an application for interim relief pending the trial or any relevant appeal.

23 This interpretation achieves the purpose underlying section 12(3). Despite its apparent circularity, this interpretation emphasises the importance of the applicant’s prospects of success as a factor to be taken into account when the court is deciding whether to make an interim restraint order. It provides, as is only sensible, that the weight to be given to this factor will depend on the circumstances. By this means the general approach outlined above does not accord inappropriate weight to the Convention right of freedom of expression as compared with the right to respect for private life or other Convention rights. This approach gives effect to the parliamentary intention that courts should have particular regard to the importance of the right to freedom of expression and at the same time it is sufficiently flexible in its application to give effect to countervailing Convention rights. In other words, this interpretation of section 12(3) is Convention-compliant.

The instant appeal

24 In the instant case it is not necessary or helpful to analyse the judge’s careful judgment line by line to see whether in substance his interpretation of section 12(3) differed from that set out above. This is so because I am satisfied that in one particular respect the judge fell into error in any event. The error was identified by Sedley LJ and sufficiently explained by him at para 88 of his judgment [2003] Ch 650, 677, and para 1 of his “private” judgment. I agree with him that the principal happenings the “Echo” wishes to publish are clearly matters of serious public interest. The graduated protection afforded to “whistleblowers” by sections 43A to 43L of the Employment Rights Act 1996, inserted by the Public Interest Disclosure Act 1998, section 1, does not militate against this appraisal. Authorities such as the Inland Revenue owe duties of confidentiality regarding the affairs of those with whom they are dealing. The “whistleblower” provisions were intended to give additional protection to employees, not to cut down the circumstances where the public interest may justify private information being published at large.

25 Since Lloyd J misdirected himself in a material respect when exercising his discretion and the Court of Appeal did not exercise this discretion afresh, it falls to your Lordships’ House to do so. I would allow this appeal. Given the public interest mentioned above I am firmly of the view that the Cream group’s prospects of success at trial are not sufficiently

- A likely to justify making an interim restraint order in this case. On the evidence the Cream group are more likely to fail than succeed at the trial, and the Cream group have shown no sufficient reason for departing from the general approach applicable in that circumstance. I would discharge the judge's injunction so far as it relates to information already supplied by Ms Banerjee to the "Echo". The defendants were content that the injunction should otherwise remain in force.

- B 26 I recognise that without reference to the content of the confidential information this conclusion is necessarily enigmatic to those who have not read the private judgments of the courts below. But if I were to elaborate I would at once destroy the confidentiality the Cream group are seeking to preserve. Even if the House discharges the restraint order made by the judge, it would not be right for your Lordships to make public the information in question. The contents of your Lordships' speeches should not pre-empt the "Echo's" publication, if that is what the newspaper decides now to do. Nor should these speeches, by themselves placing this information in the public domain, undermine any remedy in damages the Cream group may ultimately be found to have against the "Echo" or Ms Banerjee in respect of matters the Echo may decide to publish.

D **LORD WOOLF CJ**

27 My Lords, I have had the advantage of reading in draft the opinion of my noble and learned friend, Lord Nicholls of Birkenhead. For the reasons he gives, with which I agree, I would allow this appeal.

LORD HOFFMANN

- E 28 My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Nicholls of Birkenhead. For the reasons he gives, with which I agree, I would allow this appeal.

LORD SCOTT OF FOSCOTE

- F 29 My Lords, the issue raised by this appeal, namely, the proper judicial approach to section 12(3) of the Human Rights Act 1998, is one of great importance. This is particularly so for cases like this in which the disclosure which is sought to be prevented is, if the information in question is true, disclosure of iniquity by any standards. I have, however, had the advantage of reading in advance the opinion of my noble and learned friend, Lord Nicholls of Birkenhead, and am in complete agreement with the guidance he has given in para 22 of his opinion and with the reasons he has given for concluding that this appeal should be allowed. I, too, would make the order he has suggested.

BARONESS HALE OF RICHMOND

- H 30 My Lords, I have had the advantage of reading in draft the opinion of my noble and learned friend, Lord Nicholls of Birkenhead. For the reasons he gives, with which I agree, I would allow this appeal.

Appeal allowed with costs.

Solicitors: Brabners Chaffe Street, Liverpool; Wacks Caller, Manchester.

A

Supreme Court

***Cameron v Liverpool Victoria Insurance Co Ltd (Motor Insurers' Bureau intervening)**

[On appeal from Cameron v Hussain and another]

B

[2019] UKSC 6

2018 Nov 28;
2019 Feb 20Lord Reed DPSC, Lord Carnwath, Lord Hodge,
Lady Black JJSC, Lord Sumption

C

Practice — Parties — Unnamed defendant — Claimant seeking to substitute as defendant unnamed person identified by description — Whether permissible if not possible to bring claim to defendant's attention — CPR rr 6.15, 6.16, 19.2

Road traffic — Third party insurance — Insurer's liability — Claimant victim of collision with vehicle driven by unidentified driver — Vehicle insured but in name of fictitious person — Claimant seeking damages against owner of vehicle and declaration that insurer required to satisfy judgment against owner — Claimant applying to substitute unnamed person as first defendant — Whether such amendment to be allowed

D

The claimant suffered personal injuries and her car was damaged in a collision with another vehicle. She issued proceedings seeking damages against the other vehicle's owner and a declaration that the insurer of the other vehicle was obliged under section 151 of the Road Traffic Act 1988¹ to satisfy any judgment obtained against the owner. It later transpired that the owner of the other vehicle had not been driving it at the time of the collision and that the insurance had been in the name of a fictitious person. Consequently the claimant needed to obtain a judgment against the unidentified driver of the other vehicle in order for the insurer to be liable under section 151. Accordingly the claimant applied under CPR r 19.2² to amend her claim form so as to substitute for the owner "The person unknown driving [the other vehicle] who collided with [the claimant's vehicle] on [the date of the collision]". The district judge refused the application and gave judgment for the insurer, a decision that was upheld by the judge on appeal. The Court of Appeal allowed the claimant's appeal and granted the amendment sought, holding that it would be entirely consistent with the CPR and the policy of the 1988 Act for proceedings to be brought against an unnamed driver, suitably identified by an appropriate description, in order that the insurer could be made liable under section 151.

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On the insurer's appeal—

Held, allowing the appeal, that it was a fundamental principle of justice that a person could not be made subject to the jurisdiction of the court without having such notice of the proceedings as would enable him to be heard; that, therefore, it was not legitimate to issue or amend a claim form so as to sue an unnamed defendant if it was conceptually impossible to bring the claim to his attention; that it would only be conceptually possible for proceedings to be brought to the attention of a defendant if he had been described in the claim form in a way that made it possible in principle to locate or communicate with him and to know without further inquiry whether he

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¹ Road Traffic Act 1988, s 151: see post, para 3.² CPR r 6.15: see post, para 20.

R 16.6: see post, para 25.

R 19.2(2): "The court may order a person to be added as a new party if— (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue."

was the same as the person described in the claim form; that, in such circumstances, either the proceedings could be brought to a defendant's attention by serving them on him, if necessary by alternative service under CPR r 6.15, or the court might order that service be dispensed with under CPR r 6.16, which could only be done if there was reason to believe that the defendant was aware that proceedings had been or were likely to be brought; that, in the present case, the description of the driver on the claim form, which related to something he had done in the past, did not make it possible in principle to locate or communicate with him or to know whether any particular person was the same as the person described in the claim form; that, therefore, as a matter of English law, the driver in the present case could not be sued under the description relied on by the claimant; that, further, nothing in Parliament and Council Directive 2000/26/EC required the United Kingdom to give a party injured as a result of an accident caused by an insured vehicle a right to sue the driver of the vehicle without identifying him or observing rules of court designed to ensure that he was aware of the proceedings; and that, accordingly, the amendment sought by the claimant would be refused and the district judge's order restored (post, paras 12–18, 21, 25–26, 29, 31).

Dicta of the Court of Appeal in *Porter v Freudenberg* [1915] 1 KB 857, 883, 887–888, CA and of Atkin LJ in *Jacobson v Frachon* (1927) 138 LT 386, 392, CA approved.

Abbey National plc v Frost (Solicitors' Indemnity Fund Ltd intervening) [1999] 1 WLR 1080, CA considered.

Decision of the Court of Appeal [2017] EWCA Civ 366; [2018] 1 WLR 657 reversed.

The following cases are referred to in the judgment of Lord Sumption:

Abbey National plc v Frost (Solicitors' Indemnity Fund Ltd intervening) [1999] 1 WLR 1080; [1999] 2 All ER 206, CA

Abela v Baadarani [2013] UKSC 44; [2013] 1 WLR 2043; [2013] 4 All ER 119, SC(E)

Anderton v Clwyd County Council (No 2) [2002] EWCA Civ 933; [2002] 1 WLR 3174; [2002] 3 All ER 813, CA

Barton v Wright Hassall llp [2018] UKSC 12; [2018] 1 WLR 1119; [2018] 3 All ER 487, SC(E)

Bloomsbury Publishing Group plc v News Group Newspapers Ltd [2003] EWHC 1205 (Ch); [2003] 1 WLR 1633; [2003] 3 All ER 736

Bovale Ltd v Secretary of State for Communities and Local Government [2009] EWCA Civ 171; [2009] 1 WLR 2274; [2009] 3 All ER 340, CA

Brett Wilson llp v Persons Unknown [2015] EWHC 2628 (QB); [2016] 4 WLR 69; [2016] 1 All ER 1006

CMOC v Persons Unknown [2017] EWHC 3599 (Comm)

Clarke v Vedel [1979] RTR 26, CA

Dresser UK Ltd v Falcongate Freight Management Ltd [1992] QB 502; [1992] 2 WLR 319; [1992] 2 All ER 450, CA

EMI Records Ltd v Kudhail [1985] FSR 36, CA

Friern Barnet Urban District Council v Adams [1927] 2 Ch 25, CA

Gurtner v Circuit [1968] 2 QB 587; [1968] 2 WLR 668; [1968] 1 All ER 328, CA

Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site [2003] EWHC 1738 (Ch); [2004] Env LR 9

Ineos Upstream Ltd v Persons Unknown [2017] EWHC 2945 (Ch)

Jacobson v Frachon (1927) 138 LT 386, CA

Middleton v Person Unknown [2016] EWHC 2354 (QB)

Murfin v Ashbridge [1941] 1 All ER 231, CA

PML v Persons Unknown [2018] EWHC 838 (QB)

Porter v Freudenberg [1915] 1 KB 857, CA

- A *Smith v Unknown Defendant Pseudonym "Likeicare"* [2016] EWHC 1775 (QB)
South Cambridgeshire District Council v Gammell [2005] EWCA Civ 1429, [2006] 1 WLR 658, CA
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch); [2019] JPL 161
Wykeham Terrace, Brighton, Sussex, In re; Ex p Territorial Auxiliary and Volunteer Reserve Association for the South East [1971] Ch 204; [1970] 3 WLR 649
- B The following additional cases were cited in argument:
Bristol Alliance Ltd Partnership v Williams [2012] EWCA Civ 1267; [2013] QB 806; [2013] 2 WLR 1029; [2013] 1 All ER (Comm) 257; [2013] RTR 9, CA
Delaney v Secretary of State for Transport [2015] EWCA Civ 172; [2015] 1 WLR 5177; [2015] 3 All ER 329; [2015] RTR 9, CA
Sabin v Havard [2016] EWCA Civ 1202; [2017] 1 WLR 1853; [2017] 4 All ER 157; [2017] RTR 9, CA
- C

APPEAL from the Court of Appeal

- By a claim form issued on 21 January 2014 in the County Court at Liverpool, the claimant, Bianca Cameron, sought damages against the registered owner of a vehicle, a Nissan Micra registration number Y598 SPS, which collided with the claimant's vehicle on 26 May 2013 in Leeds. In March 2014 the claimant amended the claim to include the insurer, Liverpool Victoria Insurance Co Ltd, which had provided a policy of motor insurance over the registered owner's vehicle to a seemingly fictitious person, and sought a declaration against the insurer under section 151 of the Road Traffic Act 1988 that it was obliged to satisfy any unsatisfied judgment against the registered owner. By an application dated 19 June 2014 the claimant sought permission to amend the claim so as to substitute the registered owner with an unknown defendant driving the vehicle in question.
- E

- On 4 June 2014 the insurer applied for summary judgment on the claim on the basis that the registered owner had not been insured to drive the vehicle and the claimant could not prove the identity of the driver at the time of the collision. By an order dated 16 July 2014 District Judge Wright in the County Court at Liverpool refused the claimant's application and granted the insurer summary judgment. Pursuant to permission granted by the district judge on 26 September 2014 the claimant appealed. By an order dated 13 January 2015 Judge Parker dismissed the appeal. On 23 May 2017 the Court of Appeal (Gloster and Lloyd-Jones LJ, Sir Ross Cranston dissenting) allowed the claimant's appeal.
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- On 14 December 2017 the Supreme Court (Lord Mance DPSC, Lord Carnwath and Lady Black JJSC) granted the insurer permission to appeal, pursuant to which it appealed.
- G

- The issue on the appeal was whether a claimant was entitled to bring a claim for damages against an unnamed defendant if the claimant had been the victim of an unidentified hit-and-run driver, and the car the unidentified driver had been driving was covered by an insurance policy, albeit in the name of someone untraceable.
- H

The facts are stated in the judgment of Lord Sumption, post, paras 1, 6, 7.

Stephen Worthington QC and *Patrick Vincent* (instructed by *Keoghs LLP, Bolton, Lancs*) for the insurer.

Tim Horlock QC and Paul Higgins (instructed by *Weightmans LLP*, *A*
Liverpool) for the Motor Insurers' Bureau, intervening.

Benjamin Williams QC, Ben Smiley and Anneli Howard (instructed by
Bond Turner, Liverpool) for the claimant.

The court took time for consideration.

20 February 2019. **LORD SUMPTION** (with whom **LORD REED DPSC**, *B*
LORD CARNWATH, **LORD HODGE** and **LADY BLACK JJSC** agreed)
handed down the following judgment.

1 The question at issue on this appeal is: in what circumstances is it
permissible to sue an unnamed defendant? It arises in a rather special
context in which the problem is not uncommon. On 26 May 2013 *C*
Ms Bianca Cameron was injured when her car collided with a Nissan Micra.
It is common ground that the incident was due to the negligence of the driver
of the Micra. The registration number of the Micra was recorded, but the
driver made off without stopping or reporting the accident to the police and
has not been heard of since. The registered keeper of the Micra was
Mr Naveed Hussain, who was not the driver but has declined to identify the
driver and has been convicted of failing to do so. The car was insured under *D*
a policy issued by Liverpool Victoria Insurance Co Ltd to a Mr Nissar
Bahadur, whom the company believes to be a fictitious person. Neither
Mr Hussain nor the driver was insured under the policy to drive the car.

The statutory framework

2 The United Kingdom was the first country in the world to introduce
compulsory motor insurance. It originated with the Road Traffic Act 1930, *E*
which was part of a package of measures to protect accident victims,
including the Third Parties (Rights against Insurers) Act 1930. The latter
Act entitled a person to claim directly against the insurer where an insured
tortfeasor was insolvent. But it was shortly superseded as regards motor
accidents by the Road Traffic Act 1934, which required motor insurers to
satisfy any judgment against their insured and restricted the right of insurers *F*
to rely as against third parties on certain categories of policy exception or on
the right of avoidance for non-disclosure or misrepresentation. The
statutory regime has become more elaborate and more comprehensive since
1934, but the basic framework has not changed.

3 The current legislation is Part VI of the Road Traffic Act 1988. As
originally enacted, it sought to give effect to the first three EEC Motor
Insurance Directives, 72/166/EEC, 84/5/EEC and 90/232/EEC. It was *G*
subsequently amended by statutory instruments under the European
Communities Act 1972 to reflect the terms of the Fourth, Fifth and Sixth
Motor Insurance Directives 2000/26/EC, 2005/14/EC and 2009/103/EC.
The object of the current legislation is to enable the victims of negligently
caused road accidents to recover, if not from the tortfeasor then from his
insurer or, failing that, from a fund operated by the motor insurance
industry. Under section 143 of the Act of 1988 (as amended by regulation 2 *H*
of the Motor Vehicles (Compulsory Insurance) Regulations 2000
(SI 2000/726)) it is an offence to use or to cause or permit any other person
to use a motor vehicle on a road or other public place unless there is in force
a policy of insurance against third party risks "in relation to the use of the

- A vehicle” by the particular driver (I disregard the statutory provision for the giving of security in lieu of insurance). Section 145 requires the policy to cover specified risks, including bodily injury and damage to property. Section 151(5) requires the insurer, subject to certain conditions, to satisfy any judgment falling within subsection (2). This means (omitting words irrelevant to this appeal)
- B “judgments relating to a liability with respect to any matter where liability with respect to that matter is required to be covered by a policy of insurance under section 145 of this Act and either— (a) it is a liability covered by the terms of the policy or security . . . , and the judgment is obtained against any person who is insured by the policy . . . or (b) it is a liability . . . which would be so covered if the policy insured all persons . . . , and the judgment is obtained against any person other than one who is insured by the policy”
- C

The effect of the latter subsection is that an insurer who has issued a policy in respect of the use of a vehicle is liable on a judgment, even where it was obtained against a person such as the driver of the Micra in this case who was not insured to drive it. The statutory liability of the insurer to satisfy judgments is subject to an exception under section 152 where it is entitled to avoid the policy for non-disclosure or misrepresentation and has obtained a declaration to that effect in proceedings begun within a prescribed time period. But the operation of section 152 is currently under review in the light of recent decisions of the Court of Justice of the European Union.

- D 4 Under section 145(2), the policy must have been issued by an “authorised insurer”. This means a member of the Motor Insurers’ Bureau:
- E see sections 95(2) and 145(5). The Bureau has an important place in the statutory scheme for protecting the victims of road accidents in the United Kingdom. Following a recommendation of the Cassell Committee, which reported in 1937 (Cmd 5528/1937), the Bureau was created in 1946 to manage a fund for compensating victims of uninsured motorists. It is a private company owned and funded by all insurers authorised to write motor business in the United Kingdom. It has entered into agreements with the Secretary of State to compensate third party victims of road accidents who fall through the compulsory insurance net even under the enlarged coverage provided by section 151(2)(b). This means victims suffering personal injury or property damage caused by (i) vehicles in respect of which no policy of insurance has been issued; and (ii) drivers who cannot be traced. These categories are covered by two agreements with the Secretary of State, the Uninsured Drivers Agreement and the Untraced Drivers Agreement respectively. The relevant agreement covering Ms Cameron’s case was the 2003 Untraced Drivers Agreement. It applied to persons suffering death, bodily injury or property damage arising out of the use of a motor vehicle in cases where “it is not possible . . . to identify the person who is or appears to be liable”: see clause 4(d). The measure of indemnity under this agreement is not always total. Under clause 10, there is a limit to the Bureau’s liability for legal costs; and under clause 8 the indemnity for property damage is subject to a modest excess (at the relevant time £300) and a maximum limit corresponding to the minimum level of compulsory insurance (at the relevant time £1,000,000). The Bureau assumes liability under the Uninsured Drivers Agreement in cases where the insurer has a defence under the provisions
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- G
- H

governing avoided policies in section 152. But under article 75 of the Bureau's articles of association, each insurer binds itself to meet the Bureau's liability to satisfy a judgment in favour of the third party in such cases. In 2017, there were 17,700 concluded applications to the Motor Insurers' Bureau by victims of untraced drivers.

5 It is a fundamental feature of the statutory scheme of compulsory insurance in the United Kingdom that it confers on the victim of a road accident no direct right against an insurer in respect of the underlying liability of the driver. The only direct right against the insurer is the right to require it to satisfy a judgment against the driver, once the latter's liability has been established in legal proceedings. This reflects a number of features of motor insurance in the United Kingdom which originated well before the relevant European legislation bound the United Kingdom, and which differentiate it from many continental systems. In the first place, policies of motor insurance in the United Kingdom normally cover drivers rather than vehicles. Section 151(2)(b) of the Act (quoted above) produces a close but not complete approximation to the continental position. Secondly, the rule of English insurance law is that an insurer is liable to no one but its insured, even when the risks insured include liabilities owed by the insured to third parties. Subject to limited statutory exceptions, the third party has no direct right against the insurer. Thirdly, even the insured cannot claim against his liability insurer unless and until his liability has been ascertained in legal proceedings or by agreement or admission. The Untraced Drivers Agreement assumes that judgment cannot be obtained against the driver if he cannot be identified, and therefore that no liability will attach to the insurer in that case. This is why it is accepted as a liability of the Motor Insurers' Bureau. On the present appeal, Ms Cameron seeks to challenge that assumption. Such a challenge is usually unnecessary. It is cheaper and quicker to claim against the Bureau. But for reasons which remain unclear, in spite of her counsel's attempt to explain them, Ms Cameron has elected not to do that.

The proceedings

6 Ms Cameron initially sued Mr Hussain for damages. The proceedings were then amended to add a claim against Liverpool Victoria Insurance for a declaration that it would be liable to meet any judgment obtained against Mr Hussain. The insurer served a defence which denied liability on the ground that there was no right to obtain a judgment against Mr Hussain, because there was no evidence that he was the driver at the relevant time. Ms Cameron's response was to apply in the Liverpool Civil and Family Court to amend her claim form and particulars of claim so as to substitute for Mr Hussain "the person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KGo3 ZJZ on 26 May 2013". District Judge Wright dismissed that application and entered summary judgment for the insurer. Judge Parker dismissed Ms Cameron's appeal. But a further appeal to the Court of Appeal was allowed by a majority (Gloster and Lloyd-Jones LJJ, Sir Ross Cranston dissenting) [2018] 1 WLR 657.

7 Gloster LJ delivered the leading judgment. She held that the policy of the legislation was to ensure that the third-party victims of negligent drivers received compensation from insurers whenever a policy had been issued in respect of the vehicle, irrespective of who the driver was. In her judgment,

- A the court had a discretion to permit an unknown person to be sued whenever justice required it. Justice required it when the driver could not be identified, because otherwise it would not be possible to obtain a judgment which the issuer of a policy in respect of the car would be bound to satisfy. The majority considered it to be irrelevant that Ms Cameron had an alternative right against the Motor Insurers' Bureau. She had a right against the driver and, upon getting judgment against him, against the insurer. In principle she was entitled to choose between remedies. Sir Ross Cranston dissented. He agreed that there was a discretion, but he did not consider that justice required an action to be allowed against the unknown driver when compensation was available from the Motor Insurers' Bureau. Accordingly, the Court of Appeal (i) gave Ms Cameron permission to amend the claim form so as to sue the driver under the above description; (ii) directed under CPR r 6.15 that service on the insurer should constitute service on the driver and that further service on the driver should be dispensed with; and (iii) gave judgment against the driver, as described, recording in their order that the insurer accepted that it was liable to satisfy that judgment.

Suing unnamed persons

- D 8 Before the Common Law Procedure Act 1852 (15 & 16 Vict c 76) abolished the practice, it was common to constitute actions for trespass with fictional parties, generally John (or Jane) Doe or Roe, in order to avoid the restrictions imposed on possession proceedings by the forms of action. "Placeholders" such as these were also occasionally named as parties where the identity of the real party was unknown, a practice which subsists in the United States and Canada. After the disappearance of this practice in
- E England, the extent of any right to sue unnamed persons was governed by rules of court. The basic rule before 1999 was laid down by the Court of Appeal in 1926 in *Friern Barnet Urban District Council v Adams* [1927] 2 Ch 25. The Friern Barnet District Council had a statutory right to recover the cost of making up Alexandra Road from the proprietors of the adjoining lands, but in the days before registered title reached Friern Barnet it had no
- F way of discovering who they were. It therefore began proceedings against a named individual who was not concerned and "the owners of certain lands adjoining Alexandra Road . . . whose names and addresses are not known to the plaintiffs". The judge struck out these words and declined to order substituted service by affixing copies of the writ to posts on the relevant land. The Court of Appeal dismissed the appeal. They held that there was no power to issue a writ in this form because the prescribed form of writ
- G required it to be directed to "C D of, etc in the County of . . ." (p 30).
- 9 When the Civil Procedure Rules were introduced in 1999, the function of prescribing the manner in which proceedings should be commenced was taken over by CPR Pt 7. The general rule remains that proceedings may not be brought against unnamed parties. This is implicit in the limited exceptions contemplated by the Rules. CPR r 8.2A provides that a practice direction "may set out circumstances in which a claim form may be issued under this Part without naming a defendant". It is envisaged that permission will be required, but that the notice of application for permission "need not be served on any other person". However, no such practice direction has been made. The only express provision made for proceedings against an unnamed defendant, other than representative actions, is CPR r 55.3(4), which permits

a claim for possession of property to be brought against trespassers whose names are unknown. This is the successor to RSC Ord 113, which was introduced in order to provide a means of obtaining injunctions against unidentifiable squatters, following the decision of Stamp J in *In re Wykeham Terrace, Brighton, Sussex, Ex p Territorial Auxiliary and Volunteer Reserve Association for the South East* [1971] Ch 204, that they could not be sued if they could not be named. In addition, there are specific statutory exceptions to broadly the same effect, such as the exception for proceedings for an injunction to restrain “any actual or apprehended breach of planning controls” under section 187B of the Town and Country Planning Act 1990. Section 187B(3) (as inserted by section 3 of the Planning and Compensation Act 1991) provides that “rules of court may provide for such an injunction to be issued against a person whose identity is unknown”. The Rules are supplemented by a practice direction which deals with the administrative steps involved. Paragraph 4.1 of CPR Practice Direction 7A provides that a claim form must be headed with the title of the proceedings, which “should state”, among other things, the “full name of each party”.

10 English judges have allowed some exceptions. They have permitted representative actions where the representative can be named but some or all of the class cannot. They have allowed actions and orders against unnamed wrongdoers where some of the wrongdoers were known so they could be sued both personally and as representing their unidentified associates. This technique has been used, for example, in actions against copyright pirates: see *EMI Records Ltd v Kudhail* [1985] FSR 36. But the possibility of a much wider jurisdiction was first opened up by the decision of Sir Andrew Morritt V-C in *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633. The claimant in that case was the publisher of the *Harry Potter* novels. Copies of the latest book in the series had been stolen from the printers before publication and offered to the press by unnamed persons. An injunction was granted in proceedings against “the person or persons who have offered the publishers of the *Sun*, the *Daily Mail* and the *Daily Mirror* newspapers a copy of the book *Harry Potter and the Order of the Phoenix* by J K Rowling or any part thereof and the person or persons who has or have physical possession of a copy of the said book or any part thereof without the consent of the claimants”. The real object of the injunction was to deter newspapers minded to publish parts of the text, who would expose themselves to proceedings for contempt of court by dealing with the thieves with notice of the order. The Vice-Chancellor held that the decision in *Friern Barnet Urban District Council v Adams* had no application under the Civil Procedure Rules; that the decision of Stamp J in *In re Wykeham Terrace* was wrong; and that the words “should state” in paragraph 4.1 of Practice Direction 7A were not mandatory, but imported a discretion to depart from the practice in appropriate cases. In his view, a person could be sued by a description, provided that the description was “sufficiently certain as to identify both those who are included and those who are not” (para 21).

11 Since this decision, the jurisdiction has regularly been invoked. Judging by the reported cases, there has recently been a significant increase in its use. The main contexts for its exercise have been abuse of the internet, that powerful tool for anonymous wrongdoing; and trespasses and other torts committed by protesters, demonstrators and paparazzi. Cases in the

- A former context include *Brett Wilson llp v Persons Unknown* [2016] 4 WLR 69 and *Smith v Unknown Defendant Pseudonym "Likeicare"* [2016] EWHC 1775 (QB) (defamation); *Middleton v Person Unknown* [2016] EWHC 2354 (QB) (theft of information by hackers); *PML v Persons Unknown* [2018] EWHC 838 (QB) (hacking and blackmail); *CMOC v Persons Unknown* [2017] EWHC 3599 (Comm) (hacking and theft of funds). Cases decided in the second context include *Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site* [2004] Env LR 9; *Ineos Upstream Ltd v Persons Unknown* [2017] EWHC 2945 (Ch); *UK Oil and Gas Investments plc v Persons Unknown* [2019] JPL 161. In some of these cases, proceedings against persons unknown were allowed in support of an application for a quia timet injunction, where the defendants could be identified only as those persons who might in future commit the relevant acts. The majority of the Court of Appeal followed this body of case law in deciding that an action was permissible against the unknown driver of the Micra who injured Ms Cameron. This is the first occasion on which the basis and extent of the jurisdiction has been considered by the Supreme Court or the House of Lords.

- 12 The Civil Procedure Rules neither expressly authorise nor expressly prohibit exceptions to the general rule that actions against unnamed parties are permissible only against trespassers. The prescribed forms include a space in which to designate the claimant and the defendant, a format which is equally consistent with their being designated by name or by description. The only requirement for a name is contained in a practice direction. But unlike the Civil Procedure Rules, which are made under statutory powers, a practice direction is no more than guidance on matters of practice issued under the authority of the heads of division. As to those matters, it is binding on judges sitting in the jurisdiction with which it is concerned: *Bovale Ltd v Secretary of State for Communities and Local Government* [2009] 1 WLR 2274. But it has no statutory force, and cannot alter the general law. Whether or not the requirement of paragraph 4.1 of Practice Direction 7A that the claim form "should state" the defendants' full name admits of a discretion on the point, is not therefore the critical question. The critical question is what, as a matter of law, is the basis of the court's jurisdiction over parties, and in what (if any) circumstances can jurisdiction be exercised on that basis against persons who cannot be named.

- 13 In approaching this question, it is necessary to distinguish between two kinds of case in which the defendant cannot be named, to which different considerations apply. The first category comprises anonymous defendants who are identifiable but whose names are unknown. Squatters occupying a property are, for example, identifiable by their location, although they cannot be named. The second category comprises defendants, such as most hit and run drivers, who are not only anonymous but cannot even be identified. The distinction is that in the first category the defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further inquiry whether he is the same as the person described in the claim form, whereas in the second category it is not.

14 This appeal is primarily concerned with the issue or amendment of the claim form. It is not directly concerned with its service, which occurs under the rules up to four months after issue, subject to extension by order of

the court. There is no doubt that a claim form may be issued against a named defendant, although it is not yet known where or how or indeed whether he can in practice be served. But the legitimacy of issuing or amending a claim form so as to sue an unnamed defendant can properly be tested by asking whether it is conceptually (not just practically) possible to serve it. The court generally acts in personam. Although an action is completely constituted on the issue of the claim form, for example for the purpose of stopping the running of a limitation period, the general rule is that “service of originating process is the act by which the defendant is subjected to the court’s jurisdiction”: *Barton v Wright Hassall llp* [2018] 1 WLR 1119, para 8. The court may grant interim relief before the proceedings have been served or even issued, but that is an emergency jurisdiction which is both provisional and strictly conditional. In *Dresser UK Ltd v Falcongate Freight Management Ltd* [1992] QB 502 the Court of Appeal held that, for the purposes of the Brussels Convention (the relevant provisions of the Brussels Regulation are different), an English court was “seised” of an action when the writ was served, not when it was issued. This was because of the legal status of an unserved writ in English law. Bingham LJ described that status, at p 523, as follows:

“it is in my judgment artificial, far-fetched and wrong to hold that the English court is seised of proceedings, or that proceedings are decisively, conclusively, finally or definitively pending before it, upon mere issue of proceedings, when at that stage (1) the court’s involvement has been confined to a ministerial act by a relatively junior administrative officer; (2) the plaintiff has an unfettered choice whether to pursue the action and serve the proceedings or not, being in breach of no rule or obligation if he chooses to let the writ expire unserved; (3) the plaintiff’s claim may be framed in terms of the utmost generality; (4) the defendant is usually unaware of the issue of proceedings and, if unaware, is unable to call on the plaintiff to serve the writ or discontinue the action and unable to rely on the commencement of the action as a *lis alibi pendens* if proceedings are begun elsewhere; (5) the defendant is not obliged to respond to the plaintiff’s claim in any way, and not entitled to do so save by calling on the plaintiff to serve or discontinue; (6) the court cannot exercise any powers which, on appropriate facts, it could not have exercised before issue; (7) the defendant has not become subject to the jurisdiction of the court.”

The case was decided under the Rules of the Supreme Court. But Bingham LJ’s statement would be equally true (mechanics and terminology apart) of an unserved claim form under the Civil Procedure Rules.

15 An identifiable but anonymous defendant can be served with the claim form or other originating process, if necessary by alternative service under CPR r 6.15. This is because it is possible to locate or communicate with the defendant and to identify him as the person described in the claim form. Thus, in proceedings against anonymous trespassers under CPR r 55.3(4), service must be effected in accordance with CPR r 55.6 by attaching copies of the documents to the main door or placing them in some other prominent place on the land where the trespassers are to be found, and posting them if practical through the letter box. In *Brett Wilson llp v Persons Unknown* [2016] 4 WLR 69 alternative service was effected by e-mail to a

- A website which had published defamatory matter, Warby J observing (para 11) that the relevant procedural safeguards must of course be applied. In *Smith v Unknown Defendant Pseudonym "Likeicare"* [2016] EWHC 1775 (QB) Green J made the same observation (para 11) in another case of internet defamation where service was effected in the same way. Where an interim injunction is granted and can be specifically enforced against some property or by notice to third parties who would necessarily be involved in any contempt, the process of enforcing it will sometimes be enough to bring the proceedings to the defendant's attention. In *Bloomsbury Publishing Group* [2003] 1 WLR 1633, for example, the unnamed defendants would have had to identify themselves as the persons in physical possession of copies of the book if they had sought to do the prohibited act, namely disclose it to people (such as newspapers) who had been notified of the injunction. The Court of Appeal has held that where proceedings were brought against unnamed persons and interim relief was granted to restrain specified acts, a person became both a defendant and a person to whom the injunction was addressed by doing one of those acts: *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, para 32. In the case of anonymous but identifiable defendants, these procedures for service are now well established, and there is no reason to doubt their juridical basis.
- D 16 One does not, however, identify an unknown person simply by referring to something that he has done in the past. "The person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013", does not identify anyone. It does not enable one to know whether any particular person is the one referred to. Nor is there any specific interim relief such as an injunction which can be enforced in a way that will bring the proceedings to his attention. The impossibility of service in such a case is due not just to the fact that the defendant cannot be found but to the fact that it is not known who the defendant is. The problem is conceptual, and not just practical. It is true that the publicity attending the proceedings may sometimes make it possible to speculate that the wrongdoer knows about them. But service is an act of the court, or of the claimant acting under rules of court. It cannot be enough that the wrongdoer himself knows who he is.
- F 17 This is, in my view, a more serious problem than the courts, in their more recent decisions, have recognised. Justice in legal proceedings must be available to both sides. It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard. The principle is perhaps self-evident. The clearest statements are to be found in the case law about the enforcement of foreign judgments at common law. The English courts will not enforce or recognise a foreign judgment, even if it has been given by a court of competent jurisdiction, if the judgment debtor had no sufficient notice of the proceedings. The reason is that such a judgment will have been obtained in breach of the rules of natural justice *according to English notions*. In his celebrated judgment in *Jacobson v Frachon* (1927) 138 LT 386, 392, Atkin LJ, after referring to the "principles of natural justice" put the point in this way:
- H "Those principles seem to me to involve this, first of all that the court being a court of competent jurisdiction, has given notice to the litigant that they are about to proceed to determine the rights between him and

the other litigant; the other is that having given him that notice, it does afford him an opportunity of substantially presenting his case before the court.”

Atkin LJ's principle is reflected in the statutory provisions for the recognition of foreign judgments in section 9(2)(c) of the Administration of Justice Act 1920 and section 8(1) and (2) of the Foreign Judgments (Reciprocal Enforcement) Act 1933, as well as in article 45(1)(b) of the Brussels I Regulation (Recast), Regulation (EU) No 1215/2012.

18 It would be ironic if the English courts were to disregard in their own proceedings a principle which they regard as fundamental to natural justice as applied to the proceedings of others. In fact, the principle is equally central to domestic litigation procedure. Service of originating process was required by the practice of the common law courts long before statutory rules of procedure were introduced following the Judicature Acts of 1873 (36 & 37 Vict c 66) and 1875 (38 & 39 Vict c 77). The first edition of the Rules of the Supreme Court, which was promulgated in 1883, required personal service unless an order was made for what was then called substituted (now alternative) service. Subsequent editions of the rules allowed for certain other modes of service without a special order of the court, notably in the case of corporations, but every mode of service had the common object of bringing the proceedings to the attention of the defendant. In *Porter v Freudenberg* [1915] 1 KB 857 a specially constituted Court of Appeal, comprising the Lord Chief Justice, the Master of the Rolls and all five Lords Justices of the time, held that substituted service served the same function as personal service and therefore had to be such as could be expected to bring the proceedings to the defendant's attention. The defendants in that case were enemy aliens resident in Germany during the First World War. Lord Reading CJ, delivering the judgment of the court, said at p 883:

“Once the conclusion is reached that the alien enemy can be sued, it follows that he can appear and be heard in his defence and may take all such steps as may be deemed necessary for the proper presentment of his defence. If he is brought at the suit of a party before a court of justice he must have the right of submitting his answer to the court. To deny him that right would be to deny him justice and would be quite contrary to the basic principles guiding the King's courts in the administration of justice.”

It followed, as he went on to observe at pp 887–888, that the court must:

“take into account the position of the defendant the alien enemy, who is, according to the fundamental principles of English law, entitled to effective notice of the proceedings against him . . . In order that substituted service may be permitted, it must be clearly shown that the plaintiff is in fact unable to effect personal service and that the writ is likely to reach the defendant or to come to his knowledge if the method of substituted service which is asked for by the plaintiff is adopted.”

The principle stated in *Porter v Freudenberg* was incorporated in the Rules of the Supreme Court in the revision of 1962 (SI 1962/2145) as RSC Ord 67, r 4(3). This provided: “Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the court may direct to bring the document to the notice of the person to be served.” This provision subsequently became RSC Ord 65, r 4(3), and

A continued to appear in subsequent iterations of the Rules until they were superseded by the Civil Procedure Rules in 1999.

19 The treatment of the principle in the more recent authorities is, unfortunately, neither consistent nor satisfactory. The history may be summarised as follows:

B (1) *Murfin v Ashbridge* [1941] 1 All ER 231 arose out of a road accident caused by the alleged negligence of a driver who was identified but could not be found. The case is authority for the proposition that while an insurer may be authorised by the policy to defend an action on behalf of his assured, he was not a party in that capacity and could not take any step in his own name. In the course of considering that point, Goddard LJ suggested at p 235 that “possibly” service on the driver might have been effected by substituted service on the insurers. *Porter v Freudenberg* was cited, but the point does not appear to have been argued.

C (2) In *Gurtner v Circuit* [1968] 2 QB 587, the driver alleged to have been responsible for a road accident had emigrated and could not be traced. He was thought to have been insured, but it was impossible to identify his insurer. The plaintiff was held not to be entitled to an order for substituted service on another insurer who had no relationship with the driver. Lord Denning MR thought (pp 596–597) that the affidavit in support of the application was defective because it failed to state that the writ, if served on a non-insurer, was likely to reach the defendant. But he suggested that substituted service might have been effected on the real insurer if it had been identified. Diplock LJ thought (p 605) that it might have been effected on the Motor Insurers’ Bureau. *Porter v Freudenberg* was not cited, and the point does not appear to have been argued.

E (3) In *Clarke v Vedel* [1979] RTR 26, the question was fully argued by reference to all the relevant authorities in the context of the Road Traffic Acts. A person had stolen a motor cycle, collided with the plaintiffs, given a fictitious name and address and then disappeared. He was sued under the fictitious name he had given, and an application was made for substituted service on the Motor Insurers’ Bureau. The affidavit in support understandably failed to state that that mode of service could be expected to reach the driver. The Court of Appeal proceeded on the assumption (p 32) that there was: “no more reason to suppose that [the writ] will come to his notice or knowledge by being served on the Motor Insurers’ Bureau than by being served on any one else in the wide world.” But it declined to treat the dicta in the above cases as stating the law. Stephenson LJ considered (p 36), on the strength of the dicta in *Murfin v Ashbridge* and *Gurtner v Circuit*, that:

G “there may be cases where a defendant, who cannot be traced and, therefore, is unlikely to be reached by any form of substituted service, can nevertheless be ordered to be served at the address of insurers or the Bureau in a road accident case. The existence of insurers and of the Bureau and of these various agreements does create a special position which enables a plaintiff to avoid the strictness of the general rule and obtain such an order for substituted service in some cases.”

H

But he held (pp 37–38) that:

“This is a case in which, on the face of it, substituted service under the rule is not permissible and the affidavit supporting the application for it is insufficient. This fictitious, or, at any rate, partly fictitious defendant

cannot be served, so Mr Crowther is right in saying that he cannot be sued . . . I do not think that Lord Denning MR or Diplock LJ or Salmon LJ or Goddard LJ had anything like the facts of this case in mind; and whatever the cases in which the exception to the general rule should be applied, in my judgment this is not one of them.”

In his concurring judgment, Roskill LJ (pp 38–39) approved the statement in the then current edition of the *Supreme Court Practice* that “The steps which the court may direct in making an order for substituted service must be taken to bring the document to the notice of the person to be served,” citing *Porter v Freudenberg* in support of it.

(4) 20 years later, another division of the Court of Appeal reached the opposite conclusion in *Abbey National plc v Frost (Solicitors’ Indemnity Fund Ltd intervening)* [1999] 1 WLR 1080. The issue was the same, except that the defendant was a solicitor insured by the Solicitors Indemnity Fund pursuant to a scheme managed by the Law Society under the compulsory insurance provisions of the Solicitors Act 1974. The claimant sued his solicitor, who had absconded and could not be found. The Court of Appeal made an order for substituted service on the fund. Nourse LJ (with whom Henry and Robert Walker LJJs agreed) distinguished *Porter v Freudenberg* on the ground that it was based on the practice of the masters of the Supreme Court recorded in the *White Book* at the time; and *Clarke v Vedel* on the ground that the policy of the statutory solicitors’ indemnity rules required a right of substituted service on an absconding solicitor. RSC Ord 65, r 4(3) was held to be purely directory and not to limit the discretion of the court as to whether or in what circumstances to order substituted service. Nourse LJ held that RSC Ord 65 did not require that the order should be likely to result in the proceedings coming to the defendants’ attention.

20 The current position is set out in CPR Pt 6. CPR r 6.3 provides for service by the court unless the claimant elects to effect service himself. It considerably broadens the permissible modes of service along lines recommended by Lord Woolf’s reports on civil justice. But the object of all the permitted modes of service, as his final report made clear, was the same, namely to enable the court to be “satisfied that the method used either had put the recipient in a position to ascertain its contents or was reasonably likely to enable him to do so within any relevant time period”: see *Access to Justice*, Final report (July 1996), Ch 12, para 25. CPR r 6.15, which makes provision for alternative service, provides, so far as relevant:

“(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.

“(2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.”

CPR r 6.15 does not include the provision formerly at RSC Ord 65, r 4(3). But it treats alternative service as a mode of “service”, which is defined in the indicative glossary appended to the Civil Procedure Rules as “steps required by rules of court to bring documents used in court proceedings to a person’s attention”. Moreover, sub-paragraph (2) of the rule, which is in effect a form of retrospective alternative service, envisages in terms that the mode of

A service adopted will have had that effect. Applying CPR r 6.15 in *Abela v Baadarani* [2013] 1 WLR 2043 Lord Clarke of Stone-cum-Ebony JSC (with whom the rest of this court agreed) held (para 37) that “the whole purpose of service is to inform the defendant of the contents of the claim form and the nature of the claimant’s case”. The Court of Appeal appears to have had no regard to these principles in ordering alternative service of the insurer in the present case.

B 21 In my opinion, subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant. *Porter v Freudenberg* was not based on the niceties of practice in the masters’ corridor. It gave effect to a basic principle of natural justice which had been the foundation of English litigation procedure for centuries, and still is. So far as the Court of Appeal intended to state the law generally when it observed in *Abbey National plc v Frost* that service need not be such as to bring the proceedings to the defendant’s attention, I consider that they were wrong. An alternative view of that case is that that observation was intended to apply only to claims under schemes such as the solicitors’ compulsory insurance scheme, where it was possible to discern a statutory policy that the public should be protected against defaulting solicitors. If so, the reasoning would apply equally to the compulsory insurance of motorists under the Road Traffic Acts, as indeed the Court of Appeal held in the present case. That would involve a narrower exception to the principle of natural justice to which I have referred, and I do not rule out the possibility that such an exception might be required by other statutory schemes. But I do not think that it can be justified in the case of the scheme presently before us.

E 22 In the first place, the Road Traffic Act scheme is expressly based on the principle that as a general rule there is no direct liability on the insurer, except for its liability to meet a judgment against the motorist once it has been obtained. To that extent, Parliament’s intention that the victims of negligent motorists should be compensated *by the insurer* is qualified. No doubt Parliament assumed, when qualifying it in this way, that other arrangements would be made which would fill the compensation gap, as indeed they have been. But those arrangements involve the provision of compensation not by the insurer but by the Motor Insurers’ Bureau. The availability of compensation from the Bureau makes it unnecessary to suppose that some way must be found of making the insurer liable for the underlying wrong when his liability is limited by statute to satisfying judgments.

F 23 Secondly, ordinary service on the insurer would not constitute service on the driver, unless the insurer had contractual authority to accept service on the driver’s behalf or to appoint solicitors to do so. Such provisions are common in liability policies. I am prepared to assume that the policy in this case conferred such authority on the insurer, although we have not been shown it. But it could only have conferred authority on behalf of the policy-holder (if he existed), and it is agreed that the driver of the Micra was not the policy holder. Given its contingent liability under section 151 of the Road Traffic Act 1988, the insurer no doubt has a sufficient interest to have itself joined to the proceedings in its own right, if it wishes to be. That would authorise the insurer to make submissions in its own interest, including submissions to the effect that the driver was not liable. But it

would not authorise it to conduct the defence on the driver's behalf. The driver, if sued in these proceedings, is entitled to be heard in his own right.

24 Thirdly, it is plain that alternative service on the insurer could not be expected to reach the driver of the Micra. It would be tantamount to no service at all, and should not therefore have been ordered unless the circumstances were such that it would be appropriate to dispense with service altogether.

25 There is a power under CPR r 6.16 "to dispense with service of a claim form in exceptional circumstances". It has been exercised on a number of occasions and considered on many more. In general, these have been cases in which the claimant has sought to invoke CPR r 6.16 in order to escape the consequences of some procedural mishap in the course of attempting to serve the claim form by one of the specified methods, or to confer priority on the English court over another forum for the purpose of the Brussels Regulation, or to affect the operation of a relevant limitation period. In all of them, the defendant or his agents was in fact aware of the proceedings, generally because of a previous attempt by the claimant to serve them in a manner not authorised by the Rules. As Mummery LJ observed, delivering the judgment of the Court of Appeal in *Anderton v Clwyd County Council (No 2)* [2002] 1 WLR 3174, para 58, service was dispensed with because there was "no point in requiring him to go through the motions of a second attempt to complete in law what he has already achieved in fact". In addition, I would accept that it may be appropriate to dispense with service, even where no attempt has been made to effect it in whatever manner, if the defendant has deliberately evaded service and cannot be reached by way of alternative service under CPR r 6.15. This would include cases where the defendant is unidentifiable but has concealed his identity in order to evade service. However, a person cannot be said to evade service unless, at a minimum, he actually knows that proceedings have been or are likely to be brought against him. A court would have to be satisfied of that before it could dispense with service on that basis. An inference to that effect may be easier to draw in the case of hit and run drivers, because by statute drivers involved in road accidents causing personal injury or damage to another vehicle must either "stop and, if required to do so by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner and the identification marks of the vehicle", or else report the incident later. But the mere fact of breach of this duty will not necessarily be enough, for the driver may be unaware of his duty or of the personal injury or damage or of his potential liability. No submission was made to us that we should treat this as a case of evasion of service, and there are no findings which would enable us to do so. I would not wish arbitrarily to limit the discretion which CPR r 6.16 confers on the court, but I find it hard to envisage any circumstances in which it could be right to dispense with service of the claim form in circumstances where there was no reason to believe that the defendant was aware that proceedings had been or were likely to be brought. That would expose him to a default judgment without having had the opportunity to be heard or otherwise to defend his interests. It is no answer to this difficulty to say that the defendant has no reason to care because the insurer is bound to satisfy a judgment against him. If, like the driver of the Micra, the motorist was not insured under the policy, he will be liable to

A indemnify the insurer under section 151(8) of the Road Traffic Act 1988. It must be inherently improbable that he will ever be found or, if found, will be worth pursuing. But the court cannot deny him an opportunity to be heard simply because it thinks it inherently improbable that he would take advantage of it.

B 26 I conclude that a person, such as the driver of the Micra in the present case, who is not just anonymous but cannot be identified with any particular person, cannot be sued under a pseudonym or description, unless the circumstances are such that the service of the claim form can be effected or properly dispensed with.

The European law issue

C 27 Mr Williams QC, who appeared for Ms Cameron, submitted that this result was inconsistent with the Sixth Motor Insurance Directive 2009/103/EC, and that the Road Traffic Act 1988 should be read down so as to conform with it. The submission was pressed with much elaboration, but it really boils down to two points. First, Mr Williams submits that the Directive requires a direct right against the insurer on the driver's underlying liability, and not simply a requirement to have the insurer satisfy a judgment against the driver. Secondly, he submits that recourse to the Motor Insurers' Bureau is not treated by the Directive as an adequate substitute. Neither point appears to have been raised before the Court of Appeal, for there is no trace of them in the judgments. Before us, they emerged as Mr Williams' main arguments. I propose, however, to deal with them quite shortly, because I think it clear that no point on the Directive arises.

E 28 Article 3 of the Directive requires member states to ensure that civil liability in respect of the use of vehicles is covered by insurance, and article 9 lays down minimum amounts to be insured. Recital (30) states:

F "The right to invoke the insurance contract and to claim against the insurance undertaking directly is of great importance for the protection of victims of motor vehicle accidents. In order to facilitate an efficient and speedy settlement of claims and to avoid as far as possible costly legal proceedings, a right of direct action against the insurance undertaking covering the person responsible against civil liability should be extended to victims of any motor vehicle accident."

Effect is given to this objective by article 18, which provides:

"Direct right of action"

G "Member states shall ensure that any party injured as a result of an accident caused by a vehicle covered by insurance as referred to in article 3 enjoys a direct right of action against the insurance undertaking covering the person responsible against civil liability."

H 29 I assume (without deciding) that article 18 requires a direct right of action against the insurer in respect of the underlying wrong of the "person responsible" and not just a liability to satisfy judgments entered against that person. It is a plausible construction in the light of the recital and the reference to Directive 2000/26/EC. However, Ms Cameron is not trying in these proceedings to assert a direct right against the insurer for the underlying wrong. Her claim against the insurer is for a declaration that it is liable to meet any judgment against the driver of the Micra. Her claim against the

driver is for damages. But the right that she asserts against him on this appeal is a right to sue him without identifying him or observing rules of court designed to ensure that he is aware of the proceedings. Nothing in the Directive requires the United Kingdom to recognise a right of that kind. Indeed, it is questionable whether it would be consistent with article 47 of the Charter of Fundamental Rights regarding the fairness of legal proceedings.

30 Mr Williams' second point is in reality a reiteration of the first. It is based on article 10 of the Directive, which requires member states to ensure that there is a "national bureau" charged to pay compensation for "damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in article 3 has not been satisfied". The submission is that the Directive requires that recourse to the Bureau, as the relevant body in the United Kingdom, should be unnecessary in a case like this, because the Micra was identified. It was only the driver who was unidentified. This is in effect a complaint that the indemnity available from the Motor Insurers' Bureau under the Untraced Drivers Agreement, which extends to untraced drivers whether or not the vehicle is identified, is wider than the Directive requires. In reality, the complaint is not about the extent of the Bureau's coverage, which unquestionably extends to this case. The complaint is that it is the Bureau which is involved and not the insurer. But that is because the insurer is liable only to satisfy judgments, which is Mr Williams' first point. It is true that the measure of the Bureau's indemnity is slightly smaller than that of the insurer (because of the excess for property damage and the limited provision for costs). But in that respect it is consistent with the Directive.

Disposal

31 I would allow the appeal, set aside the order of the Court of Appeal, and reinstate that of District Judge Wright.

Appeal allowed.

SHIRANIKHA HERBERT, Barrister

Chancery Division

Vastint Leeds BV v Persons unknown

[2018] EWHC 2456 (Ch)

2018 July 20; Sept 24

Marcus Smith J

Injunction — Trespass — Quia timet — Proper approach to exercise of court's discretion

The claimant had the immediate right of possession of an industrial site which was in the process of being developed. Despite taking a number of measures to secure the site, the claimant apprehended a threat of trespass from entry involving caravans by travellers seeking to occupy the site, from persons organising and participating in raves, and persons seeking to use the site for fly-tipping. It was contended that the acts of trespass envisaged posed a safety risk to the trespassers themselves, the claimant's contractors and staff, and could result in the claimant incurring considerable expense, which in practice would be irrecoverable. The claimant sought a quia timet injunction against persons unknown restraining them from entering the site.

On the claim—

Held, that a quia timet injunction would be granted in respect of threatened incursions by persons seeking to establish a more than temporary or more than purely transient occupation of the site, and persons organising, involved in, or participating in raves (post, paras 39).

Statement of the established law relating to the granting of final quia timet relief (post, para 31).

CLAIM

By an application notice dated 27 April 2018, the claimant, Vastint Leeds BV, sought an interim injunction against persons unknown enjoining them, without the consent of the claimant, from entering or remaining on the site, the former Tetley Brewery site, Leeds. By a claim form dated 30 April 2018 and amended by the order of Marcus Smith J on 4 July 2018, the claimant sought a final injunction in similar terms. The interim injunction was granted on 4 May 2018 by Hildyard J and ran until 4 July 2018. On 4 July 2018 the order was continued by Marcus Smith J until 31 July 2018.

The facts are stated in the judgment, post, paras 1–5, 8–18.

Brie Stevens-Hoare QC (instructed by *Fieldfisher llp*) for the claimant.

The court took time for consideration.

24 September 2018. **MARCUS SMITH J** handed down the following judgment.

A. Introduction

1 The claimant, Vastint Leeds BV ("Vastint"), has the immediate right to possession of a site known as the "Former Tetley Brewery Site" in Leeds. Before me, this property was referred to as the "Estate".

2 By Part 8 proceedings commenced on 30 April 2018 and amended by my order of 4 July 2018, Vastint seeks a final injunction against "persons unknown" enjoining them, without the consent of Vastint, from entering or remaining on the "Site". The Site comprises five discrete portions of land within the overall Estate.

3 By an application notice dated 27 April 2018, Vastint sought interim relief, in broadly similar terms, also against "persons unknown". That relief was granted by Hildyard J on 4 May 2018. Hildyard J's order (which was endorsed with a penal notice) made provision for the service of his order by ensuring that notices were affixed to the perimeter of and entrances to the Site. Personal service was not, however, dispensed with.

4 The interim injunction ran until 4 July 2018, which date was expressed to be the "return date" for the interim injunction. However, Hildyard J's order made clear that the return date was to be treated as the trial of the action, without pleadings or disclosure: see para 5.

5 The matter next came before me, in the interim applications court, on 4 July 2018. At that hearing, I indicated certain reservations in making a final order on that occasion. I continued the order of Hildyard J until 31 July 2018 or further order, and made clear that the matter should come back to me, for final hearing, before that date. In the event, the final hearing took place on 20 July 2018. This is my judgment on that final hearing.

6 Vastint seeks a quia timet injunction against persons unknown. It will be necessary to consider both the rules regarding the grant of final quia timet relief (in section D below) and the rules regarding the joinder as defendants of “persons unknown” (in section C below). Matters have been complicated by the fact that none of the “persons unknown” have appeared before me, and I have only heard submissions from Vastint. The manner in which I dispose of this matter is described in section E below.

7 Before considering the rules regarding the grant of final quia timet relief and the rules regarding the joinder as defendants of “persons unknown”, it is necessary briefly to describe the facts as presented in the evidence before me.¹

B. The facts

8 As much of the Site is unoccupied, Vastint has implemented a number of security measures, including but not limited to fencing on the perimeter of the Site, regular security patrols and weekly inspections of vacant properties.

9 Vastint is unable to eliminate entirely the risk of further trespass to the Site despite the security measures it has put in place.

10 The existence of unoccupied buildings on the Site gives rise to safety concerns prior to development taking place: some of the buildings are unsafe and structurally unstable, and there are hazardous materials and substances like asbestos on the Site.

11 During each of the three phases of the development of the Site, there will be different or increased safety risks on the Site arising out of work being done on the Estate and/or the Site, for example: (during demolition), unstable structures and hazardous substances; (during remediation) large excavations; and (during construction) risks from equipment and machinery.

12 There have been four incidents of trespass, primarily involving caravans, at the Estate (including, but not solely, in relation to the Site) in 2011, 2016, 2017 and 2018. Recently, persons unknown have triggered alarms at the Site; these alarms have been sufficient to warn off these persons, but there are further cases of trespass or (at least) attempted trespass.

13 There have also been a number of incidents, primarily involving actual or attempted illegal raves, taking place at a site in East London owned by another member of the group of which Vastint is a part (Vastint UK BV). In the case of this, East London, site, a final injunction against persons unknown was granted by this court in February 2017.

14 There is an increase in gangs using commercial properties for illegal fly-tipping. No specific instances of professional squatters running fly-tipping operations have been identified, but Vastint has incurred clean-up costs of approximately £25,000 after rubbish and unwanted items were left on the Estate and/or the Site following the four incidents mentioned in para 12 above. Other members of the same corporate group have also suffered delay and incurred clean-up costs as a result of fly-tipping elsewhere.

15 There is an emerging illegal rave culture. No specific instances of proposed or attempted illegal raves at the Site have been identified. Vastint relies upon what happened at the East London site, and newspaper articles commenting on the rise of illegal raves; it considers that an empty warehouse on a part of the site known as the “Asda land” may be an attractive location for illegal raves.

16 On 29 May 2018, a high-profile incident occurred at a development site in Blackburn where 20 caravans and 25 vehicles caused significant damage to the value of £100,000.

17 As at 13 June 2018, it was anticipated that demolition would commence in autumn 2018. Remediation (which remains to be agreed) would then follow either at the end of 2018 or early 2019 and, subject to the progress of the first two phases, construction may commence in autumn 2019. There is no evidence before me regarding the anticipated duration of the construction phase of the works.

18 The position, in light of the evidence, may be described as follows:

(1) Despite Vastint taking a number of measures to ensure the physical integrity of the Site, the threat of trespass remains. That threat is said to emanate from three, specific, sources: (a) Entry involving caravans, by travellers, seeking to establish a more than temporary, or more than purely transient, occupation of the Site. (b) Entry of persons organising, involved in, or participating in, raves. (c) Entry of persons seeking to use the Site for fly-tipping.

(2) The evidence regarding the level of the threat from these sources becomes more exiguous as the three sources, described in the preceding sub-paragraph, are individually considered: (a) There is evidence of actual past entry onto the Estate and/or the Site involving caravans. I do not consider that it is especially profitable to differentiate between trespass involving the Estate and trespass involving the Site. One (the Site) is a subset of the other (the Estate), and in my judgment, trespass onto the Estate albeit not involving the Site is good evidence of a risk of this sort of trespass to the Site. (b) There is no evidence of actual past entry onto the Estate or the Site for the purpose of raves. Vastint's concern regarding this particular threat is informed by what has occurred at the East London site of its sister company, combined with the existence of premises on the Site (the Asda land) which are attractive to those organising raves. (c) There is limited evidence of actual past entry onto *other* Vastint group properties for the purposes of fly-tipping, and there are cases involving the property of third parties, including third party developers.

(3) In terms of the risks that exist in the case of trespass, these are twofold: (a) First, there are risks to the health and safety of those trespassing (to whom Vastint owes a limited duty of care) as well as risks to the health and safety of those having to deal with such trespass (which persons will include employees and contractors engaged by Vastint, to whom a rather more extensive duty of care will be owed). Obviously, were injury or worse to be sustained by a person, that is only compensable in damages in the most rudimentary way. It is clearly better that the trespass—and the consequent risk to health and safety—not occur. (b) Secondly, Vastint may well, in the case of trespass, incur significant costs in dealing with such trespass which (albeit theoretically recoverable from the trespasser) are likely to prove in practice irrecoverable.

(4) In terms of the benefits that an injunction enjoining persons (or a class of person) from entering the Site would confer, these are threefold: (a) First, it was stressed to me that the effect of a court order, enjoining entry, was (in Vastint's experience) a material one; and that this effect was over-and-above the deterrence provided by Vastint's other measures to maintain the integrity of the Site. In short, an injunction, if granted, would have a real effect in preserving the Site from trespass. (b) Secondly, Vastint considered that an injunction would not only affect the conduct of potential trespassers, but also would underline the seriousness of the position to the police, who might be more responsive in the case of any trespass in breach of a court order. (c) Thirdly, given that the order sought by Vastint will be buttressed by a penal notice, Vastint would have easier recourse to the court's contempt jurisdiction. (I say easier because, although both Hildyard J and I ordered service of the interlocutory injunctions in this case by additional means (see para 3 above), personal service was *not* dispensed with. Accordingly, unless personal service *is* dispensed with, it would be necessary for an order to be personally served on a party in breach, and for the order to continue to be breached, before committal proceedings could be contemplated.)

C. Proceedings and orders against persons unknown

19 It was established in *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] EWHC 1205 (Ch); [2003] 1 WLR 1633 that following the introduction of the CPR, there was no requirement that a defendant must be named in proceedings against him/her/it, but merely a direction that the defendant should be named (if possible).

20 The naming of a defendant thus ceased to be a substantive requirement for the purpose of issuing proceedings, but rather became a question for the case management of the court. In all the circumstances, is it appropriate that, instead of identifying a defendant by name, for the defendant be identified in some other way?

21 The manner in which a defendant can be identified other than by name will vary according to the circumstances of the particular case. Three particular instances may be described:

(1) Where there is a specific defendant, but where the name of that defendant is simply not known. In such a case, it may be appropriate to describe the defendant by reference to an alias, a photograph, or some other descriptor that enables those concerned in the proceedings—including the defendant—to know who is intended to be party to the proceedings.

(2) Where there is a specific *group* or *class* of defendants, some of whom are known but some of whom (because of the fluctuating nature of the group or class or for some other reason) are unknown. In such a case, the persons unknown are defined by reference to their association with that particular group or class.

(3) Where the identity of the defendant is defined by reference to *that defendant's future act of infringement*. In such a case, the identity of the defendant cannot be immediately established: the defendant is established by his/her/its (future) act of infringement.

22 It is this third class of unknown defendant that is in play here. Accordingly, it is appropriate to pay particular attention to the extent to which the courts have sanctioned the joining of persons to proceedings on this basis.

(1) In *Bloomsbury* itself, the Vice-Chancellor stated, at para 21 as follows:²

“The crucial point, as it seems to me, is that the description used must be sufficiently certain as to identify both those who are included and those who are not. If that test is satisfied then it does not seem to me to matter that the description may apply to no one or to more than one person nor that there is no further element of subsequent identification whether by service or otherwise.”

(2) *South Cambridgeshire District Council v Gammell* [2005] EWCA Civ 1429; [2006] 1 WLR 658, the Court of Appeal considered the effect of an injunction granted pursuant to section 187B of the Town and Country Planning Act 1990, which provided for the making of injunctions against persons unknown. The Court of Appeal concluded, at para 32 that a person became a party to proceedings by the very act of infringing the order: “In each of these appeals the appellant became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case.”

(3) In *Ineos Upstream Ltd v Persons Unknown* [2017] EWHC 2945 (Ch) at [119], Morgan J expressed a degree of concern about orders having this effect, but concluded, at para 121 that (particularly in light of the *South Cambridgeshire* decision) this procedure was now open to claimants in cases outside section 187B of the Town and Country Planning Act 1990.

23 At first sight, the notion that a person, through the very act of infringing an order, becomes: (i) a party to the proceedings in which that order was made; (ii) bound by that order; and (iii) in breach of that order, seems counter-intuitive.

24 However, aside from the fact that the making of such orders is now settled practice, *provided* the order is clearly enough drawn (a point I revert to below), it actually works extremely well within the framework of the CPR. Until an act infringing the order is committed, *no-one* is party to the proceedings. It is the act of infringing the order that makes the infringer a party. It follows that—as a non-party—any person affected by the order (provided he or she has not breached it) may apply to set the order aside pursuant to CPR r 40.9. CPR r 40.9 provides: “A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.” Thus, were a person to become aware of such an order, and consider the order improperly made, that person (if “directly affected” by the order) could apply to set it aside without more. It is simply that such a person would have to do so *before* infringing the order, whilst still a non-party. It is entirely right that even court orders wrongly made should be obeyed until set aside or varied, and CPR r 40.9 does no more than emphasise the importance of such an approach.³

25 In terms of how such an order might be framed, the Vice-Chancellor gave the following guidance in *Hampshire Waste Services Ltd v Intending Trespassers Upon Chineham Incinerator Site* [2003] EWHC 1738 (Ch); [2004] Env LR 9:

(1) First, that the description of the defendant should not involve a legal conclusion, such as is implicit in the use of the word “trespass”, para 9.

(2) Secondly, that it is undesirable to use a description such as “intending to trespass”, because that depends on the subjective intention of the individual which is not necessarily known to the outside world, and in particular the claimant, and is susceptible of change.⁴

D. *Quia timet* injunctions

26 *Gee, Commercial Injunctions*, 6th ed (2016), para 2-035 describes a *quia timet* injunction in the following terms: “A *quia timet* (since he fears) injunction is an injunction granted where no actionable wrong has been committed, to prevent the occurrence of an actionable wrong, or to prevent repetition of an actionable wrong”: see also *Proctor v Bayley* (1889) 42 Ch D 390, 398.

27 The jurisdiction is a preventive jurisdiction and may be exercised both on an interlocutory or interim basis or as a final or perpetual injunction. In this case, of course, a final injunction is sought. That injunction will—if granted—be time limited to the period the perimeter around the Site is in place.

28 *Hooper v Rogers* [1975] Ch 43; [1974] 3 WLR 329 was a case where the Court of Appeal was considering the circumstances in which a *mandatory*⁵ final *quia timet* injunction was being sought. Russell LJ, with whom Stamp and Scarman LJ agreed, articulated the circumstances in which such an injunction would be granted, at p 50:

“In different cases, differing phrases have been used in describing circumstances in which mandatory injunctions and quia timet injunctions will be granted. In truth, it seems to me that the degree of probability of future injury is not an absolute standard: what is to be aimed at is justice between the parties, having regard to all the relevant circumstances.”

29 *Gee, Commercial Injunctions*, 6th ed (2016), para 2-035 similarly, suggests that the circumstances in which a quia timet injunction will be granted are relatively flexible:

“There is no fixed or ‘absolute’ standard for measuring the degree of apprehension of a wrong which must be shown in order to justify quia timet relief. The graver the likely consequences, the more the court will be reluctant to consider the application as ‘premature’. But there must be at least some real risk of an actionable wrong.”

30 However, in *Islington London Borough Council v Elliott* [2012] EWCA Civ 56; [2012] 7 EG 90, Patten LJ, with whom Longmore and Rafferty LJ agreed, formulated an altogether more stringent test, at paras 29–31:

“29. The court has an undoubted jurisdiction to grant injunctive relief on a quia timet basis when that is necessary in order to prevent a threatened or apprehended act of nuisance. But because this kind of relief ordinarily involves an interference with the rights and property of the defendant and may (as in this case) take a mandatory form requiring positive action and expenditure, the practice of the court has necessarily been to proceed with caution and to require to be satisfied that the risk of actual damage occurring is both imminent and real. That is particularly so when, as in this case, the injunction sought is a permanent injunction at trial rather than an interlocutory order granted on *American Cyanamid* principles having regard to the balance of convenience. A permanent injunction can only be granted if the claimant has proved at the trial that there will be an actual infringement of his rights unless the injunction is granted.

“30. A much-quoted formulation of this principle is set out in the judgment of Pearson J in *Fletcher v Bealey* (1884) 28 Ch D 688 at 698 where he first quotes from Mellish LJ in *Salvin v North Brancepeth Coal Company* (1874) LR 9 Ch App 705 and then adds his own comments that: ‘it is not correct to say, as a strict proposition of law, that, if the plaintiff has not sustained, or cannot prove that he has sustained, substantial damage, this court will give no relief; because, of course, if it could be proved that the plaintiff was certainly about to sustain very substantial damage by what the defendant was doing, and there was no doubt about it, this court would at once stop the defendant, and would not wait until the substantial damage had been sustained. But in nuisance of this particular kind, it is known by experience that unless substantial damage has actually been sustained, it is impossible to be certain that substantial damage ever will be sustained, and, therefore, with reference to this particular description of nuisance, it becomes practically correct to lay down the principle, that, unless substantial damage is proved to have been sustained, this court will not interfere. I do not think, therefore, that I shall be very far wrong if I lay it down that there are at least two necessary ingredients for a quia timet action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed, the damage will be suffered, I think it must be shewn that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a quia timet action.’

“31. More recently in *Lloyd v Symonds* [1998] EWCA Civ 511 (a case involving nuisance caused by noise) Chadwick LJ said: ‘On the basis of the judge’s finding that the previous nuisance had ceased at the end of May 1996 the injunction which he granted on 7 January 1997 was quia timet. It was an injunction granted, not to restrain anything that the defendants were doing (then or at the commencement of the proceedings on 20 June 1996), but to restrain something which (as the plaintiff alleged) they were threatening or intending to do. Such an injunction should not, ordinarily, be granted unless the plaintiff can show a strong probability that, unless restrained, the defendant

will do something which will cause the plaintiff irreparable harm—that is to say, harm which, if it occurs, cannot be reversed or restrained by an immediate interlocutory injunction and cannot be adequately compensated by an award for damages. There will be cases in which the court can be satisfied that, if the defendant does what he is threatening to do, there is so strong a probability of an actionable nuisance that it is proper to restrain the act in advance rather than leave the plaintiff to seek an immediate injunction once the nuisance has commenced. “Preventing justice excelleth punishing justice”—see *Graigola Merthyr Co Ltd v Swansea Corpn* [1928] Ch 235, 242. But, short of that, the court ought not to interfere to restrain a threatened action in circumstances in which it is satisfied that it can do complete justice by appropriate orders made if and when the threat of nuisance materialises into actual nuisance (see *Attorney-General v Nottingham Corpn* [1904] 1 Ch 673, 677). ... In the present case, therefore, I am persuaded that the judge approached the question whether or not to grant a permanent injunction on the wrong basis. He should have asked himself whether there was a strong probability that, unless restrained by injunction, the defendants would act in breach of the Abatement Notice served on 22 April 1996. That notice itself prohibited the causing of a nuisance. Further he should have asked himself whether, if the defendants did act in contravention of that notice, the damage suffered by the plaintiff would be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at that stage) to restrain further occurrence of the acts complained of, a remedy in damages would be inadequate. Had the judge approached the question on that basis, I am satisfied that he could not have reached the conclusion that the grant of a permanent injunction quia timet was appropriate in the circumstances of this case.”

31 From this, I derive the following propositions:

(1) A distinction is drawn between final *mandatory* and final *prohibitory* quia timet injunctions. Because the former oblige the defendant to do something, whilst the latter merely oblige the defendant not to interfere with the claimant’s rights, it is harder to persuade a court to grant a mandatory than a prohibitory injunction. That said, the approach to the granting of a quia timet injunction, whether mandatory or prohibitory, is essentially the same.

(2) Quia timet injunctions are granted where the breach of a claimant’s rights is threatened, but where (for some reason) the claimant’s cause of action is not complete. This may be for a number of reasons. The threatened wrong may, as here, be entirely anticipatory. On the other hand, as in *Hooper v Rogers*, the cause of action may be substantially complete. In *Hooper v Rogers*, an act constituting nuisance or an unlawful interference with the claimant’s land had been committed, but damage not yet sustained by the claimant but was only in prospect for the future.

(3) When considering whether to grant a quia timet injunction, the court follows a two-stage test: (a) First, is there a strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant’s rights? (b) Secondly, if the defendant did an act in contravention of the claimant’s rights, would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of *actual* infringement of the claimant’s rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?

(4) There will be multiple factors relevant to an assessment of each of these two stages, and there is some overlap between what is material to each. Beginning with the first stage—the strong possibility that there will be an infringement of the claimant’s rights—and without seeking to be comprehensive, the following factors are relevant: (a) If the anticipated infringement of the claimant’s rights is entirely anticipatory—as here—it will be relevant to ask what other steps the claimant might take to ensure that the infringement does not occur. Here, for example, Vastint has taken considerable steps to prevent trespass; and yet, still, the threat exists. (b) The attitude of the defendant or anticipated defendant in the case of an anticipated infringement is significant. As *Spry, Equitable Remedies*, 9th ed (2013) notes at p 393: “One of the most important indications of the defendant’s intentions is ordinarily found in his own statements and actions”. (c) Of course, where acts that may lead to an infringement 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. (d) 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. (*Hooper v Rogers* [1975] Ch 43, 50)

(5) Turning to the second stage, it is necessary to ask the counterfactual question: assuming no quia timet injunction, but an infringement of the claimant’s rights, how effective will a

more-or-less immediate interim injunction plus damages in due course be as a remedy for that infringement? Essentially, the question is how easily the harm of the infringement can be undone by an ex post rather than an ex ante intervention, but the following other factors are material: (a) The gravity of the anticipated harm. It seems to me that if some of the consequences of an infringement are potentially very serious and incapable of ex post remedy, albeit only one of many types of harm capable of occurring, the seriousness of these irremediable harms is a factor that must be borne in mind. (b) The distinction between mandatory and prohibitory injunctions.

E. Disposition

(1) Strong probability of a breach of Vastint's rights, unless the defendant is restrained

32 Applying the two-stage test as I have described it, Vastint labours under the considerable disadvantage that it cannot, with any specificity at all, identify the persons likely to trespass on its property. Of course, I accept entirely that this court has jurisdiction to permit proceedings and make orders, even final orders, against "persons unknown", who are only defined by reference to their future acts: see paras 21–24 above. But, I must recognise, as a strong indicator against the granting of an injunction, that Vastint lacks altogether any evidence regarding the attitude of the anticipated defendants.

33 On the other hand, Vastint has taken careful and responsible steps to secure the Site and to prevent trespass on it. Despite these measures, as I have described (see para 18(2) above), there has been actual past entry onto the Estate and/or the Site involving caravans. A future incursion by caravans may very well occur; it is impossible to say when. I consider that, as regards this threatened infringement of Vastint's rights, that the first stage of the test has been made out, and that there is a strong probability that, unless restrained by injunction, there will be a future infringement of Vastint's rights by way of trespass.

34 As regards the entry of persons organised, involved in or participating in raves, the evidence amounts to a combination of: (i) this having happened on another site owned by the Vastint group in East London; (ii) there being a building suitable for, and attractive to the organisers of, raves on the Site; and (iii) various attempts unlawfully to access the Site which do not appear to be related to caravans. With some hesitation, I conclude that there is a strong probability that, unless restrained by injunction, Vastint's rights will be infringed by such persons.

35 The evidence as regards fly-tipping is exiguous at best: in relation to the Estate, it is speculation, and there is no evidence of a substantial risk of infringement beyond the assertion that this is something that goes on at (development) sites elsewhere in England and Wales.

(2) Gravity of resulting harm

36 The harm that Vastint envisages as arising out of an act of trespass has been described in para 18(3) above. It is clear that the risks to health and safety (to trespassers, staff and contractors) that Vastint has identified are serious risks to life and limb that ought, if possible, to be avoided.

37 Additionally, there are the significant costs that Vastint would incur in the case of removing trespassers from the Site. Although I accept that, in theory, such costs are compensable in damages, this court should look to the reality of the situation, and recognise that such costs—in theory recoverable from the trespassers—are unlikely ever to be recovered.⁶

38 I am satisfied that the second limb of the test is met.

(3) The appropriate order in this case

39 For the reasons I have given, it is appropriate to grant a quia timet injunction in respect of threatened incursions by: (1) Persons seeking to establish a more than temporary or more than purely transient occupation of the Site. (2) Persons organising, involved in, or participating in raves.

40 Vastint contended for an order in the following terms: "Those defendants who are not already in occupation of [the Site]⁷ must not enter or remain on Site without the written consent of [Vastint] ..." The duration of the order is time limited to the period in which the perimeter surrounding the Site is in place.

41 The precise formulation of the order is a matter to be considered by Vastint in light of this judgment. However, as drafted, the order extends to *any* person entering the Site without the written consent of Vastint. I do not consider such an order to be workable, satisfactory or appropriate. Because this directly affects the scope of the order I am prepared to make, it is necessary that I should say why I have come to this view:

(1) As I pointed out in argument, as framed, this order would involve police officers and other public authorities entering the property in the lawful execution of their duties being in

breach of the order. Vastint has sought to deal with this by a recital to the order, whereby Vastint acknowledges “that this order does not apply to police officers, fire fighters, paramedics or others properly forming part of an emergency service related to the protection of or health and welfare of the public”. Aside from the fact that this is quite a vague formulation, it is inappropriate for so important a “carve out” to feature in a recital to an order. So far as I can see, a police officer entering the Site in the execution of his lawful duty would be in breach of the order; it is simply that Vastint, by its recital, would be in difficulty in enforcing the order.

(2) Clearly, the Site is being developed. That will involve large numbers of persons *legitimately* working on the Site. I anticipate that the identity of the persons so involved will fluctuate over time, with existing members of this group leaving it, and new members joining it. As the order is drafted, each such person will require Vastint’s written consent to be on the Site in order to avoid their being in breach of the order. I have not been addressed on the workability of this. Suffice it to say that I have considerable concerns, and I do not consider that the order, as drafted, meets the criteria framed by the Vice-Chancellor and set out in para 22(1) above.

(3) As framed, the order applies to any person entering the Site without Vastint’s written consent, subject to the recital that I have described. Its ambit is not confined to the two classes of unknown defendants in respect of whom I have found there to be a substantial risk that they will infringe Vastint’s property rights. It extends to *any* trespasser. I consider that quia timet injunctive relief must be tailored to the threat that is feared and should not be wider than is strictly necessary to deal with this threat.

42 Resisting a narrower order than the one it put forward, Vastint made a number of points:

(1) First, it was suggested that the order as drafted followed the suggested form of words of the Vice-Chancellor in *Hampshire Waste Services Ltd v Intending Trespassers Upon Chineham Incinerator Site* [2003] EWHC 1738 (Ch); [2004] Env LR 9. That is not, in fact, the case. The wording suggested by the Vice-Chancellor at para 10 was as follows:

“Persons entering or remaining without the consent of the claimants, or any of them, on any of the incinerator sites at [the addresses were then set out] *in connection with the ‘Global Day of Action Against Incinerators’ (or similarly described event) on or around 14 July 2003.*” (Emphasis added.)

The Vice-Chancellor sought to target his order to the class of defendant constituting the threat to the claimants’ rights: the order in the present case must do the same.

(2) Secondly, it was suggested that it might not be possible to define, with sufficient clarity, the “persons unknown” to whom the order was directed and/or that such narrow drafting would give rise to argument about whether a given person had or had not infringed the order. There are two answers to this point: (a) First, as a matter of principle, it seems to me that unless the ambit of the order can clearly be drawn, so that it is clear, it ought not to be granted. I do not consider, in this case, that an appropriate order cannot be drafted. (b) Secondly, for the reason given in para 41 above, the draft order as framed by Vastint is itself unsatisfactorily clear, because I am satisfied that Vastint has given insufficient consideration as to how written consent to be present on the Site will be given to the large and fluctuating workforce that will be properly present on the Site.

(3) Thirdly, it was suggested that singling out specific classes of unknown defendants might suggest that for all other persons, not so identified, this court was somehow sanctioning the tort of trespass. I do not accept that. Anyone entering the Site without consent will be a trespasser: it is simply that, as regards those unknown defendants identified by the order, particular (and very serious) consequences attach should they breach the order.

(4) *Final matters*

43 When the matter was before me on 4 July 2018, I extended the interim relief granted by Hildyard J until 31 July 2018 or further order. Given the date on which this judgment is being circulated in draft (26 July 2018), and given the work that needs to be done in relation to the order, it is appropriate that I extend the interim relief to 30 September 2018 or further order, so that a properly drafted final order can be put in place before then.

44 Finally, the interim orders made by Hildyard J and myself made provision for service by additional means, but did not dispense with personal service. This was described to me as an additional safeguard for persons infringing the order, in that committal proceedings could not be commenced against infringing parties without personal service. Given the narrower class of defendant to which the final order I envisage will apply and given the importance of proper enforcement of the order in case of breach, it is appropriate that process envisaged for bringing these proceedings and the orders made pursuant to these proceedings to the attention

of potential defendants should constitute the *only* form of service, and that personal service be dispensed with.

Notes

1. The evidence before me comprised: (i) witness statement of Daniel Owen Christopher Talfan Davies dated 27 April 2018; (ii) witness statement of Michael Denis Cronin dated 27 April 2018; (iii) witness statement of Simon Schofield dated 27 April 2018; (iv) second witness statement of Daniel Owen Christopher Talfan Davies dated 13 June 2018; (v) second witness statement of Michael Denis Cronin dated 13 June 2018; (vi) witness statement of Luke Alan Evans dated 13 June 2018; (vii) third witness statement of Daniel Owen Christopher Talfan Davies dated 18 July 2018.

2. Affirmed in *Cameron v Hussain* [2017] EWCA Civ 366 at [50], [53] and [54].

3. It may be that a person infringing the order—and so a party—could apply under CPR r 39.3 to have the order set aside. That, as it seems to me, involves something of a strained reading of CPR r 39.3, since at the time the order was made, such a person would not have been a party.

4. As regards the second point, it is worth noting that there have been later cases where subjective states of mind have been used in the order. Morgan J referred to this in *Ineos* at para 122. See, for example, *Sheffield City Council v Fairhall* [2018] EWHC 1793 (QB).

5. In this case, Vastint does not seek a mandatory but a prohibitive injunction.

6. See *Hampshire Waste Services Ltd v Intending Trespassers Upon Chineham Incinerator Site* [2003] EWHC 1738 (Ch), where such irrecoverable costs (as well as safety risks) were taken into account).

7. It is unclear to me what the purpose of the words “who are not already in occupation of the Site” is.

Order accordingly.

SARAH PARKER, Barrister



Neutral Citation Number: [2019] EWHC 1560 (QB)

Case No: F90BM116

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/06/2019

Before :

MR JUSTICE WARBY

Between :

Birmingham City Council
- and -

Claimant

(1) Mr Shakeel Afsar
(2) Ms Rosina Afsar
(3) Mr Amir Ahmed
(4) Persons Unknown

Defendants

Jonathan Manning (instructed by **Birmingham City Council**) for the **Claimant**
John Randall QC and James Dixon (instructed by **Safaaz Solicitors**) for the **First to Third**
Defendants

Hearing date: 10 June 2019

Approved Judgment

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

.....

CLIVE SHELDON QC

MR JUSTICE WARBY:

1. This case is about a protest which has been carried on outside a primary school, Anderton Park School (the “School”), against aspects of the teaching at the School. The case involves a conflict between a number of important civil rights, some of them fundamental human rights. The case will have to go to trial. This judgment follows an interim, pre-trial hearing on Monday 10 June 2019. At that hearing I gave directions for the case to be tried before the end of July. I then heard an application by the first to third defendants, for the discharge of injunctions that had been granted at a hearing without notice on 31 May 2019, and an application by the claimant to continue those injunctions until after judgment at the trial.
2. At the end of the hearing, I announced my decision. I granted the defendants’ application for discharge of the existing injunctions, with costs, on the grounds of failures to comply with the duty of full and frank disclosure owed by those who seek injunctions without giving notice to other parties. But I upheld the claimant’s application, and granted fresh interim injunctions, so that protection remains in place pending trial, with costs. I did so on the basis that the claimant was likely to succeed at trial in showing that restraint on the way the protests were being conducted was justified. I said that my reasons would follow. These are those reasons.

The factual background: outline

3. The protest involves parents of pupils at the school, relatives of theirs, and other individuals opposed to some of the ways the school is teaching its pupils. It began on or about 18 March 2019, and has been going on for a number of weeks, attracting a degree of publicity. The focus of the protest has been the teaching of matters relating to sexual behaviour, sexuality, and gender. The named defendants and, it would appear, a significant proportion of the protestors are of the Muslim faith, advocating what some have described as the “conservative values” of their community.
4. At the end of May, Birmingham City Council applied to Court for an injunction to restrain aspects of this protest. There were four named defendants. The first three were individuals, Shakeel Afsar, Rosina Afsar and Amir Ahmed. The fourth defendant was “Persons Unknown”, a category designed to cover persons interested in protesting at or near the school. The application was prompted by what the Council saw as an escalation in the protests, particularly in the last week of the first half of term. It was made without notice to any of the defendants. It was heard on the last day of the half-term break, Friday 31 May 2019, in the Interim Applications Court in London, by Moulder J, DBE. The Judge granted orders against all of the defendants.
5. In summary, the injunctions against the named defendants contain (1) an exclusion zone order, prohibiting entry into an area around the School, (2) a prohibition on conduct which harasses, alarms or causes distress to others, (3) a ban on approaching staff of the school or witnesses in the case, (4) and (5) prohibitions on the use of social media to offend or abuse teachers, and (6) a ban on otherwise engaging in or encouraging others to protest within the exclusion zone. The precise terms of the injunction granted against the second defendant are set out in Appendix A to this judgment. It contains exceptions reflecting the status of the second defendant as the mother of two children at the School. The orders against the first defendant (brother of the second defendant) and the third defendant (an organiser of the protests) were in

the same terms, but without those exceptions. They did contain the exception allowing access to the mosque. These Orders were made pursuant to the Local Government Act 1972 (s 222), and the Anti-Social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) (s 7).

6. The terms of the injunction granted against Persons Unknown are set out in Appendix B. They reflect paragraphs 5 and 6 of the orders against the named defendants, with the addition of a prohibition on “engaging” in protest. These orders were made pursuant to the Local Government Act 1972 (s 222), Highways Act 1980 (s 130), and the Localism Act 2011 (s 1). This injunction order had a Schedule containing provisions as to service. Service was to be effected by placing signs informing people of the Order and the area in which it has effect “in prominent locations along the boundary” of the exclusion zone, at the School entrances, in a newspaper, on the Council’s website, Facebook page, Twitter account and other social media.
7. The injunctions were served on the named defendants on Monday 3 June 2019. I have no evidence of this, but I take it that the signs and other notices in respect of the Persons Unknown injunction were put up, posted, published or circulated the same day, 3 June. The following day, Tuesday 4 June 2019, the Council applied for and obtained an extension of the exclusion zone, at a hearing before Moulder J which was again conducted without notice to any of the defendants.
8. All the orders were expressed to “continue until the hearing of the claim unless previously varied or discharged by further Order of the Court”. But each order provided that it should “in any event, be reconsidered at a further hearing at 10.30 am on 10 June 2019 at the Birmingham Civil & Family Justice Centre, Priory Law Courts, 33 Bull Street, Birmingham B4 6DS.”
9. At that hearing, before me, Mr Manning on behalf of the Council applied to continue the injunction until trial. Mr Randall QC appeared with Mr Dixon for the first three defendants, to resist that application and to seek the discharge of the order granted by Moulder J, on the grounds of material non-disclosure. These applications gave rise to three main issues for decision: (1) Should the existing order be discharged? (2) Regardless of the answer to that question, what if any injunction should be granted pending the trial of the claim? (3) What directions are required in order to ensure that the case is resolved swiftly, expeditiously and fairly?
10. A fourth issue arose for my consideration: what if any injunction should be put in place for the future against Persons Unknown? I was bound to address that issue as a matter of principle, despite the fact that nobody appeared at the hearing to identify themselves as the, or a, fourth defendant, or a representative of any Person Unknown.

The legal context

Substantive law

11. Section 1 of the 2014 Act allows the Court to grant a final injunction if (a) the court is satisfied, on the balance of probabilities, that the defendant has engaged or threatens to engage in anti-social behaviour and (b) considers it just and convenient to grant the injunction for the purpose of preventing the defendant from engaging in anti-social behaviour. Section 7 allows the court to grant an interim injunction pending a final

hearing if it “thinks it just to do so”. This power is available on a without-notice application (s.7(1), (3)-(4)). Anti-social behaviour is defined by s 2(1), to encompass conduct “that has caused, or is likely to cause, harassment, alarm or distress to any person”, or is “capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises.”

12. These provisions, like those of any statute, must be interpreted and applied in conformity with the European Convention on Human Rights (‘the Convention’) and other statutory provisions. The rights to protest, to associate with others for that purpose, and to express one’s religious views, are all aspects of the fundamental human rights protected by the Convention and the Human Rights Act 1998 (“HRA”). They are rights safeguarded by Articles 9, 10 and 11 of the Convention. Article 2 of the First Protocol (“A2P1”) is also relevant, or at least arguably so, insofar as it requires the state to respect the right of parents to ensure that education and teaching is in conformity with their own religious and philosophical convictions. There would seem to be an overlap here with the right to respect for one’s private and family life, protected by Article 8.
13. On the other side of the argument lie the right to education, the right to impart and receive information and opinions with which others may disagree, and the right to respect for one’s private life: articles 8 and 10 of the Convention, and A2P1. The court must act compatibly with these rights: s 6 HRA. Also relevant are the civil rights of citizens to be free from threatening behaviour, unwarranted harassment, or conduct that unjustifiably causes alarm or distress. These are protected by Article 8 and by domestic law, including the statutory provisions I have cited above.
14. These competing rights are engaged in the context of a dispute over issues of social, political, and educational policy. But I repeat what I said at the hearing: it is no part of my role, at this stage of the case, to decide any question about the rights and wrongs of the views expressed by the protestors. Not only is this not the trial, it does not seem to me to be an appropriate legal vehicle for the resolution of issues of that kind. It might be open to the protestors to seek judicial review of the educational policy that has been adopted and applied here, but it is not easy to see how the merits of that policy can figure large in this case.
15. Neither side has in fact suggested that my decision should turn on the merits of the debate that is taking place. Whatever may be the Council’s opinion as to the propriety of the protestors’ views, it is no part of the Council’s case at this hearing that the Court should prevent the defendants from protesting because their views are unacceptable or wrong. Rather the contrary, Mr Manning has been at pains to emphasise that the restraints sought and imposed are not bans on the protests as such; they are limitations on where and how the protest can be carried on.
16. For their part, the named defendants do maintain that the School is behaving wrongfully, as they and their Counsel have made clear. But it is not suggested that I can or should reach a decision on those questions. This application is therefore not about the content of the expression under discussion. The injunctions were not granted to prevent the expression of particular views, but to protect against anti-social behaviour, harassment, misuse of the highways, and other interests which have to do with where and how the protestors are expressing their opinions.

Standing, jurisdiction and procedure

17. It is not in dispute that the Council has standing to seek injunctions of the kind that were sought and granted here. Nor is there any dispute that the named defendants are amenable to the Court's jurisdiction under the statutory provisions relied on.
18. The pursuit of remedies against "Persons Unknown" has been a well-trodden path, ever since *Bloomsbury Publishing Group v News Group Newspapers Ltd* [2003] EWHC 1205 (Ch) [2003] 1 WLR 1633. There is no doubt that claims of this kind are legitimate in principle, and orders have often been made against Persons Unknown, in the media context, and in the context of trespasses and protests. But the limits of the jurisdiction and the practice in such cases have come under fresh scrutiny in two recent and important judgments: that of the Supreme Court in *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6 [2019] 1 WLR 1471, and the subsequent decision of the Court of Appeal in *Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515. *Cameron* related to a claim against an unknown driver, alleged to be responsible for a traffic accident causing injury. *Ineos* was closer on its facts to the present case, as it related to injunctions to restrict anti-fracking protests, and thus engaged s 12 HRA.
19. The relevant procedural law is clear, and well-established, and is, or should be, well known. There has been little dispute about the applicable principles. Key points are:-
 - (1) Any application to the Court should ordinarily be made by application notice, filed and served on the respondent, with the supporting evidence, not less than 3 days before the hearing at which the Court is to decide whether to grant the relief sought: CPR 23.3, 23.4, 23.7(1) & (3) and PD23A para 4.1.
 - (2) "An application may be made without serving a copy of the application notice if this is permitted by (a) a rule; (b) a practice direction; or (c) a court order": CPR 23.4(2). "Where an application notice should be served but there is not sufficient time to do so, informal notice of the application should be given unless the circumstances of the application require secrecy": PD23A para 4.2.
 - (3) All of the ordinary requirements for notice and service apply to applications for interim injunctions: see Part 25 and PD25A paras 2.1 - 2.4. The regime is similar: "The Court may grant an interim remedy on an application made without notice if it appears to the Court that there are good reasons for not giving notice" (CPR 25.3(1)), but "except in cases where secrecy is essential, the applicant should take steps to notify the respondent informally of the application" (PD25A para 4.3(3)).
 - (4) If the applicant does make an application for an interim injunction without giving notice:-
 - a) "... the evidence in support of the application must state the reasons why notice has not been given": CPR 25.3(3);
 - b) The applicant comes under a duty to make full and frank disclosure to the Court of all matters of fact and law that are material to the application: Civil Procedure 2019 n 25.3.5. This is a broader obligation

than the one specified in PD25A para 3.3 (“the evidence must set out ... all material facts of which the Court should be made aware”).

- c) The applicant (including its Counsel and solicitors) has a duty to make a note of the hearing, including but not limited to a note of the Court’s judgment, and to serve this on the respondent without delay: Civil Procedure 2019, n 25.3.10.

(5) “To ensure that court time is used efficiently there must be adequate preparation prior to the hearing. This includes the preparation and exchange of skeleton arguments, the compilation of bundles of documents ...”, and the preparation of lists of authorities and bundles of authorities. Skeleton arguments for substantial hearings should be prepared, filed and served not later than 10am the day before the hearing: Queen’s Bench Guide 2018, para 12.3 (The Guide is “equally applicable to the work of the District Registries...” para 1.1.4; it should be borne in mind that there are some differences, but none that are relevant here).

(6) Any order for an injunction must:

- a) unless the Court orders otherwise, contain undertakings to pay any damages the respondent may sustain which the Court considers the applicant should pay and, if the application was made without notice, to serve the respondent with the hearing papers; it must also contain a return date: PD25A para 5.1(1)-(3);

- b) “... set out clearly what the respondent must do or not do”: PD25A para 5.5.

(7) “In an interim injunction case, if the duty of full and fair disclosure is not observed, the court may discharge the injunction”: Civil Procedure 2019, n 25.3.6. The court will then consider whether to re-grant the order: Civil Procedure 2019, n 25.3.8.

20. It is worth expanding a little on some of these points, starting with the question of applications without notice. A series of authorities has emphasised how exceptional it is for the Court to grant an injunction or other order against an absent party, who has not had notice of the application and a chance to dispute it. The principle that the Court should hear both sides of the argument is an “elementary” rule of justice and “[a]s a matter of principle no order should be made in civil or family proceedings without notice to the other side unless there is very good reason for departing from the general rule that notice should be given”: *Moat Housing Group South Ltd v Harris* [2005] EWCA Civ 287 [2006] QB 606 [63], [71-72] (a case of alleged anti-social behaviour by a tenant). The law is particularly strict when it comes to applications for relief which, if granted, would interfere with the Convention right to freedom of expression. Section 12 of the Human Rights Act 1998 applies in all such cases: see s 12(1). Section 12(2) provides that in such a case

“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.”

This is a jurisdictional threshold; unless the requirements of s 12(2)(a) or (b) are satisfied the Court has no power to grant an injunction. The Court has repeatedly deprecated the making of applications without notice in cases which engage s 12 HRA, without adhering to the requirements of the applicable rules and practice: see, for example, *ND v KP* [2011] EWHC 457 (Fam); *O’Farrell v O’Farrell* [2012] EWHC 123 (QB) [66], *Bristol City Council v News Group Newspapers Ltd* [2012] EWHC 3748 (Fam) [2013] 1 FLR 1205 [23-24] (Baker J).

21. The principles relating to the duty of full and frank disclosure of facts are summarised in a judgment of mine, *YXB v TNO* [2015] EWHC 826 (QB), in terms with which neither Counsel has taken issue:

“19 ...

- ii) The duty requires the applicant to make a full and fair disclosure of those facts which it is material for the court to know: *Brink’s Mat Ltd v Elcombe* [1988] 1 WLR 1350, 1356 (1) and (2) (Ralph Gibson LJ). Put another way, disclosure should be made of “any matter, which, if the other party were represented, that party would wish the court to be aware of”: *ABCI v Banque Franco-Tunisienne* [1996] 1 Lloyd’s Rep 485, 489 (Waller J).
- iii) Non-disclosure of material facts on an application made without notice may lead to the setting aside of the order obtained, without examination of the merits. It is important to uphold the requirement of full and frank disclosure.
- iv) But the court has a discretion to set aside or to continue the order. Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to the issues that were to be decided. The answer to the question whether the non-disclosure was innocent is an important, though not decisive, consideration. See *Brink’s Mat* at pp1357 (6) and (7) and 1358 (Balcombe LJ).

20. Further points to be derived from *Brink’s Mat* are:-

- i) The duty applies to facts known to the applicant and additional facts which he would have known if he had made proper inquiries before the application (1356H, Ralph Gibson LJ).
 - ii) If material non-disclosure is established the court will be “astute to ensure” that a claimant who has obtained an injunction without notice and without full disclosure “is deprived of any advantage he may have gained” (1357C, Ralph Gibson LJ).
 - iii) The rule in favour of discharge also operates as a deterrent to ensure that those who make applications without notice realise the existence and potential consequences of non-disclosure (1358D-E, Balcombe LJ).
 - iv) The discretion to continue the injunction, or to grant a fresh one in its place, is necessary if the rule is not “to become an instrument of injustice”; it is to be exercised “sparingly”, but there is no set limit on the circumstances in which it can be exercised (1358E-F, Balcombe LJ).”
22. These are the principles relating to disclosure of facts. As to the law, the authorities are clear: there is a “high duty to make full, fair and accurate disclosure ... and to draw the court’s attention to significant ... legal and procedural aspects of the case”: *Memory Corp v Sidhu (No 2)* [2001] 1 WLR 1443 (CA), 1459-60. The duty is owed by the lawyers also. “It is the particular duty of the advocate to see that ... at the hearing the court’s attention is drawn by him to ... the applicable law and to the formalities and procedure to be observed”: *Memory Corp*, *ibid*.
23. There is one important statutory provision that requires mention. On applications for injunctions which would interfere with freedom of expression before trial, HRA s 12(3) prescribes a unique threshold test: “no such relief is to be granted unless the court is satisfied that the applicant is likely to show that publication should not be allowed”. I set out what this means in *Linklaters LLP v Mellish* [2019] EWHC 177 (QB) [29]:
- “This requirement looks forward to the time of a trial, and to what would happen then. “Likely” in this context normally means “more likely than not”, though a lesser prospect of success may suffice where the Court needs a short time to consider evidence/argument, or where the adverse consequences of publication might be extremely serious: *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 [16]-[23] (Lord Nicholls); *ABC v Telegraph Media Group Ltd* [2018] EWCA Civ 2329 [2019] EMLR 5 [16]. ”

Unsurprisingly, it has been held that the duty of full and frank disclosure requires a party, that applies without notice for an interim injunction to restrain freedom of

expression, to draw the Court's attention not only to s 12(2) HRA, but also to the requirements of s 12(3), identifying the statutory threshold for the grant of any such relief: see *Doncaster Metropolitan Borough Council v BBC* [2010] EWHC 53 (QB) [29], [34-35] (Tugendhat J), *Dar al Arkan Real Estate Development Co v Al Refai* [2012] EWHC 3539 (Comm) [136-140] (Andrew Smith J).

24. There is no rule as to the means by which this duty is to be performed. But it is well recognised that the applicant's skeleton argument is a convenient vehicle for the discharge of this duty. It is common practice for the skeleton argument to contain a distinct section headed (for instance) "What the respondent might say". Sometimes the evidence also deals separately with the duty of full and frank disclosure. This helps concentrate the minds of the applicant, the applicant's legal team, and the Judge on the facts and arguments that would or might be put forward by the absent respondent.
25. Since 2011, there has been a helpful and authoritative summary of all the key principles regarding applications of the present kind, collected in a single place for easy reference. Applications for interim injunctions that impinge on the right to freedom of expression are subject to the *Practice Guidance: Interim Non-Disclosure Orders* issued by the Master of the Rolls following the "super-injunction" furore of 2011, and reported at [2012] 1 W.L.R. 1003. The scope and purposes of the Practice Guidance are explained in its opening paragraph:

"1. This Guidance sets out recommended practice regarding any application for interim injunctive relief in civil proceedings to restrain the publication of information: an interim non-disclosure order. It is issued as guidance (not as a Practice Direction) by the Master of the Rolls, as Head of Civil Justice. Such applications may be founded on rights guaranteed by the European Convention on Human Rights (the Convention), or on grounds of privacy or confidentiality. They may also be made in respect of a threatened contempt of court, a threatened libel or malicious falsehood, harassment, or a *Norwich Pharmacal* application in support of such actions. All such orders will seek to restrict the exercise of the Article 10 Convention right of freedom of expression through prohibiting the disclosure of information."

26. The Guidance goes on to provide a convenient summary of the applicable principles, of which the following extracts are pertinent to the present case:-

"Statutory provisions

4. Applications which seek to restrain publication of information engage Article 10 of the Convention and s12 of the Human Rights Act 1998 (HRA). In some, but not all, cases they will also engage Article 8 of the Convention. Articles 8 and 10 of the Convention have equal status and, when both have to be considered, neither has automatic precedence over the other. The court's approach is set out in *Re S (a child)* [2004] UKHL 47, [2005] 1 AC 593 at [17].

5. HRA s12 applies whenever the court is considering whether to grant relief which might affect the exercise of the Article 10 Convention right. HRA s12(2) requires advance notice to be given to persons against whom the application is made, except in the exceptional circumstances set out in HRA s12(2)(a) and (b).

...

Civil Procedure Rules

8. CPR 25.3 and CPR PD25A (1) – (5) apply to all interim injunction applications, including those for interim non-disclosure orders.

....

Notice of Application

19. HRA s12(2) applies in respect of both (a) respondents to the proceedings and (b) any non-parties who are to be served with or otherwise notified of the order, because they have an existing interest in the information which is to be protected by an injunction (*X & Y v Persons Unknown* [2007] EMLR 290 at [10] – [12]). Both respondents and any non-parties to be served with the order are therefore entitled to advance notice of the application hearing and should be served with a copy of the Application Notice and any supporting documentation before that hearing.

20. Applicants will need to satisfy the court that all reasonable and practical steps have been taken to provide advance notice of the application. At the hearing they should inform the court of any non-party which they intend to notify of the order as the court is required to ensure that the requirements of HRA s12(2) are fulfilled in respect of each of them. A schedule to any interim non-disclosure order granted should provide details of all such non-parties.

21. Failure to provide advance notice can only be justified, on clear and cogent evidence, by compelling reasons. Examples which may amount to compelling reasons, depending on the facts of the case, are: that there is a real prospect that were a respondent or non-party to be notified they would take steps to defeat the order's purpose (*RST v UVW* [2009] EWHC 24 at [7] and [13]), for instance, where there is convincing evidence that the respondent is seeking to blackmail the applicant (*ASG v GSA* [2009] EWCA Civ 1574 at [3]; *DFT* at [7]).

...

Hearing – Scrutiny of Application

29. The onus is on the applicant to satisfy the court that an interim non-disclosure order is justified. Where the applicant seeks derogations from open justice reference should be made to paragraphs 8 – 13 of this Guidance.

30. Particular care should be taken in every application for an interim non-disclosure order, and especially where an application is made without-notice, by applicants to comply with the high duty to make full, fair and accurate disclosure of all material information to the court and to draw the court's attention to significant factual, legal and procedural aspects of the case. The applicant's advocate, so far as it is consistent with the urgency of the application, has a particular duty to see that the correct legal procedures and forms are used; that a written skeleton argument and a properly drafted order are prepared personally by her or him and lodged with the court before the oral hearing; and that, at the hearing, the court's attention is drawn to unusual features of the evidence adduced, to the applicable law and to the formalities and procedure to be observed including how, if at all, the order submitted departs from the model order.

31. Applications, especially those which seek derogations from open justice, must be supported with clear and cogent evidence which demonstrates that without the specific exception, justice could not be done.

32. Each application shall be subject to intense scrutiny. The need for intense scrutiny is particularly acute on without-notice applications ...

...

Explanatory Notes

33. It is helpful if applications and orders are accompanied by an Explanatory Note, from which persons served can (a) readily understand the nature of the case, (b) ascertain whether they wish to attend the application hearing, and/or be legally represented at it, or, (c) where the application was heard without-notice, whether they wish to challenge the order.

...

Hearing Notes and Judgments

40. It is of particular importance that a full and accurate note of the hearing is taken of a without-notice hearing: *G & G v Wikimedia* [2010] EMLR 14 at [28] – [32]. It is the duty of

counsel and solicitors to ensure that such a note is taken during the hearing, or, if that is not possible, to prepare such a note after the hearing is over. The note should be drafted so that anyone supplied with a copy of it is properly informed of: what documents were put before the court at the hearing; which legal authorities were relied on by the applicant; and what the court was told in the course of the hearing.”

27. I have set all this out in some detail because of its importance to this case.

The applications without notice

The factual background

28. The Council’s evidence makes clear that over the weeks leading to its application to Moulder J, it perceived a “dramatic” escalation in the scale of the protests. As early as 2 May 2019, the Council served a Community Protection Warning Notice (“CPW”) on the first defendant. This is a document, served pursuant to the 2014 Act, asserting that his behaviour was having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality of the School, and was unreasonable. It warned him to stop, failing which the Council would serve a Community Protection Notice (CPN), making continuation of his conduct a criminal offence. He was given 24 hours to desist.
29. On 9 May 2019, a letter went out from the Chair of the School’s Governing Body to parents and carers of pupils at the School. It asked those who were participating in the protests to consider the wellbeing of the children as they made final preparations for checks and SATs. On the same day, a Council official phoned the first defendant and left a message, with a view to reasoning with her to bring an end to the disruption. The first defendant did not respond. Protests continued.
30. The Council then gathered evidence of what it considered to be conduct contrary to the CPW, showing the impact on individuals, including pupils, staff members, parents, visitors and governors as well as residents of the locality. Statements dated variously between 10 and 23 May 2019 are in evidence, attesting to the effects of the protests on individuals within these categories. The statements were obtained by providing the terms of the CPW to the School’s Deputy Headteacher, Claire Evans, who then collected witness accounts of what was going on, using a form created at the school.
31. The Council also obtained a video recording of a protest on 17 May 2019, at which a speaker, who apparently came from Batley, spoke to a large crowd outside the School. On 19 May, a Sunday, a local group supporting the LGBT community came to the school and began attaching ribbons to the gates, but were pelted with eggs by protestors. On Monday 20 May, the protestors attempted to implement a boycott and blockade of the school. During that week, leaflets were distributed advising parents that there would be a “national” protest outside the school on Friday 24 May at 2:30pm.

32. On 21 May 2019, senior officials at the Council held a meeting with representatives of West Midlands Police to discuss the situation. It was decided that a CPN would no longer be suitable, due to the increased scale and nature of the protests, and the fact that it was directed at a single individual. The Council gave consideration to other means of addressing the perceived problems.
33. Police officers attended on each occasion a protest was organised, or nearly all. Statements were obtained from a number of them. These were all signed and dated 23 May 2019.
34. On 24 May 2019, there was a large protest. The school, forewarned by the leaflets, had decided to close early, at 12:00 noon, in an attempt to avoid the protest. But the protest was brought forward. A few protestors arrived in the early morning and (according to the Council's evidence) began causing disturbance from around 11:15am. By the afternoon, there were over 300 protestors in attendance, and there was shouting with a megaphone, and chanting as well as the holding up of placards.

The application process

35. Monday 27 May 2019 was a public holiday, and staff were away. But by Tuesday 28 May 2019, the three main witness statements had been prepared in draft: those of the Headteacher, Ms Hewitt-Clarkson, her Deputy Ms Evans, and Mr James, the Council's Acting Corporate Director for Neighbourhoods. These are substantial pieces of work, with large exhibits, which fill a lever arch file. Ms Hewitt-Clarkson signed her statement on the Tuesday. The others were signed on Wednesday 29 May, along with a fourth statement from a Ms Mayne. It was on the Wednesday that papers were lodged with the Court. They consisted of a Claim Form and detailed Particulars of Claim, an application notice, draft orders (of which there were five in all) and the four witness statements I have mentioned. The Council and its lawyers must have been working hard on preparation of the application papers from Monday 27 May onwards.
36. The application notice stated that the application was to be served on all four defendants, but a decision had plainly been made to apply without notice in the first instance. This was made clear in the statements of Mr James and Ms Hewitt-Clarkson, and in a Certificate of Urgency filed with the application papers. The Certificate first explained the urgency:

“The size of the protests and the behaviour of the protesters significantly worsened from 17 May to the last day before the half term holidays on 24 May ... It is important that relief is obtained this week, during the half term holiday and the claimant is seriously concerned for the safety and security of the school, its staff, parents and pupils if the term re-starts with no protection in place”.

That, of course, was a justification for applying without the full 3 days' notice required by the rules. It provided no justification for proceeding without any notice at all. The Certificate addressed that point as follows:

“Further, the application is made without notice on the basis of secrecy pursuant to CPR Part 25 PD 25.4.3(3).

It is averred that if the Defendants were put on notice, they would take action to escalate the protests as they have done in the past when warned of events that would make their protests less effective, e.g. on 24 May when the school decided to close at midday, to avoid a “national” protest scheduled to start at 2.30pm, the Defendants brought forward the start of the protest to 11.15am causing serious nuisance and disruption to classes and to staff, parents and children at midday when they were leaving to go home.

The Claimant also fears that giving notice of the application would lead to further abuse of staff on social media.”

37. Holgate J was sitting in Birmingham, conducting a criminal trial. The case was put to him for consideration. Just before midday on 29 May, through an email from his clerk, the Judge queried whether there was any good reason for proceeding without notice, asking for help by 2pm on the following:

“... the question whether it would be appropriate for the matter to be dealt with ex parte. Assuming hypothetically, for example, that an injunction were to be granted ex parte, there would have to be a return date on notice after a short interval to allow respondents to make any submissions they wish about the continuation of the injunction. Quite apart from that, given that the papers will be at the court today and it is proposed to have a hearing on Friday is there a good reason for making the application ex parte without notice to the Respondents at this stage bearing in mind perhaps any time which has already elapsed since the grounds for seeking injunction arose.”

38. Mr Manning replied that the Council had taken the view that “in the light of the protesters’ response to the school announcing it would close early - which was to bring forward the protest - if this application were to be made on notice, there would be a similarly serious response before any protection could be put in place which would coincide with the return to school next week.” It had wanted to apply on the Tuesday or the Wednesday, but the papers had taken time to get ready. Mr Manning went on to say that he did not think “we can serve and be in Court by tomorrow or Friday in any event.”
39. A number of obvious comments can be made. The protestors’ “response” relied on had taken place during the school term. The injunction application was prepared and ready to go by the following Wednesday, during half-term, when the pupils, their parents (and most of the staff) were not attending school. That was the very reason for applying at that time. But the reason for applying during half-term undermined the justification offered for failing to give notice. Beyond this, there was the question of whether the prospect of some escalation, or some additional abuse of teachers, really warranted a secret application to the Court. Finally, the suggestion that the Council could not serve papers for a hearing on Thursday or Friday is incomprehensible. They

intended to and were able to serve all the defendants once they got the injunction orders.

40. In the event, it was not possible for Holgate J to take time out of his criminal trial to hear the application, and it was listed for hearing in the Interim Applications Court in London, where Moulder J was sitting as the duty Judge. She heard Mr Manning on Friday 31 May 2019, the last weekday of the half term holidays.

Hearing and judgment

41. The Judge was provided with a paginated bundle containing the claim form, Particulars of Claim and application papers together with a skeleton argument. No criticism has been made of the Council's compliance with these aspects of the procedural requirements. But the justification for proceeding without notice was no better than before. The skeleton argument again spoke of "fears" that "notifying the Defendants of these proceedings without an Order in place, would further increase the likelihood and severity of an escalation in the behaviour complained of, as occurred on 24th May when the school sought to avoid (rather than prevent) the national protest planned for that day". Reference was made to passages in the statements of Mr James, Ms Hewitt-Clarkson, and Ms Evans. No reference was made to the email exchange with Holgate J, the points he had raised, or to the obvious points that I have made above. The skeleton argument did cite s 12(2) HRA, and addressed the requirement of "compelling reasons", but for reasons to which I shall come I consider that what was said on that score was seriously deficient.
42. The skeleton argument identified the human rights engaged by the application as the Article 8 rights of those affected by the protests, and the article 9, 10 and 11 rights of the protestors. It made no mention of A2P1. The skeleton argument made no mention of s 12(3) HRA, or the threshold of "likely" success at trial which it sets for interim injunctions that interfere with freedom of expression. Indeed, the text of s 12 was set out, using three dots to indicate the omission of sub-sections (3) and (4). The skeleton argument made no reference to the Master of the Rolls' Practice Guidance. Reference was made to the three-part test for justifying an interference with a Convention right (pursuit of a legitimate aim, a rational connection between the aim and the means pursued, and that no less restrictive option could be pursued). But there was no reference to *Re S*, with its requirement of a parallel analysis, and the ultimate balancing test. The skeleton identified the conditions to be satisfied as those prescribed by s 1 of the 2014 Act. The approach the Judge was invited to adopt was to grant relief on the basis that this was "proportionate, just and an appropriate exercise of discretion". The draft Order contained no undertaking in damages. It was not based on the Model Order, to which no reference was made. There was no Explanatory Note.
43. At the end of the hearing, Moulder J gave an extempore judgment explaining her reasons for granting the injunctions in the terms sought. She was persuaded that there were compelling reasons for granting relief without notice (paragraph 26), and that the Court should grant interim injunctions "including under s 1 of the 2014 Act". She referred to the requirements of s 1 and found them to be satisfied, concluding that it was "just and convenient" to grant the interim injunction sought, until a return date (paragraphs [28-30]). The Judge took into account the defendants' rights under

Articles 9, 10 and 11 but held that the restrictions pursued a legitimate aim, and were necessary and proportionate.

44. I take all this from the skeleton argument and the Note of Judgment that was eventually provided by the Council, a week after the hearing had taken place. The paragraph numbers I have used are those assigned in that Note. But I can say little else about the hearing before Moulder J, as it remains the case that no other note of what took place at the hearing has ever been provided. All that I have is some statements made in the Council's reply skeleton to which I shall come, responding to complaints of non-disclosure at the hearing.

Service

45. It follows that when the orders were served on 3 June 2019, they were not accompanied by a note of the hearing. Nor were they accompanied by any note of the judgment, or by any Explanatory Note. None of those documents were available to the defendants' legal team when they were appointed, later that week. Nor did the legal team have any note of what took place before Moulder J on 4 June, in the absence of the defendants, as the Council did not serve any note of that, either.

The 4 June application

46. This was made by formal application notice, with evidence contained in the application notice itself. The evidence explained that the purpose was to "clarify" the order by extending it to cover an area of green space on the opposite side of the road from the school, which the protestors had started to use after service of the original order. Although the order had been served, no notice was given of this application. There was no evidence that attempted to explain or justify applying without notice. No new skeleton argument appears to have been filed. There is, again, no note of the hearing. I do now have a note of the short judgment given by Moulder J. She recognised that in reality the application was to amend rather than clarify, but was satisfied the amendment was appropriate. She applied the reasoning from the previous Friday, concluding that it was "just and convenient" to grant the application. There is no reference to the question of notice. I conclude that there was no attempt by the Council to justify making this application without notice, or even to identify to the Judge the need to justify such a procedure.

The return date application

47. The Council continued to fall short of its procedural obligations, and its duty to help the Court achieve the overriding objective. It was on Thursday 6 June that I was assigned to hear the application on the return date. I had no papers. My clerk was able to obtain soft copies of the amended Orders from Mr Manning during the afternoon of that day, but no other papers were available. A bundle should have been filed by the Council on the Thursday. On the Friday morning, and early afternoon, I was busy with another urgent injunction application. Eventually I received, from the Court, the hearing bundle that had been before Moulder J. That was shortly after 1pm. It had no index. The Council never filed or even prepared an updated hearing bundle for the return date. No hard copies of the orders were provided. The Council filed no evidence as to service of the orders, or the current position on the ground. A skeleton argument for the return date should have been filed by 10:30 on the Friday. None was

ever prepared. What actually happened was that, at 2 minutes to 5 on the Friday, after prompting from my clerk, I was sent the original skeleton dated 31 May 2019. I was not provided with the authorities relied on by the claimant.

48. The defendants' legal team, having been instructed late, emailed a skeleton argument to my clerk at 18:50 on Friday night, following shortly afterwards by copies of the authorities relied on by them. The defendants' skeleton argument complained, among other things, of non-disclosure of matters of law and of fact, and of the failure to provide notes of the hearings and judgments. On the Saturday afternoon, I reviewed the parties' skeleton arguments, identified and collated copies of relevant authorities that had not been cited, and arranged for these to be emailed to Counsel. On the Sunday night, at 22:11, the defendants' witness statements were emailed to my clerk and to the Council's legal team. At 23:30 Mr Manning emailed my clerk with the claimant's notes of the judgments of Moulder J, and a supplementary skeleton argument. I was able to read most but not all of this before the hearing, and had to complete my reading over the midday adjournment on Monday 10 June.

Discharge for breach of the duty of full and frank disclosure

49. I have already identified some breaches of this duty, at the hearings of 31 May and 4 June 2019. I shall say a little more about those, and others. Discharge does not follow automatically, and the Court need not demand perfection. But in my judgment the breaches here are serious enough in combination to require discharge. The multiple failures by the Council to comply with its other procedural responsibilities towards the defendants and the Court provide additional reasons for exercising my discretion to discharge both of the orders granted by Moulder J even though, as will already be clear, I am satisfied that the threshold set by s 12(3) HRA is satisfied, and that injunctions should be granted. It may well be that Moulder J would have granted the orders she did, or some similar orders, if the Council had scrupulously complied with all its responsibilities. But that is not the test.

(1) Application without notice

50. The Council correctly identified the relevant procedural law; s 12(2) HRA was cited in Mr Manning's skeleton argument. But the evidence and argument advanced on this point fell short. I have already identified the non-disclosure of a material exchange of emails with the Court. It remains to address the way the Council put the case in relation to secrecy.
51. Paragraph 3 of the skeleton argument explained why the Council had "decided to make this application at this time, and to do so on a without notice basis in the first instance, notwithstanding that the protests have been continuing for some weeks". In this way, the argument rolled up what are on analysis three separate points, each requiring separate justification: delay in applying, applying without notice, and applying at all. Later in the skeleton argument it was submitted that "... the urgency of the need for relief and the likely adverse effect of giving notice are compelling reasons for the grant of relief without notice." The "adverse effect" relied on was the "fear" of escalation ([41] above). This was the point made in the evidence, and it is reflected in the Certificate of Urgency, on which I have already commented.

52. The skeleton argument went on to submit that “in deciding whether there is a compelling reason, the court should consider the evidence as a whole and the nature of the proposed restriction on freedom of expression”. It was argued that the restrictions proposed did not prohibit protest as such, but only geographical restrictions; that the interim relief would only last for a short period, and that it would “not be a significant curtailment of the Defendants’ human rights”; it was said that the protests were intimidatory and obstructive; and, finally:-
- “The harm to the staff, children and parents is severe, and is such that given the urgency of the application and the risks of an escalation in the conduct complained of, there is a compelling need for the court to impose the limited restrictions sought in relation to the street protests.”
53. Urgency can only be a compelling reason for applying without notice if there is simply no time at all in which to give notice. Modern methods of communication mean that will rarely, if ever, be the case, and it was not the position here. You do not justify applying in secret by showing that your case has merit, or by saying that the relief sought is limited in scope and time, and will have only limited impact on the respondents. These are not relevant considerations, let alone compelling reasons for proceeding without notice. The likely effect of giving notice is clearly a relevant consideration, and can be a compelling reason for applying in secret. What Tugendhat J said in *RST v UVW* [2009] EWHC 2448 (QB) [2010] EMLR 13 [7] was: “the facts are such as to give rise to a real prospect that, if notice is given, the defendant may take steps to defeat the purpose of the injunction.” The Council cited this passage, but failed to properly to analyse the legal and factual position and to present a full, fair and balanced picture.
54. *RST v UVW* was a case of apparent blackmail. That is a category of case in which application without notice is often made, for good reason. Notice may lead to the carrying out of the blackmail threat. Freezing orders, where the risk is that notice will allow the respondent to spirit away the money to be frozen, provide another example. But the risk relied on here was not in reality that the respondents would take steps to “defeat the purpose of the application”. Rather, it was that they would do more of what they had been doing for weeks, only worse. There were several problems with that line of argument. If the application was made on short notice, the respondents would only have a limited time and opportunity to escalate; they would probably be preoccupied by dealing with the litigation. Most importantly, though, the entire week was half-term. Notice could have been given on the Tuesday, Wednesday or Thursday for a hearing on the Friday. It is hard to see a risk of any, let alone “severe”, harm to parents and children. No pupils were at school, and no parents were attending to drop them off or pick them up. Some staff may have been at the school, but the contention that notice would have given rise to a risk of “severe” harm to them does not seem persuasive.
55. In my judgment, there can be no doubt that the Council’s duty of full and frank disclosure required it to provide the Court with a distinct, clear, and sufficient explanation, founded upon evidence, for making its application without notice to any of the defendants, identifying the counter-arguments which could be put forward, and explaining why those arguments should not be accepted. It failed to discharge that duty. Instead, it wove together a number of disparate strands of reasoning, some of

which were irrelevant, and it put forward a confused and confusing case on this issue. The risk of escalation should have been examined much more carefully. If that had been done, it would have been incumbent on the Council to point out that there was no risk of the whole purpose of the application being defeated, and to highlight the most important fact, namely that the case could be dealt with on notice before the school went back after half term. On this ground alone, the injunctions must be discharged.

56. The breaches of duty in this respect were particularly egregious when it came to the application of 4 June. It is not easy to see what new evidence there was to justify a variation of the order which the claimant itself had sought. It is impossible to understand the grounds for making this application without notice. By that time, it could no longer be said that giving notice might prompt escalation; the Council already had in place the very relief that it had sought at the hearing on 31 May. No other basis was identified. It seems that the question of notice was simply ignored.

(2) Failure to identify the threshold for granting an injunction

57. The failure to cite s 12(3) HRA was clearly a deliberate omission. Not only was the subsection replaced in the skeleton argument by the ellipse "...", the skeleton argument made no reference to the need to demonstrate a likelihood of success at trial, or to the authoritative interpretation of s 12(3) in *Cream Holdings v Banerjee*. Instead, it focused on the lawfulness and proportionality of the relief sought. The draft order prepared by the claimant reflected this approach, making no reference to s 12. It is thus apparent that the reason why s 12(3) was not cited was because nobody on the claimant's side had identified its relevance to the case.
58. This is remarkable, and at first, I found it hard to comprehend, because the applicability of s 12 as a whole had been recognised and identified to the Court. The explanation seems to lie in Mr Manning's primary submission to me on this issue. He argues that in this case it was not wrong to omit reference to s 12(3), which is irrelevant, because this case is not about "publication". That reflects a misunderstanding of the statutory and legal context in which that word is used.
59. The sub-section forms part of a code expressly designed to address cases where relief is sought that might interfere with freedom of expression. There is no doubt that this is such a case. The claimant acknowledged as much by citing s 12 to Moulder J. Mr Manning's argument has to be that, despite this, s 12(3) is concerned only with a subset of such cases: those involving "publication", meaning something other than what was going on here. He cites no authority in support of this narrow construction, and I am unaware of this point having ever been made before. It was wrong, in my judgment, to proceed without notice without reference to s 12(3), on the basis of an interpretation, unsupported by any authority, which is at odds with the Practice Guidance. If this was the view of the Council, the Judge should have had this issue drawn to her attention, along with the available counter-arguments. Those arguments would have included the approach adopted in the Practice Guidance to which, it appears, those acting for the Council had not directed their own attention let alone that of the Judge.
60. But I would go further. I am satisfied that it would be quite wrong to treat the word "publication" in s 12(3) as having a limited meaning, restricted for example (as Mr

Manning's submission seemed to imply) to commercial publication. It is hard to see how that such an approach could be rationally defended. It would give commercial publishers preferential treatment compared to other defendants, such as individuals communicating for private purposes, on social media. As everybody knows, some social media accounts have larger readerships than some paid-for newspapers. But there is a more fundamental point. In the law of defamation, "publication does not mean commercial publication, but communication to a reader or hearer other than the claimant": *Lachaux v Independent Print Ltd* [2019] UKSC 27 [18] (Lord Sumption). This is generally true of the torts associated with the communication of information, sometimes known as "publication torts", and the related law (see the discussion in *Aitken v DPP* [2015] EWHC 1079 (Admin) [2016] 1 WLR 297 [41-62]). Parliament must be taken to have legislated against this well-established background. Section 12(3) applies to any application for prior restraint of any form of communication that falls within Article 10 of the Convention. This is appropriately reflected in the language of the Practice Guidance, quoted above.

61. Section 12(3) may not be relevant to every anti-social behaviour injunction. There are no doubt many ways of behaving anti-socially that do not involve speech, or writing, or other forms of expression. But there can be no doubt as to the materiality of s 12(3) in this case. It contains a statutory prohibition on the grant of a pre-trial injunction which interferes with freedom of expression, unless the Court is satisfied that the claimant is likely to obtain a final injunction. In fairness to Mr Manning, it must be recognised that he identified that the orders sought involved interference with Article 10 rights, and addressed the Judge upon that topic. It may be that, had the Judge been directed to the statutory threshold test, she would have been satisfied that it was met. But I do not accept Mr Manning's fall-back submission that if, contrary to his primary argument, s 12(3) applied, the hearing should be treated as involving, in substance, a submission and finding that success at trial was likely. The Court could not be so satisfied of that unless it addressed its mind to the question. The Council failed to pose the question, with the result that the application was determined on the lower threshold test set out in the 2014 Act for anti-social behaviour injunctions of all kinds.
62. There is an additional point, worthy of mention. Where the Court concludes that an injunction application is, to any extent, aimed at protecting the reputation of the claimant it will normally apply a still higher threshold at the interim stage. The "defamation rule" requires an applicant to show that the claim is bound to succeed: see *LJY v Persons Unknown* [2017] EWHC 3230 [2018] EMLR 19 [41-43]. I do not rest my decision on this point, which was not argued, but there is evidence here that could be said to indicate that reputational concerns are at stake, among others, so this is something to which future applicants in cases of this kind should be alert.

(3) Other failures to refer to or follow the Practice Guidance/Model Order

63. Mr Manning has submitted that it is inappropriate to draw an analogy between cases involving restraints on the disclosure of private information and cases of the present kind, which do not seek to prevent the disclosure of information, but rather harassment and intimidation and the like. This is a false dichotomy and reflects a further misunderstanding. The principles identified in the Practice Guidance do not apply by analogy. They apply because the relief sought engages the right to freedom of expression, and the requirements of s 12 HRA. The Practice Guidance is primarily directed at cases involving private information, but it is not limited to such cases: see

paragraph 1 of the Guidance, quoted above, which refers expressly to libel, malicious falsehood and harassment. It is true that the orders made did not stop the protestors saying what they wanted, but only where and how they did it; but it does not follow that the Practice Guidance is inapplicable. I regard the failures under this heading as significant.

(4) *A2P1*

64. The potential for an argument that A2P1 rights of the parents involved in the protest were engaged was not recognised, and hence not placed before the Judge. On the other hand, the A2P1 rights of the pupils affected were not invoked, either; and the Article 9 rights of the parents were drawn to the Judge's attention. This deficiency would not in itself have justified discharge of the orders.

(5) *Non-Disclosure: the facts*

65. Respondents against whom injunctions have been granted without notice often complain of material non-disclosure of facts or evidence. Here, Mr Randall QC has complained that Moulder J was given a "selective and partisan summary of the underlying evidence". I think that is something of an overstatement. The skeleton argument was necessarily selective. As Mr Randall conceded in oral argument, one should not be overly picky about the way this is done. I doubt that I would in all the circumstances have discharged the orders on this basis; but I do agree that the Council could and should have done more to highlight what the defendants might have said in opposition to its application, had they been given the chance to have a say.
66. In the event, the response of the defendants is (in broad summary) that their rights to protest should be zealously safeguarded and protected, and interfered with only to the extent that this is imperative; and that the Council has overstated both the conduct involved, and its impact on those affected. Mr Randall submits that, even when dealing with material and views that come across as fundamentally and obviously wrong, the Court "must strive not to inhibit the freedom to express views, the freedom to demonstrate and the freedom to organise politically": *Chief Constable of Bedfordshire v Golding* [2015] EWHC 1875 (QB) [37] (Knowles J). As he points out, freedom of expression includes the right to express views which certain sections of the community would find objectionable or even offensive. On the facts, he had gone so far as to say that only someone with "snowflake sensitivity" would suffer alarm or distress as a result of what has in fact been done. This is a rhetorical flourish, but responses on these general lines were entirely foreseeable. The Council, presenting the Court with a 220-page hearing bundle, could not assume that it would all be read in the available time. It ought to have identified for the Judge the chief points that could be made by the defence, so far as the facts are concerned.
67. It is unnecessary to enter into any great detail, but three points seem to me to have particular force. The first is that the police had determined that "no-one is breaking the law". This was stated in the Headteacher's statement, at paragraph 72, but not brought to the Court's attention. This is significant because the Protection from Harassment Act 1997 makes harassment (within the meaning of that Act) a criminal offence. Secondly, although a substantial number of witness statements were provided from police officers, the Council did not draw to the Court's attention that

several of these made clear in terms that the authors had not been alarmed or distressed by what was going on. Thirdly, the “chants” on which heavy reliance was placed by the Council were in reality anodyne in content rather than offensive, as would naturally have been inferred. The chants demanded that “Parent Governors – step down” “Let kids – be kids”, “Listen to – parents” “Learn how to – mediate” and “We are no – homophobic.” This is apparent from one of the police witness statements, but the Court was evidently not taken to that detail.

Re-grant

68. Despite these deficiencies in the presentation of the case at the without-notice stage, I came to share the view of Moulder J that, on a proper assessment of the merits, interim injunctions are appropriate. I accept the submission of Mr Randall, that I should ask and answer the two questions I posed in an earlier protest case, *Thames Cleaning and Support Services Ltd v United Voices of the World* [2016] EWHC 1310 (QB) at [46]:

“First, has the claimant demonstrated that it would probably succeed at a trial in showing a risk, justifying an injunction, that unless restrained the defendant will cause protest or demonstration which is unlawful, and actionable at the suit of the claimant? Secondly, if so, can an injunction be framed which serves to restrain the encouragement of unlawful conduct, without straying into improper restraint of lawful protest?”

I answer both questions “yes”. Mr Manning has persuaded me that, on the evidence before the Court at this stage, the Council appears more likely than not to succeed at trial in obtaining injunctions – albeit rather more limited than that put in place at the outset – which serve to protect against harassment and other anti-social behaviour, whilst permitting legitimate expression of lawful dissent against the policies of the School.

Persons Unknown

69. At one stage the propriety of any order against Persons Unknown was controversial. Although Mr Randall appears only for the named defendants, he queried whether the relevant law had been properly examined. That was entirely proper, as he could not know when he raised the point what had been said to the Judge at the without notice hearing. In the event, although I have some reservations, I was satisfied that the present case falls within the scope of the principles identified in *Boyd v Ineos*.
70. My reservations concern the identity of the fourth defendant. As things stand, this is “all persons” other than the named defendants. There is no limitation on the category, with the consequence that the order is, in form and in practice, an order against the entire world including - as I observed at the hearing – me. I have not been provided with any reasoned explanation for not limiting the category of Persons Unknown who are to be made parties to this action in the way that has been standard practice since the *Bloomsbury* case: a designation must be supplied which sets some limits upon the class in question, and enables a person to state whether any given individual is a member of the class of Persons Unknown who are targeted by the claim and the

injunction. The new order will therefore be limited by such a description. Unless the parties persuade me otherwise, this will be “Persons Unknown seeking to express opinions about the teaching at the School”.

Substance

71. There is much that has been said by the protestors which falls firmly within the realm of reasonable, peaceful and lawful protest, even if it is offensive. Complaint is made of placards with messages such as “Adam and Eve, not Adam and Steve”. These may be upsetting to some, but must be viewed as a legitimate means of expressing a lawful opinion. Complaint is made that photographs have been taken without permission. That may in some circumstances be unlawful but hardly amounts to harassment. The Headteacher complains of being called a “liar”. I do not doubt her evidence that this is distressing, but her complaint appears to be of defamation and I would not prohibit such speech without proof that the claim was bound to succeed. I do not consider it proper to grant an injunction to prohibit social media posts which are “offensive” to teachers. That would represent a vague and unjustified incursion into freedom of speech.
72. But the gravity of the conduct engaged in by some of those attending the protests, and the seriousness of its impact on others, has in my judgment been downplayed by the defendants. It is unnecessary to go into extensive detail. But the evidence discloses that allegations of paedophilia have been made during the protests, which appear to be entirely baseless. Some of the messages posted on social media are abusive, without any informational content (the Headteacher is described as a “piece of shit”). There is evidence of aggressive shouting and the use of “extremely intimidating” body language towards staff members in the street, and of protestors blocking the path as parents seek to take their children to the School. The use of a megaphone has evidently disrupted the school’s ordinary activities.
73. Members of staff have felt “quite frightened”, in one description. Another phrase, used by the Headteacher, is that the protests have had “devastating effects” on children, staff, visitors, student teachers, governors, as well as herself. Reading the statement as a whole I suspect this might turn out to be something of an exaggeration, but I take particularly seriously the impact on children. The Headteacher’s 16-year-old daughter has broken down in her own school due to worry over the protestors. Staff members at the School speak of children there being “very distressed” by the aggressive nature of the protests, and crying. It is to be recalled that this is a primary school.
74. The likelihood is that the Council will prevail at trial in showing that conduct that has this kind of impact is unnecessary, disproportionate and unlawful in pursuit of the protestors’ aims; and that the relief I am granting, or something close to it, represents a legitimate interference with their rights.

Form

75. After argument on matters of form, I modified the original injunctions as follows. I continued the exclusion zone orders, but amended the wording so as to refer to protesting against teaching at the school rather than the “teaching of equalities”. I made the same change to paragraph 6. I did so for the purpose of clarity and

certainty. “Equalities” (an odd plural) is not a term of art, and it would be undesirable to set up a debate about its scope. Although the removal of this limitation expands the scope of the order in theory, it does not do so in practice, as there is no threat of any other kind of protest. I discharged paragraph 2 of the orders against the named defendants, in its entirety. Again, this was for reasons of clarity. Injunctions are commonly granted against harassment with a non-exhaustive list of activities that must not be engaged in. But an order simply not to harass is too broad. An order prohibiting the causing of “nuisance or annoyance” is far too vague and general. Mr Randall floated the idea of substituting specific orders against the use of megaphones, generally or for specific periods, but the Council had not sought such orders and did not take up the suggestion. I eliminated the prohibition on “offensive” comments about members of staff, which seemed to me far too broad and subjective. A further change to paragraph 6 was made, to clarify its true objective, which was to identify the three kinds of activity in the sub-paragraphs as non-exhaustive examples of methods of protest which were prohibited when engaged in within the exclusion zone, but not otherwise.

APPENDIX A

Without Notice Injunction against the Second Defendant

The court ordered that the Defendant, Ms Rosina Afsar (whether by herself or by instructing, encouraging or allowing any other person) SHALL NOT:

1. Enter the area shown on Map 1, attached to this Order, at Schedule 1, the boundaries of which are delineated in red except that she may enter the area for the purpose of taking her children to or collecting them from Anderton Park School (the School), or for any prearranged meeting at the School; or for the purpose of attending the Dennis Road Mosque.
2. Engage in any conduct that causes or is likely to cause nuisance, annoyance, harassment, alarm or distress to any member of staff, parent or child attending the School;
3. Approach, contact or attempt to contact any member of staff of the School, or any person who has given a witness statement relied on by the Claimant, by any means, including social media, whether directly or through any other person, except that she may contact the School in relation to matters concerning her own children using the main phone number 01214641581, and may contact any member of staff as permitted by the school.
4. Use any of the School's social media accounts.
5. Use any social media account to make offensive or abusive comments about any member or members of staff at the School in relation to the teaching of equalities at the school, including in relation to their evidence in these proceedings.
6. Organise engage in (whether by herself or with any other person) or encourage any other person to engage in any protest against the teaching of equalities at the School, within in the area shown on Map 1, including by
 - (i) printing or distributing leaflets for herself or others to hand out;
 - (ii) inviting, encouraging or arranging another person to come to attend such a protest;
 - (iii) encouraging or arranging for another person to congregate at any entrance to the School for the purpose of any such protest.

APPENDIX B

Without Notice Injunction against Persons Unknown

All persons except for the First, Second and Third Defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):

(a) organise, engage in (whether by himself or with any other person) or encourage any other person to engage in any protest against the teaching of equalities at Anderton Park School (the School), within in the area shown on the Map attached to this Order at Schedule 1, including by

- (i) printing or distributing leaflets for herself or others to hand out;
- (ii) inviting, encouraging or arranging another person to come to attend such a protest;
- (iii) encouraging or arranging for another person to congregate at any entrance to the School for the purpose of any such protest;

(b) use any social media account to make offensive or abusive comments about any member or members of staff at the School in relation to the teaching of equalities at the school or in relation to their evidence in these proceedings.

A

Court of Appeal

**Barking and Dagenham London Borough Council and others v
Persons Unknown and others**

[2022] EWCA Civ 13

B

2021 Nov 30;
Dec 1, 2;
2022 Jan 13

Sir Geoffrey Vos MR, Lewison, Elisabeth Laing LJJ

C

Injunction — Final — Persons unknown — Local authorities obtaining final injunctions against persons unknown to restrain unauthorised encampments on land — Judge calling in injunctions for reconsideration in light of subsequent legal developments — Whether court having power to grant final injunctions against persons unknown — Whether procedure adopted by judge appropriate — Whether limits on court’s power to grant injunctions against world — Senior Courts Act 1981 (c 54), s 37¹ — Town and Country Planning Act 1990 (c 8), s 187B²

D

In claims brought under CPR Pt 8, a number of local authorities obtained a series of injunctions which were aimed at the gypsy and traveller community and targeted unauthorised encampment on land. All of the injunctions were against “persons unknown” although most also included varying numbers of named defendants. In some cases only interim injunctions were granted and in others final injunctions were also made. A judge took the view that a series of subsequent decisions of the Supreme Court and Court of Appeal had changed the law relating to injunctions against persons unknown, with the consequence that many of the injunctions might need to be discharged. Accordingly, with the concurrence of the President of the Queen’s Bench Division and the judge in charge of the Queen’s Bench Civil List, he made an order effectively calling in the final injunctions for reconsideration. Following a hearing the judge discharged some of the injunctions, holding that the court could not grant final injunctions that prevented persons who were unknown and unidentified at the date of the order from occupying and trespassing on local authority land, because final injunctions could only be made against parties who had been identified and had had an opportunity to contest the final injunction sought.

F

On appeal by some of the local authorities—

G

Held, allowing the appeals, that section 37 of the Senior Courts Act 1981, which was a broad provision, gave the court power to grant a final injunction that bound individuals who were not parties to the proceedings at the date when the injunction was granted; that, in particular, there was no difference in jurisdictional terms between an interim and a final injunction, particularly in the context of those granted against persons unknown; that, rather, where an injunction was granted, whether on an interim or a final basis, the court retained the right to supervise and enforce that injunction, including bringing before the court parties violating the injunction who thereby made themselves parties to the proceedings, which were not at an end until the injunction had been discharged; that, therefore, the court had power under section 37 of the 1981 Act to grant a final injunction that prevented persons who were unknown and unidentified at the date of the injunction from occupying and trespassing on local authority land; that it followed that the judge had been wrong to hold that the court could not grant a local authority’s application for a final injunction against unauthorised encampment that prevented newcomers from occupying and trespassing

H

¹ Senior Courts Act 1981, s 37: see post, para 72.

² Town and Country Planning Act 1990, s 187B: see post, para 114.

on the land; and that, accordingly, the judge's orders discharging the final injunctions obtained by the local authorities would be set aside (post, paras 7, 71–77, 81–82, 86, 89, 91–93, 98–99, 101, 125, 126).

Young v Bristol Aeroplane Co Ltd [1944] KB 718, CA, *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, CA and *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, CA applied.

Canada Goose UK Retail Ltd v Persons Unknown [2020] 1 WLR 2802, CA not applied.

Cameron v Hussain [2019] 1 WLR 1471, SC(E) and *Venables v News Group Newspapers Ltd* [2001] Fam 430 considered.

Per curiam. (i) The procedure adopted by the judge was unorthodox and highly unusual in so far as it sought to call in final orders of the court for revision in the light of subsequent legal developments. The circumstances which will justify varying or revoking a final order under CPR r 3.1(7) will be very rare given the importance of finality. However no harm has been done in that the parties did not object to the judge's procedure at the time and it has enabled a comprehensive review of the law applicable in an important field. In any event, most of the orders provided for review or gave permission to apply (post, paras 7, 110–112, 125, 126).

Terry v BCS Corporate Acceptances Ltd [2018] EWCA Civ 2422, CA applied.

(ii) Section 37 of the 1981 Act and section 187B of the Town and Country Planning Act 1990 impose the same procedural limitations on applications for injunctions against persons unknown. In either case, the applicant must describe any persons unknown in the claim form by reference to photographs, things belonging to them or any other evidence, and that description must be sufficiently clear to enable persons unknown to be served with the proceedings, whilst acknowledging that the court retains the power in appropriate cases to dispense with service or to permit service by an alternative method or at an alternative place. CPR PD 8A, para 20 seems to have been drafted with the objective of providing, so far as possible, procedural coherence and consistency rather than separate procedures for different kinds of cases (post, paras 7, 117, 125, 126).

(iii) The court cannot and should not limit in advance the types of injunction that might in future cases be held appropriate to be made against the world under section 37 of the 1981 Act. It is extremely undesirable for the court to lay down limitations on the scope of as broad and important a statutory provision as section 37, which might tie the hands of a future court in types of case that cannot now be predicted. Injunctions against the world have been granted to restrain the publication of information which would put a person at risk of serious injury or death, to prevent unauthorised encampment and to prohibit the tortious actions of protesters. No further limitations are appropriate since although such cases are exceptional, other categories may in future be shown to be proportionate and justified (post, paras 7, 72, 119–121, 125, 126).

(iv) Each member of the gypsy and traveller community has a right under article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms to pursue a traditional nomadic lifestyle. Accordingly, when a member of that community makes themselves party to an unauthorised encampment injunction they have the opportunity to apply to the court to set aside the injunction praying in aid that right. Then the court can test whether the injunction interferes with that person's article 8 rights, the extent of that interference and whether the injunction is proportionate, balancing their article 8 rights against the public interest. It is incorrect to say that the gypsy and traveller community has article 8 rights, since Convention rights are individual. Nonetheless, local authorities should engage in a process of dialogue and communication with travelling communities and should respect their culture, traditions and practices. Persons unknown injunctions against unauthorised encampments should be limited in time, perhaps to one year at a time before a review (post, paras 105–107, 125, 126).

- A (v) This area of law and practice has been bedevilled by the use of Latin tags. That usage is particularly inappropriate in an area where it is important that members of the public can understand the courts' decisions. Plain language should be used in place of Latin (post, paras 8, 125, 126).

Decision of Nicklin J [2021] EWHC 1201 (QB) reversed.

The following cases are referred to in the judgment of Sir Geoffrey Vos MR:

- B *Attorney General v Newspaper Publishing plc* [1988] Ch 333; [1987] 3 WLR 942; [1987] 3 All ER 276, CA
Attorney General v Times Newspapers Ltd [1992] 1 AC 191; [1991] 2 WLR 994; [1991] 2 All ER 398, HL(E)
Barton v Wright Hassall LLP [2018] UKSC 12; [2018] 1 WLR 1119; [2018] 3 All ER 487, SC(E)
Birmingham City Council v Afsar [2019] EWHC 3217 (QB); [2020] 4 WLR 168; [2020] 3 All ER 756
- C *Bloomsbury Publishing Group Ltd v News Group Newspapers Ltd* [2003] EWHC 1205 (Ch); [2003] 1 WLR 1633; [2003] 3 All ER 736
Bromley London Borough Council v Persons Unknown [2020] EWCA Civ 12; [2020] PTSR 1043; [2020] 4 All ER 114, CA
Burris v Azadani [1995] 1 WLR 1372; [1995] 4 All ER 802, CA
Cameron v Hussain [2019] UKSC 6; [2019] 1 WLR 1471; [2019] 3 All ER 1, SC(E)
- D *Canada Goose UK Retail Ltd v Persons Unknown* [2019] EWHC 2459 (QB); [2020] 1 WLR 417; [2020] EWCA Civ 303; [2020] 1 WLR 2802; [2020] 4 All ER 575, CA
Canary Wharf Investments Ltd v Brewer [2018] EWHC 1760 (QB)
Chapman v United Kingdom (Application No 27238/95) (2001) 33 EHRR 18, ECtHR (GC)
Chelsea FC plc v Brewer [2018] EWHC 1424 (Ch)
Cuadrilla Bowland Ltd v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29, CA
- E *Davis v Tonbridge and Malling Borough Council* [2004] EWCA Civ 194; *The Times*, 5 March 2004, CA
Dresser UK Ltd v Falcongate Freight Management Ltd (The Duke of Yare) [1992] QB 502; [1992] 2 WLR 319; [1992] 2 All ER 450, CA
Enfield London Borough Council v Persons Unknown [2020] EWHC 2717 (QB)
Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site [2003] EWHC 1738 (Ch); [2004] Env LR 9
- F *Hubbard v Pitt* [1976] QB 142; [1975] 3 WLR 201; [1975] ICR 308; [1975] 3 All ER 1, CA
Ineos Upstream Ltd v Persons Unknown [2017] EWHC 2945 (Ch); [2019] EWCA Civ 515; [2019] 4 WLR 100; [2019] 4 All ER 699, CA
Jacobson v Frachon (1927) 138 LT 386, CA
Manchester City Council v Pinnock [2010] UKSC 45; [2011] 2 AC 104; [2010] 3 WLR 1441; [2011] PTSR 61; [2011] 1 All ER 285, SC(E)
- G *Mid-Bedfordshire District Council v Brown* [2004] EWCA Civ 1709; [2005] 1 WLR 1460, CA
Secretary of State for the Environment, Food and Rural Affairs v Meier [2009] UKSC 11; [2009] 1 WLR 2780; [2010] PTSR 321; [2010] 1 All ER 855, SC(E)
South Bucks District Council v Porter [2003] UKHL 26; [2003] 2 AC 558; [2003] 2 WLR 1547; [2003] 3 All ER 1, HL(E)
South Cambridgeshire District Council v Gammell [2005] EWCA Civ 1429; [2006] 1 WLR 658, CA
- H *South Cambridgeshire District Council v Persons Unknown* [2004] EWCA Civ 1280; [2004] 4 PLR 88, CA
Speedier Logistics Co Ltd v Aardvark Digital Ltd [2012] EWHC 2776 (Comm)
Starmark Enterprises Ltd v CPL Distribution Ltd [2001] EWCA Civ 1252; [2002] Ch 306; [2002] 2 WLR 1009; [2002] 4 All ER 264, CA

Terry v BCS Corporate Acceptances Ltd [2018] EWCA Civ 2422, CA A
Vastint Leeds BV v Persons Unknown [2018] EWHC 2456 (Ch); [2019] 4 WLR 2
Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038;
 [2001] 1 All ER 908
Young v Bristol Aeroplane Co Ltd [1944] KB 718; [1944] 2 All ER 293, CA

The following additional cases were cited in argument:

Attorney General v Harris [1961] 1 QB 74; [1960] 3 WLR 532; [1960] 3 All ER 207, CA B

Bank of Scotland plc (formerly Governor and Company of the Bank of Scotland) v Pereira (Practice Note) [2011] EWCA Civ 241; [2011] 1 WLR 2391; [2011] 3 All ER 392, CA

Birmingham City Council v Sharif [2020] EWCA Civ 1488; [2021] 1 WLR 685; [2021] 3 All ER 176, CA

Bromsgrove District Council v Carthy (1975) 30 P & CR 34, DC C

Cartier International AG v British Sky Broadcasting Ltd [2016] EWCA Civ 658; [2017] Bus LR 1; [2017] 1 All ER 700, CA

Claimants in the Royal Mail Group Litigation v Royal Mail Group Ltd [2021] EWCA Civ 1173, CA

Crédit Agricole Corporate and Investment Bank v Persons Having Interest in Goods Held by the Claimant [2021] EWHC 1679 (Ch); [2021] 1 WLR 3834; [2022] 1 All ER 83 D

Fourie v Le Roux [2007] UKHL 1; [2007] 1 WLR 320; [2007] Bus LR 925; [2007] 1 All ER 1087, HL(E)

Iveson v Harris (1802) 7 Ves 251

Marengo v Daily Sketch and Sunday Graphic Ltd [1948] 1 All ER 406

Newbury District Council v Secretary of State for the Environment [1978] 1 WLR 1241; [1979] 1 All ER 243, CA

OPQ v BJM [2011] EWHC 1059 (QB); [2011] EMLR 23 E

Persons formerly known as Winch, In re [2021] EWHC 1328 (QB); [2021] EMLR 20, DC

Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment [1985] AC 132; [1984] 3 WLR 32; [1984] 2 All ER 358, HL(E)

R (Youngsam) v Parole Board [2019] EWCA Civ 229; [2020] QB 387; [2019] 3 WLR 33; [2019] 3 All ER 954, CA

Rickards v Rickards [1990] Fam 194; [1989] 3 WLR 748; [1989] 3 All ER 193, CA F

Roult v North West Strategic Health Authority [2009] EWCA Civ 444; [2010] 1 WLR 487, CA

Serious Organised Crime Agency v O'Docherty [2013] EWCA Civ 518; [2013] CP Rep 35, CA

Test Valley Investments Ltd v Tanner (1963) 15 P & CR 279, DC

University of Essex v Djemal [1980] 1 WLR 1301; [1980] 2 All ER 742, CA

Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd) [2013] UKSC 46; [2014] AC 160; [2013] 3 WLR 299; [2013] 4 All ER 715, SC(E) G

X (formerly Bell) v O'Brien [2003] EWHC 1101 (QB); [2003] EMLR 37

The following additional cases, although not cited, were referred to in the skeleton arguments:

Akerman v Richmond upon Thames London Borough Council [2017] EWHC 84 (Admin); [2017] PTSR 351, DC H

Ashford Borough Council v Cork [2021] EWHC 476 (QB)

Attorney General v Premier Line Ltd [1932] 1 Ch 303

Attorney General v Punch Ltd [2002] UKHL 50; [2003] 1 AC 1046; [2003] 2 WLR 49; [2003] 1 All ER 289, HL(E)

- A *Basingstoke and Deane Borough Council v Eastwood* [2018] EWHC 179 (QB)
Basingstoke and Deane Borough Council v Thompson [2018] EWHC 11 (QB)
Bensaid v United Kingdom (Application No 44599/98) (2001) 33 EHRR 10, ECtHR
Birmingham City Council v Shafi [2008] EWCA Civ 1186; [2009] 1 WLR 1961;
 [2009] PTSR 503; [2009] 3 All ER 127, CA
British Broadcasting Corpn, In re [2009] UKHL 34; [2010] 1 AC 145; [2009] 3 WLR
 142; [2010] 1 All ER 235, HL(E)
- B *Broadmoor Special Hospital Authority v Robinson* [2000] QB 775; [2000] 1 WLR
 1590; [2000] 2 All ER 727, CA
Cadder v HM Advocate [2010] UKSC 43; [2010] 1 WLR 2601, SC(Sc)
Carr v News Group Newspapers Ltd [2005] EWHC 971 (QB)
Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd [1993] AC 334;
 [1993] 2 WLR 262; [1993] 1 All ER 664, HL(E)
City of London Corpn v Bovis Construction Ltd [1992] 3 All ER 697, CA
- C *City of London Corpn v Persons Unknown* [2021] EWHC 1378 (QB)
City of London Corpn v Samede [2012] EWCA Civ 160; [2012] PTSR 1624; [2012]
 2 All ER 1039, CA
D v Persons Unknown [2021] EWHC 157 (QB)
Guardian News and Media Ltd, In re [2010] UKSC 1; [2010] 2 AC 697; [2010]
 2 WLR 325; [2010] 2 All ER 799, SC(E)
Hall v Beckenham Corpn [1949] 1 KB 716; [1949] 1 All ER 423
- D *Hatton v United Kingdom* (Application No 36022/97) (2003) 37 EHRR 28,
 ECtHR (GC)
Independent Publishing Co Ltd v Attorney General of Trinidad and Tobago [2004]
 UKPC 26; [2005] 1 AC 190; [2004] 3 WLR 611; [2005] 1 All ER 499, PC
Lambeth Overseers v London County Council [1897] AC 625, HL(E)
Local Authority, A v W [2005] EWHC 1564 (Fam); [2006] 1 FLR 1
López Ostra v Spain (Application No 16798/90) (1994) 20 EHRR 277, ECtHR
- E *Masri v Consolidated Contractors International (UK) Ltd* (No 2) [2008] EWCA Civ
 303; [2009] QB 450; [2009] 2 WLR 621; [2009] Bus LR 168; [2008] 2 All ER
 (Comm) 1099, CA
Mayor of London (on behalf of the Greater London Authority) v Hall [2010] EWCA
 Civ 817; [2011] 1 WLR 504, CA
Mileva v Bulgaria (Application Nos 43449/02 and 21475/04) (2010) 61 EHRR 41,
 ECtHR
- F *Moreno Gómez v Spain* (Application No 4143/02) (2004) 41 EHRR 40, ECtHR
R v Hatton [2005] EWCA Crim 2951; [2006] 1 Cr App R 16, CA
RXG v Ministry of Justice [2019] EWHC 2026 (QB); [2020] QB 703; [2020] 2 WLR
 635, DC
S (A Child) (Identification: Restrictions on Publication), In re [2004] UKHL 47;
 [2005] 1 AC 593; [2004] 3 WLR 1129; [2004] 4 All ER 683, HL(E)
- G *Scott v Scott* [1913] AC 417, HL(E)
*Siskina (Owners of cargo lately laden on board) v Distos Cia Naviera SA (The
 Siskina)* [1979] AC 210; [1977] 3 WLR 818; [1977] 3 All ER 803, HL(E)
Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] Ch 1; [1983] 3 WLR 78;
 [1983] 2 All ER 787, CA
Tewkesbury Borough Council v Smith [2016] EWHC 1883 (QB)
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch);
 [2019] JPL 161
- H *Von Hannover v Germany* (Application No 59320/00) (2004) 40 EHRR 1, ECtHR
Wellesley v Duke of Beaufort (1827) 2 Russ 1
Wokingham Borough Council v Scott [2017] EWHC 294 (QB)
X (A Minor) (Wardship: Injunction), In re [1984] 1 WLR 1422; [1985] 1 All ER 53
X and Y v The Netherlands (Application No 8978/80) (1985) 8 EHRR 235, ECtHR

APPEALS from Nicklin J

Using the modified CPR Pt 8 procedure provided by CPR r 65.43 Walsall Metropolitan Borough Council applied for a traveller injunction against Brenda Bridges and 17 other named defendants and persons unknown. An interim injunction without notice was granted on 23 September 2016. A final injunction was granted on 21 October 2016 until further order of the court.

By a claim form issued on 10 March 2017 Barking and Dagenham London Borough Council applied for a borough-wide injunction against Tommy Stokes and 63 other named defendants and persons unknown, being members of the traveller community who had unlawfully encamped within the borough of Barking and Dagenham. On 29 March 2017 an interim injunction was granted prohibiting trespass on land by named defendants and persons unknown (“a traveller injunction”). On 30 October 2017 a final injunction was granted until further order against 23 named defendants and persons unknown, containing permission to apply to the defendants or “anyone notified of this order” to vary or discharge the order on 72 hours’ written notice.

By a claim form issued on 21 December 2017 Rochdale Metropolitan Borough Council applied for a traveller injunction against Shane Heron and 88 other named defendants and persons unknown, being members of the travelling community who had unlawfully encamped within the borough of Rochdale. An interim injunction was granted on 9 February 2018 with a power of arrest.

By a claim form issued on 26 April 2018 Redbridge London Borough Council applied for an injunction against Martin Stokes and 99 other named defendants and persons unknown forming or intending to form unauthorised encampments in the London Borough of Redbridge. On 4 June 2018 an interim injunction was granted against 70 named defendants and persons unknown with a power of arrest. A final injunction was granted on 12 November 2018 until 21 November 2021 against 69 named defendants and persons unknown. The final injunction contained a permission to apply to the defendants “and anyone notified of this order” to vary or discharge on 72 hours’ written notice.

By a claim form issued on 28 June 2018 Wolverhampton City Council applied for a traveller injunction against persons unknown. An injunction contra mundum with a power of arrest was granted on 2 October 2018. The order provided for a review hearing to take place on the first available date after 1 October 2019. A further injunction order was granted on 5 December 2019, contra mundum and with a power of arrest. The order provided for a further review hearing to take place on 20 July 2020, following which an order was made dated 29 July 2020 continuing the injunction.

By a claim form issued on 2 July 2018 Basingstoke and Deane Borough Council and Hampshire County Council applied for a traveller injunction against Henry Loveridge and 114 other named defendants and persons unknown, the owner and/or occupiers of land at various addresses set out in a schedule attached to the claim form. On 30 July 2018 an interim injunction was granted with a power of arrest. A final injunction was granted on 26 April 2019 until 3 April 2024 or further order against 115 named defendants and persons unknown with a power of arrest. The final

A injunction contained a permission to apply to the defendants or “anyone notified of this order” to vary or discharge on 72 hours’ written notice.

By a claim form issued on 22 February 2019 Nuneaton and Bedworth Borough Council and Warwickshire County Council applied for a traveller injunction against Thomas Corcoran and 52 other named defendants and persons unknown forming unauthorised encampments within the borough of Nuneaton and Bedworth. On 19 March 2019 an interim injunction was granted with a power of arrest.

By a claim form issued on 6 March 2019 Richmond upon Thames London Borough Council applied for a traveller injunction against persons unknown possessing or occupying land and persons unknown depositing waste or flytipping on land. By an order of 10 May 2019 the final hearing of the claim was adjourned until the decision of the Court of Appeal in *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043. An interim injunction without notice was granted on 14 August 2018 and continued on 24 August 2018. Both contained powers of arrest.

By a claim form issued on 29 March 2019 Hillingdon London Borough Council applied for an injunction against persons unknown occupying land and persons unknown depositing waste or flytipping on land. On 12 June 2019 an interim traveller injunction without notice was granted with a power of arrest. By an order of 17 June 2019 the final hearing of the claim was adjourned until the decision of the Court of Appeal in the case of *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043.

By a claim form issued on 31 July 2019 Havering London Borough Council applied for a traveller injunction against William Stokes and 104 other named defendants and persons unknown. On 11 September 2019 an interim traveller injunction was granted pending the final injunction hearing with a power of arrest.

By a claim form issued on 31 July 2019 Thurrock Council applied for a traveller injunction against Martin Stokes and 106 other named defendants and persons unknown. An interim injunction was granted on 3 September 2019 with a power of arrest.

By a claim form issued on 18 June 2020 Test Valley Borough Council applied for a traveller injunction against Albert Bowers and 88 other named defendants and persons unknown forming unauthorised encampments within the borough of Test Valley. An interim injunction was granted on 28 July 2020 with a power of arrest.

On 16 October 2020 Nicklin J made an order of his own motion, but with the concurrence of Dame Victoria Sharp P and Stewart J (the judge in charge of the Queen’s Bench Civil List), ordering each claimant in 38 sets of proceedings, including those detailed above, to complete a questionnaire in the form set out in a schedule to the order with a view to identifying those local authorities with existing “traveller injunctions” who wished to maintain such injunctions (possibly with modification), and those who wished to discontinue their claims and/or discharge the current traveller injunction granted in their favour. On 27 and 28 January 2021, as a consequence of local authorities having completed the questionnaire, Nicklin J conducted a hearing in which he considered the injunctions granted in those proceedings. By a judgment handed down on 12 May 2021 Nicklin J [2021] EWHC 1201 (QB) held that the court could not grant final injunctions which prevented

persons who were unknown and unidentified at the date of the order from occupying and trespassing on local authority land. By an order dated 24 May 2021 Nicklin J discharged certain of the injunctions that the local authorities had obtained.

By appellants' notices filed on or about 7 June 2021 and with permission of the judge the local authorities detailed above appealed on the following grounds. (1) The judge had erred in law in finding that the court had jurisdiction to vary and/or discharge final injunction orders where no application had been made by a person affected by those final orders to vary or discharge them. (2) The judge had been wrong to hold that the injunction order bound only the parties to the proceedings at the date of the order and did not bind "newcomers" where the injunction was granted pursuant to section 187B of the Town and Country Planning Act 1990, which provided a statutory power to grant an injunction against persons unknown at the interim and final stages. The judge had failed to take into account the court's entitlement to grant an injunction that bound newcomers pursuant to section 222 of the Local Government Act 1972, in particular where the local authorities' enforcement powers pursuant to sections 77 and 78 of the Criminal Justice and Public Order Act 1994 had proved to be ineffective. (3) The judge had been wrong to hold that final injunction orders sought and obtained pursuant to section 222 of the 1972 Act could not, in principle, bind newcomers who were not party to the litigation. Such injunctions could be granted on a contra mundum basis where there was evidence of widespread impact on the article 8 rights of the inhabitants of the local authority area. One of the claimants in the court below, Basildon Borough Council, did not appeal but was given permission to intervene by written submissions only. The following bodies were granted permission to intervene: London Gypsies and Travellers; Friends, Families and Travellers; Derbyshire Gypsy Liaison Group; High Speed Two (HS2) Ltd; and Basildon Borough Council.

The facts are stated in the judgment of Sir Geoffrey Vos MR, post, paras 9–17.

Nigel Giffin QC and Simon Birks (instructed by Walsall Metropolitan Borough Council Legal Services) for Walsall.

There are no unavoidable conceptual objections to the grant of final injunctions against newcomers, that is, persons who have not been identified as defendants prior to the date on which the final order is made, whether identification is by name or by some sufficient other description. The key principle is procedural fairness. If ways can be found of granting a final injunction while complying with procedural fairness there is no principled objection to doing so. The final injunction must provide a means by which a newcomer may ask the court to vary or discharge the injunction to comply with procedural fairness. In the present case Nicklin J accepted that interim injunctions can be granted against persons unknown, including newcomers who become parties after the order has been made by doing an act which breaches the injunction and by being served with the injunction or by a form of alternative service. If a person can become a party to the proceedings after the order has been made at the interim stage, that should apply equally

A at the final stage. A final injunction is final only in the sense that it is not a staging post on the way to a later trial. It is *not* final in the sense of being set in stone. A person who breaches the injunction and as a consequence becomes a party to it is entitled to apply for the injunction to be varied or discharged.

B A rigid distinction between interim and final injunctions would be false and lead to undesirable consequences: see the flytipping case of *Enfield London Borough Council v Persons Unknown* [2020] EWHC 2717 (QB) at [41]–[44], per Nicklin J. In the case of a rolling occupation, where one group of persons move on to land for a time and are immediately replaced by another group, which makes it difficult to identify those involved, a rigid approach to identifying defendants does not address the practical problems faced by local authorities. Nicklin J’s approach is unworkable and impractical with wide ramifications. That approach has considerably truncated the use of interim as well as final injunctions, which is inconsistent with authority: cf *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 and *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780. It is consistent with interim injunction cases where by the time of the application for a final injunction the defendants have all been identified (see *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658), but in the case of the present injunctions it is not possible to identify all the defendants. Similar problems can arise in different areas of the law including protest cases, copyright infringement and nuisance, for example, car cruising and illegal raves. Section 37 of the Senior Courts Act 1981, which confers jurisdiction to grant a final injunction binding non-parties, is flexible and adapts to new circumstances: see *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 and *Fourie v Le Roux* [2007] 1 WLR 320. Apart from exceptional cases against the world, the use of section 37 should not be excluded on an *a priori* basis and regardless of the particular facts unless a reason of principle compels such a conclusion.

F What is important is not the difference between interim and final injunctions but between injunctions and other remedies such as damages. The latter are backward-looking, compensating for past wrongs, and are by their nature once and for all and binary. It inevitably follows that the person sought to be held liable must already be a party at the time of trial. Any opportunity to be heard must be extended to that party by trial at the latest: see *Cameron v Hussain* [2019] 1 WLR 1471. *Cameron* is distinguishable from the present cases on the basis that it concerned the remedy of damages, not an injunction. The fundamental principle that a person could not be made subject to the jurisdiction of the court without having such notice of the proceedings as would enable him to be heard was applicable to the issues considered in that case, but the issues arising in the present cases, including rolling occupation and newcomers, were not before the Supreme Court in *Cameron*. It follows that it was not part of the ratio of *Cameron* that a final injunction could not be granted against persons unknown.

Where a form of relief by its nature operates only for the future, there is no reason of principle why it should not operate against newcomers who come to the proceedings in the future. By contrast with monetary remedies,

injunctions are forward-looking, and even if final rather than interim they can be varied for the future. It is not the case that proof of historic wrongdoing by person A is intrinsically incapable of justifying a quia timet (precautionary) injunction against person B. The material upon which the court is invited to act when granting an injunction will necessarily relate to what has been said and done in the past. But inferences can be drawn from such material about what is likely to happen in the future in the absence of an injunction. That is the whole basis of precautionary claims, although naturally a court will be cautious in drawing such inferences and the relief to be granted on the basis of them: see *Ineos* [2019] 4 WLR 100 and *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29. The fact that evidence relates to the past behaviour of A does not mean that it is incapable of founding an inference about the likely future behaviour of B, but rather goes to the weight to be placed on the evidence in that respect. The past conduct of a substantial number of persons, significant numbers of whom it has not been possible to identify, is in appropriate circumstances capable of founding inferences as to the likely future behaviour of persons who have not yet been identified.

A final injunction should be formulated so as to catch only behaviour which is unlawful and ought to be restrained. There are obvious problems, other than on a purely temporary basis, when seeking to control an activity not intrinsically unlawful, such as protest on the public highway, the lawfulness of which will depend critically on what a given protester actually does, and which very directly engages rights under the Convention for the Protection of Human Rights and Fundamental Freedoms, particularly articles 10 and 11: see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802. Those problems are compounded, and probably insuperable, if the injunction is directed to an unlimited class of potential future newcomers. That is one reason why the attempt to obtain a final injunction in *Canada Goose* failed. The ratio in *Canada Goose* does not lay down a universal principle of general application but applies only to protester injunctions: see para 89. If that were not the case, *Ineos* and *Canada Goose*, both Court of Appeal decisions, would be inconsistent. Any apparently broader statements made by the Court of Appeal in *Canada Goose* cannot be considered to be part of the binding ratio: see *R (Youngsam) v Parole Board* [2020] QB 387, para 48, per Leggatt LJ. [Reference was made to *Bank of Scotland plc (formerly Governor and Company of the Bank of Scotland) v Pereira (Practice Note)* [2011] 1 WLR 2391.]

In considering whether to grant an injunction against the unauthorised occupation and use of land, Convention rights are relevant, but the starting point has to be whether the activity being restrained would have an impact upon the Convention rights of the persons living or working in the relevant part of the claimant local authority's area, particularly article 8 rights. Whether the unauthorised occupation and use of land would in fact violate Convention rights, and whether a contra mundum (against the world) injunction would represent a proportionate means of protecting those rights, would of course depend entirely upon the particular facts. But that possibility cannot be ruled out as a matter of principle.

A *Mark Anderson QC and Michelle Caney* (instructed by *Wolverhampton City Council Legal Services* for *Wolverhampton*).

The injunction granted to the local authority in this case is a precautionary injunction against persons unknown in order to prevent future encampments following frequent disruptive incursions on local authority land. There being no named defendants, the injunction defines defendants as persons who, in the future, would set up encampments. Defendants would come into being only if and when they committed the prohibited acts. It is therefore a precautionary injunction and provisional because it will only take effect against an individual who acts inconsistently with it, is identified and brought before the court. There being no return date or expression that it will only last until trial, it is not interim but neither is it a final order which can only be challenged on appeal. Since it is not a final order in the usual sense, it is not inconsistent with the fundamental principle that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard: see *Cameron v Hussain* [2019] 1 WLR 1471, para 17, *Iveson v Harris* (1802) 7 Ves 251, 256–257, *Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406 and *Attorney General v Times Newspapers Ltd* (“*Spycatcher*”) [1992] 1 AC 191, 224A–B per Lord Oliver of Aylmerton. The injunction includes provision for an application to discharge the order. That is consistent with a proportionate approach permitting a person who becomes a defendant by breaching the injunction of which he or she has knowledge to apply for the injunction to be varied or discharged: see *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658. A full assessment of all the circumstances, as in *South Bucks District Council v Porter* [2003] 2 AC 558, is not required: see *Gammell*, para 27. None of the courts in *Iveson*, *Marengo* or *Spycatcher* defined the circumstances in which a court can grant a precautionary injunction or explored the limits of such orders.

There is no fundamental distinction between interim and final injunctions. An injunction is always against the world to the extent that it binds newcomers as defined in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, para 82(1). Thus, the distinction between “persons unknown” and “against the world” injunctions, when analysing their effectiveness against newcomers, is conceptually unimportant. A problem arises if it is possible to obtain injunctive relief against the whole world provided the claimant can name one defendant, but not possible to obtain any relief at all if there is no named defendant to a claim. That is close to the distinction which can lead to the anomalous position identified in *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633, para 11, per Sir Andrew Morritt V-C, and approved in *Cameron v Hussain* [2019] 1 WLR 1471, para 10. An injunction will not be granted against a defendant who cannot be served unless an alternative method of service is available. An alternative method is provided in the injunction granted to the local authority in the present case. All the injunctions in this appeal should have been reviewed by the court which granted them in accordance with the guidance in the test case of *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, para 106.

The injunction considered by the Court of Appeal in *Canada Goose* [2020] 1 WLR 2802 (a protester case) was a very different type of injunction in very

different circumstances from those of the present case, where there is a binary distinction between whether individuals are trespassing on land and whether they are not. Trespass is always unlawful. *Canada Goose* is distinguishable from the present circumstances. The injunction sought in *Canada Goose* was not precautionary. It was not intended to preserve the status quo, but to put a final end to an existing activity. It was an application for summary judgment, so had nothing provisional about it. The claimant was a private entity seeking to use remedies in private litigation to prevent what it perceived as public disorder to protect its own commercial interests. The Court of Appeal found that in a protester case the fundamental principle necessitates that a final injunction must only prohibit a person from activity in which that person has already participated. The circumstances are very different in the case of unauthorised encampments on local authority land. The guidance in *Bromley* [2020] PTSR 1043 should stand and be applied. There was no need for Nicklin J to revisit it in these cases.

Ranjit Bose QC and Steven Woolf (instructed by *South London Legal Partnership*) for Hillingdon and Richmond upon Thames.

The difficulty of obtaining an injunction against traveller encampments with a floating population of travellers has long been recognised: see *Test Valley Investments Ltd v Tanner* (1963) 15 P & CR 279, 280, per Lord Parker CJ and *Bromsgrove District Council v Carthy* (1975) 30 P & CR 34, per Lord Widgery CJ. Some local authorities have had a long-standing problem with deliberate breaches of planning law. There has long been a strong perception that the planning system is being systematically abused and needed strengthening: see *South Bucks District Council v Porter* [2003] 2 AC 558, para 45, per Lord Steyn. This is the context in which section 187B of the Town and Country Planning Act 1990 was enacted and the mischief at which it was directed.

Section 187B of the 1990 Act envisages that a final injunction may be granted against newcomers. Being expressed in wide terms, section 187B confers locus on a local planning authority to apply to the court for injunctive relief (including quia timet relief) where it is “necessary or expedient” within subsection (1), but it also confers power on the court itself to grant such relief by subsection (2). It differs, in this respect, from cases in which an authority brings proceedings under section 222 of the Local Government Act 1972, where the court’s power to grant injunctive relief comes from section 37 of the Senior Courts Act 1981. This does not, however, warrant a different approach by the courts. The language of section 187B does not differ from the criteria in section 37 of the 1981 Act. The grant of the injunction must be just and convenient. If this test is not satisfied it is not appropriate to grant an injunction: see *South Bucks District Council*, para 98, per Lord Scott of Foscote. The focus of planning and planning control is what is done to the land. By whom it is done is secondary.

Section 187B enables the local authority to apply to the court for an injunction to prohibit an express breach or to prevent an apprehended breach. Alone in this area of law section 187B is prospective. It can be invoked as a stand alone provision where a breach is threatened, whether or not the local authority is proposing to exercise other powers. Section 187B itself confers power on the court to grant relief against a person whose identity is unknown, this being implicit in the terms of subsection (3), which

- A contemplate that rules of court may make provision for an injunction to be issued against such a person. The power to grant relief comes from subsection (2) and this power cannot be widened or narrowed by rules of court that happen to be made (or not made) or the terms of those rules: see *Cameron v Hussain* [2019] 1 WLR 1471, para 12, per Lord Sumption, who stated that Practice Directions are no more than guidance on matters of practice, they have no statutory force and they cannot alter the general law.
- B Section 187B is broad and open-textured. It contains nothing to exclude final relief against newcomers. [Reference was made to *In re Persons formerly known as Winch* [2021] EMLR 20.]

- C The dispute in these cases is not between individuals but between the public and a small part of the public not complying with the law. The law should protect the public. To counter this contemporary problem an injunction is only effective if it can be enforced against newcomers. *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 did not establish a principle of universal application to civil litigation that a final injunction against “persons unknown” binds only those who are parties to the proceedings at the date the final order is granted. It is distinguishable on a number of bases. First, it was a protest case and applies to applications for
- D injunctive relief in protester cases: see paras 11, 82, 89, and 93. Second, like *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 and *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29, a private entity was seeking to protect its commercial interests against interference with its private law rights. The claimants, by contrast, are public authorities: their claims do not concern interference with their private law rights (save in relation to trespass), but with their public law rights. Third, nothing in
- E *Canada Goose* calls into question or qualifies the Court of Appeal’s judgment handed down the previous month in *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, which was an appeal by a local authority against a refusal to grant final injunctions relating to residential encampment. In *Bromley* the only judgment was given by
- F Coulson LJ, who was then part of the constitution which delivered the judgment of the court in *Canada Goose*. Fourth, para 44 of *Birmingham City Council v Sharif* [2021] 1 WLR 685 suggests that the Court of Appeal does not regard *Canada Goose* as necessarily applying to injunctions under section 222 of the Local Government Act 1972, since there the court referred to the possibility of further consideration in any future case about injunctions to restrain anti-social behaviour by persons unknown.

- G The claimant local authorities are seeking to enforce public rights for the benefit of the public in their areas. Three public wrongs are of particular concern: (i) breaches of planning law; (ii) public nuisance, for example, fly-tipping; and (iii) trespass. Local authorities as owners of land for public use such as parks and the green belt, can enforce planning law in the public interest. Where local authorities are seeking to enforce public rights on behalf of all members of the public, as in the case of the Attorney General,
- H the court should seek to assist them: see *Attorney General v Harris* [1961] 1 QB 74 and paras 42 and 44 of *Sharif*, a case of street cruising in the local authority’s area which the Court of Appeal concluded could only effectively be restrained by an injunction. The prospect of obtaining effective relief in

the instant cases is vanishingly small if no final injunction can be granted against persons unknown. A

Caroline Bolton and Natalie Pratt (instructed by *Sharpe Pritchard LLP* and *Legal Services, Barking and Dagenham London Borough Council*) for Barking and Dagenham, Havering, Redbridge, Basingstoke and Deane, Hampshire, Nuneaton and Bedworth, Warwickshire, Rochdale, Test Valley and Thurrock. B

The general principle that applies to final orders is that once judgment has been given on a claim, the cause of action is extinguished and the sole right is on the judgment: see *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd)* [2014] AC 160, para 17, per Lord Sumption JSC. Nicklin J in the present case wrongly found that the court could disturb the final orders granted to the local authorities of its own initiative and/or pursuant to CPR r 3.1(7) and was wrong to find that, where a final order binds persons unknown (as these final orders do), a change in the law could justify the disturbing of an order where no application has been made by a non-party to vary or discharge the order. There having been, in the cases of these local authorities, no application by a non-party to vary or set aside the final orders, nor any application under the liberty to apply provisions, the court was wrong to re-open, case manage and ultimately discharge the final orders in so far as they relate to persons unknown. C D

In *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 the court held that final injunctions bind only parties to the proceedings. But that case is distinguishable because it concerned private law rights and common law causes of action in nuisance and trespass, whereas the present cases concern public law rights and statutory rights, including section 187B of the Town and Country Planning Act 1990 and section 222 of the Local Government Act 1972. Nicklin J was wrong to say that *Canada Goose* was of universal application. *Canada Goose* concerned a claim against protesters, where no statutory power had been provided to grant an injunction against persons unknown, by contrast with the present cases in which section 187B of the 1990 Act provides a statutory power to grant an injunction against persons unknown at the interim and final stages. The 1990 Act, like its predecessors, provides that matters of planning control and judgment are exclusively for local planning authorities and the Secretary of State: see *South Bucks District Council v Porter* [2003] 2 AC 558, para 30, per Lord Bingham of Cornhill and *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 141, per Lord Scarman. Private law is not to be applied to planning law unless it is necessary for interpretation: see *Newbury District Council v Secretary of State for the Environment* [1978] 1 WLR 1241, 1248–1249. The court has power under section 187B to grant a final injunction against persons unknown: see *South Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88, para 8 and *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, para 2. A final order is binding on persons unknown who were not defendants at the time the order was made but became defendants when they knowingly acted in breach of it: see *Mid-Bedfordshire District Council v Brown* [2005] 1 WLR 1460, paras 23–28. E F G

Canada Goose applied *Cameron v Hussain* [2019] 1 WLR 1471, para 9, in which the Supreme Court confirmed the general rule that proceedings may H

A not be commenced against unnamed parties but referred to statutory exceptions to the principle, in particular, the specific power in section 187B of the 1990 Act to restrain actual or apprehended breaches of planning control, with the provision of rules of court for injunctions against persons unknown pursuant to section 187B(3). Thus, the principle in *Canada Goose* is subject to statutory exceptions, in particular section 187B of the 1990 Act.

B *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043 concerned a final injunction to restrain unauthorised occupation of land owned or managed by the local authority and/or the disposal of waste or fly-tipping on the land, which was refused by the judge on proportionality grounds. Whereas *Bromley* was a case on public law rights, it is distinguishable from *Canada Goose* which was concerned with private law rights. There is no suggestion in the text of section 187B, or CPR PD 8A, C paras 20.1–20.10, that orders against persons unknown are intended to be limited to the interim injunction stage in proceedings. The appropriate approach is to ask whether a case is sufficiently serious to justify granting a final injunction. Service on persons unknown under this type of order is alternative service: see *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658. It is important for orders made against persons D unknown to include a liberty to apply clause, so that when a person becomes a defendant by knowingly breaching the injunction, that defendant can apply to vary or discharge the order. A non-party who is affected by an order may also apply to set it aside under CPR r 40.9.

A court has no power to case manage a final injunction without a specific provision for review in the liberty to apply clause. Nicklin J had no power in the present case to call in final orders, review them and discharge them. He E was wrong to take the view that *Bromley* and *Canada Goose* obliged him to call in the final orders that he did: see *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2014] AC 160. That approach offends against the principle of finality and runs contrary to the case law on final orders. [Reference was made to *Crédit Agricole Corporate and Investment Bank v Persons Having Interest in Goods Held by the Claimant* [2021] 1 WLR 3834.]

F Although CPR r 3.1(7) provides a wide power for a court making an order to vary or revoke the order, there are limitations on that power. First, rule 3.1(7) cannot constitute a power in a judge to hear an appeal from himself in respect of a final order. Second, whilst the powers at rule 3.1(7) may be invoked in respect of procedural or interlocutory orders where either (i) the order was made on the basis of erroneous information or G (ii) a subsequent event destroys the basis on which the order was made, it does not follow that where either (i) or (ii) are established a party may return to a trial judge and ask him to re-open a final order disposing of the case, whether in whole or in part. Third, to extend the power at rule 3.1(7) would undermine the principle of finality: see *Roult v North West Strategic Health Authority* [2010] 1 WLR 487. This limitation on the power at rule 3.1(7) is well established, and recognised in subsequent Court of Appeal authority: H see *Terry v BCS Corporate Acceptances Ltd* [2018] EWCA Civ 2422 at [75]. Neither of the first two limitations are present in the cases before the court. The retrospective effect of a judicial decision is excluded from cases already finally determined: see *Serious Organised Crime Agency v O'Docherty* [2013] CP Rep 35, para 20.

Richard Kimblin QC (instructed by *Eversheds Sutherland (International) LLP*) for High Speed Two (HS2) Ltd, intervening. A

The approach of Nicklin J in the present case has produced an unworkable outcome which makes it impossible to obtain relief other than on a short-term basis on an interim application, and after trial relief is available only against named defendants which is of no use against a fluctuating body of unknown persons. HS2 has experienced significant disruption from protesters against the national high-speed rail link it is building, and has obtained interim injunctions against persons unknown at three different places. Each injunction is temporally and geographically limited. Following the judgment below the protection they give is short-lived and after trial, non-existent against persons unknown. B

HS2 has two central concerns: (i) whether the temporal limits on interim injunctions are short (see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, paras 92–93); and (ii) whether a newcomer, that is, a person who was not a party to the litigation at the date on which the final order was granted, is bound by it. On *Canada Goose* the submissions of Mr Giffin and Mr Anderson are adopted. C

First, assessing a claim for relief against persons unknown is a highly fact-specific exercise. Second, classification of injunctions by reference to the type of claimant or defendant is unhelpful because the range of rights to be balanced is not consistent from case to case. Third, it is properly open to a court to grant interim relief which will last for a long time. Fourth, an injunction against persons unknown, made by final order, may bind newcomers if one or more representative persons have been served with the claim form or the order is plainly *contra mundum*. Such an order is appropriate where the extent of its effects are necessarily limited and do not, in reality, affect everybody. *Canada Goose* was not intended to have the wide and restrictive effect which Nicklin J understood it to have; alternatively, paras 89–90 of *Canada Goose* should not be followed in that limited respect. D E

There is a wide range of factual circumstances in which claimants seek relief by injunction or order for possession: cf *Canada Goose, Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633, *Attorney General v Times Newspapers Ltd* (“*Spycatcher*”) [1992] 1 AC 191, *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780 and *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043. In all of these cases, the following differ greatly: (i) the number of people who might reasonably be thought to be affected; (ii) the type and gravity of the anticipated harm; (iii) the length of time during which there was an issue to be addressed; (iv) the legal right to be protected, or the illegality to be prevented; and (v) the legal rights of potential defendants. HS2’s circumstances illustrate why the fact-specific nature of the jurisdiction is so central to the legal issues which have to be solved in any particular case. HS2 seeks to keep possession of its land in much the same way as local authorities do in respect of, for example, their amenity land. But the defendants would say that they are protesters, not trespassers, so the set of legal issues is quite different to those arising from local authority concerns which are prompted by traveller incursions. For that reason, it may be unhelpful to classify cases. F G H

- A The first and obvious solution to the problem of providing relief where the case calls for it but the defendants fluctuate, is to leave it to the judgment of the first instance judge to decide what interim relief is appropriate. As the circumstances and legal issues are so very variable, an overburden of principles and classifications is a hindrance to finding a just solution in a particular case. No claim should be allowed to go to sleep. Active
- B case management assists all parties and the court. But what constitutes appropriate case management will be highly variable and not susceptible to prescriptive guidance in cases which are looking to future events. Nicklin J overstated both the restriction on contra mundum orders and the effect of *Canada Goose* [2020] 1 WLR 2802, which is inconsistent with *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100. *Ineos* is to be preferred. In that case it was held that there is no conceptual or legal
- C prohibition on suing persons unknown who are not currently in existence but will come into existence when they commit the prohibited tort. It is accepted that any prohibitory order in respect of specified land should be conditional, which is the case in each of the three injunctions made in HS2's favour. The appropriate conditions will relate to the circumstances of the case and not to generalised prescription. What constitutes a just order is fact
- D specific. It is an assessment which is closely allied to any necessary consideration of proportionality, in that the court will take a view about the extent of land to be affected which will in turn affect who, in reality, is likely to be subject to the terms of the order. The quality of service is important. It is perfectly possible to effect alternative service which provides a fair opportunity to challenge an application for an order against persons unknown. In the light of *Burris v Azadani* [1995] 1 WLR 1372, 1380 the
- E Court of Appeal in *Canada Goose* held that the court may prohibit lawful conduct where there is no other proportionate means of protecting the claimant's rights. The court was adjusting its approach by reference to the outcome which it needed to achieve, that is, protecting rights. That position was anticipated in *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780, paras 39–40, and is appropriate.
- F *Tristan Jones* (instructed by *Attorney General*) as advocate to the court. These appeals concern the conflict between, on the one hand, the desirability of the court aiding the prevention of persistent and harmful wrongdoing, and on the other hand, the principled and practical limits to the court's ability to criminalise conduct *ex ante* and *ex parte*. Those important issues have already been the subject of very extensive judicial consideration,
- G including by the Court of Appeal on several occasions over recent years. Once the authorities are properly understood and the rules of precedent properly applied, the answers to most of the claimants' arguments are clear. There are two issues on the appeal. Issue 1, on which Barking and Dagenham and others in the same group seek permission to appeal, is whether the court has power, either generally under CPR r 3.1(7) or specifically on the terms of the order below, to case manage the proceedings
- H and/or to vary or discharge injunctions that have previously been granted by final order. Issue 2, on which all the claimants appeal, is whether the court has jurisdiction, and/or whether it is correct in principle, generally or in any relevant category of claim, to grant a claimant local authority final injunctive relief either against "persons unknown" who are not, by the

date of the hearing of the application for a final injunction, parties to the proceedings, and/or on a contra mundum basis. A

In relation to the procedural limb of the claimants' argument on issue 1, the court's power to vary or revoke final orders is recognised in several CPR provisions, including the general provision in CPR r 3.1(7), and the liberty to apply provisions in the injunctions themselves. The answer to the claimants' procedural point is CPR r 3.3(1), which provides that, except where a rule or some other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative. The substantive question concerns the circumstances in which the court's power is properly to be exercised. The claimants rely on *Roult v North West Strategic Health Authority* [2010] 1 WLR 487, but that was inter partes litigation of limited interest in the present appeals. The better analogy would be with cases where a party failed to attend the final hearing and then applied to set aside judgment under CPR r 39.3(3), in which case the judgment may be set aside provided the requirements of rule 39.3(5) are met. A further analogy is with cases where a non-party makes an application under rule 40.9, on which the authorities establish that the court will take a flexible approach but in an appropriate case will reconsider the issues on the merits. The underlying principle is natural justice. How that applies to a particular case will depend on the circumstances. In general, a newcomer or prospective newcomer should be able to challenge an injunction on any grounds, including on the merits, without bringing the case within a category ordinarily applicable on the application of a party present at the original hearing. If the court makes an order ex parte with lasting effects against newcomers, then it has necessarily taken on a role with wider public consequences than ordinarily arise in private litigation. If the jurisdiction is exercised then it is right that the court should retain a flexible power to oversee and review its orders on an ongoing basis. There is, accordingly, no need to bring this case within one of the categories of cases recognised to apply in inter partes litigation: see *Roult*. In the present case Nicklin J found that the court had jurisdiction because the terms of the final injunctions expressly provided for the court's continuing jurisdiction, and in any event applied to newcomers who were not parties to the relevant proceedings when the order was granted. He was essentially right for the reasons he gave. B C D E F

The question of res judicata, raised by Wolverhampton, has some relevance to both issues 1 and 2. The claimant argues that an injunction against newcomers is necessarily an injunction contra mundum; that it follows that in such a case there is no res judicata; and that that is why such injunctions can be re-opened. Nicklin J adopted that argument at para 141 of his judgment in relation to issue 1, but the argument is wrong. The claimant is right to argue that an injunction against newcomers would in effect be (and could in principle only be) an injunction contra mundum. Essentially such an injunction would be in rem. But the claimant is wrong to suggest that orders in rem do not create a res judicata. Further, the claimant is wrong to assume that final decisions creating a res judicata cannot be set aside. The reason the court can set aside the injunctions in this case is not because they are a special kind of final relief which creates no res judicata, it is instead the result of the application of the normal procedural and substantive rules, namely CPR rr 39.3 (an application by a party), 40.9 (an application by a non-party) or 3.3(1) (the court's power to make an order of its own initiative). G H

- A The parties agree that issue 2 contains two separate issues: (i) how Nicklin J understood the issue; and (ii) how he addressed it. That is the correct approach because there is a clear difference between making an unknown person a party to an injunction on a “persons unknown” basis, and, by contrast, obtaining an injunction against the entire world under the exceptional *contra mundum* jurisdiction. Nicklin J was right on the persons unknown issue in holding that
- B the court could not grant final injunctions that prevented persons who were unknown and unidentified at the date of the order from occupying and trespassing on local authority land, for the reasons he gave. As regards the *contra mundum* injunctions issue, Nicklin J’s conclusion will be correct in the very large majority of cases but it is possible that there could in future be a case in which the court might be compelled to grant a *contra mundum* injunction to safeguard local residents’ article 8 rights.
- C The difference between a persons unknown injunction and a *contra mundum* injunction starts from the principle that an injunction normally only operates in *personam*, which is to say in relation to persons over whom the court has jurisdiction because they have properly been made parties to the claim: see *Iveson v Harris* (1802) 7 Ves 251. Exceptions have been recognised where an injunction may operate *contra mundum* and bind
- D non-parties, but only in exceptional and tightly defined circumstances, which may include (of particular significance) final injunctions where required by the Human Rights Act 1998. A separate question arises as to the circumstances in which a person whose identity is not known can be made a party to a claim. The answer, in broad terms, is that an unknown person can be made a party to a claim if they can be suitably described and given adequate notice to enable them to participate fairly in the action: see
- E *Cameron v Hussain* [2019] 1 WLR 1471. It is helpful to distinguish between three categories of unknown persons: (a) existing identifiable unknown persons can be made parties to the claim and may thus be the subject of an injunction on normal principles; (b) existing unidentifiable unknown persons can be made subject to an interim injunction, the breach of which would make them an identifiable party to the claim within (a) above, but otherwise
- F cannot be made a party to the claim; and (c) newcomers are subject to the same principles as existing unidentifiable unknown persons. In practical terms the claim form will list, as parties, “persons unknown”, and a suitable description will need to be given for them to be adequately identified. In contrast, in a claim *contra mundum* it has been suggested that as there are no parties the claim form should simply leave the “defendant” box blank: see
- G Nicklin J in *Persons formerly known as Winch* [2021] EMLR 20, para 31. One potential source of confusion is that the expression “persons unknown” is somewhat ambiguous: it is sometimes used to refer compendiously to persons unknown injunctions and *contra mundum* injunctions. The drafting of an injunction may also be unclear: it might be expressed as being against “persons unknown” even though it is in reality *contra mundum*.
- H The four main categories of the claimants’ argument with the answers to them are in summary as follows. (1) Some claimants argue that the persons unknown case law permits the making of final injunctions against newcomers. That is contrary to authority. A final persons unknown injunction cannot be made against newcomers. A court could only make a final injunction against newcomers if permitted under the *contra mundum*

jurisdiction, but that would be subject to the limits of that case law: see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, paras 89, 91 and 92. What is not permissible is to bypass that case law by relying on a new form of “final persons unknown injunction against newcomers” jurisdiction. (2) Some claimants argue that final injunctions against newcomers are specifically permitted under section 187B of the Town and Country Planning Act 1990. If that were possible at all, it would require there to be relevant rules of court, which there are not. (3) Some claimants base arguments on section 222 of the Local Government Act 1972, which gives the claimants standing to seek certain kinds of injunction but does not create any new kind of injunction. (4) Some claimants argue that a contra mundum injunction may be made to protect the article 8 rights of local residents. Nicklin J rejected that argument, holding that such an injunction could never be justified. This question requires a cautious approach. Nicklin J identified a range of compelling factors which tend to show that such injunctions would always be highly problematic, but those factors do not arise in the case law regarding confidentiality injunctions which is the foundation of the claimants’ human rights arguments. Contrary to what the claimants say, one cannot simply transpose the approach adopted in the confidentiality context to this context. On the other hand, the Strasbourg authorities do establish that, as in the confidentiality context, there could in principle be a positive duty on a court to take action within its jurisdiction to protect a local resident’s article 8 rights against unlawful action by third parties. Therefore the possibility that a contra mundum injunction might be required in a particular case cannot be ruled out if there were an exceptional and compelling need to prevent a significant interference with the article 8 rights of local residents.

The principal authorities on contra mundum injunctions are distilled with an overview of all the authorities in a High Court case, *OPQ v BJM* [2011] EMLR 23. The so-called *Spycatcher* principle provides that anyone who reveals confidential information the subject of an interim injunction to restrain publication by the defendants, with knowledge of that injunction, is liable for criminal contempt of court: see *Attorney General v Newspaper Publishing plc* [1988] Ch 333 and *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191. Once a permanent injunction has been obtained the *Spycatcher* doctrine no longer applies because the court’s purpose, in holding the ring until trial, has been overtaken by events. That remains the position. *Spycatcher* also recognised limited exceptions such as the wardship jurisdiction, which have been expanded in the new era of the Human Rights Act 1998: see *Venables v News Group Newspapers Ltd* [2001] Fam 430, para 100, per Dame Elizabeth Butler-Sloss P. The Convention for the Protection of Human Rights and Fundamental Freedoms places a duty on the court to protect individuals from the criminal acts of others where exceptionally it is necessary and proportionate to protect them by granting an injunction against the world. That jurisdiction having been established, a court could expand it where it was necessary and proportionate on the facts to do so, on grounds not limited to human rights. In the cases before the court no injunctions were sought on human rights grounds.

The case law on persons unknown was reviewed in *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633

- A by Sir Andrew Morritt V-C, who concluded at paras 20–22 that, under the CPR provisions, an unknown person may be a party provided that the description used was sufficiently certain to identify “both those who are included and those who are not”, a test which was satisfied in that case. It should be noted that the interim injunctions in the *Bloomsbury* case were against existing persons unknown, not newcomers. In *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 interim injunctions were granted restraining the stationing of caravans on identified land. The appellants were newcomers who became defendants when they stationed their caravans on the land: see para 32 per Sir Anthony Clarke MR.

- B Later authorities have explained that the ratio in *Gammell* is confined to interim injunctions and therefore does not establish a novel principle. In *Cameron v Hussain* [2019] 1 WLR 1471 the Supreme Court considered the basis and extent of the persons unknown jurisdiction in a damages case. The question was widely framed by Lord Sumption and considered two classes of persons unknown: those who could be identified but not named, such as squatters identifiable by their location, and those who could not be named or identified, for example, hit and run drivers. The first category, which included people who can be given notice of the proceedings because they become identifiable if and when they commit conduct in breach of an interim order, can be parties to proceedings. The second category of anonymous defendant, who is not identifiable and cannot be served, cannot be a party, subject to any statutory provision to the contrary: see para 21. The ratio of *Cameron* was not confined to actions for damages because of the broad question posed, but extends to injunctions and other forms of relief. Although *Cameron* does not expressly consider newcomers, they are a fortiori in the second category of unidentifiable defendants. Any person affected by an order can apply under the CPR to become a party and participate in the final trial because they have been identified. That is consistent with *Cameron*.

- D The issues raised have been considered since *Cameron* in several recent Court of Appeal authorities. *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, an interim injunction case, held that newcomers can be sued as persons unknown, and parts of the judgment can be read (wrongly) as extending that proposition to final injunctions: see para 34. In *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, as it was not in issue that the court could make an order against persons unknown in a final injunction case, the court’s consideration of that issue was obiter. The correct position is that such final injunctions cannot be made save for potentially under an exceptional contra mundum jurisdiction. That issue was not considered in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29.

- F In *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, paras 57, 65–72 the discussion of *Ineos* is confined to interim injunctions only. Final injunctions against newcomers are only permitted if they can be brought within established exceptions for against the world injunctions: see paras 89, 91, 92. That is a principle of general application, derived from *Cameron* [2019] 1 WLR 1471. Both *Cameron* and *Canada Goose* apply to the present cases. The claimants’ submissions that *Canada Goose* is per incuriam are not correct. However, setting out different

scenarios, the first being if *Cameron* does not apply to injunction cases, if the court concludes that either *Gammell* [2006] 1 WLR 658 or *Ineos* decide as part of their binding reasoning that it is permissible generally to grant a final injunction against newcomers, then *Canada Goose* would be inconsistent with that principle. The court would not be bound by *Canada Goose* if its ratio only applies to protesters. If *Canada Goose* cannot be distinguished and its ratio includes the reasoning that no final injunction can be made against newcomers there would be a conflict of authority. The answer may be to apply the principle that, where the ratio of an earlier decision of the Court of Appeal is directly applicable to the circumstances of a case before the Court of Appeal but that decision has been wrongly distinguished in a later Court of Appeal decision, it is open to the Court of Appeal to apply the ratio of the earlier decision and to decline to follow the later decision: see *Starmark Enterprises Ltd v CPL Distribution Ltd* [2002] Ch 306, paras 65, 67, 97, and cf *Claimants in the Royal Mail Group Litigation v Royal Mail Group Ltd* [2021] EWCA Civ 1173.

A second scenario is if the principle that no final injunction can be made against newcomers is not part of the binding reasoning in *Gammell* or *Ineos*, and *Canada Goose* is distinguishable, then there is no binding authority either way. If it is not possible to distinguish *Canada Goose*, but the court considers that it is based on a misunderstanding of *Cameron*, the court can apply the principle in *Rickards v Rickards* [1990] Fam 194, 204, 206, 210. Where the Court of Appeal is satisfied that an earlier Court of Appeal decision was erroneous, there is no likelihood of the matter being reviewed by the Supreme Court and the issue concerns the jurisdiction of the Court of Appeal, the court is justified in treating the earlier decision as within an exceptional category of case in which it is entitled to regard the decision as given per incuriam and to decline to follow it. Even if the court were to follow *Canada Goose* and uphold the judgment as a general proposition, the court could still find that Nicklin J below went too far in ruling out ever obtaining an injunction against persons unknown in cases of trespass on and occupation of local authority land. Such an injunction could be granted to protect the article 8 rights of local residents. Although none of the claimants have put forward arguments on article 8 grounds, it should be put before the court. If such an injunction were considered by the court, there would then be a balancing exercise between the article 8 rights of the travellers and those of the local residents.

HS2's core argument is that each case raises its own range of issues and that the court should not be overburdened with principles and classifications, such as contra mundum, persons unknown, and interim as against final injunctions. That is a recipe for uncertainty, and in any event that approach is not open to this court on the authorities. The court should instead be flexible to give effective remedies in meritorious cases. The submissions of the advocate to the court are consistent with those on behalf of the London Gypsies and Travellers. The one point of difference is that those interveners do not contemplate the possibility of making a contra mundum order in certain exceptional cases raising local residents' article 8 issues. However, they may have focused somewhat more on the lack of evidence for creating such an exceptional jurisdiction in these particular

A cases, as opposed to the wider question of principle of whether it could ever be appropriate. If the court agrees with the interveners regarding the evidence in these cases then the appropriate result may be to dismiss the appeals even if the court agrees that it is possible that, in another case, a contra mundum injunction might be necessary.

B On the question of the procedure adopted by Nicklin J in bringing these cases before the court for review, in consultation with the President of the Queen's Bench Division, that course was taken because of a change in the law and widespread problems which had arisen. Fairness requires a review of cases against newcomers. Some injunctions contain ongoing review provisions but others do not. Nicklin J exercised a power the court had to review these cases though there does not appear to be any previous example of such a course having been adopted.

C *Marc Willers QC, Tessa Buchanan and Owen Greenhall* (instructed by *Community Law Partnership, Birmingham*) for London Gypsies and Travellers; Friends, Families and Travellers; and Derbyshire Gypsy Liaison Group, intervening.

D It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard: see *Cameron v Hussain* [2019] 1 WLR 1471, para 17, per Lord Sumption. Two categories of unknown defendant were identified by Lord Sumption: anonymous defendants who are identifiable but whose names are unknown and anonymous defendants who cannot be identified. An interim injunction may be made whereby a person only becomes party to proceedings when they commit the act prohibited under the order: see *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, para 32. Applying the principles in *Cameron*, the Court of Appeal has ruled that a final injunction cannot be granted in a protester case against persons unknown who are not parties at the date of the final order, that is newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the persons unknown and who have not been served with the claim form: see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, para 89. The progenitor of that jurisdiction is a possession case brought by a university against students occupying parts of the university and threatening to move on to other parts, in which a wide injunction was granted extending to the whole of the university premises against named defendants "or any person who might be in adverse possession": see *University of Essex v Djemal* [1980] 1 WLR 1301, 1305. The principle in that case is where there is a right, there should be a remedy to fit the right (see *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780, para 25); but an order must be made against known individuals who have already intruded upon the claimant's land, are threatening to do so again, and have been given a proper opportunity to contest the order (see *Meier* at para 40). *Canada Goose* is the key case. In the orders before the court a number of individuals have been named and efforts have been made to identify others so the final injunctions granted will not offend against the principle in *Canada Goose*.

H The increasing popularity of wide injunctions granted to local authorities against persons unknown prohibiting unauthorised occupation or use of

land is identified in *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, para 10. There is a shortage of sites available for travellers, which means that those travelling for an economic purpose such as seeking work will be caught by borough-wide injunctions since there has been no improvement in the availability of sites in recent years. Given that there may well be nowhere to park a caravan when travellers are moving for work, it is right to restrict the width of the ambit of injunctions granted. The centrality of the nomadic lifestyle to the gypsy and traveller identity has been recognised by the European Court of Human Rights: see *Chapman v United Kingdom* (2001) 33 EHRR 18, para 73. [Reference was made to a government policy document, *Planning Policy for Traveller Sites*, updated 31 August 2015.]

In para 124 of his judgment in the present case Nicklin J found that the traveller injunctions granted to the claimant local authorities were subject to the principle that a final injunction operated only between the parties to the proceedings and did not fall into the exceptional category of civil injunction that could be granted contra mundum. On this issue the grounds of appeal fall into three broad categories: (i) traveller injunctions do or should fall into the exceptional category of contra mundum cases; (ii) the court has the power to grant a final injunction against newcomers under the *Gammell* principle and there is no principled reason why it should not be exercised in traveller injunction cases; and/or (iii) there are specific statutory powers to grant final injunctions against newcomers in traveller injunction cases.

In general, first, injunctions against persons unknown can still be made in respect of a defendant who is identifiable but whose name is unknown. There is an obvious tension between the argument frequently advanced by the local authorities that, on the one hand, a wide injunction is needed because otherwise the occupants of one encampment will simply move onto the next site, and, on the other hand, the claimed inability to identify any defendants. If a local authority knows that there is a “rolling cast” moving from site to site, then it must know enough to identify at least some of the alleged wrongdoers. A local authority therefore could obtain an injunction against named defendants (for example there were 105 named defendants in *Havering’s* case), and limit the application to those individuals. Second, it is not Nicklin J’s judgment which is radical, but the cases advanced by the local authorities. It is not radical to say that a claimant cannot sue a defendant who does not exist. What would be truly radical would be to hold that the court has the power, absent the exceptional category of contra mundum cases, to grant wide-ranging relief against persons who have never been before the court or had notice of the claim. Third, one-sided justice results if a claimant is allowed to bring proceedings in an adversarial system without having to name, and therefore give notice to, any defendant.

On the contra mundum issue, Nicklin J correctly excluded borough-wide injunctions from traveller injunctions. The court’s power to grant an injunction under section 37 of the Senior Courts Act 1981 “in all cases in which it appears to the court to be just and convenient to do so” is subject to the fundamental principle that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard: see *Iveson v Harris* (1802) 7 Ves 251, 256–257 and *Cameron v Hussain* [2019] 1 WLR 1471, para 17. The only exception

A to the principle that the court cannot grant an injunction which binds a non-party is where it is necessary for the court to grant a contra mundum injunction in order to avoid a breach of section 6 of the Human Rights Act 1998. The local authorities cannot bring themselves within the existing exception.

B The truly exceptional nature of the circumstances warranting such injunctions can be seen from an examination of the facts of those cases: see *Venables v News Group Newspapers Ltd* [2001] Fam 430, *X (formerly Bell) v O'Brien* [2003] EMLR 37 and *OPQ v BJM* [2011] EMLR 23. There are no cases cited by the local authorities where a contra mundum final order has been granted which has not concerned exceptional circumstances including a risk to life (*Venables*), a risk to physical health (*X v O'Brien*) or serious risk to mental health (*X v O'Brien* and *OPQ v BJM*). Two principles can be derived from those authorities. First, a contra mundum injunction can only be made to prevent a breach of an individual's human rights. That is fundamentally inconsistent with an application made at a general, or borough-wide, level, such as those made by the local authorities. Second, a contra mundum injunction can only be granted where to do otherwise would defeat the purpose of the injunction, such as in publicity cases like *D Venables*. The same cannot be said to apply to the case of unauthorised encampments, which will vary immeasurably in terms of their size, nature, and effect.

E The court cannot create another exception to the principle that a final injunction binds only the parties to a claim. The importance of the fundamental principle identified by Lord Sumption is such that any other exception must be created by legislation. In any event, it would be wrong in principle to create another exception. The flexibility of section 37 of the 1981 Act is not without limit and the case law continually refers to the need for a party to be before the court as a restriction on the grant of injunctive relief. Where an extension of an existing jurisdiction is sought, the onus is on those who seek to increase jurisdiction to justify the extension. There are further specific reasons for concern in relation to borough-wide traveller injunctions identified by Nicklin J at para 234 on the basis that it is impossible to carry out the required parallel analysis of, and intense focus upon, the engaged rights. Further, in *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, para 101 the Court of Appeal expressed concern that closing down unlawful encampments on land and moving on gypsies and travellers must be regarded as a last resort. Prospectively making a contra mundum injunction prohibiting all encampments is arguably worse. Nicklin J was therefore correct to refuse to extend contra mundum cases to traveller injunctions.

H Contrary to the submissions for the local authorities, *Canada Goose* [2020] 1 WLR 417, para 89 precludes all final injunctions against newcomers. Lord Sumption referred in *Cameron v Hussain* [2019] 1 WLR 1471, para 15 to the cases of *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633 and *Gammell* [2006] 1 WLR 658 as examples of interim injunctions concerning anonymous but identifiable defendants. There is scope for making persons unknown subject to a final injunction provided the persons unknown are confined to those

anonymous defendants who are identifiable as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date: see *Canada Goose*, para 91. It is wrong to differentiate between the injunction against protesters in *Canada Goose* and those injunctions against travellers granted to local authorities in these cases. The causes of action, for example, in nuisance and trespass, are similar. All that is required for an injunction against persons unknown is their identification.

It is wrong to seek to extend the *Gammell* principle to final injunctions on the basis that relief is sought on a quia timet or precautionary basis. The limitations on suing persons unknown are not based on whether the harm sought to be prevented has occurred or not, they are based on the need properly to identify defendants even where they cannot be named. The procedural protections in a final order proposed by the local authorities do not overcome the jurisdictional issues that arise in cases where unidentifiable defendants are subject to final orders. The purpose of the *Gammell* principle is to enable a claimant to identify defendants and bring them before the court so that the claim may be determined.

The adequacy of procedural protection cannot, and should not, be assessed in a vacuum. A realistic assessment of the position of those affected by the order must be made, and the resources available to gypsies and travellers and their pattern of life are relevant factors for the court to consider: see *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, paras 104–105. These injunctions are aimed at temporary encampments formed by nomadic people, many of whom will be of limited means with poor literacy. The injunction will inevitably do what it was designed to do: it will have a chilling effect and scare away those likely to be affected by it without enabling them to have a reasonable opportunity to challenge the order. There is no inconsistency between *Canada Goose* [2020] 1 WLR 417 and earlier Court of Appeal decisions in *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 and *Gammell*. *Canada Goose*, in which the court concluded that in protester cases there is no justification for injunctions against the world, is binding on the present court. The court in *Canada Goose* did not misunderstand the fundamental principle in *Cameron* that persons unknown should be identified to enable them to participate in proceedings for a final injunction on the basis of fairness.

Section 187B of the Town and Country Planning Act 1990, one of the specific exceptions to the general rule that proceedings may not be brought against unnamed persons, does not, in and of itself, allow for injunctions to be made against persons unknown, but allows for rules of court to be made to that effect. The scope of the jurisdiction is in CPR PD 8A, paras 20.1–20.10, from which it is apparent that there must still be an identifiable (if anonymous) defendant to whom the normal rules requiring service still apply. Since neither section 222 of the Local Government Act 1972 nor sections 77 to 79 of the Criminal Justice and Public Order Act 1994 provide any power on which to grant injunctive relief, their combination cannot achieve a different result. There are no other statutory powers which provide a basis for the local authorities to obtain the injunctive relief sought.

- A Permission to appeal on the first proposed ground of appeal should be refused on the grounds set out by Nicklin J: see paras 146–147.

Giffin QC replied.

Anderson QC replied.

Bhose QC replied.

- B *Bolton* replied.

Wayne Beglan (instructed by *Basildon Borough Council Legal Services*) for Basildon Borough Council, intervening by written submissions only.

The court took time for consideration.

- C 13 January 2022. The following judgments were handed down.

SIR GEOFFREY VOS MR

Introduction

- D 1 This case arises in the context of a number of cases in which local authorities have sought interim and sometimes then final injunctions against unidentified and unknown persons who may in the future set up unauthorised encampments on local authority land. These persons have been collectively described in submissions as “newcomers”. Mr Marc Willers QC, leading counsel for the first three interveners, explained that the persons concerned fall mainly into three categories, who would describe themselves as Romani Gypsies, Irish Travellers and New Travellers.

- E 2 The central question in this appeal is whether the judge was right to hold that the court cannot grant final injunctions that prevent persons, who are unknown and unidentified at the date of the order (i.e. newcomers), from occupying and trespassing on local authority land. The judge, Nicklin J, held that this was the effect of a series of decisions, particularly this court’s decision in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802
F (“*Canada Goose*”) and the Supreme Court’s decision in *Cameron v Hussain* [2019] 1 WLR 1471 (“*Cameron*”). The judge said that, whilst interim injunctions could be made against persons unknown, final injunctions could only be made against parties who had been identified and had had an opportunity to contest the final order sought.

- G 3 The 15 local authorities that are parties to the appeals before the court contend that the judge was wrong^{1*}, and that, even if that is what the Court of Appeal said in *Canada Goose*, its decision on that point was not part of its essential reasoning, distinguishable on the basis that it applied only to so-called protester injunctions, and, in any event, should not be followed because (a) it was based on a misunderstanding of the essential decision in *Cameron*, and (b) was decided without proper regard to three earlier Court of Appeal decisions in *South Cambridgeshire District Council v Gammell*
H [2006] 1 WLR 658 (“*Gammell*”), *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 (“*Ineos*”), and *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043 (“*Bromley*”).

* *Reporter’s note.* The superior figures in the text refer to notes which can be found at the end of the judgment of Sir Geoffrey Vos MR, on p 350.

4 The case also raises a secondary question as to the propriety of the procedure adopted by the judge to bring the proceedings in their current form before the court. In effect, the judge made a series of orders of the court's own motion requiring the parties to these proceedings to make submissions aimed at allowing the court to reach a decision as to whether the interim and final orders that had been granted in these cases could or should stand. Counsel for one group of local authorities, Ms Caroline Bolton, submitted that it was not open to the court to call in final orders made in the past for reconsideration in the way that the judge did.

5 In addition, there are subsidiary questions as to whether (a) the statutory jurisdiction to make orders against persons unknown under section 187B of the Town and Country Planning Act 1990 ("section 187B") to restrain an actual or apprehended breach of planning control validates the orders made, and (b) the court may in any circumstances like those in the present case make final orders against all the world.

6 I shall first set out the essential factual and procedural background to these claims, then summarise the main authorities that preceded the judge's decision, before identifying the judge's main reasoning, and finally dealing with the issues I have identified.

7 I have concluded that: (i) the judge was wrong to hold that the court cannot grant final injunctions that prevent persons, who are unknown and unidentified at the date of the order, from occupying and trespassing on land, and (ii) the procedure adopted by the judge was unorthodox. It was unusual insofar as it sought to call in final orders of the court for revision in the light of subsequent legal developments, but has nonetheless enabled a comprehensive review of the law applicable in an important field. Since most of the orders provided for review and nobody objected to the process at the time, there is now no need for further action. (iii) Section 37 of the Senior Courts Act 1981 ("section 37") and section 187B impose the same procedural limitations on applications for injunctions of this kind. (iv) Whilst it is the court's proper function to give procedural guidelines, the court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under section 37 against the world.

8 This area of law and practice has been bedevilled by the use of Latin tags. That usage is particularly inappropriate in an area where it is important that members of the public can understand the courts' decisions. I have tried to exclude Latin from this judgment, and would urge other courts to use plain language in its place.

The essential factual and procedural background

9 There were five groups of local authorities before the court, although the details are not material. The first group was led by Walsall Metropolitan Borough Council ("Walsall"), represented by Mr Nigel Giffin QC. The second group was led by Wolverhampton City Council ("Wolverhampton"), represented by Mr Mark Anderson QC. The third group was led by Hillingdon London Borough Council ("Hillingdon"), represented by Mr Ranjit Bhose QC. The fourth and fifth groups were led respectively by Barking and Dagenham London Borough Council ("Barking") and Havering London Borough Council ("Havering"), represented by Ms Caroline Bolton.

A The cases in the groups led by Walsall, Wolverhampton, and Barking related to final injunctions, and those led by Hillingdon and Havering related to interim injunctions.

B 10 The injunctions granted in each of the cases were in various forms broadly described in the detailed Appendix 1 to the judge’s judgment. Some of the final injunctions provided for review of the orders to be made by the court either annually or at other stages. Most, if not all, of the injunctions allowed permission for anyone affected by the order, including persons unknown, to apply to vary or discharge them.

C 11 It is important to note at the outset that these claims were all started under the procedure laid down by CPR Pt 8, which is appropriate where the claimant seeks the court’s decision on a question which is unlikely to involve a substantial dispute of fact (CPR r 8.1(2)(a)). Whilst CPR r 8.2A(1) contemplates a practice direction setting out circumstances in which a claim form may be issued under Part 8 without naming a defendant, no such practice direction has been made (see *Cameron* at para 9). Moreover, CPR r 8.9 makes clear that, where the Part 8 procedure is followed, the defendant is not required to file a defence, so that several other familiar provisions of the CPR do not apply and any time limit preventing parties taking a step before defence also does not apply. A default judgment cannot be obtained in Part 8 cases (CPR r 8.1(5)). Nonetheless, CPR r 70.4 provides that a judgment or order against “a person who is not a party to proceedings” may be enforced “against that person by the same methods as if he were a party”.

D

E 12 These proceedings seem to have their origins from 2 October 2020 when Nicklin J dealt with an application in the case of *Enfield London Borough Council v Persons Unknown* [2020] EWHC 2717 (QB) (“*Enfield*”), and raised with counsel the issues created by *Canada Goose*. Nicklin J told the parties that he had spoken to the President of the Queen’s Bench Division (the “PQBD”) about there being a “group of local authorities who already have these injunctions and who, therefore, may following the decision today, be intending or considering whether they ought to restore the injunctions in their cases to the court for reconsideration”. He reported that the PQBD’s

F current view was that she would direct that those claims be brought together to be managed centrally. In his judgment in *Enfield*, Nicklin J said that “the legal landscape that [governed] proceedings and injunctions against persons unknown [had] transformed since the interim and final orders were granted in this case”, referring to *Cameron*, *Ineos*, *Bromley*, *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 (“*Cuadrilla*”), and *Canada Goose*.

G 13 Nicklin J concluded at para 32 in *Enfield* that, in the light of the decision in *Speedier Logistics Co Ltd v Aardvark Digital Ltd* [2012] EWHC 2776 (Comm) (“*Speedier*”), there was “a duty on a party, such as the claimant in this case who (i) has obtained an injunction against persons unknown without notice, and (ii) is aware of a material change of circumstances, including for these purposes a change in the law, which gives rise to a real prospect that the court would amend or discharge the injunction, to restore the case within a reasonable period to the court for reconsideration”. He said

H that duty was not limited to public authorities.

14 At paras 42–44, Nicklin J said that *Canada Goose* established that final injunctions against persons unknown did not bind newcomers, so that any “interim injunction the court granted would be more effective and more

extensive in its terms than any final order the court could grant”. That raised the question of whether the court ought to grant any interim relief at all. The only way that Enfield could achieve what it sought was “to have a rolling programme of applications for interim orders”, resulting in “litigation without end”.

15 On 16 October 2020, Nicklin J made an order expressed to be with the concurrence of the PQBD and the judge in charge of the Queen’s Bench Division Civil List. That order (“the 16 October order”) recited the orders that had been made in *Enfield*, and that it appeared that injunctions in similar terms might have been made in 37 scheduled sets of proceedings, and that similar issues might arise. Accordingly, Nicklin J ordered without a hearing and of the court’s own motion, that, by 13 November 2020, each claimant in the scheduled actions must file a completed and signed questionnaire in the form set out in schedule 2 to the order. The 16 October order also made provision for those claimants who might want, having considered *Bromley* and *Canada Goose*, to discontinue or apply to vary or discharge the orders they had obtained in their cases. The 16 October order stated that the court’s first objective was to “identify those local authorities with existing traveller injunctions who [wished] to maintain such injunctions (possibly with modification), and those who [wished] to discontinue their claims and/or discharge the current traveller injunction granted in their favour”.

16 Mr Giffin and Mr Anderson emphasised to us that they had not objected to the order the court had made. The 16 October order does, nonetheless, seem to me to be unusual in that it purports to call in actions in which final orders have been made suggesting, at least, that those final orders might need to be discharged in the light of a change in the law since the cases in question concluded. Moreover, Mr Anderson expressed his client’s reservations about one judge expressing “deep concern” over the order that had been made in favour of Wolverhampton by three other judges. By way of example, Jefford J had said in her judgment on 2 October 2018 that she was satisfied, following the principles in *Bloomsbury Publishing Group Ltd v News Group Newspapers Ltd* [2003] 1 WLR 1633 (“*Bloomsbury*”) and *South Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88 (“*South Cambridgeshire*”), that it was appropriate for the application to be made against persons unknown.

17 The 16 October order and the completion of questionnaires by numerous local authorities resulted in the rolled-up hearing before Nicklin J on 27 and 28 January 2021, in respect of which he delivered judgment on 12 May 2021. As a result, the judge made a number of orders discharging the injunctions that the local authorities had obtained and giving consequential directions.

18 Nicklin J concluded his judgment by explaining the consequences of what he had decided, in summary, as follows:

(i) Claims against persons unknown should be subject to stated safeguards.

(ii) Precautionary interim injunctions would only be granted if the applicant demonstrated, by evidence, that there was a sufficiently real and imminent risk of a tort being committed by the respondents.

A (iii) If an interim injunction were granted, the court in its order should fix a date for a further hearing suggested to be not more than one month from the interim order.

(iv) The claimant at the further hearing should provide evidence of the efforts made to identify the persons unknown and make any application to amend the claim form to add named defendants.

B (v) The court should give directions requiring the claimant, within a defined period: (a) if the persons unknown have not been identified sufficiently that they fall within category 1 persons unknown², to apply to discharge the interim injunction against persons unknown and discontinue the claim under CPR r 38.2(2)(a), (b) otherwise, as against the category 1 persons unknown defendants, to apply for (i) default judgment³; or
C (ii) summary judgment; or (iii) a date to be fixed for the final hearing of the claim, and, in default of compliance, that the claim be struck out and the interim injunction against persons unknown discharged.

(vi) Final orders must not be drafted in terms that would capture newcomers.

D 19 I will return to the issues raised by the procedure the judge adopted when I deal with the second issue before this court raised by Ms Bolton.

The main authorities preceding the judge's decision

E 20 It is useful to consider these authorities in chronological order, since, as the judge rightly said in *Enfield*, the legal landscape in proceedings against persons unknown seems to have transformed since the injunction was granted in that case in mid-2017, only 4½ years ago.

Bloomsbury: judgment 23 May 2003

F 21 The persons unknown in *Bloomsbury* [2003] 1 WLR 1633 had possession of and had made offers to sell unauthorised copies of an unpublished Harry Potter book. Sir Andrew Morritt V-C continued orders against the named parties for the limited period until the book would be published, and considered the law concerning making orders against unidentified persons. He concluded that an unknown person could be sued, provided that the description used was sufficiently certain to identify those who were included and those who were not. The description in that case (para 4) described the defendants' conduct and was held to be sufficient to identify them (paras 16–21). Sir Andrew was assisted by an advocate to the court. He said that the cases decided under the Rules of the Supreme Court did not apply under the Civil Procedure Rules: "The overriding objective and the obligations cast on the court are inconsistent with an undue reliance on form over substance": para 19. Whilst the persons unknown against whom the injunction was granted were in existence at the date of the order and not newcomers in the strict sense, this does not seem to me to be a distinction of any importance. The order he made was also not, in form, a final order made at a hearing attended by the unknown persons or after they had been served, but that too, as it seems to me, is not a distinction of any importance, since the injunction granted was final and binding on those unidentified persons for the relevant period leading up to publication of the book.
H

Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site [2004] Env LR 9 (“Hampshire Waste”): judgment 8 July 2003

22 *Hampshire Waste* was a protester case, in which Sir Andrew Morritt V-C granted a without notice injunction against unidentified “Persons entering or remaining without the consent of the claimants, or any of them, on any of the incinerator sites . . . in connection with the ‘Global Day of Action Against Incinerators’”. Sir Andrew accepted at paras 6–10 that, subject to two points on the way the unknown persons were described, the position was in essence the same as in *Bloomsbury*. The unknown persons had not been served and there was no argument about whether the order bound newcomers as well as those already threatening to protest.

South Cambridgeshire: judgment 17 September 2004

23 In *South Cambridgeshire* [2004] 4 PLR 88 the Court of Appeal (Brooke and Clarke LJ) granted a without notice interim injunction against persons unknown causing or permitting hardcore to be deposited, or caravans being stationed, on certain land, under section 187B.

24 At paras 8–11, Brooke LJ said that he was satisfied that section 187B gave the court the power to “make an order of the type sought by the claimants”. He explained that the “difficulty in times gone by against obtaining relief against persons unknown” had been remedied either by statute or by rule, citing recent examples of the power to grant such relief in different contexts in *Bloomsbury* and *Hampshire Waste*.

Gammell: judgment 31 October 2005

25 In *Gammell* [2006] 1 WLR 658, two injunctions had been granted against persons unknown under section 187B. The first (in *South Cambridgeshire District Council v Gammell*) was an interim order granted by the Court of Appeal restraining the occupation of vacant plots of land. The second (in *Bromley London Borough Council v Maughan*) (“*Maughan*”) was an order made until further order restraining the stationing of caravans. In both cases, newcomers who violated the injunctions were committed for contempt, and the appeals were dismissed.

26 Sir Anthony Clarke MR (with whom Rix and Moore-Bick LJ agreed) said that the issue was whether and in what circumstances the approach of the House of Lords in *South Bucks District Council v Porter* [2003] 2 AC 558 (“*Porter*”) applied to cases where injunctions were granted against newcomers (para 6). He explained that, in *Porter*, section 187B injunctions had been granted against unauthorised development of land owned by named defendants, and the House was considering whether there had been a failure to consider the likely effect of the orders on the defendants’ Convention rights in accordance with section 6(1) of the Human Rights Act 1998 (“the 1998 Act”) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

27 Sir Anthony noted at para 10 that in *Porter*, the defendants were in occupation of caravans in breach of planning law when the injunctions were granted. The House had (Lord Bingham of Cornhill at para 20) approved paras 38–42 of Simon Brown LJ’s judgment, which suggested that injunctive

A relief was always discretionary and ought to be proportionate. That meant that it needed to be: “appropriate and necessary for the attainment of the public interest objective sought—here the safeguarding of the environment—but also that it does not impose an excessive burden on the individual whose private interests—here the gypsy’s private life and home and the retention of his ethnic identity—are at stake.” He cited what
 B Auld LJ (with whom Arden and Jacob LJ had agreed) had said in *Davis v Tonbridge and Malling Borough Council* [2004] EWCA Civ 194 (“*Davis*”) at para 34 to the additional effect that it was “questionable whether article 8 adds anything to the existing equitable duty of a court in the exercise of its discretion under section 187B”, and that the jurisdiction was to be exercised with due regard to the purpose for which it was conferred, namely to restrain breaches of planning control. Auld LJ at para 37 in *Davis* had explained
 C that *Porter* recognised two stages: first, to look at the planning merits of the matter, according respect to the authority’s conclusions, and secondly to consider for itself, in the light of the planning merits and any other circumstances, in particular those of the defendant, whether to grant injunctive relief. The question, as Sir Anthony saw it in *Gammell* [2006] 1 WLR 658 at para 12, was whether those principles applied to the cases in
 D question.

28 At paras 28–29, Sir Anthony held, as a matter of essential decision, that the balancing exercise required in *Porter* did not apply, either directly or by analogy, to cases where the defendant was a newcomer. In such cases, Sir Anthony held at paras 30–31 that the court would have regard to statements in *Mid-Bedfordshire District Council v Brown* [2005] 1 WLR 1460 (“*Brown*”) (Lord Phillips of Worth Matravers MR, Mummery and Jonathan
 E Parker LJ) as to cases in which defendants occupy or continue to occupy land without planning permission and in disobedience of orders of the court. The principles in *Porter* did not apply to an application to add newcomers (such as the defendants in *Gammell* and *Maughan*) as defendants to the action. It was, in that specific context, that Sir Anthony said what is so often cited at para 32 in *Gammell*, namely:

F “In each of these appeals the appellant became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case. Thus in the case of [Ms Maughan] she became a person to whom the injunction was addressed and a defendant when she caused her three caravans to be stationed on the land on
 G 20 September 2004. In the case of [Ms Gammell] she became both a person to whom the injunction was addressed and the defendant when she caused or permitted her caravans to occupy the site. In neither case was it necessary to make her a defendant to the proceedings later.”

29 In dismissing the appeals against the findings of contempt, Sir Anthony summarised the position at para 33 including the following:
 H (i) *Porter* applied when the court was considering granting an injunction against named defendants. (ii) *Porter* did not apply in full when a court was considering an injunction against persons unknown because the relevant personal information was, ex hypothesi, unavailable. That fact made it “important for courts only to grant such injunctions in cases where it is not possible for the applicant to identify the persons concerned or likely to be

concerned”. (iii) In deciding a newcomer’s application to vary or discharge an injunction against persons unknown, the court will take account of all the circumstances of the case, including the reasons for the injunction, the reasons for the breach and the applicant’s personal circumstances, applying the *Porter* and *Brown* principles. A

30 These holdings were, in my judgment, essential to the decision in *Gammell*. It was submitted that the local authority had to apply to join the newcomers as defendants, and that when the court considered whether to do so, the court had to undertake the *Porter* balancing exercise. The Court of Appeal decided that there was no need to join newcomers to an action in which injunctions against persons unknown had been granted and knowingly violated by those newcomers. In such cases, the newcomers automatically became parties by their violation, and the *Porter* exercise was irrelevant. As a result, it was irrelevant also to the question of whether the newcomers were in contempt. B C

31 There is nothing in *Gammell* to suggest that any part of its reasoning depended on whether the injunctions had been granted on an interim or final basis. Indeed, it was essential to the reasoning that such injunctions, whether interim or final, applied in their full force to newcomers with knowledge of them. It may also be noted that there was nothing in the decision to suggest that it applied only to injunctions granted specifically under section 187B, as opposed to cases where the claim was brought to restrain the commission of a tort. D

Secretary of State for the Environment, Food and Rural Affairs v Meier
[2009] 1 WLR 2780 (“Meier”): judgment 1 December 2009

32 In *Meier*, the Forestry Commission sought an injunction against travellers who had set up an unauthorised encampment. The injunction was granted by the Court of Appeal against “those people trespassing on, living on, or occupying the land known as Hethfelton Wood”. The case did not, therefore, concern newcomers. Nonetheless, Lord Rodger of Earlsferry JSC made some general comments at paras 1–2 which are of some relevance to this case. He referred to the situation where the identities of trespassers were not known, and approved the way in which Sir Andrew Morritt V-C had overcome the procedural problems in *Bloomsbury* [2003] 1 WLR 1633 and *Hampshire Waste* [2004] Env LR 9. Referring to *South Cambridgeshire* [2004] 4 PLR 88, he cited with approval Brooke LJ’s statement that “There was some difficulty in times gone by against obtaining relief against persons unknown, but over the years that problem has been remedied either by statute or by rule”⁴. E F G

Cameron: Judgment 20 February 2019

33 In *Cameron* [2019] 1 WLR 1471, an injured motorist applied to amend her claim to join “The person unknown driving [the other vehicle] who collided with [the claimant’s vehicle] on [the date of the collision]”. The Court of Appeal granted the application, but the Supreme Court unanimously allowed the appeal. H

34 Lord Sumption said at para 1 that the question in the case was in what circumstances it was permissible to sue an unnamed defendant. Lord Sumption said at para 11 that, since *Bloomsbury*, the jurisdiction had been

A regularly invoked in relation to abuse of the internet, trespasses and other torts committed by protesters, demonstrators and paparazzi. He said that in some of the cases, proceedings against persons unknown were allowed in support of an application for precautionary injunctions, where the defendants could only be identified as those persons who might in future commit the relevant acts. It was that body of case law that the majority of the Court of Appeal (Gloster and Lloyd-Jones LJJ) had followed in deciding that an action was permissible against the unknown driver who injured Ms Cameron. He said that it was “the first occasion on which the basis and extent of the jurisdiction [had] been considered by the Supreme Court or the House of Lords”.

35 After commenting at para 12 that the CPR neither expressly authorised nor expressly prohibited exceptions to the general rule that actions against unnamed parties were permissible only against trespassers (see CPR r 55.3(4), which in fact only refers to possession claims against trespassers), Lord Sumption distinguished at para 13 between two kinds of case in which the defendant cannot be named: (i) anonymous defendants who are identifiable but whose names are unknown (eg squatters), and (ii) defendants, such as most hit and run drivers, who are not only anonymous but cannot even be identified. The distinction was that those in the first category were described in a way that made it possible in principle to locate or communicate with them, whereas in the second category it was not. It is to be noted that Lord Sumption did not mention a third category of newcomers.

36 At para 14, Lord Sumption said that the legitimacy of issuing or amending a claim form so as to sue an unnamed defendant could properly be tested by asking whether it was conceptually possible to serve it: the general rule was that service of originating process was the act by which the defendant was subjected to the court’s jurisdiction: *Barton v Wright Hassall LLP* [2018] 1 WLR 1119 at para 8. The court was seised of an action for the purposes of the Brussels Convention when the proceedings were served (as much under the CPR as the preceding Rules of the Supreme Court): *Dresser UK Ltd v Falcongate Freight Management Ltd (The Duke of Yare)* [1992] QB 502, 523 per Bingham LJ. An identifiable but anonymous defendant could be served with the claim form, if necessary, by alternative service under CPR r 6.15, which was why proceedings against anonymous trespassers under CPR r 55.3(4) had to be effected in accordance with CPR r 55.6 by placing them in a prominent place on the land. In *Bloomsbury* [2003] 1 WLR 1633, for example, the unnamed defendants would have had to identify themselves as the persons in physical possession of copies of the book if they had sought to do the prohibited act, namely disclose it to people (such as newspapers) who had been notified of the injunction. Lord Sumption then referred to *Gammell* [2006] 1 WLR 658 as being a case where the Court of Appeal had held that, when proceedings were brought against unnamed persons and interim relief was granted to restrain specified acts, a person became both a defendant and a person to whom the injunction was addressed by doing one of those acts. It does not seem that he disapproved of that decision, since he followed up by saying that “in the case of anonymous but identifiable defendants, these procedures for service are now well established, and there is no reason to doubt their juridical basis”.

37 Accordingly, pausing there, Lord Sumption seems to have accepted that, where an action was brought against unknown trespassers, newcomers could, as Sir Anthony Clarke MR had said in *Gammell*, make themselves parties to the action by (knowingly) doing one of the prohibited acts. This makes perfect sense, of course, because Lord Sumption's thesis was that, for proceedings to be competent, they had to be served. Once Ms Gammell knowingly breached the injunction, she was both aware of the proceedings and made herself a party. Although Lord Sumption mentioned that the *Gammell* injunction was "interim", nothing he said places any importance on that fact, since his concern was service, rather than the interim or final nature of the order that the court was considering.

38 Lord Sumption proceeded to explain at para 16 that one did not identify unknown persons by referring to something they had done in the past, because it did not enable anyone to know whether any particular persons were the ones referred to. Moreover, service on a person so identified was impossible. It was not enough that the wrongdoers themselves knew who they were. It was that specific problem that Lord Sumption said at para 17 was more serious than the recent decisions of the courts had recognised. It was a fundamental principle of justice that a person could not be made subject to the jurisdiction of the court without having such notice of the proceedings as would enable him to be heard⁵.

39 Pausing once again, one can see that, assuming these statements were part of the essential decision in *Cameron*, they do not affect the validity of the orders against newcomers made in *Gammell* (whether interim or final) because before any steps could be taken against such newcomers, they would, by definition, have become aware of the proceedings and of the orders made, and made themselves parties to the proceedings by violating those orders (see para 32 in *Gammell*).

40 At para 19, Lord Sumption explained why the treatment of the principle that a person could not be made subject to the jurisdiction of the court without having notice of the proceedings had been "neither consistent nor satisfactory". He referred to a series of cases about road accidents, before remarking that CPR rr 6.3 and 6.15 considerably broadened the permissible modes of service, but that the object of all the permitted modes of service was to enable the court to be satisfied that the method used either had put the recipient in a position to ascertain its contents or was reasonably likely to enable him to do so. He commented that the Court of Appeal in *Cameron* appeared to "have had no regard to these principles in ordering alternative service of the insurer". On that basis, Lord Sumption decided at para 21 that, subject to any statutory provision to the contrary, it was an essential requirement for any form of alternative service that the mode of service should be such as could reasonably be expected to bring the proceedings to the attention of the defendant. The Court of Appeal had been wrong to say that service need not be such as to bring the proceedings to the defendant's attention. At para 25, Lord Sumption commented that the power in CPR r 6.16 to dispense with service of a claim form in exceptional circumstances had, in general, been used to escape the consequences of a procedural mishap. He found it hard to envisage circumstances in which it would be right to dispense with service in circumstances where there was no reason to believe that the defendant was aware that proceedings had been or

- A were likely to be brought. He concluded at para 26 that the anonymous unidentified driver in *Cameron* could not be sued under a pseudonym or description, unless the circumstances were such that the service of the claim form could be effected or properly dispensed with.

Ineos: judgment 3 April 2019

- B 41 *Ineos* [2019] 4 WLR 100 was argued just two weeks after the Supreme Court's decision in *Cameron*. The claimant companies undertook fracking, and obtained interim injunctions restraining unlawful protesting activities such as trespass and nuisance against persons unknown including those entering or remaining without consent on the claimants' land. One of the grounds of appeal raised the issue of whether the judge had been right to grant the injunctions against persons unknown (including, of course, newcomers).

- C 42 Longmore LJ (with whom both David Richards and Leggatt LJ agreed) first noted that *Bloomsbury* and *Hampshire Waste* had been referred to without disapproval in *Meier*. Having cited *Gammell* in detail, Longmore LJ recorded that Ms Stephanie Harrison QC, counsel for one of the unknown persons (who had been identified for the purposes of the appeal), had submitted that the enforcement against persons unknown was unacceptable because they "had no opportunity, before the injunction was granted, to submit that no order should be made" on the basis of their Convention rights. Longmore LJ then explained *Cameron*, upon which Ms Harrison had relied, before recording that she had submitted that Lord Sumption's two categories of unnamed or unknown defendants at para 13 in *Cameron* were exclusive and that the defendants in *Ineos* did not fall within them.

- D 43 Longmore LJ rejected that argument on the basis that it was "too absolutist to say that a claimant can never sue persons unknown unless they are identifiable at the time the claim form is issued". Nobody had suggested that *Bloomsbury* and *Hampshire Waste* were wrongly decided. Instead, she submitted that there was a distinction between injunctions against persons who existed but could not be identified and injunctions against persons who did not exist and would only come into existence when they breached the injunction. Longmore LJ rejected that submission too at paras 29–30, holding that Lord Sumption's two categories were not considering persons who did not exist at all and would only come into existence in the future (referring to para 11 in *Cameron*). Lord Sumption had, according to Longmore LJ, not intended to say anything adverse about suing such persons. Lord Sumption's two categories did not include newcomers, but "he appeared rather to approve them [suing newcomers] provided that proper notice of the court order can be given and that the fundamental principle of justice on which he relied for the purpose of negating the ability to sue a 'hit and run' driver" was not infringed (see my analysis above).
- E Lord Sumption's para 15 in *Cameron* amounted "at least to an express approval of *Bloomsbury* and no express disapproval of *Hampshire Waste*". Longmore LJ, therefore, held in *Ineos* that there was no conceptual or legal prohibition on suing persons unknown who were not currently in existence but would come into existence when they committed the prohibited tort.

44 Once again, there is nothing in this reasoning that justifies a distinction between interim and final injunctions. The basis for the decision was that *Bloomsbury* and *Hampshire Waste* were good law, and that in *Gammell* the defendant became a party to the proceedings when she knew of the injunction and violated it. *Cameron* was about the necessity for parties to know of the proceedings, which the persons unknown in *Ineos* did.

Bromley: judgment 21 January 2020

45 In *Bromley* [2020] PTSR 1043, there was an interim injunction preventing unauthorised encampment and fly tipping. At the return date, the judge refused the injunction preventing unauthorised encampment on the grounds of proportionality, but granted a final injunction against fly tipping including by newcomers. The appeal was dismissed. *Cameron* was not cited to the Court of Appeal, and *Bloomsbury* and *Hampshire Waste* were cited, but not referred to in the judgments. At para 29, however, Coulson LJ (with whom Ryder and Haddon-Cave LJJs agreed), endorsed the elegant synthesis of the principles applicable to the grant of precautionary injunctions against persons unknown set out by Longmore LJ at para 34 in *Ineos*. Those principles concerned the court's practice rather than the appropriateness of granting such injunctions at all. Indeed, the whole focus of the judgment of Coulson LJ and the guidance he gave was on the proportionality of granting borough-wide injunctions in the light of the Convention rights of the travelling communities.

46 At paras 31–34, Coulson LJ considered procedural fairness “because that has arisen starkly in this and the other cases involving the gypsy and traveller community”. Relying on article 6 of the Convention, *Attorney General v Newspaper Publishing plc* [1988] Ch 333 and *Jacobson v Frachon* (1927) 138 LT 386, Coulson LJ said that “The principle that the court should hear both sides of the argument [was] therefore an elementary rule of procedural fairness”.

47 Coulson LJ summarised many of the cases that are now before this court and dealt also with the law reflected in *Porter* [2003] 2 AC 558, before referring at para 44 to *Chapman v United Kingdom* (2001) 33 EHRR 18 (“*Chapman*”) at para 73, where the European Court of Human Rights (“ECtHR”) had said that the occupation of a caravan by a member of the gypsy and traveller community was an integral part of her ethnic identity and her removal from the site interfered with her article 8 rights not only because it interfered with her home, but also because it affected her ability to maintain her identity as a gypsy. Other cases decided by the ECtHR were also mentioned.

48 After rejecting the proportionality appeal, Coulson LJ gave wider guidance starting at para 100 by saying that he thought there was an inescapable tension between the “article 8 rights of the gypsy and traveller community” and the common law of trespass. The obvious solution was the provision of more designated transit sites.

49 At paras 102–108, Coulson LJ said that local authorities must regularly engage with the travelling communities, and recommended a process of dialogue and communication. If a precautionary injunction were thought to be the only way forward, then engagement was still of the utmost importance: “Welfare assessments should be carried out, particularly in

- A relation to children”. Particular considerations included that: (a) injunctions against persons unknown were exceptional measures because they tended to avoid the protections of adversarial litigation and article 6 of the Convention, (b) there should be respect for the travelling communities’ culture, traditions and practices, in so far as those factors were capable of being realised in accordance with the rule of law, and (c) the clean hands doctrine might require local authorities to demonstrate that they had complied with their general obligations to provide sufficient accommodation and transit sites, (d) borough-wide injunctions were inherently problematic, (e) it was sensible to limit the injunction to one year with subsequent review, as had been done in the *Wolverhampton* case (now before this court), and (f) credible evidence of criminal conduct or risks to health and safety were important to obtain a wide injunction. Coulson LJ concluded with a summary after saying that he did not accept the submission that this kind of injunction should never be granted, and that the cases made plain that “the gypsy and traveller community have an enshrined freedom not to stay in one place but to move from one place to another”: “An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act 2010, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise.”

50 It may be commented at once that nothing in *Bromley* suggests that final injunctions against unidentified newcomers can never be granted.

Cuadrilla: judgment 23 January 2020

- E 51 In *Cuadrilla* [2020] 4 WLR 29 the Court of Appeal considered committals for breach of a final injunction preventing persons unknown, including newcomers, from trespassing on land in connection with fracking. The issues are mostly not relevant to this case, save that Leggatt LJ (with whom Underhill and David Richards LJJs substantively agreed) summarised the effect of *Ineos* (in which Leggatt LJ had, of course, been a member of the court) as being that there was no conceptual or legal prohibition on (a) suing persons unknown who were not currently in existence but would come into existence if and when they committed a threatened tort, or (b) granting precautionary injunctions to restrain such persons from committing a tort which has not yet been committed (para 48). After further citation of authority, the Court of Appeal departed from one aspect of the guidance given in *Ineos*, but not one that is relevant to this case. Leggatt LJ noted at para 50 that the appeal in *Canada Goose* was shortly to consider injunctions against persons unknown.

Canada Goose: judgment 5 March 2020

- H 52 The first paragraph of the judgment of the court in *Canada Goose* [2020] 1 WLR 2802 (Sir Terence Etherton MR, David Richards and Coulson LJJs) recorded that the appeal concerned the way in which, and the extent to which, civil proceedings for injunctive relief against persons unknown could be used to restrict public protests. On the claimants’ application for summary judgment, Nicklin J had refused to grant a final injunction, discharged the interim injunction, and held that the claim form

had not been validly served on any defendant in the proceedings and that it was not appropriate to make an order dispensing with service under CPR r 6.16(1). The first defendants were named as persons unknown who were protesters against the manufacture and sale at the first claimant's store of clothing made of or containing animal products. An interim injunction had been granted until further order in respect of various tortious activities including assault, trespass and nuisances, with a further hearing also ordered.

53 The grounds of appeal were based on Nicklin J's findings on alternative service and dispensing with service, the description of the persons unknown, and the judge's approach to the evidence and to summary judgment. The appeal on the service issues was dismissed at paras 37–55. The Court of Appeal started its treatment of the grounds of appeal relating to description and summary judgment by saying that it was established that proceedings might be commenced, and an interim injunction granted, against persons unknown in certain circumstances, as had been expressly acknowledged in *Cameron* and put into effect in *Ineos* and *Cuadrilla*.

54 The court in *Canada Goose* set out at para 60 Lord Sumption's two categories from para 13 of *Cameron*, before saying at para 61 that that distinction was critical to the possibility of service: "Lord Sumption acknowledged that the court may grant interim relief before the proceedings have been served or even issued but he described that as an emergency jurisdiction which is both provisional and strictly conditional": para 14. This citation may have sown the seeds of what was said at paras 89–92, to which I will come in a moment.

55 At paras 62–88 in *Canada Goose*, the court discussed in entirely orthodox terms the decisions in *Cameron*, *Gammell*, *Ineos*, and *Cuadrilla*, in which Leggatt LJ had referred to *Hubbard v Pitt* [1976] QB 142 and *Burris v Azadani* [1995] 1 WLR 1372. At para 82, the court built on the *Cameron* and *Ineos* requirements to set out refined procedural guidelines applicable to proceedings for interim relief against persons unknown in protester cases like the one before that court. The court at paras 83–88 applied those guidelines to the appeal to conclude that the judge had been right to dismiss the claim for summary judgment and to discharge the interim injunction.

56 It is worth recording the guidelines for the grant of interim relief laid down in *Canada Goose* at para 82 as follows:

"(1) The 'persons unknown' defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The 'persons unknown' defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also newcomers, that is to say people who in the future will join the protest and fall within the description of the 'persons unknown'.

- A “(2) The ‘persons unknown’ must be defined in the originating process by reference to their conduct which is alleged to be unlawful.
- “ (3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify [precautionary] relief.
- B “ (4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as ‘persons unknown’, must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.
- “ (5) 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.
- C “ (6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant’s intention if that is strictly necessary to correspond to the threatened tort and done in non-technical
- D language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.
- “ (7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose’s application for a final injunction on its summary judgment application.”
- E

- 57 The claim form was held to be defective in *Canada Goose* under those guidelines and the injunctions were impermissible. The description of the persons unknown was also impermissibly wide, because it was capable of applying to persons who had never been at the store and had no intention of ever going there. It would have included a “peaceful protester in Penzance”. Moreover, the specified prohibited acts were not confined to unlawful acts, and the original interim order was not time limited. Nicklin J had been bound to dismiss the application for summary judgment and to discharge the interim injunction: “both because of non-service of the proceedings and for the further reasons . . . set out below”.
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- G

58 It is the further reasons “set out below” at paras 89–92 that were relied upon by Nicklin J in this case that have been the subject of the most detailed consideration in argument before us. They were as follows:

- “89. A final injunction cannot be granted in a protester case against ‘persons unknown’ who are not parties at the date of the final order, that is to say newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the ‘persons unknown’ and who have not been served with the claim form. There are some very limited circumstances, such as in *Venables v News Group Newspapers Ltd* [2001] Fam 430, in which a final injunction may be granted against
- H

the whole world. Protester actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 224. That is consistent with the fundamental principle in *Cameron* (at para 17) that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard.”

“91. That does not mean to say that there is no scope for making ‘persons unknown’ subject to a final injunction. That is perfectly legitimate provided the persons unknown are confined to those within Lord Sumption’s category 1 in *Cameron*, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date. The proposed final injunction which Canada Goose sought by way of summary judgment was not so limited. Nicklin J was correct (at para 159) to dismiss the summary judgment on that further ground (in addition to non-service of the proceedings). Similarly, Warby J was correct to take the same line in *Birmingham City Council v Afsar* [2019] EWHC 3217 (QB) at [132].

“92. In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose submitted that, if there is no power to make a final order against ‘persons unknown’, it must follow that, contrary to *Ineos*, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption’s category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also ‘persons unknown’ who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that.”

The reasons given by the judge

59 The judge began his judgment at paras 2–5 by setting out the background to unauthorised encampment injunctions derived mainly from Coulson LJ’s judgment in *Bromley* [2020] PTSR 1043. At para 6, the judge said that the central issue to be determined was whether a final injunction granted against persons unknown was subject to the principle that final injunctions bind only the parties to the proceedings. He said that *Canada Goose* [2020] 1 WLR 2802 held that it was, but the local authorities contended that it should not be. It may be noted at once that this is a one-sided view of the question that assumes the answer. The question was not whether an assumed general principle derived from *Attorney General v Times Newspapers Ltd* (“*Spycatcher*”) [1992] 1 AC 191 or *Cameron* [2019] 1 WLR 1471 applied to final injunctions against persons unknown (which if

A it were a general principle, it obviously would), but rather what were the general principles to be derived from *Spycatcher*, *Cameron* and *Canada Goose*.

60 At paras 10–25, the judge dealt with three of the main cases: *Cameron*, *Bromley* and *Canada Goose*, as part of what he described as the “changing legal landscape”.

B 61 At paras 26–113, the judge dealt in detail with what he called the cohort claims under 9 headings: assembling the cohort claims and their features, service of the claim form on persons unknown, description of persons unknown in the claim form and in CPR r 8.2A, the (mainly statutory) basis of the civil claims against persons unknown, powers of arrest attached to injunction orders, use of the interim applications court of the Queen’s Bench Division (court 37), failure to progress claims after the grant of an interim injunction, particular cohort claims, and the case management hearing on 17 December 2020: identification of the issues of principle to be determined.

D 62 On the first issue before him (what I have described at para 4 above as the secondary question before us), the judge stated his conclusion at para 120 to the effect that the court retained jurisdiction to consider the terms of the final injunctions. At para 136, he said that it was legally unsound to impose concepts of finality against newcomers, who only later discovered that they fell within the definition of persons unknown in a final judgment. The permission to apply provisions in several injunctions recognised that it would be fundamentally unjust not to afford such newcomers the opportunity to ask the court to reconsider the order. A newcomer could apply under CPR r 40.9, which provided that “A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied”.

F 63 On the second and main issue (the primary issue before us), the judge stated his conclusion at para 124 that the injunctions granted in the cohort claims were subject to the *Spycatcher* principle (derived from p 224 of the speech of Lord Oliver of Aylmerton) and applied in *Canada Goose* that a final injunction operated only between the parties to the proceedings, and did not fall into the exceptional category of civil injunction that could be granted against the world. His conclusion is explained at paras 161–189.

G 64 On the third issue before him (but part of the main issue before us), the judge concluded at para 125 that if the relevant local authority cannot identify anyone in the category of persons unknown at the time the final order was granted, then that order bound nobody.

H 65 The judge stated first, in answer to his second issue, that the court undoubtedly had the power to grant an injunction that bound non-parties to proceedings under section 37. That power extended, exceptionally, to making injunction orders against the world (see *Venables v News Group Newspapers Ltd* [2001] Fam 430 (“*Venables*”)). The correct starting point was to recognise the fundamental difference between interim and final injunctions. It was well established that the court could grant an interim injunction against persons unknown which would bind all those falling within the description employed, even if they only became such persons as a result of doing some act after the grant of the interim injunction. He said that the key decision underpinning that principle was *Gammell* [2006]

1 WLR 658, which had decided that a newcomer became a party to the underlying proceedings when they did an act which brought them within the definition of the defendants to the claim. The judge thought that there was no conceptual difficulty about that at the interim stage, and that *Gammell* was a case of a breach of an interim injunction. At para 173, the judge stated that *Gammell* was not authority for the proposition that persons could become defendants to proceedings, after a final injunction was granted, by doing acts which brought them within the definition of persons unknown. He did not say why not. But the point is, at least, not free from doubt, bearing in mind that it is not clear whether Ms Maughan's case, decided at the same time as *Gammell*, concerned an interim or final order.

66 At para 174, the judge suggested that a claim form had to be served for the court to have jurisdiction over defendants at a trial. Relief could only be granted against identified persons unknown at trial: "It is fundamental to our process of civil litigation that the court cannot grant a final order against someone who is not party to the claim." Pausing there, it may be noted that, even on the judge's own analysis, that is not the case, since he acknowledged that injunctions were validly granted against the world in cases like *Venables*. He relied on para 92 in *Canada Goose* as deciding that a person who, at the date of grant of the final order, is not already party to a claim, cannot subsequently become one. In my judgment, as appears hereafter, that statement was at odds with the decision in *Gammell*.

67 At paras 175–176, the judge rejected the submission that traveller injunctions were "not subject to these fundamental rules of civil litigation or that the principle from *Canada Goose* is limited only to 'protester' cases, or cases involving private litigation". He said that the principles enunciated in *Canada Goose*, drawn from *Cameron*, were "of universal application to civil litigation in this jurisdiction". Nothing in section 187B suggested that Parliament had granted local authorities the ability to obtain final injunctions against unknown newcomers. The procedural rules in CPR PD 20.4 positively ruled out commencing proceedings against persons unknown who could not be identified. At para 180 the judge said that, insofar as any support could be found in *Bromley* for a final injunction binding newcomers, *Bromley* was not considering the point for decision before Nicklin J.

68 The judge then rejected at para 186 the idea that he had mentioned in *Enfield* that application of the *Canada Goose* principles would lead to a rolling programme of interim injunctions: (i) On the basis of *Ineos* and *Canada Goose*, the court would not grant interim injunctions against persons unknown unless satisfied that there were people capable of being identified and served. (ii) There would be no civil claim in which to grant an injunction, if the claim cannot be served in such a way as can reasonably be expected to bring the proceedings to an identified person's attention. (iii) An interim injunction would only be granted against persons unknown if there were a sufficiently real and imminent risk of a tort being committed to justify precautionary relief; thereafter, a claimant will have the period up to the final hearing to identify the persons unknown.

69 The judge said that a final injunction should be seen as a remedy flowing from the final determination of rights between the claimant and the defendants at trial. That made it important to identify those defendants

A before that trial. The legitimate role for interim injunctions against persons unknown was conditional and to protect the existing state of affairs pending determination of the parties' rights at a trial. A final judgment could not be granted consistently with *Cameron* against category 2 defendants: i.e. those who were anonymous and could not be identified.

B 70 Between paras 190–241, Nicklin J considered whether final injunctions could ever be granted against the world in these types of case. He decided they could not, and discharged those that had been granted against persons unknown. At paras 244–246, the judge explained the consequential orders he would make, before giving the safeguards that he would provide for future cases (see para 17 above).

C *The main issue: Was the judge right to hold that the court cannot grant final injunctions that prevent persons, who are unknown and unidentified at the date of the order (i.e. newcomers), from occupying and trespassing on local authority land?*

Introduction to the main issue

D 71 The judge was correct to state as the foundation of his considerations that the court undoubtedly had the power under section 37 to grant an injunction that bound non-parties to proceedings. He referred to *Venables* [2001] Fam 430 as an example of an injunction against the world, and there is a succession of cases to similar effect. It is true that they all say, in the context of injunctioning the world from revealing the identity of a criminal granted anonymity to allow him to rehabilitate, that such a remedy is exceptional. I entirely agree. I do not, however, agree that the courts should seek to close the categories of case in which a final injunction against all the world might be shown to be appropriate. The facts of the cases now before the court bear no relation to the facts in *Venables* and related cases, and a detailed consideration of those cases is, therefore, ultimately of limited value.

F 72 Section 37 is a broad provision providing expressly that “the High Court may by order (whether interlocutory or final) grant an injunction . . . in all cases in which it appears to the court to be just and convenient to do so”. The courts should not cut down the breadth of that provision by imposing limitations which may tie a future court's hands in types of case that cannot now be predicted.

G 73 The judge in this case seems to me to have built upon paras 89–92 of *Canada Goose* to elevate some of what was said into general principles that go beyond what it was necessary to decide either in *Canada Goose* or this case.

74 First, the judge said that it was the “correct starting point” to recognise the fundamental difference between interim and final injunctions. In fact, none of the cases that he relied upon decided that. As I have already pointed out, none of *Gammell*, *Cameron* or *Ineos* drew such a distinction.

H 75 Secondly, the judge said at para 174 that it was “fundamental to our process of civil litigation that the court cannot grant a final order against someone who is not party to the claim”. Again, as I have already pointed out, no such fundamental principle is stated in any of the cases, and such a principle would be inconsistent with many authorities (not least, *Venables*, *Gammell* and *Ineos*). The highest that *Canada Goose* put the point was to

refer to the “usual principle” derived from *Spycatcher* to the effect that a final injunction operated only between the parties to the proceedings. The principle was said to be applicable in *Canada Goose*. Admittedly, *Canada Goose* also described that principle as consistent with the fundamental principle in *Cameron* (at para 17) that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard, but that was said without disapproving the mechanism explained by Sir Anthony Clarke MR in *Gammell* by which a newcomer might become a party to proceedings by knowingly breaching a persons unknown injunction.

76 Thirdly, the judge suggested that the principles enunciated in *Canada Goose*, drawn from *Cameron*, were “of universal application to civil litigation in this jurisdiction”. This was, on any analysis, going too far as I shall seek to show in the succeeding paragraphs.

77 Fourthly, the judge said that it was important to identify all defendants before trial, because a final injunction should be seen as a remedy flowing from the final determination of rights between identified parties. This ignores the Part 8 procedure adopted in unauthorised encampment cases, which rarely, if ever, results in a trial. Interim injunctions in other fields often do protect the position pending a trial, but in these kinds of case, as I say, trials are infrequent. Moreover, there is no meaningful distinction between an interim and final injunction, since, as the facts of these cases show and *Bromley* explains, the court needs to keep persons unknown injunctions under review even if they are final in character.

78 With that introduction, I turn to consider whether the statements made in paras 89–92 of *Canada Goose* properly reflect the law. I should say, at once, that those paragraphs were not actually necessary to the decision in *Canada Goose*, even if the court referred to them at para 88 as being further reasons for it.

Para 89 of Canada Goose

79 The first sentence of para 89 said that “A final injunction cannot be granted in a protester case against ‘persons unknown’ who are not parties at the date of the final order, that is to say newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the ‘persons unknown’ and who have not been served with the claim form”. That sentence does not on its face apply to cases such as the present, where the defendants were not protesters but those setting up unauthorised encampments. It is nonetheless very hard to see why the reasoning does not apply to unauthorised encampment cases, at least insofar as they are based on the torts of trespass and nuisance. I would be unwilling to accede to the local authorities’ submission that *Canada Goose* can be distinguished as applying only to protester cases.

80 *Canada Goose* then referred at para 89 to “some very limited circumstances” in which a final injunction could be granted against the whole world, giving *Venables* as an example. It said that protester actions did not fall within that exceptional category. That is true, but does not explain why a final injunction against persons unknown might not be appropriate in such cases.

- A 81 *Canada Goose* then said at para 89, as I have already mentioned, that the usual principle, which applied in that case, was that a final injunction operated only between the parties to the proceedings, citing *Spycatcher* as being consistent with *Cameron* at para 17. That passage was, in my judgment, a misunderstanding of para 17 of *Cameron*. As explained above, para 17 of *Cameron* did not affect the validity of the orders against newcomers made in
- B *Gammell* (whether interim or final) because before any steps could be taken against such newcomers, they would, by definition, have become aware of the proceedings and of the orders made, and made themselves parties to the proceedings by violating them (see para 32 in *Gammell*). Moreover at para 63 in *Canada Goose*, the court had already acknowledged that (i) Lord Sumption had not addressed a third category of anonymous defendants, namely people
- C who will or are highly likely in the future to commit an unlawful civil wrong (i.e newcomers), and (ii) Lord Sumption had referred at para 15 with approval to *Gammell* where it was held that “persons who entered onto land and occupied it in breach of, and subsequent to the grant of, an interim injunction became persons to whom the injunction was addressed and defendants to the proceedings”. There was no valid distinction between such an order made as a final order and one made on an interim basis.
- D 82 There was no reason for the Court of Appeal in *Canada Goose* to rely on the usual principle derived from *Spycatcher* that a final injunction operates only between the parties to the proceedings. In *Gammell* and *Ineos* (cases binding on the Court of Appeal) it was held that a person violating a “persons unknown” injunction became a party to the proceedings. *Cameron* referred to that approach without disapproval. There is and was no reason why the court cannot devise procedures, when making longer
- E term persons unknown injunctions, to deal with the situation in which persons violate the injunction and make themselves new parties, and then apply to set aside the injunction originally violated, as happened in *Gammell* itself. Lord Sumption in *Cameron* was making the point that parties must always have the opportunity to contest orders against them. But the persons unknown in *Gammell* had just such an opportunity, even though they were
- F held to be in contempt. *Spycatcher* was a very different case, and only described the principle as the usual one, not a universal one. Moreover, it is a principle that sits uneasily with parts of the CPR, as I shall shortly explain.

Para 90 of Canada Goose

- G 83 In my judgment both the judge at para 90 and the Court of Appeal in *Canada Goose* at para 90 were wrong to suggest that Marcus Smith J’s decision in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 (“*Vastint*”) was wrong. There, a final injunction was granted against persons unknown enjoining them from entering or remaining at the site of the former Tetley Brewery (for the purpose of organising or attending illegal raves). At paras 19–25, Marcus Smith J explained his reasoning relying on *Bloomsbury*, *Hampshire Waste*, *Gammell* and *Ineos* (at first instance: [2017] EWHC 2945 (Ch)).
- H At para 24, he said that the making of orders against persons unknown was settled practice provided the order was clearly enough drawn, and that it worked well within the framework of the CPR: “Until an act infringing the order is committed, no one is party to the proceedings. It is the act of infringing the order that makes the infringer a party.” Any person affected by

the order could apply to set it aside under CPR r 40.9. None of *Cameron*, *Ineos*, or *Spycatcher* showed *Vastint* to be wrong as the court suggested. A

Para 91 of Canada Goose

84 In the first two sentences of para 91, *Canada Goose* seeks to limit persons unknown subject to final injunctions to those “within Lord Sumption’s category 1 in *Cameron*, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to [that] date”. This holding ignores the fact that *Canada Goose* had already held that Lord Sumption’s categories did not deal with newcomers, which were, of course, not relevant to the facts in *Cameron*. B

85 The point in *Cameron* was that the proceedings had to be served so that, before enforcement, the defendant had knowledge of the order and could contest it. As already explained, *Gammell* held that persons unknown were served and made parties by violating an order of which they had knowledge. Accordingly, the first two sentences of para 91 are wrong and inconsistent both with the court’s own reasoning in *Canada Goose* and with a proper understanding of *Gammell*, *Ineos* and *Cameron*. C

86 In the third sentence of para 91, the court in *Canada Goose* said that the proposed final injunction which *Canada Goose* sought by way of summary judgment was objectionable as not being limited to Lord Sumption’s category 1 defendants, who had already been served and identified. As I have said, that ignores the fact that the court had already said that Lord Sumption excluded newcomers and the *Gammell* situation. D

87 The court in *Canada Goose* then approved Nicklin J at para 159 in his judgment in *Canada Goose*, where he said this: E

“158. Rather optimistically, Mr Buckpitt suggested that all these concerns could be adequately addressed by the inclusion of a provision in the ‘final order’ permitting any newcomers to apply to vary or discharge the ‘final order’.” F

“159. Put bluntly, this is just absurd. It turns civil litigation on its head and bypasses almost all of the fundamental principles of civil litigation: see paras 55–60 above. Unknown individuals, without notice of the proceedings, would have judgment and a ‘final injunction’ granted against them. If subsequently, they stepped forward to object to this state of affairs, I assume Mr Buckpitt envisages that it is only at this point that the question would be addressed whether they had actually done (or threatened to do) anything that would justify an order being made against them. Resolution of any factual dispute taking place, one assumes, at a trial, if necessary. Given the width of the class of protestor, and the anticipated rolling programme of serving the ‘final order’ at future protests, the court could be faced with an unknown number of applications by individuals seeking to ‘vary’ this ‘final order’ and possible multiple trials. This is the antithesis of finality to litigation.” G H

88 This passage too ignores the essential decision in *Gammell*.

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

A 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. A person who is not a party but who is directly affected by an order may apply under CPR r 40.9. In addition, in the case of a third party costs order, CPR r 46.2 requires the non-party to be made party to the proceedings, even though the dispute between the litigants themselves is at an end. In this case, as in *Canada Goose*, the court was effectively concerned with the enforcement of an order, because the problems in *Canada Goose* all arose because of the supposed impossibility of enforcing an order against a non-party. Since the order can be enforced as decided authoritatively in *Gammell*, there is no procedural objection to its being made. The CPR contain many ways of enforcing an order. CPR r 70.4 says that an order made against a non-party may be enforced by the same methods as if he were a party. In the case of a possession order against squatters, the enforcement officer will enforce against anyone on the property whether or not a newcomer. Notice must be given to all persons against whom the possession order was made and “any other occupiers”: CPR r 83.8A. Where a judgment is to be enforced by charging order CPR r 73.10 allows “any person” to object and allows the court to decide any issue between any of the parties and any person who objects to the charging order. None of these rules was considered in *Canada Goose*. In addition, in the case of an injunction (unlike the claim for damages in *Cameron*), there is no possibility of a default judgment, and the grant of the injunction will always be in the discretion of the court.

90 The decision of Warby J in *Birmingham City Council v Afsar* [2020] 4 WLR 168 at para 132 provides no further substantive reasoning beyond para 159 of Nicklin J.

Para 92 of Canada Goose

91 The reasoning in para 92 is all based upon the supposed objection (raised in written submissions following the conclusion of the oral hearing of the appeal) to making a final order against persons unknown, because interim relief is temporary and intended to “enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption’s category 1”. Again, this reasoning ignores the holding in *Gammell*, *Ineos* and *Canada Goose* itself that an unknown and unidentified person knowingly violating an injunction makes themselves parties to the action. Where an injunction is granted, whether on an interim or a final basis for a fixed period, the court retains the right to supervise and enforce it, including bringing before it parties violating it and thereby making themselves parties to the action. That is envisaged specifically by point 7 of the guidelines in *Canada Goose*, which said expressly that a persons unknown injunction should have “clear geographical and temporal limits”. It was suggested that it must be time limited because it was an interim and not a final injunction, but in fact all persons unknown injunctions ought normally to have a fixed end point for review as the injunctions granted to these local authorities actually had in some cases.

92 It was illogical for the court at para 92 in *Canada Goose* to suggest, in the face of *Gammell*, that the parties to the action could only include persons unknown “who have breached the interim injunction and are

identifiable albeit anonymous”. There is, as I have said, almost never a trial in a persons unknown case, whether one involving protesters or unauthorised encampments. It was wrong to suggest in this context that “Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end”. In these cases, the case is not at end until the injunction has been discharged.

The judge’s reasoning in this case

93 In my judgment, the judge was wrong to suggest that the correct starting point was the “fundamental difference between interim and final injunctions”. There is no difference in jurisdictional terms between the grant of an interim and a final injunction. *Gammell* had not, as the judge thought, drawn any such distinction, and nor had *Ineos* as I have explained at paras 31 and 44 above. It would have been wrong to do so.

94 The judge, as it seems to me, went too far when he said at para 174 that relief could only be granted against identified persons unknown at trial. He relied on *Canada Goose* at para 92 as deciding that a person who, at the date of grant of the final order, is not already party to a claim, cannot subsequently become one. But, as I have said, that misunderstands both *Gammell* and *Ineos*. *Ineos* itself made clear that Lord Sumption’s two categories of defendant in *Cameron* did not consider persons who did not exist at all and would only come into existence in the future. *Ineos* held that there was no conceptual or legal prohibition on suing persons unknown who were not currently in existence but would come into existence when they committed the prohibited tort.

95 I agree with the judge that there is no material distinction between an injunction against protesters and one against unauthorised encampment, certainly insofar as they both involve the grant of injunctions against persons unknown in relation to torts of trespass or nuisance. Nor is there any material distinction between those cases and the cases of urban exploring where judges have granted injunctions restraining persons unknown from trespassing on tall buildings (for example, the Shard) by climbing their exteriors (e.g *Canary Wharf Investments Ltd v Brewer* [2018] EWHC 1760 (QB) and *Chelsea FC plc v Brewer* [2018] EWHC 1424 (Ch)). One of those cases was an interim and one a final injunction, but no distinction was made by either judge.

96 As I have explained, in my judgment, the judge ought not to have applied paras 89–92 of *Canada Goose*. Instead, he ought to have applied *Gammell* and *Ineos*. *Bromley* too had correctly envisaged the possibility of final injunctions against newcomers. The judge misunderstood the Supreme Court’s decision in *Cameron*.

The doctrine of precedent

97 We received helpful submissions during the hearing as to the propriety of our reaching the conclusions already stated. In particular, we were concerned that *Cameron* had been misunderstood in the ways I have now explained in detail. The question, however, was, even if *Cameron* did not mandate the conclusions reached by the judge and paras 89–92 of *Canada Goose*, whether this court would be justified in refusing to follow those paragraphs. That question turns on precisely what *Gammell*, *Ineos* and *Canada Goose* decided.

A 98 In *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 (“*Young*”), three exceptions to the rule that the Court of Appeal is bound by its previous decisions were recognised. First, the Court of Appeal can decide which of two conflicting decisions of its own it will follow. Secondly, the Court of Appeal is bound to refuse to follow a decision of its own which cannot stand with a subsequent decision of the Supreme Court, and thirdly, the Court of Appeal is not bound to follow a decision of its own if given without proper regard to previous binding authority.

B 99 In my judgment, it is clear that *Gammell* [2006] 1 WLR 658 decided, and *Ineos* [2019] 4 WLR 100 accepted, that injunctions, whether interim or final, could validly be granted against newcomers. Newcomers were not any part of the decision in *Cameron* [2019] 1 WLR 1471, and there is and was no basis to suggest that the mechanism in *Gammell* was not applicable to make an unknown person a party to an action, whether it occurred following an interim or a final injunction. Accordingly, a premise of *Gammell* was that injunctions generally could be validly granted against newcomers in unauthorised encampment cases. *Ineos* held that the same approach applied in protester cases. Accordingly, paras 89–92 of *Canada Goose* [2020] 1 WLR 2802 were inconsistent with *Ineos* and *Gammell*. Moreover, those paragraphs seem to have overlooked the provisions of the CPR that I have mentioned at para 89 above. For those reasons, it is open to this court to apply the first and third exceptions in *Young*. It can decide which of *Gammell* and *Canada Goose* it should follow, and it is not bound to follow the reasons given at paras 89–92 of *Canada Goose*, which even if part of the court’s essential reasoning, were given without proper regard to *Gammell*, which was binding on the Court of Appeal in *Canada Goose*.

E 100 This analysis is applicable even if paras 89–92 of *Canada Goose* are taken as explaining *Gammell* and *Ineos* as being confined to interim injunctions. The Court of Appeal can, in that situation, refuse to follow its second decision if it takes the view, as I do, that paras 89–92 of *Canada Goose* wrongly distinguished *Gammell* and *Ineos* (see *Starmark Enterprises Ltd v CPL Distribution Ltd* [2002] Ch 306 at paras 65–67 and 97).

F *Conclusion on the main issue*

101 For the reasons I have given, I would decide that the judge was wrong to hold that the court cannot grant final injunctions that prevent persons, who are unknown and unidentified at the date of the order (newcomers), from occupying and trespassing on local authority land.

G *The guidance given in Bromley and Canada Goose and in this case by Nicklin J*

H 102 We did not hear detailed argument either about the guidance given in relation to interim injunctions against persons unknown at para 82 of *Canada Goose* (see para 56 above), or in relation to how local authorities should approach persons unknown injunctions in unauthorised encampment cases at paras 99–109 in *Bromley* [2020] PTSR 1043 (see para 49 above). It would, therefore, be inappropriate for me to revisit in detail what was said there. I would, however, make the following comments.

103 First, the court’s approach to the grant of an interim injunction would obviously be different if it were sought in a case in which a final

injunction could not, either as a matter of law or settled practice, be granted. In those circumstances, these passages must, in view of our decision in this case, be viewed with that qualification in mind.

104 Secondly, I doubt whether Coulson LJ was right to comment that: (i) there was an inescapable tension between the article 8 rights of the gypsy and traveller community and the common law of trespass, and (ii) the cases made plain that the gypsy and traveller community have an enshrined freedom not to stay in one place but to move from one place to another.

105 On the first point, it is not right to say that either “the gypsy and traveller community” or any other community has article 8 rights. Article 8 provides that “everyone has the right to respect for his private and family life, his home and his correspondence”. In unauthorised encampment cases, unlike in *Porter* [2003] 2 AC 558 (and unlike in *Manchester City Council v Pinnock* [2011] 2 AC 104), newcomers cannot rely on an article 8 right to respect for their home, because they have no home on land they do not own. They can rely on a private and family life claim to pursue a nomadic lifestyle, because *Chapman* 33 EHRR 18 decided that the pursuit of a traditional nomadic lifestyle is an aspect of a person’s private and family life. But the scheme of the Human Rights Act 1998 is individualised. It is unlawful under section 6 for a public authority to act incompatibly with a Convention right, which refers to the Convention right of a particular person. The mechanism for enforcing a Convention right is specified in section 7 as being legal proceedings by a person who is or would be a victim of any act made unlawful by section 6. That means, in this context, that it is when individual newcomers make themselves parties to an unauthorised encampment injunction, they have the opportunity to apply to the court to set aside the injunction praying in aid their private and family life right to pursue a nomadic lifestyle. Of course, the court must consider that putative right when it considers granting either an interim or a final injunction against persons unknown, but it is not the only consideration. Moreover, it can only be considered, at that stage, in an abstract way, without the factual context of a particular person’s article 8 rights. The landowner, by contrast, has specific Convention rights under article 1 to the First Protocol to the peaceful enjoyment of particular possessions. The only point at which a court can test whether an order interferes with a particular person’s private and family life, the extent of that interference, and whether the order is proportionate, is when that person comes to court to resist the making of an order or to challenge the validity of an order that has already been made.

106 Secondly, it is not, I think, quite clear what Coulson LJ meant by saying that the gypsy and traveller community had an enshrined freedom to move from one place to another. Each member of those communities, and each member of any community, has such a freedom in our democratic society, but the communities themselves do not have Convention rights as I have explained. Individuals’ qualified Convention rights must be respected, but the right to that respect will be balanced, in short, against the public interest, when the court considers their challenge to the validity of an unauthorised encampment injunction binding on persons unknown. The court will also take into account any other relevant legal considerations, such as the duties imposed by the Equality Act 2010.

A 107 Nothing I have said should, however, be regarded as throwing doubt upon Coulson LJ's suggestions that local authorities should engage in a process of dialogue and communication with travelling communities, undertake, where appropriate, welfare and equality impact assessments, and should respect their culture, traditions and practices. I would also want to associate myself with Coulson LJ's suggestion that persons unknown
B injunctions against unauthorised encampments should be limited in time, perhaps to one year at a time before a review.

108 It will already be clear that the guidance given by the judge in this case at para 248 (see para 18 above) requires reconsideration. There are indeed safeguards that apply to injunctions sought against persons unknown in unauthorised encampment cases. Those safeguards are not, however, based on the artificial distinction that the judge drew between interim and
C final orders. The normal rules are applicable, as are the safeguards mentioned in *Bromley* (subject to the limitations already mentioned at paras 104–106 above), and those mentioned below at para 117. There is no rule that an interim injunction can only be granted for any particular period of time. It is good practice to provide for a periodic review, even when a final order is made. The two categories of persons unknown referred to by Lord Sumption
D at para 13 in *Cameron* have no relevance to cases of this kind. He was not considering the position of newcomers. The judge was wrong to suggest that directions should be given for the claimant to apply for a default judgment. Such judgments cannot be obtained in Part 8 cases. A normal procedural approach should apply to the progress of the Part 8 claims, bearing in mind the importance of serving the proceedings on those affected and giving notice of them, so far as possible, to newcomers.
E

The secondary question as to the propriety of the procedure adopted by the judge to bring the proceedings in their current form before the court

109 In effect, the judge made a series of orders of the court's own motion requiring the parties to these proceedings to make submissions aimed at allowing the court to reach a decision as to whether the interim and
F final orders that had been granted in these cases could or should stand. Counsel for one group of local authorities, Ms Caroline Bolton, submitted that it was not open to the court to call in final orders made in the past for reconsideration in the way that the judge did.

110 In my judgment, the procedure adopted was highly unusual, because it was, in effect, calling in cases that had been finally decided on the basis that the law had changed. We heard considerable argument based on
G the court's power under CPR r 3.1(7), which gives the court a power "to vary or revoke [an] order". This court has recently said that the circumstances which would justify varying or revoking a final order would be very rare given the importance of finality (see *Terry v BCS Corporate Acceptances Ltd* [2018] EWCA Civ 2422 at [75]).

111 As it seems to me, however, we do not need to spend much time on
H the process which was adopted. First, the local authorities concerned did not object at the time to the court calling in their cases. Secondly, the majority of the injunctions either included provision for review at a specified future time or express or implied permission to apply. Thirdly, even without such provisions, the orders in question would, as I have already explained,

be reviewable at the instance of newcomers, who had made themselves parties to the claims by knowingly breaching the injunctions against unauthorised encampment. A

112 In these circumstances, the process that was adopted has ultimately had a beneficial outcome. It has resulted in greater clarity as to the applicable law and practice.

The statutory jurisdiction to make orders against person unknown under section 187B to restrain an actual or apprehended breach of planning control validates the orders made B

113 The injunctions in these cases were mostly granted either on the basis of section 187B or on the basis of apprehended trespass and nuisance, or both. C

114 Section 187B provides that:

“(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part. D

“(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

“(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.

“(4) In this section ‘the court’ means the High Court or the county court.” E

115 CPR PD 8A provides at paras 20.1–20.6 in part as follows:

“20.1 This paragraph relates to applications under—
(1) [section 187B]; . . .

“20.2 An injunction may be granted under those sections against a person whose identity is unknown to the applicant . . .

“20.4 In the claim form, the applicant must describe the defendant by reference to— (1) a photograph; (2) a thing belonging to or in the possession of the defendant; or (3) any other evidence. F

“20.5 The description of the defendant under paragraph 20.4 must be sufficiently clear to enable the defendant to be served with the proceedings. (The court has power under Part 6 to dispense with service or make an order permitting service by an alternative method or at an alternative place.) G

“20.6 The application must be accompanied by a witness statement. The witness statement must state— (1) that the applicant was unable to ascertain the defendant’s identity within the time reasonably available to him; (2) the steps taken by him to ascertain the defendant’s identity; (3) the means by which the defendant has been described in the claim form; and (4) that the description is the best the applicant is able to provide.” H

116 In the light of what I have decided as to the approach to be followed in relation to injunctions sought under section 37 against persons unknown in relation to unauthorised encampment, the distinctions that the parties

- A sought to draw between section 37 and section 187B applications are of far less significance to this case.

- B 117 In my judgment, sections 37 and 187B impose the same procedural limitations on applications for injunctions of this kind. In either case, the applicant must describe any persons unknown in the claim form by reference to photographs, things belonging to them or any other evidence, and that description must be sufficiently clear to enable persons unknown to be served with the proceedings, whilst acknowledging that the court retains the power in appropriate cases to dispense with service or to permit service by an alternative method or at an alternative place. These safeguards and those referred to with approval earlier in this judgment are as much applicable to an injunction sought in an unauthorised encampment case under section 187B as they are to one sought in such a case to restrain apprehended trespass or nuisance. Indeed, CPR PD 8A, para 20 seems to me to have been drafted with the objective of providing, so far as possible, procedural coherence and consistency rather than separate procedures for different kinds of cases.

118 There is, therefore, no need for me to say any more about section 187B.

- D *Can the court in any circumstances like those in the present case make final orders against all the world?*

119 As I have said, Nicklin J decided at paras 190–241 that final injunctions against persons unknown, being a species of injunction against all the world, could never be granted in unauthorised encampment cases. For the reasons I have given, I take the view that he was wrong.

- E 120 I have already explained the circumstances in which such injunctions can be granted at paras 102–108. Beyond what I have said, however, I take the view that it is extremely undesirable for the court to lay down limitations on the scope of as broad and important a statutory provision as section 37. Injunctions against the world have been granted in the type of case epitomised by *Venables*. Persons unknown injunctions have been granted in cases of unauthorised encampment and may be appropriate in some protester cases as is demonstrated by the authorities I have already referred to. I would not want to lay down any further limitations. Such cases are certainly exceptional, but that does not mean that other categories will not in future be shown to be proportionate and justified. The urban exploring injunctions I have mentioned are an example of a novel situation in which such relief was shown to be required.

- G 121 I conclude that the court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under section 37 against the world.

Conclusions

- H 122 The parties agreed four issues for determination in terms that I have not directly addressed in this judgment. They did, however, raise substantively the four issues I have dealt with.

123 I have concluded, as I indicated at para 7 above, that the judge was wrong to hold that the court cannot grant final injunctions against unauthorised encampment that prevent newcomers from occupying and trespassing on land. Whilst the procedure adopted by the judge was

unorthodox and unusual in that he called in final orders for revision, no harm has been done in that the parties did not object at the time and it has been possible to undertake a comprehensive review of the law applicable in an important field. Most of the orders anyway provided for review or gave permission to apply. The procedural limitations applicable to injunctions against person unknown are as much applicable under section 37 as they are to those made under section 187B. The court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under section 37 against the world.

124 I would allow the appeal. I am grateful to all counsel, but particularly to Mr Tristan Jones, whose submissions as advocate to the court have been invaluable. Counsel will no doubt want to make further submissions as to the consequences of this judgment. Without pre-judging what they may say, it may be more appropriate for such matters to be dealt with in the High Court.

Notes

1. There were 38 local authorities before the judge.
2. This was a reference to the two categories set out by Lord Sumption at para 13 in *Cameron*, as to which see para 35.
3. As I have noted above, default judgment is not available in Part 8 cases.
4. Lord Rodger noted also the discussion of such injunctions in Jillaine Seymour, "Injunctions Enjoining Non-Parties: Distinction without Difference" (2007) 66 CLJ 605.
5. See *Jacobson v Frachon* (1927) 138 LT 386, 392 per Atkin LJ.

LEWISON LJ

125 I agree.

ELISABETH LAING LJ

126 I also agree.

Appeals allowed.

Judge's order set aside.

Injunctions obtained by Havering, Nuneaton and Bedworth, Rochdale, Test Valley and Wolverhampton restored subject to review hearing.

Interim injunctions obtained by Hillingdon and Richmond upon Thames restored subject to applications for review on terms.

Permission to appeal refused.

25 October 2022. The Supreme Court (Lord Hodge DPSC, Lord Hamblen and Lord Stephens JJSC)) allowed an application by London Gypsies and Travellers for permission to appeal.

SUSAN DENNY, Barrister



Neutral Citation Number: [2022] EWHC 1215 (QB)

Case No: QB-2022-001420

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 May 2022

Before :

MR JUSTICE JOHNSON

Between :

SHELL UK OIL PRODUCTS LIMITED

Claimant

- and -

**PERSONS UNKNOWN DAMAGING, AND/OR
BLOCKING THE USE OF OR ACCESS TO ANY SHELL
PETROL STATION IN ENGLAND AND WALES, OR TO
ANY EQUIPMENT OR INFRASTRUCTURE UPON IT, BY
EXPRESS OR IMPLIED AGREEMENT WITH OTHERS, IN
CONNECTION WITH ENVIRONMENTAL PROTEST
CAMPAIGNS WITH THE INTENTION OF DISRUPTING
THE SALE OR SUPPLY OF FUEL TO OR FROM THE
SAID STATION**

Defendants

Toby Watkin QC (instructed by CMS Cameron McKenna Nabarro Olswang LLP) for the
Claimant

Hearing date: 13 May 2022

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 10am on 20 May 2022.

Mr Justice Johnson :

1. The claimant sells fossil fuels to those who run Shell branded petrol stations. The defendants are climate and environmental activists who say that the claimant's activities are destroying the planet. They engage in protests to draw attention to the issue and to encourage governmental and societal change.
2. The claimant seeks to maintain an injunction that was granted on an emergency basis by McGowan J on 5 May 2022. It restrains the defendants from undertaking certain activities such as damaging petrol pumps and preventing motorists from entering petrol station forecourts when that is done to prevent the claimant from carrying on its business – see paragraph 20 below. The claimant recognises that the injunction interferes with rights of assembly and expression but contends that the interference is proportionate and justified to protect its rights to trade.
3. The order of McGowan J was necessarily made without notice to the defendants or anybody else. McGowan J made provision for the order to be widely published (including at every Shell filling station in England and Wales, and to over 50 email addresses that are associated with protest groups). McGowan J also required that the order be reconsidered at a public hearing on 13 May 2022 so that the court could reconsider the continuation of the order, and its terms. This provided a specific opportunity for anyone affected by the order to seek to argue that it should be set aside or varied. In the event, nobody did so.
4. Mrs Nancy Friel, who describes herself as an environmental activist, attended the hearing. She asked for the hearing to be adjourned so that she could secure representation and argue that the order should be set aside or varied. I declined the request to adjourn. It was important that this injunction, which was granted without notice to the defendants and which impacts on their rights of assembly and expression, was considered by a court at a public hearing without further delay. Continuing with the hearing does not prejudice any application that Mrs Friel (or anybody else) might wish to make to vary the order or to set it aside: the terms of the order itself permit such an application to be made (and see also rule 40.9 of the Civil Procedure Rules).
5. Mrs Friel was concerned that the terms of the order require that any person who wishes to apply to vary or discharge the order must first apply to be joined as a named defendant. She did not consider that was appropriate, because she is not taking part in any unlawful activity and does not therefore come within the scope of the description of the defendants. There are two answers to that concern. First, the description of the “unknown” defendants does not prevent Mrs Friel from being added as a second defendant to the proceedings; she may be affected by the order – and may be entitled to be joined as a party – even if she does not come within that description. Second, if she otherwise has a right to apply to set aside the order without being joined as a party then she may do so under CPR 40.9, notwithstanding the terms of the order (see *National Highways Limited v Persons Unknown* [2022] EWHC 1105 (QB) *per* Bennathan J at [20]-[22] and *Barking and Dagenham LBC v Persons Unknown* [2022] EWCA Civ 13 *per* Sir Geoffrey Vos MR at [89]).
6. It is not, however, appropriate to vary the terms of the order to give a general right to anyone (beyond that recognised by CPR 40.9) to apply to vary the order without first applying to be a party. That would risk going beyond the ambit of CPR 40.9: although

that provision is stated in wide terms, in practice the circumstances in which a non-party may successfully apply to vary an order are more limited (see the commentary to CPR 40.9 in the 2022 White Book). There is therefore a risk of creating an unjustified advantage for such an applicant (for example, as regards costs) or an unjustified disadvantage for the claimant, without first considering the particular circumstances of the application. The question of whether it is necessary for a person to be joined as a party is best addressed (if and when the issue arises) as and when any application is made, and on the facts of the particular application.

Factual background

7. Benjamin Austin is the claimant's Health, Safety and Security Manager. He has provided two witness statements, supported with extensive exhibits. I take the account of events from his statements and exhibits.

The claimant

8. The claimant is part of a group of companies that are ultimately owned and controlled by Shell plc. It markets and sells fuels to retail customers in England and Wales through a network of 1,062 "Shell-branded" petrol stations ("Shell petrol stations"). The stations are operated by third party contractors, but the fuel is supplied by the claimant. In some cases, the claimant has an interest in the land where the Shell petrol station is located.

Insulate Britain, Just Stop Oil and Extinction Rebellion

9. Insulate Britain, Just Stop Oil and Extinction Rebellion are environmental protest groups that seek to influence government policy in respect of the fossil fuel industry, so as to mitigate climate change. These groups say that they are not violent. I was not shown any evidence to suggest that they have resorted to physical violence against others. They are, however, committed to protesting in ways that are unlawful, short of physical violence to the person. Their public websites demonstrate this, with references to "civil disobedience", "direct action", and a willingness to risk "arrest" and "jail time". The activities of their supporters also demonstrate this, as explained below.

The protests

10. In autumn 2021 a number of protests took place. These involved blocking major roads in the UK, including the M25, including by activists gluing themselves to roads, immovable objects, or each other. Injunctions to restrain such activities were made by the court on the application of National Highways Limited. There were many breaches of those injunctions. Committal proceedings were brought. Initially, the defendants to those proceedings evinced an intention to carry on with the protests in defiance of court orders. Orders for immediate imprisonment for contempt of court were imposed - see *National Highways Ltd v Heyatawin* [2021] EWHC 3078 (QB). Thereafter, unlawful protests in this form came to an end. In subsequent committal hearings, the respondents were unrepentant. They maintained that they were justified in their conduct because of the very great dangers of climate change. However, they did not demonstrate an intention to commit further breaches of court orders. Many indicated that they would find other, lawful, ways to draw attention to the climate crisis and to seek to influence government policy. The court responded by imposing orders of imprisonment for contempt of court that were suspended, subject to compliance with conditions imposed

by the court – *National Highways Ltd v Buse* [2021] EWHC 3404 (QB) (*per* Dingemans LJ at [57]) and *National Highways Ltd v Springorum* [2022] EWHC 205 (QB) (*per* William Davis LJ at [65]).

11. In spring 2022, protests involving similar tactics re-commenced, but directed at the fossil fuel industry rather than the road network. Reports include cases of protesters climbing onto fuel delivery lorries, cutting the air brake cables so that the lorries cannot move, tunnelling under roadways to seek to make them impassable to lorries, climbing onto equipment used for storage of fuels, and tampering with safety equipment, such as valves. One of these protests was at a terminal owned by the Shell Group.
12. On 28 April 2022, there were protests at two petrol stations (one of which was a Shell petrol station) on the M25, Clacket Lane and Cobham. Protestors arrived at around 7am. Video, photographic and written evidence (largely deriving from the websites and media releases of protest groups) show that:
 - (1) The entrance to the forecourts were blocked.
 - (2) The display screens of fuel pumps were smashed with hammers.
 - (3) The display screens of fuel pumps were obscured with spray paint.
 - (4) The kiosks were “sabotaged... to stop the flow of petrol”.
 - (5) Protestors variously glued themselves to the floor, a fuel pump, the roof of a fuel tanker, or each other.
13. A total of 55 fuel pumps were damaged (including 35 out of 36 pumps at Cobham) to the extent that they were not safe for use, and the whole forecourt had to be closed. Five people were arrested and charged with offences, including criminal damage. They are subject to bail conditions. The claimant has not sought to join them as individual named defendants to this claim because (in the case of four of them) it considers that, in the light of the bail conditions, there is not now a significant risk that they will carry out further similar activities, and (in the case of the fifth) it is not sufficiently clear that the conduct of that individual comes within the scope of the injunction.
14. In April 2022 there were protests at an oil storage depot in Warwickshire, which is partly owned by the claimant. These involved the digging of a tunnel under a tanker route, to stop oil tankers leaving the terminal and distributing fuel. An injunction was granted on an application made by the local authority. Protests at the depot have continued. On 9 May 2022 drones were flown over the depot and along its external fence. The claimant thinks this may have been a form of reconnaissance by a group of protestors.
15. On 3 May 2022 more than 50 protestors from Just Stop Oil attended the Nustar Clydebank Oil Depot in Glasgow. They climbed on top of tankers, locked themselves to the entrance of the terminal and climbed onto pipework at height. Their actions halted operations at the depot.

16. The campaign orchestrated by these (and other) groups of environmental activists continues. Just Stop Oil's website says that the disruption will continue "until the government makes a statement that it will end new oil and gas projects in the UK."
17. The claimant says that there is thus an ongoing risk of further incidents of a similar nature to those seen on 28 April 2022.

The risks at petrol stations

18. Aside from the physical damage that has been caused at the petrol stations, and the direct financial impact on the claimant (from lost sales), these types of protest give rise to additional potential risks. Petrol is highly flammable. Ignition can occur not just where an ignition source is brought into contact with the fuel itself, but also where there is a spark (for example from static electricity or the use of a device powered by electricity) in the vicinity of invisible vapour in the surrounding atmosphere. Such vapour does not disperse easily and can travel long distances. There is therefore close regulation, including by the Dangerous Substances and Explosives Atmosphere Regulations 2002, the Highway Code, Health and Safety Executive guidance on "Storing petrol safely" and "Dispensing petrol as a fuel: health and safety guidance for employees", and non-statutory guidance, "Petrol Filling Stations – Guidance on Managing the Risks of Fire and Explosions."
19. The use of mobile telephones on the forecourt (outside a vehicle) is prohibited for that reason (see annex 6 to the Highway Code: "Never smoke, or use a mobile phone, on the forecourt of petrol stations as these are major fire risks and could cause an explosion."). The evidence shows that at the protests on 28 April 2022 protestors used mobile phones on the forecourts to photograph and film their activities. Further, as regards the use of hammers to damage pumps, Mr Austin says: "Breaking the pump screens with any implement could cause a spark and in turn potentially harm anyone in the vicinity. The severity of any vapour cloud ignition could be catastrophic and cause multiple fatalities. Unfortunately, Shell Group has tragically lost several service station employees in Pakistan in the last year when vapour clouds have been ignited during routine operations." I was not shown any positive evidence as to the risks posed by spray paint, glue or other solvents in the vicinity of fuel or fuel vapour, but I was told that this, too, was a potential cause for concern.

The injunction

20. The operative paragraphs of the injunction are:
 - "2. For the period until 4pm on 12 May 2023, and subject to any further order of the Court, the Defendants must not do any of the acts listed in paragraph 3 of this Order in express or implied agreement with any other person, and with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station.
 3. The acts referred to in paragraph 2 of this order are:

- 3.1. blocking or impeding access to any pedestrian or vehicular entrance to a Shell Petrol Station or to a building within the Shell Petrol Station;
 - 3.2. causing damage to any part of a Shell Petrol Station or to any equipment or infrastructure (including but not limited to fuel pumps) upon it;
 - 3.3. operating or disabling any switch or other device in or on a Shell Petrol Station so as to interrupt the supply of fuel from that Shell Petrol Station, or from one of its fuel pumps, or so as to prevent the emergency interruption of the supply of fuel at the Shell Petrol Station.
 - 3.4. affixing or locking themselves, or any object or person, to any part of a Shell Petrol Station, or to any other person or object on or in a Shell Petrol Station;
 - 3.5. erecting any structure in, on or against any part of a Shell Petrol Station;
 - 3.6. spraying, painting, pouring, depositing or writing any substance on to any part of a Shell Petrol Station.
 - 3.7. encouraging or assisting any other person do any of the acts referred to in sub-paragraphs 3.1 to 3.6.”
21. Some of the conduct referred to in paragraph 3 is, in isolation, potentially innocuous (“depositing... any substance on... any part of a Shell Petrol Station” would, literally, cover the disposal of a sweet wrapper in a rubbish bin). The injunction does not prohibit such conduct. The structure is important. The injunction only applies to the defendants. The defendants are those who are “damaging, and/or blocking the use of or access to any Shell petrol station in England and Wales, or to any equipment or infrastructure upon it, by express or implied agreement with others, with the intention of disrupting the sale or supply of fuel to or from the said station.” So, the prohibitions in the injunction only apply to those who fall within that description. Further, the order does not impose a blanket prohibition on the conduct identified in paragraph 3. It only does so where that conduct is undertaken “in express or implied agreement with any other person, and with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station.”
22. It follows that while paragraph 3 is drafted quite widely, its impact is narrowed by the requirements of paragraph 2. This is deliberate. It is because the claimant is not able to maintain an action in respect of the activity in paragraph 3 (read in isolation) in respect of those Shell petrol stations where it has no interest in the land. It is only actionable where that conduct fulfils the ingredients of the tort of conspiracy to injure (as to which see paragraph 26 below). The terms of the injunction are therefore deliberately drafted so as only to capture conduct that amounts to the tort of conspiracy to injure.

The legal controls on the grant of an injunction

23. The injunction is sought on an interim basis before trial, rather than a final basis after trial. It is sought against “persons unknown”. It is sought on a precautionary basis to restrain anticipated future conduct. It interferes with freedom of assembly and expression. For these reasons, the law imposes different tests that must all be satisfied before the order can be made. The claimant must demonstrate:
- (1) There is a serious question to be tried: *American Cyanamid v Ethicon* [1975] AC 396 *per* Lord Diplock at 407G.
 - (2) Damages would not be an adequate remedy for the claimant, but a cross-undertaking in damages would adequately protect the defendants, or
 - (3) The balance of convenience otherwise lies in favour of the grant of the order: *American Cyanamid* *per* Lord Diplock at 408C-F.
 - (4) There is a sufficiently real and imminent risk of damage so as to justify the grant of what is a precautionary injunction: *Islington London Borough Council v Elliott* [2012] EWCA Civ 56 *per* Patten LJ at [28], *Ineos Upstream Ltd v Persons Unknown* [2019] EWCA Civ 515 [2019] 4 WLR 100 *per* Longmore LJ at [34], *Canada Goose UK Retail Limited v Persons Unknown* [2020] EWCA Civ 303 [2020] 1 WLR 2802 *per* Sir Terence Etherton MR at [82(3)].
 - (5) The prohibited acts correspond to the threatened tort and only include lawful conduct if there is no other proportionate means of protecting the claimant’s rights: *Canada Goose* at [78] and [82(5)].
 - (6) The terms of the injunction are sufficiently clear and precise: *Canada Goose* at [82(6)].
 - (7) The injunction has clear geographical and temporal limits: *Canada Goose* at [82(7)] (as refined and explained in *Barking and Dagenham LBC v Persons Unknown* [2022] EWCA Civ 13 *per* Sir Geoffrey Vos MR at [79] - [92]).
 - (8) The defendants have not been identified but are, in principle, capable of being identified and served with the order: *Canada Goose* at [82(1)] and [82(4)].
 - (9) The defendants are identified in the Claim Form (and the injunction) by reference to their conduct: *Canada Goose* at [82(2)].
 - (10) The interferences with the defendants’ rights of free assembly and expression are necessary for and proportionate to the need to protect the claimant’s rights: articles 10(2) and 11(2) of the European Convention on Human Rights (“ECHR”), read with section 6(1) of the Human Rights Act 1998.
 - (11) All practical steps have been taken to notify the defendants: section 12(2) of the Human Rights Act 1998.
 - (12) The order does not restrain “publication”, or, if it does, the claimant is likely to establish at trial that publication should not be allowed: section 12(3) of the Human Rights Act 1998.

24. Section 12 Human Rights Act 1998 (see paragraphs 23(11) and (12) above) states:

“12 Freedom of expression.

- (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
- (2) 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.
- (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.
- (4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—
 - (a) the extent to which—
 - (i) the material has, or is about to, become available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published;
 - (b) any relevant privacy code.
- (5) In this section—

“court” includes a tribunal; and

“relief” includes any remedy or order (other than in criminal proceedings).”

(1) Serious issue to be tried

25. The claimant has a strong case that on 28 April 2022 the defendants committed the activities identified in paragraph 3 of the draft order: those activities are shown in photographs and videos. There are apparent instances of trespass to goods (the damage to the petrol pumps and the application of glue), trespass to land (the general implied licence to enter for the purpose of purchasing petrol does not extend to what the defendants did) and nuisance (preventing access to the petrol stations). None of this gives rise to a right of action by the claimant in respect of those Shell petrol stations where it does not have an interest in the land and does not own the petrol pumps. It is therefore not, itself, able to maintain a claim in trespass or nuisance in respect of all Shell petrol stations.
26. The claim advanced by the claimant is framed in the tort of conspiracy to injure by unlawful means (“conspiracy to injure”). The ingredients of that tort are identified in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9 [2020] 4 WLR 29 *per* Leggatt LJ at [18]: (a) an unlawful act by the defendant, (b) with the intention of injuring the claimant, (c) pursuant to an agreement with others, (d) which injures the claimant.
27. As I have explained, the claimant has a strong case that the defendants have acted unlawfully. To establish the tort of conspiracy to injure, it is not necessary to show that the underlying unlawful conduct (to satisfy limb (a)) is actionable by the claimant. Criminal conduct which is not actionable in tort can suffice (so long as it is directed at the claimant): *Revenue and Customs Commissioners v Total Network SL* [2008] UKHL 19 [2008] 1 AC 1174 *per* Lord Walker at [94] and Lord Hope at [44]. A breach of contract can also suffice, even though it is not actionable by the claimant: *The Racing Partnership Ltd v Done Bros (Cash Betting) Ltd* [2020] EWCA Civ 1300 [2021] Ch 233 *per* Arnold LJ at [155].
28. The question of whether a tort, or a breach of statutory duty, can suffice was left open by the Supreme Court in *JST BTS Bank v Ablyaszov (No 14)* [2018] UKSC 19 [2020] AC 727. Lord Sumption and Lord Lloyd-Jones observed, at [15], that the issue was complex, not least because it might – in the case of a breach of statutory duty – depend on the purpose and scope of the underlying statute and whether that is consistent “with its deployment as an element in the tort of conspiracy.”
29. For the purposes of the present case, it is not necessary to decide whether a breach of statutory duty can found a claim for conspiracy to injure, or whether every (other) tort can do so. It is only necessary to decide whether the claimant has established a serious issue to be tried as to whether the torts that are here in play may suffice as the unlawful act necessary to found a claim for conspiracy to injure. Those torts involve interference with rights in land and goods where those rights are being exercised for the benefit of the claimant (where the petrol station is being operated under the claimant’s brand, selling the claimant’s fuel). Recognising the torts as capable of supporting a claim in conspiracy to injure does not undermine or undercut the rationale for those torts. It would be anomalous if a breach of contract (where the existence of the cause of action is dependent on the choice of the contracting parties) could support a claim for conspiracy to injure, but a claim for trespass could not do so. Likewise, it would be anomalous if trespass to goods did not suffice given that criminal damage does. I am

therefore satisfied that the claimant has established a serious issue to be tried in respect of a relevant unlawful act.

30. There is no difficulty in establishing a serious issue to be tried in respect of the remaining elements of the tort. The intention of the defendants' unlawful activities is plain from their conduct and from the published statements on the websites of the protest groups: it is to disrupt the sale of fuel in order to draw attention to the contribution that fossil fuels make to climate change. They are not solitary activities but are protests involving numbers of activists acting in concert. They therefore apparently undertake their protest activities in agreement with one another. Loss is occasioned because the petrol stations are unable to sell the claimant's fuel.
31. I am therefore satisfied that there is a serious issue to be tried.
32. Further, the evidence advanced by the claimant appears credible and is supported by material that is published by the groups to which the defendants appear to be aligned. That evidence is therefore likely to be accepted at trial. I would (if this had been a trial) wished to have clearer and more detailed evidence (perhaps including expert evidence) as to the risks that arise from the use of mobile phones, glue and spray paint in close proximity to fuel, but it is not necessary precisely to calibrate those risks to determine this application. It is also, I find, likely that the court at trial will adopt the legal analysis set out above in respect of the tort of conspiracy to injure (including, in particular, that the necessary unlawful act could be a tort that is not itself actionable by the claimant). It follows that not only is there a serious issue to be tried, but the claimant is also more likely than not to succeed at trial in establishing its claim.

(2) Adequacy of damages

33. The claimant asserts that damages are not an adequate remedy because they could not be quantified. It is difficult to see why that should be so. Any losses ought to be capable of assessment. For example, loss of sales can be assessed by (broadly) identifying the time period when sales were affected, and comparing the sales made during that period with the sales made during the equivalent period the previous week. The possible difficulties in calculation are not a convincing reason for concluding that damages are an inadequate remedy.
34. There is, though, no evidence that the defendants have the financial means to satisfy an award of damages. It is very possible that any award of damages would not, practically, be enforceable. Further, the defendants' conduct gives rise to potential health and safety risks. If such risks materialise then they could not adequately be remedied by way of an award of damages to the claimant.
35. For these reasons, damages are not an adequate remedy for the claimant.
36. Conversely, if any defendant sustains loss as a result of the injunction, then the claimant undertakes to pay any damages which the court considers ought to be paid. It has the means to satisfy any such order. The injunction interferes with rights of expression and assembly, but it does not impact on the core of those rights. It does not prevent the defendants from congregating and expressing their opposition to the claimant's conduct (including in a loud or disruptive fashion, in a location close to Shell petrol stations), so long as it is not done in a way which involves the unlawful conduct prohibited by

paragraphs 2 and 3 of the injunction. To the extent that there is an interference with rights of assembly and expression then (if a court subsequently finds that to be unjustified) that can be met by the cross-undertaking: interferences with such rights to assembly and expression can be remedied by an award of damages, even where the loss is not monetary in nature (see section 8 of the Human Rights Act 1998).

37. So, while damages are not an adequate remedy for the claimant, the cross-undertaking in damages is an adequate remedy for the defendants.

(3) Balance of convenience

38. The fact that damages are not an adequate remedy for the claimant but that the cross-undertaking is adequate protection for the defendants means that it may not be necessary separately to consider the balance of convenience.
39. In any event, the balance of convenience favours the grant of injunctive relief. If an injunction is not granted, then there is a risk of substantial damage to the claimant's legal rights which might not be capable of remedy. Conversely, it is open to the defendants (or anybody else that is affected by the injunction) at any point to apply to vary or set aside the order. Further, although the injunction has a wide effect, there are both temporal and geographical restrictions. It will only run for a maximum of a year before having to be reconsidered by a court. It only applies to Shell petrol stations (not other places where the claimant does business).

(4) Real and imminent risk of harm

40. Harm has already occurred as a result of the protests on 28 April 2022. The risk of repetition is demonstrated by the further protests that have occurred since then, and the public statements that have been made by protest groups as to their determination to continue with similar activities.
41. If the claimant is given sufficient warning of a protest that would involve a conspiracy to injure, then it can seek injunctive relief in respect of that specific event. If there were grounds for confidence that such warnings will be given, then the risk now (in advance of any such warning) might not be sufficiently imminent to justify a more general injunction. There is some indication that protest groups sometimes engage with the police and give prior warning of planned activities. But it is unlikely that sufficient warning would be given to enable an injunction to be obtained. That would be self-defeating. Further, it is not always the case that warnings are given. Extinction Rebellion say in terms (on its website) that it will not always give such warnings. Moreover, the claimant did not receive sufficient (or any) warning of the activities on 28 April 2022.
42. Accordingly, I am satisfied that this application is not premature, and that the risk now is sufficiently imminent. The claimant may not have a further opportunity to seek an injunction before a further protest causes actionable harm.

(5) Prohibited acts to correspond to the threatened tort

43. The acts that are prohibited by the injunction necessarily amount to conduct that constitutes the tort of conspiracy to injure. The structure and terms of the injunction have been drafted to achieve that.
44. It would be permissible for an injunction to prohibit behaviour which is otherwise lawful (or which is not actionable by the claimant) if there are no other proportionate means of protecting the claimant's rights. The claimant does not contend that is the case here, because an order that closely corresponds to the threatened tort will afford adequate protection. I agree.

(6) Terms sufficiently clear and precise

45. The terms of the injunction (see paragraph 20 above) are in clear and simple language that avoids technical legal expression.
46. It is usually desirable that such terms should, so far as possible, be based on objective conduct rather than subjective intention. The drafting of paragraph 3 satisfies that criterion. There is an element of subjective intention in paragraph 2 ("with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station") but that is unavoidable because of the nature of the tort of conspiracy to injure. It is the inevitable price to be paid for closely tracking the tort. The alternative would be to leave out the subjective element and focus only on the objective conduct. That would give wider protection than is necessary or proportionate. It is also necessary to introduce the language of intention to avoid some of the prohibitions having a much broader effect than could ever be justified (for example, the sweet wrapper example at paragraph 21 above).

(7) Clear geographical and temporal limits

47. There are clear geographical limits to the order: it applies only to Shell petrol stations.
48. It is convenient, at this point, to address the question of whether those geographical limits can be justified as being no more than is necessary and proportionate to protect the claimant's interests (so as to ensure compatibility with articles 10 and 11 ECHR – see paragraphs 55-62 below). The only Shell petrol station where acts of conspiracy to injure have occurred so far is on the M25. It is perhaps unsurprising that petrol stations of that profile (large, and on the London orbital motorway) have been targeted. It would be possible to grant an injunction that only applied to the station that has been targeted, but that would leave many other petrol stations vulnerable. The claimant's interests would not be sufficiently protected. It would be possible to fashion an injunction that only targeted certain types of petrol station (for example, those on motorways, or those on trunk roads). Again, that would not properly protect the claimant's interests because there would be plenty of other available targets. It is possible to envisage that the risk at some individual Shell petrol stations is very low, but it is not practical to draft the order in a way that excludes such petrol stations: that would be self-defeating because any excluded station would then be at a heightened risk. I have concluded that the ambit of coverage is justified as being necessary and proportionate to protect the claimant's interests.

49. There is also a clear temporal limit. It will not last for longer than 12 months, without a further order of the court. *Canada Goose*, on one view, might suggest (and at first instance in the cases that led to *Barking and Dagenham* was taken as suggesting) that interim orders should not last for as long as this, that there is an obligation to progress litigation to a final hearing, and that an interim order should only be imposed for so long as is necessary for the case to be progressed to a final hearing. However, the notion that there is a fundamental difference between what can be justified by an interim order, and what can be justified by a final order, was dispelled in *Barking and Dagenham*. In that case, Sir Geoffrey Vos MR made it clear that both interim and final orders should be time-limited, and that it is good practice to provide for a review. Sir Geoffrey Vos MR agreed with the suggestion of Coulson LJ in *Canada Goose* that “persons unknown injunctions against unauthorised encampments should be limited in time, perhaps to one year at a time before a review.” I do not consider it appropriate to grant this interim injunction for longer than a year. But I consider that a year can be justified (bearing in mind the right to apply to vary or set aside at any earlier point). The pattern of protest activity is unpredictable. Providing a much shorter time period might mean that the court will be in no better position than it is now to predict what is necessary to protect the claimant’s interests. Moreover, the period of a year will allow the claimant to progress the litigation so that if continued restraint is necessary after the current order expires the court may have the option of making a final order (albeit, as *Barking and Dagenham* shows, that too will have to be time-limited).

(8) Persons unknown are unidentified but could, in principle, be identified and served

50. Five of those who took part in the protests on 28 April 2022 have been identified. For the reasons explained at paragraph 13 above, the claimant does not seek injunctive relief against them. Others who were involved on 28 April 2022, and others who may undertake such activities in the future, have not been identified. In principle, as and when they take part in such protests, they could be identified and could then be personally served with court documents.
51. In the interim, the issue as to how service should take place was the subject of careful consideration by McGowan J and is reflected in the order that was made on 5 May 2022. That provides on the face of the order that the matter would be considered by the court on 13 May 2022. It also provides that the claimant must send a copy of the order to more than 50 email addresses that are linked with the protest groups. That was done. It also provides that a copy should be made available on the claimant’s website “shell.co.uk”. Again, that was done. The frontpage of the website contains a link, with the text “Notice of injunction”, from which the court documents, including the order of 5 May 2022, can be downloaded. The order also requires that the claimant use all reasonable endeavours to display notices at the entrances of every Shell Petrol station (and also elsewhere within the station) that identify a point of contact from which the order can be requested and identify a website where it can be downloaded. At the time of the hearing, the claimant had done this in respect of well over 50% of Shell petrol stations.
52. As to the future, there is good reason to make slight adjustments to the order that was made by McGowan J. That order was designed only to cover the short period between 5 May 2022 and 13 May 2022. The injunction will (subject to any further order) now remain in place for a longer period of time. It is appropriate therefore to require the claimant not just to take steps to ensure that the notices are displayed at the Shell petrol

stations, but also now to take steps to ensure that those notices remain in place. On the other hand, the order made by McGowan J required a degree of saturation (notices on every entrance to the petrol station, and on every upright steel structure forming part of the canopy infrastructure, and every entrance door to every retail establishment at the petrol station). That was appropriate to ensure initial notification of the existence of the order, but it is logistically difficult to maintain in the long term. It remains necessary for there to be clear notices at every Shell petrol station that draw attention to the injunction, but I do not consider that it remains necessary for these to be displayed on every single upright steel structure. It is also possible to make the order a little more flexible. That will ensure that notices are clearly visible but that the precise mechanism by which this is done can be tailored to the circumstances of individual petrol stations. I will adjust the order accordingly. This means that it is practically unlikely that a defendant could embark on conduct that would be in breach of the injunction without knowing of its existence.

53. By these means I am satisfied that effective service on the defendants can continue to take place.

(9) Persons unknown are identified by reference to their conduct

54. The persons unknown are described in the claim form, and in the injunction, in the way set out in the heading to this judgment. That description is in clear and simple language and relates to their conduct. It is usually desirable that such descriptions should, so far as possible, be based on objective conduct rather than subjective intention. The description that has been used does that. There is an element of subjective intention (“with the intention of disrupting the sale or supply of fuel to or from the said station”) but (as with the terms of the injunction) that is unavoidable because of the nature of the tort of conspiracy to injure.

(10) Is the injunction necessary for and proportionate to the need to protect the claimant’s rights?

55. The injunction interferes with the defendants’ rights to assemble and express their opposition to the fossil fuel industry.
56. Unless such interference can be justified, it is incompatible with the defendants’ rights under articles 10 and 11 ECHR and may not therefore be granted (see sections 1 and 6 of the Human Rights Act 1998). Articles 10 and 11 ECHR are not absolute rights. Interferences with those rights can be justified where they are necessary and proportionate to the need to protect the claimant’s rights: articles 10(2) and 11(2) ECHR. Proportionality is assessed by considering if (i) the aim is sufficiently important to justify interference with a fundamental right, (ii) there is a rational connection between the means chosen and the aim in view, (iii) there is no less intrusive measure which could achieve that aim, and (iv) a fair balance has been struck between the rights of the defendants and the general interest of the community, including the rights of others: *DPP v Ziegler* [2021] UKSC 23 [2022] AC 408 *per* Lord Sales JSC at [125].
57. Here, the aim is to protect the claimant’s right to carry on its business. On the other hand, the defendants are motivated by matters of the greatest importance. The defendants might say that there is an overwhelming global scientific consensus that the business in which the claimant is engaged is contributing to the climate crisis and is

thereby putting the world at risk, and that the claimant's interests pale into insignificance by comparison. This is not, however, "a particularly weighty factor: otherwise judges would find themselves according greater protection to views which they think important" – *City of London v Samede* [2012] EWCA Civ 160 [2012] 2 All ER 1039 *per* Lord Neuberger at [41]. It is not for the court, on this application, to adjudicate on the important underlying political and policy issues raised by these protests. It is for Parliament to determine whether legal restrictions should be imposed on the trade in fossil fuels. That is why the defendants' actions are directed at securing a change in Government policy. The claimant is entitled to ask the court to uphold and enforce its legal rights, including its right to engage in a lawful business without tortious interference. Those rights are prescribed by law and their enforcement is necessary in a democratic society. The aim of the injunction is therefore sufficiently important to justify interferences with the defendants' rights of assembly and expression: cf *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 *per* Morgan J at [105] and *Cuadrilla* *per* Leggatt LJ at [45] and [50].

58. There is a rational connection between the terms of the injunction and the aim that it seeks to achieve. As explained at paragraphs 43-44 above, the terms are constructed so as only to prohibit activity that would amount to the tort of conspiracy to injure. That also means that the terms are no more intrusive than necessary to achieve the aim of the injunction. For the reasons given above (at paragraphs 47-49) the territorial and temporal provisions within the injunction are no more than is necessary to achieve its aim.
59. The injunction also strikes a fair balance between the important rights of the defendants to assembly and expression, and the rights of the claimant. It protects the latter so far as it is necessary to do so, but no further. It does not remove the rights of the defendants to assemble and express their opposition to the fossil fuel industry. It does not prevent them from expressing their views (including in a way that is noisy and/or otherwise disruptive) in close proximity to places where that industry takes place (including Shell petrol stations). It does not therefore prevent activities that are "at the core of these Convention rights" or which form "the essence" of such rights – see *DPP v Cuciurean* [2022] EWHC 736 *per* Lord Burnett of Maldon CJ at [31], [36] and [46]. Although the defendants' activities come within the scope of articles 10 and 11, they are right at the margin of what is protected.
60. All that is prohibited is specified deliberate tortious conduct (in one sense deliberate doubly tortious conduct, because of the nature of conspiracy to injure) that is carried out as part of an agreement and with the intention of harming the claimant's lawful business interests. It would not strike a fair balance between the competing rights simply to leave matters to the police to enforce the criminal law. Such enforcement could only, practicably, take place after the event, meaning that loss to the claimant is inevitable. Moreover, some of the activities that the injunction seeks to restrain are not breaches of the criminal law and could not be enforced by the exercise of conventional policing functions.
61. In *Cuadrilla* Leggatt LJ said (at [94]-[95]):

"... the disruption caused was not a side-effect of protest held in a public place but was an intended aim of the protest... this is an important distinction. ...intentional disruption of activities of

others is not “at the core” of the freedom protected by article 11 of the Convention one reason for this [is] that the essence of the rights of peaceful assembly and freedom of expression is the opportunity to persuade others... ..persuasion is very different from attempting (through physical obstruction or similar conduct) to *compel* others to act in a way you desire.

Where... individuals not only resort to compulsion to try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect their conscientious motives will insulate them from the sanction of imprisonment.” [original emphasis]

62. The context was different (the case was concerned with an appeal against an order for committal), but the same essential distinction applies to the fair balance question. Here, the injunction restrains protests which have as their aim (rather than as a side-effect) intentional unlawful interference with the claimant’s activities.

(11) Notification of defendants

63. Section 12(2) of the Human Rights Act 1998 (see paragraph 24 above) requires that the claimant has taken all practical steps to notify the defendants of its application, or else that there are compelling reasons not to notify the defendants.
64. The identity of the defendants is unknown. It was thus impossible to serve them personally with the application. As explained at paragraph 51 above, McGowan J made extensive directions in respect of the service of the injunction (which contains details of the return date).
65. By these means, I am satisfied that the claimant has taken all practical steps to notify the defendants of its application (and I note that Mrs Friel was aware of the application, because she attended the hearing).

(12) Does the order restrain “publication”?

66. The injunction affects the exercise of the Convention right to freedom of expression. Section 12(3) of the Human Rights Act 1998 (see paragraph 24 above) provides that “[n]o 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.”
67. Nothing in the injunction explicitly restrains publication of anything. Nor does it have that effect. The defendants can publish anything they wish without breaching the injunction. The activities that the injunction restrains do not include publication. It does not, for example, restrain the publication of photographs and videos of the protests that have already taken place. Nor does it prevent anyone from, for example, chanting anything, or from displaying any message on any placard or from placing any material on any website or social media site.
68. Lord Nicholls explained the origin of section 12(3) in *Cream Holdings Limited v Banerjee* [2004] UKHL 44 [2005] 1 AC 253 (at [15]). There was concern that the

incorporation of article 8 ECHR into domestic law might result in the courts readily granting interim applications to restrain the publication by newspapers (or others) of material that interferes with privacy rights. Parliament enacted section 12(3) to address that concern, by setting a high threshold for the grant of an interim injunction in such a case. It codifies the prior restraint principle that previously operated at common law. The policy motivation that gave rise to section 12(3) has no application here.

69. The word “publication” does not have an unduly narrow meaning so as to apply only to commercial publications: “publication does not mean commercial publication, but communication to a reader or hearer other than the claimant” – *Lachaux v Independent Print Limited* [2019] UKSC 27 [2020] AC 612 *per* Lord Sumption at [18]. Lord Sumption’s observation was made in the context of defamation, but Parliament legislated against this well-established backdrop. Section 12(3) should be applied accordingly so that “publication” covers “any form of communication”: *Birmingham City Council v Asfar* [2019] EWHC 1560 (QB) *per* Warby J at [60].
70. The meaning set out by Lord Sumption in *Lachaux* is sufficient to achieve the underlying policy intention. There is therefore no good reason for giving the word “publication” an artificially broad meaning so as to cover (for example) demonstrative acts of trespass in the course of a protest. Such acts are intended to publicise the protestor’s views, but they do not amount to a publication.
71. Further, the wording of section 12 itself indicates that the word “publication” has a narrower reach than the term “freedom of expression”. That is because the term “freedom of expression” is expressly used in the side-heading to section 12, and in section 12(1), and is used (by reference (“no such relief”)) in section 12(2) and section 12(3). The term “publication” is then used in section 12(3) to signify one form of expression. If Parliament had intended section 12(3) to apply to all forms of expression, then there would have been no need to introduce the word “publication”.
72. I therefore respectfully agree with the observation of Lavender J in *National Highways Limited v Persons Unknown* [2021] EWHC 3081 (QB) at [41] that section 12(3) is “not applicable” in this context.
73. It is, though, necessary to address the decisions in *Ineos Upstream v Persons Unknown* [2017] EWHC 2945. That case concerned an injunction that appears to have been similar in scope to the injunction in the present case. At first instance, Morgan J held (a) that section 12(3) applied (at [86]) and (b) the statutory test was satisfied because if the court accepted the evidence put forward by the claimants, then it would be likely, at trial, to grant a final injunction (at [98] and [105]). As to the applicability of section 12(3), Morgan J found the injunction that he was considering might affect the exercise of the right to freedom of expression. That was plainly correct, because the injunction restrained activities that were intended to express support for a particular cause. It does not, however, necessarily follow that section 12(3) is engaged (because, as above, “publication” is not the same as “expression”). There does not appear to have been any argument on that point – rather the focus was on the question of whether there was an interference with the right to freedom of expression. To the extent that Morgan J in *Ineos* and Lavender J in *National Highways* reached different conclusions about the applicability of section 12(3) in this context, I respectfully adopt the latter’s approach for the reasons I have given.

74. On appeal ([2019] EWCA Civ 515 [2019] 4 WLR 100), there was no challenge to the holding of Morgan J that section 12(3) applies. The Court of Appeal did not therefore consider or rule on that question. It did not need to do so because it was not in issue. The only issue in relation to section 12(3) was whether (on the assumed basis that it applied) the judge was wrong to approach the statutory test without subjecting the claimants' evidence to critical scrutiny. In that respect, the court accepted the "submissions of principle" and remitted the case for the judge to reconsider "whether interim relief should be granted in the light of section 12(3) HRA."
75. The Court of Appeal decision in *Ineos* is authority for the approach that should be taken where section 12(3) applies, but (because it was assumed rather than determined that section 12(3) applied) I do not consider that it is authority that section 12(3) applies in the circumstances of the present case: *Re Hetherington* [1990] Ch 1 *per* Sir Nicholas Lord Browne Wilkinson VC at 10, *R (Khadim) v Brent London Borough Council Housing Benefit Review Board* [2001] QB 955 *per* Buxton LJ at [33] and [38].
76. *Ineos* does not therefore determine that section 12(3) applies to a case such as the present where there is no question of restraining the defendants from publishing anything. *Ineos* does not mandate a finding in this case that section 12(3) applies. I have concluded that section 12(3) does not apply. If I am wrong, then I have, anyway, found that the claimant is likely to succeed at a final trial (see paragraph 32 above).

Outcome

77. The claimant succeeds in securing the continuation of the order made by McGowan J so as to restrain, for a period of up to a year, at any Shell petrol station, the specified acts of the defendants (set out at paragraph 20 above) that amount to a conspiracy to injure the claimant.



Neutral Citation Number: [2022] EWHC 1324 (QB)

Case No: QB-2022-001317

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 May 2022

Before:

HIS HONOUR JUDGE SIMON
(Sitting as a Judge of the High Court)

Between:

(1) THURROCK COUNCIL
(2) ESSEX COUNTY COUNCIL

Claimants

- and -

(1) MADELINE ADAMS

Defendants

**(2)-(222) OTHER NAMED DEFENDANTS AS
LISTED AT SCHEDULE 1 TO THE CLAIM
FORM**

**(223) PERSONS UNKNOWN, WHO ARE FOR
THE PURPOSE OF PROTESTING, CAUSING
THE BLOCKING, ENDANGERING, SLOWING
DOWN, OBSTRUCTING, PREVENTING OR
OTHERWISE INTERFERING WITH THE
FREE FLOW OF TRAFFIC ON TO, OFF OR
ALONG THE ROADS LISTED AT ANNEXE 1 TO
THE CLAIM FORM**

**(224) PERSONS UNKNOWN, WHO ARE FOR
THE PURPOSE OF PROTESTING, AND
WITHOUT THE PERMISSION OF THE
REGISTERED KEEPER OF THE
VEHICLE, ENTERING, CLIMBING ON,
CLIMBING INTO, CLIMBING UNDER, OR IN
ANY WAY AFFIXING THEMSELVES OR**

**AFFIXING ANY ITEM TO ANY
VEHICLE TRAVELLING ON TO, OFF, ALONG
OR WHICH IS ACCESSING OR EXITING THE
ROADS LISTED AT ANNEXE 1 TO THE CLAIM
FORM**

**(225) PERSONS UNKNOWN, WHO ARE FOR
THE PURPOSE OF PROTESTING, CAUSING
THE BLOCKING, ENDANGERING, SLOWING
DOWN, OBSTRUCTING, PREVENTING OR
OTHERWISE INTERFERING WITH
VEHICULAR ACCESS TO, INTO OR OFF ANY
PETROL STATION OR ITS FORECOURT
WITHIN THE ADMINISTRATIVE AREA OF
THURROCK (AS
MARKED ON THE MAP AT ANNEXE 2 TO THE
CLAIM FORM)**

**(226) PERSONS UNKNOWN, WHO ARE FOR
THE PURPOSE OF PROTESTING, CAUSING
THE BLOCKING, ENDANGERING, SLOWING
DOWN, OBSTRUCTING, PREVENTING OR
OTHERWISE INTERFERING WITH
VEHICULAR ACCESS TO OR FROM ANY
PETROL STATION OR ITS FORECOURT
WITHIN THE ADMINISTRATIVE AREA OF
ESSEX (AS MARKED
ON THE MAP AT ANNEXE 3 TO THE CLAIM
FORM)**

**(227) PERSONS UNKNOWN, WHO ARE FOR
THE PURPOSE OF PROTESTING, BLOCKING,
PREVENTING OR OTHERWISE INTERFERING
WITH THE
OFFLOADING BY DELIVERY TANKERS OF
FUEL SUPPLIES AND/OR THE REFUELLING OF
VEHICLES AT ANY PETROL STATION WITHIN
THE ADMINISTRATIVE AREA OF THURROCK
(AS MARKED ON THE MAP AT
ANNEXE 2 TO THE CLAIM FORM)**

**(228) PERSONS UNKNOWN, WHO ARE FOR
THE PURPOSE OF PROTESTING, BLOCKING,
PREVENTING OR OTHERWISE INTERFERING
WITH THE OFFLOADING BY DELIVERY
TANKERS OF FUEL SUPPLIES AND/OR THE
REFUELLING OF VEHICLES AT ANY PETROL
STATION WITHIN THE ADMINISTRATIVE
AREA OF ESSEX (AS MARKED ON THE MAP
AT ANNEXE 3 TO THE CLAIM FORM)**

**(229) PERSONS UNKNOWN WHO ARE
TRESPASSING ON, UNDER OR ADJACENT TO
THE ROADS LISTED AT ANNEXE 1 TO THE
CLAIM FORM BY UNDERTAKING**

**EXCAVATIONS, DIGGING, DRILLING AND/OR
TUNNELLING WITHOUT THE PERMISSION OF
THE RELEVANT HIGHWAY AUTHORITY**

Ms Caroline Bolton & Ms Natalie Pratt (instructed by **Sharpe Pritchard**) for the **Claimants**
Mr Stephen Simblet QC (instructed by **Hodge Jones & Allen**) for the **63rd Defendant, Ms**
Ella Eason

Hearing dates: 10 & 11 May 2022 & 27 May 2022

APPROVED JUDGMENT

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

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HIS HONOUR JUDGE SIMON:

Introduction

1. The Claimants in these injunction proceedings are Thurrock Council (Thurrock) and Essex County Council (Essex). They are represented by Caroline Bolton and Natalie Pratt. On 24 April 2022 at an Out of Hours hearing without notice before Ritchie J, the Claimants applied for and obtained an interim injunction (the injunction) in the form annexed to this judgment as Annex 2. The injunction was made against 222 named Defendants and seven categories of persons unknown. The categories appear in the heading of this judgment as they appeared in the injunction.
2. The injunction provided, among other things, for a return date on 10 May 2022 with a time estimate of two days. At the return date, the 63rd Defendant, Ella Eason, was present and represented by Stephen Simblet QC. Also present, though neither a named Defendant nor a person seeking to be joined to the proceedings, was Jessica Branch, who wished her statement to be considered in support of Ms Eason's opposition to the continuation of the injunction.
3. The injunction in its present form contains 19 prohibitions, the specifics of which are discussed further below. In broad terms, they seek to prohibit what the Claimants argue are acts of public nuisance and/or trespass in the administrative areas for which Thurrock and Essex are responsible.
4. As a result of the breadth of issues and submissions in this case, it has been necessary to summarise, albeit in some detail, those submissions in the body of the judgment. I am grateful to Ms Bolton and Mr Simblet QC for their assistance with the complexities of the case.

Background

5. Thurrock is an administrative area within Essex and encompasses, for the purposes of these proceedings, three fuel terminals (the Thurrock terminals). They are:

The Navigator Fuel Terminal, Oliver Road, West Thurrock RM20 3ED – the main entrance to the site is off Burnley Road/Oliver Road in West Thurrock. There is a secondary exit from the site on Oliver Close;

The Esso Fuel Terminal, London Road, Purfleet RM19 1RS – the primary access route to the site is off the A1090, London Road, Purfleet; and

Exolum Storage Ltd, off Askews Farm Lane, London Road, Grays RM17 5YZ.

6. In addition, a fourth fuel terminal, the Oikos site, is situated at Haven Road, Hole Haven Wharf, Canvey Island SS8 0NR, within the administrative area of Essex. Each of these sites is subject to the Control of Major Accidents Hazards (COMAH) Regulations 2015 and each has a risk assessment associated with this status.
7. The significance of these fuel terminals in their respective areas is that they, and the surrounding highway network, have been the target of repeated protest action by a large number of individuals, specifically during the period 1 – 15 April 2022. The banner, so to speak, under which many of the individuals participated in the protests was Just Stop Oil (JSO). In common with other protest groups, such as Extinction Rebellion and Insulate Britain, JSO advocates direct action to raise awareness of concerns about climate change and the need for urgent action. JSO's protests in Thurrock have been directed at the Thurrock terminals due to their significance as directly connected with fossil fuels. The Claimants do not say that every person who has taken part in the protests thus far, identified or otherwise, is necessarily an active member of JSO. It is in the nature of such groups that they have no formalised membership structure, but attract people variously to specific events. Individuals may also take part in protests promoted by other groups. In the present proceedings, the Claimants suggest that Extinction Rebellion (XR) and a group called Youth Climate Swarm (YCS) have also encouraged and facilitated some of the action seen in Thurrock.
8. The named Defendants in these proceedings are those who have been arrested by Essex Police (and officers from other forces providing mutual aid), some of them more than once, for involvement in the actions complained of by the Claimants.

Submissions

9. The Claimants made extensive reference to the statements and exhibits filed in support of the interim injunction being continued. Rather than quoting large swathes within the body of the judgment, I have précised all of the written evidence in a separate document as Annex 3 to this judgment.
10. Ms Bolton began her oral submissions, building on her skeleton argument filed in advance and a further skeleton in reply to that of Mr Simblet, by setting out the chronology, noting that the injunction was not pure *quia timet*, because in relation to the Thurrock terminals it sought to restrain the resumption of activity already undertaken between 1 – 15 April 2022. It was *quia timet* in relation to the Oikos terminal, but based on the experience in Thurrock, the publicly stated intentions of JSO (Phase 2a activity having been experienced in other parts of the country) and the suspicious 'visitor' at the

terminal that suggested it was being surveyed, the injunctive relief was well founded.

11. Ms Bolton clarified the underlying causes of action relied on, which are trespass and public nuisance. For present purposes at least, the Claimants do not seek to invoke the Court's power to injunct in support of the criminal law. She made reference to the detailed evidence of Mr Adesina as to the significance of the Thurrock terminals and the level of potential impact on all residents, though particularly emergency and essential services, if fuel supplies are disrupted. Expressing sympathy with the protesters' concerns for the future, she argued that the protests would cause significant harm to those in the present, realistically including potential loss of life. The protests had created, and if repeated would create, a real risk of public safety to the protesters, emergency services and the wider public. The Claimants bring their claim in public nuisance under s222 Local Government Act 1972, extending to the garage forecourts
12. Ms Bolton addressed the trespass aspect of the application by reference to the tunnelling undertaken by protesters extending under the highway and coming very close to significant infrastructure. This had no place in peaceful protest and risked harm to all. As the Claimants are also the relevant Highways Authority, they bring the claim in trespass, there being no reasonable use of the highway when it involves tunnelling. However, the Claimants' powers pursuant to s222 are equally in play in respect of protest activity amounting to trespass. Ms Bolton pointed out that many of the cases in *Barking* covered trespass with large numbers of defendants and far more extensive orders than in the instant application.
13. Ms Bolton then dealt with the evidence of TDCS Cronin which provided an overview of what the police have been dealing with during the period 1 – 15 April 2022. The specific incidents during this period within Thurrock appear in Annex 4 to this judgment. The police evidence also dealt with the compilation of the list of named Defendants. Ms Bolton emphasised that at this interim stage, where justified, an injunction can be granted against those concisely referred to as 'newcomers'. She submitted that *Cameron* was not concerned with 'newcomers' and to that extent *Canada Goose (CA)* had taken a "wrong turn" in thinking that it was. *Barking* has now made clear that category 2 in *Cameron* is not concerned with 'newcomers'. The Defendants in the instant case are *Cameron* category 1 (or in the process of becoming such) and 'newcomers'. The case law now makes clear the need to define persons unknown by the acts to be restrained as unlawful. Ms Bolton contrasted the decision in *Ineos (CA)*, where the Court concluded that there was inadequate evidence of reasonable apprehension, with the current application which could rely on events that had already taken place, the harm

caused and the intelligence as to future anticipated actions. She pointed to the expansion through paragraph 50 of *Cuadrilla* of sub-paragraph 4 of Longmore LJ's 'tentative' crafting of the requirements for interim injunctions against persons unknown at paragraph 34 of *Ineos (CA)*, submitting that if I took the view that it was proportionate to restrain then I would be entitled to include potentially lawful conduct if this were the only way to achieve effective protection. In addressing the 'persons unknown' element, Ms Bolton submitted that *Ineos (CA)* clearly categorised 'newcomers' as those other than the two categories described in *Cameron*. The *Ineos (CA)* criteria at paragraph 34 were all satisfied in the present application. Indeed, she contended, *Ineos* involved purely apprehension of activity, whereas the events of 1-15 April in Thurrock are a clear foundation for seeking the injunction. The case of *Gamell* was also relevant to the question of 'newcomers' in that the Claimants were seeking to communicate to as many people as possible the existence, and then the terms, of the injunction. This was why the signs had QR codes to permit easy access to the details. The injunction does not bite until a person comes to the area and sees the notices, which is the whole point of the 'newcomer' principle.

14. Ms Bolton referred to TDCS Cronin's description of the particular dangers involved when there is any interception of a tanker from one of the fuel terminals, given the nature of the load being transported. She referred to the potential consequences of any protester climbing onto a tanker as "possibly unthinkable". When it happens on a highway, the entire area has to be secured and it creates risk for the protester(s) and those tasked with getting them down, not just from working at height, but also any damage to the integrity of the tanker. Standard methods of releasing protesters from glue or lock-on devices cannot be used, for obvious safety reasons, and one such protester spent three days atop a tanker as a result. Ms Bolton noted the disproportionate impact on the areas for which the Claimants are responsible by comparison with other parts of the country as a result of the presence and importance of the Thurrock terminals and the Oikos terminal. The impact on all other work by the police is also a matter of great concern. Ms Bolton relied on the evidence of Mr Rulewski to the effect that post-moratorium and the granting of the injunction there has not been a repeat of the obstruction and harm seen in April. She referred to the police intelligence briefing to argue that Phase 1 of JSO's action had been seen already and Phase 2a could reasonably be apprehended to occur in Thurrock/Essex as it has occurred elsewhere. Phase 2a includes action at petrol stations and JSO have called publicly for recruitment from universities of a thousand students. Ms Bolton contrasted the decision in *Afsar*, in which the public at large was not exposed to risk or to nuisance.
15. Ms Bolton pointed out that there was nothing in the evidence of Ms Eason or Ms Branch to suggest that the Claimants were wrong about any of the facts on

which they rely, nor anything about why they cannot protest effectively with the injunction in place, utilising parts of the roads other than the carriageway.

16. Ms Bolton dealt separately with Canvey Island, relying on the evidence of Mr Crick. The strategic importance of the Oikos site, particularly in respect of air travel, was clear. Essex has a very specific concern in relation to Canvey Island because there are only two routes on and off the island. Without appropriate injunctive protection it would be very easy to obstruct the Oikos site, which is “on the doorstep” of Thurrock; there appears to have been a survey undertaken in advance of action; JSO has threatened escalation, which has occurred elsewhere; the limited roads available for fuel distribution; and there is a need to balance the protesters’ rights with the police intelligence and potential for significant harm.
17. In addressing the terms of the injunction, Ms Bolton acknowledged that the list of affected roads in the schedule is long, but explained that they had been limited to the roads used by the tankers and that a major road with an A-road number may actually change its name a number of times along the route. The list of road names was intended for clarity. She submitted that paragraph 2.1 was made out on the evidence from Thurrock and the police. She added that the same provision appeared in what was referred to as the Insulate Britain order, made in the case which she submitted had been tested through the committal process in those proceedings. She distinguished *Canada Goose (HC) & (CA)* on the basis that the Claimant was a private company seeking to use public law rights, not, as in the instant case, a public body seeking to protect its inhabitants. *Ineos* had involved a pure *quia timet* injunction, whereas Thurrock could point to actual not just apprehended obstruction. Thurrock was able to provide evidence to justify the terms it sought as proportionate, because thought had been given to what was needed to prevent harm occurring and it was unclear how anything less would suffice.
18. Paragraph 2.2, specifying adjacent roads to those named was, Ms Bolton submitted, necessary to support paragraph 2.1 as otherwise the intent of the injunction could be frustrated, and ‘adjacent’ was not ambiguous but clear. Paragraphs 2.3 and 2.4, relating to action directed at any vehicle on the roads had to be both unlawful (meaning without the permission of the registered keeper) and for the purpose of protest before it would be caught by these provisions. Ms Bolton added that provision could be added for “without the permission of the authorised driver”. Without such restriction there was a real risk to public safety, which would itself form a significant obstruction of the highway. Paragraphs 2.5 and 2.6 would include protesters gluing themselves to tankers, which had occurred. Such action was simply unacceptable as was protesters affixing themselves to the roads themselves, which was covered by paragraphs 2.7 and 2.8. Paragraphs 2.9 to 2.17 had been drafted based on

actual evidence or police intelligence, as well as the JSO's Phase 2a targeting of petrol stations, which had occurred elsewhere since the protests had resumed. The activity addressed by the injunction in relation to petrol stations would amount to a public nuisance and would, if not prevented, affect the whole county. A power of arrest was sought only in relation to paragraphs 2.1 to 2.16 as they all related to harm or threatened harm. Ms Bolton submitted that the test for attaching a power of arrest was made out because the potential harm was significant and a newcomer who might come and breach the order would not be capable of identification and subject to committal proceedings if not arrested and processed. The police should be relied on to act in a measured way when utilising their powers of arrest in an injunction. The 'refusing to leave' provision in paragraph 2.17 had been included in other similar injunctions, but did not need a power of arrest attached as the police would use the five-stage appeal process in such situations. Allowing any obstruction of the carriageway would permit harm to continue and would be exploited.

19. Ms Bolton made clear that the Claimants were not seeking to prohibit peaceful protest, which could be facilitated as long as it involved neither obstructing the highway nor locking-on to roads or vehicles. The activity engaged in by the protesters in April 2022 in Thurrock was significantly harmful and many of those arrested and released on bail had returned to commit further offences. As to service, the signs put up on relevant roads indicate the existence of an injunction and provide a QR code and a link to the details of it. Ms Bolton wondered how else the Claimants might alert people to a serious order in place and to do so in strong terms. Every petrol station has full copies of the injunction and the named Defendants were sent the documents by post. She argued that finding and understanding the prohibitions was perfectly feasible and there was no evidence that anyone had breached the injunction as a result of the measures taken for service to persons unknown. She said the Claimants had made quite a significant effort at speed.
20. Ms Bolton referred to the various maps attached to the injunction, which reflected the choice of major routes through Thurrock and those distinct to Canvey Island. She submitted that one could not simply identify a road by its road number, as some roads change their name and clarity was needed. All of this was proportionate to the torts sought to be prevented.
21. In relation to Mr Simblet's submissions about the Claimants' failure to make full and frank disclosure to Ritchie J, Ms Bolton made clear that *Ineos (HC)* had been cited at the without notice hearing, not to mislead the judge about the outcome on appeal, but solely for the purpose of establishing that the elements of obstruction amounting to tortious public nuisance are the same as they are in the criminal offence. She submitted that Ritchie J was aware of the

evidence filed, the causes of action and why no undertaking in damages was required. The relevant parts of Ziegler were also brought to the judge's attention. She argued that the current application involved no 'publication' such as to trigger consideration of the test in s12(3) HRA. What it is sought to restrain in the instant case is assembly, not publication. She explained that it had not been possible to obtain the first instance order in *Ineos (HC)*, but there had been a harassment claim and that may explain why s12(3) was a live consideration. Ms Bolton referred to paragraph 32 of *Sun Street* in which Roth J held that the Defendants in that case, who were occupying a large commercial building, were manifestly able to communicate their views without being in occupation of the specific building:

"No one is seeking to prevent them from coming together to campaign or promulgate those views. I need hardly add that the fact that the occupation gives them a valuable platform for publicity cannot in itself provide a basis for overriding the respondent's own rights as regards the property."

22. This was intended as support for the contention that geographic location alone should not be considered as 'publication' and this would then exclude consideration of s12(3) because it was only the location of protests that the Claimants sought to restrict. Ms Bolton also made reference to CPR Practice Guidance on Interim Non-Disclosure Orders at Page 1-2008 of the White Book, which refers to 'publication', as do all the authorities, in a way which supports her submission. Even if I were to find that the Claimants were wrong not to bring s12(3) to the attention of Ritchie J, or indeed any other failure of the duty of candour, Ms Bolton invited me to deal with the failure in the same way that Warby J did in *Afsar* and regrant the injunction.
23. Finally, in respect of a cross-undertaking in damages, Ms Bolton made the point that the Claimants are acting in accordance with the administrative duties that they have to those residing and working in their areas and that neither Claimant would have the not insignificant resources required properly to give a cross-undertaking. Even applying the dicta in *Sinaloa Gold*, the Claimants should not be required to give a cross-undertaking, either at the without notice stage or at the on notice return date for the reasons identified particularly at paragraphs 42-43.
24. In detailed written and oral submissions, Mr Simblet began by challenging the entire approach of the Claimants to obtaining an injunction without notice, as well as the breadth and/or details of the terms of the injunction, including ancillary orders for alternative service. He emphasised on numerous occasions that protesting on the highway is a statutory right and he characterised the instant injunction as "a tool of totalitarian regimes *rather*

than a liberal democracy”. He relied on *Ziegler* at paragraph 57 and *Jones* at paragraph 76.

25. Mr Simblet’s submissions against the maintenance of the injunction in any form or, if maintained, in the form currently in force fell under a number of headings.

Cause of action and ‘persons unknown’

26. Mr Simblet submitted that there was inherent confusion in the Claimants’ application as to the underlying cause(s) of action, the defendants to such cause(s) of action and the propriety of “proceeding against an ill-defined contrived defendant”, referring to ‘persons unknown’. He added that the Claimants must present a proper case for injunctive relief and comply with the proper rules affecting all litigants. He argued that seeking to injunct activity on garage forecourts seemed to be private rather than public nuisance, which would undermine the Claimants’ right to bring the application. As to a claim in trespass, Mr Simblet contended that the Claimants were not in a similar position to the Mayor of London in *Hall*, who had statutory responsibility for Parliament Square, where such a claim was maintainable. He emphasised that the entrances to petrol stations and the fuel terminals belong to others who would be entitled to apply for injunctive relief; a point which would also be relevant to the court’s exercise of discretion. In this case, the Claimants were seeking to invest a mischief and use that as a basis for the grant of an injunction against persons unknown.
27. Mr Simblet cautioned against adding together acts of individuals and creating a level of conduct that would justify an order, rather than assessing the conduct of an individual tortfeasor. He suggested that the former might be appropriate where individuals were congregating in one place all of the time, but that was not the case here. He challenged the schedule of named Defendants, their arrest details and the fact that there are so many gaps in them. Mr Simblet contended that there may have been people who committed tortious acts but have not been sufficiently described in evidence so that they could be identified. He said it was a misconception to aggregate actions of a number of people and then create a fourth class of Defendant said to be responsible for “all sorts of inchoate tortious misdeeds”. He suggested that the Claimants had not put forward a case against any individual in any cause of action open to them, noting that this was exactly why the Court of Appeal in *Ineos (CA)* discharged two injunctions due to the absence of supporting material. In the instant case a claim in trespass can only apply to acts on the highway.
28. In relation to public nuisance, Mr Simblet said that there still had to be an identifiable Defendant, a claim cannot be brought against a protest group that

has no distinct legal identity. Exceptionally, if the nuisance affected a widespread section of the population, a local authority would be able to bring a claim without proof of special damage. The widespread effects necessary to amount to public nuisance did not exist in this case. He suggested such a cause of action was not made out in this case and that left, in his words, the only cause of action to which the Claimants even came close, which was enforcement of the criminal law. That itself is an exceptional jurisdiction and Mr Simblet relied on *B&Q* at paragraph 22F-23B & 23F-H and on *Bovis*. He submitted that there was no evidence in the instant case that criminal penalties had proved insufficient, indeed no evidence that anyone had committed a specific offence and not been deterred by the consequences of conviction such as to continue committing it. What is being complained about by the Claimants amounts to discrete criminal offences, upon which the courts will adjudicate where there are prosecutions and this will act as a way of regulating such protests. Mr Simblet said the Court was being asked to continue prohibiting lawful conduct whilst elevating the penalty attaching to it.

29. The thrust of the argument under this head in relation to the use of ‘persons unknown’ by the Claimants was that there was insufficient evidence to underpin a legal cause of action. Directing an injunction at ‘persons unknown’ could not abrogate the need for proper service or depart from the fundamental rule that people affected by an order had to be given a fair opportunity to be heard before their legal rights are determined, relying on *Cameron* at paragraph 17 and Lord Sumption’s categories of persons unknown.

Protest on the highway

30. Mr Simblet argued strongly that protest on the public highway is lawful and those doing it are exercising fundamental rights, including statutory rights, to put forward their views lawfully and effectively. He took particular issue with the wording and format of the notices put up in Thurrock and Essex which betrayed a starting point in relation to such protests that was wrong. Nuisance, he said, was about reasonableness, duration and the extent of the effects. He relied on *Canada Goose (CA)* at paragraph 93, which remained good law even following the decision in *Barking*. He pointed out that, in line with *Dulgheriu*, the Claimants have other means available to them for regulating protests through the Anti-Social Behaviour, Crime and Policing Act 2014.
31. Mr Simblet relied on numerous specific paragraphs in *Ziegler* and the fact specific assessment to be made for each interference of articles 10 and/or 11, taken with the opinion of Lord Bingham in *Laporte*, to submit that prior restraint of lawful protest is always exceptionally hard to justify, even more so in the “incredibly wide and uncertain powers being deployed” in this case. The Court was asked to treat the signs put up by the Claimants as deterring

lawful protest, based on the evidence of Ms Hardy and Ms Branch in this regard. Mr Simblet described them as too crude a measure to judge the efficacy of the injunction.

Enforceability

32. The argument under this head was the need for the language used in an injunction to be clear and capable of enforcement, restraining that which is unlawful while not unreasonably or unfairly restraining that which is lawful. The injunction, Mr Simblet submitted, sought a power to send people to prison on an ill-defined and inchoate basis. He strongly criticised the definition of ‘roads’ utilised and the very long list of roads affected, running over a number of pages of A4.
33. Mr Simblet also relied on *Laporte* at paragraphs 46-52 for the important high principle regarding the great care that must be exercised in terms of prior restraint of actions that involve Convention rights, particularly the fundamental rights in articles 10 and 11. Only the clearest prohibitions on the clearest possible legal basis can be invoked and only when absolutely necessary. He prayed in aid paragraphs 64-104 of *Canada Goose (HC)* as directly referable to the present application.
34. Importantly, in reliance on *Ineos (CA)* at paragraph 43, Mr Simblet reminded the Court of the requirements for clear geographical and temporal limits within the injunction.

Power of arrest

35. Mr Simblet contended that the addition of a power of arrest to most of the prohibitions had the practical effect of reducing the threshold at which one could lose one’s liberty (without even breaching the order), due to the uncertainty inherent in the notices and the lack of control over the circumstances in which an officer has reasonable suspicion but the person arrested is unaware of the order. He referred to the evidence of TDCS Cronin and the importing of officers from outside Essex to assist with policing and how they will likely be affected by “the looseness of the language” in the injunction.

Service

36. Related to enforceability was the need for everyone affected to be heard on the terms of the injunction. Mr Simblet argued that *Canada Goose (CA)* did not suggest that service or notification of proceedings was unimportant. The methods permitted for alternative service in this case were an unsatisfactory way of bringing the injunction to people’s attention. Equally, people should not be oppressed by signs of the sort used in this case. He said that the Court

had still not been furnished with proposals for how the Claimants can serve and publicise the injunction without interfering with other people's rights. The added uncertainty of the definition of roads, the unclear maps, the challenge of understanding which roads were affected and the imprecision with which they are identified all combined to make the injunction incapable of being kept within proper bounds.

Duty of candour

37. Mr Simblet made complaint under this head in relation notably to two aspects of the hearing before Ritchie J: first, the Claimants' reliance on *Ineos (HC)* at first instance without referencing *Ineos (CA)* on appeal; and secondly the failure of the Claimants to direct the judge to the correct test for granting an injunction under s12(3) HRA, but rather suggesting the standard – and lesser – threshold test for granting injunctions applied.
38. Amongst other cases, Mr Simblet relied on *Canada Goose (HC)* at paragraph 64 on for an exposition of the principle for applying s12(3). He rejected Ms Bolton's submission that the presence of a harassment claim in *Ineos* would make a difference. As to Lavender J's judgment in *National Highways Ltd*, Mr Simblet said that the judge did not explain why s12(3) was not applicable. By extension, if s12(3) is applicable, the Claimants would find it very difficult to satisfy the high test therein. He also cited *Afsar (1)* at paragraph 53 and following in relation to the absence of an urgency to justify a without notice application.
39. Mr Simblet suggested that the Claimants had decided to act of their own volition, essentially in circumstances without precedent, in a claim of considerable novelty and complexity. This put an onerous obligation on counsel for the Claimants at the without notice stage and the identified failures alone should lead to discharge of the order and the refusal of further discretionary relief.

Undertaking in damages

40. Mr Simblet relied on *Afsar (2)* as support for the argument that in a protest context a cross-undertaking in damages should be given by a local authority. Furthermore he contended that the correct test in the instant case was that in *Sinaloa Gold* and not *Kirklees* and that therefore the Claimants were wrong to seek, and the judge was wrong to grant, an injunction without the usual protection for affected Defendants provided by such a cross-undertaking. The point of principle, he argued, in *Sinaloa Gold*, as in *Kirklees*, was that the Claimant was acting under a statutory duty in applying to the Court. This contrasted strongly with the local authority Claimants in the present case which had decided to seek injunctive relief, but were not under any duty to do

so. The usual safeguards for a Defendant should in the circumstances be provided for.

Further evidence

41. At the conclusion of the hearing, it was clear that there was a factual dispute about the terms of the order in the *Insulate Britain* case. I permitted further evidence in writing, but for the reasons set out below, I need not precis it.

Discussion

42. The Claimants bring the proceedings pursuant to *section 222 Local Government Act 1972* (LGA) and *section 130 Highways Act 1980* (HA).

43. The relevant part of *section 222 LGA* provides:

“222.— Power of local authorities to prosecute or defend legal proceedings.”

(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—

(a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, ...”

44. *Section 130(1) – (5) HA* provides as follows:

“130.— Protection of public rights.

(1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.

(2) Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.

(3) Without prejudice to subsections (1) and (2) above, it is the duty of a council who are a highway authority to prevent, as far as possible, the stopping up or obstruction of—

(a) the highways for which they are the highway authority, and

(b) any highway for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area.

(4) Without prejudice to the foregoing provisions of this section, it is the duty of a local highway authority to prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are the highway authority.

(5) Without prejudice to their powers under section 222 of the Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.”

45. Regarding the attachment of a power of arrest to an injunction such as that sought in these proceedings, *section 27 Police and Justice Act 2006* provides:

“27 Injunctions in local authority proceedings: power of arrest and remand”

(1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (c. 70) (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants of their area).

(2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.

(3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either—

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection.

(4) Where a power of arrest is attached to any provision of an injunction under subsection (2), a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of that provision.”

46. Articles 10 and 11 of the Convention appear in Schedule 1 to the Human Rights Act 1998 (HRA):

Article 10

Freedom of expression

- 1 *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2 *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

Article 11

Freedom of assembly and association

- 1 *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
- 2 *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

47. Section 12 HRA, which features in this case, states:

12 Freedom of expression.

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) 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.

(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.

48. The causes of action upon which the Claimants relied at the return date were public nuisance and trespass. I am not being asked to consider granting injunctive relief in support of the criminal law and I have therefore not addressed that issue in this judgment.
49. It seemed to me that Mr Simblet's arguments on the paucity of causes of action conflated two separate stages of the Court's consideration of the Claimants' case in that it honed in on whether the Claimants had an action through which they could exercise rights over petrol station forecourts. Mr Simblet argued that this might amount to a private nuisance but not a public one and nor would it provide an actionable trespass claim for the Claimants. The proper approach, in my judgment, is to consider the causes of action relied on first and only if satisfied that one or more of them gives the Claimants standing to seek injunctive relief, does one move to the next stage which is determining the specific provisions which are justifiably included in the terms of the injunction, bearing in mind all factors including the important rights contained in articles 10 and 11.
50. Mr Simblet's construct of a paradigm for public nuisance of a noisy nightclub or that in *Bovis*, advanced in his submissions, is not an exclusive characterisation of such, nor does it deflect this court from what must be an assessment of the specific facts presented by the Claimants. Having said this, it is relevant to observe that in both of his examples the conduct to be curtailed by court order was emanating from private land, causing nuisance to a wider public.
51. The nature of the protest activity seen in Thurrock between 1 and 15 April 2022 is very evident from the incident log at Annex 4 and the Claimants' evidence more generally. It involved actions that presented a serious threat to the health and wellbeing of the protesters, the police and the general populace. The evidence of the reckless actions of some protesters who gained entry to the terminals underlines the level of potential risk to which people could be exposed by a repeat of activity conducted on the highways in April. This, in my judgment, justifies a cause of action in public nuisance. The significant reduction in fuel stock levels resulting from the April protests and its potential impact on emergency and essential services, many of which are intended for residents who would properly be considered as vulnerable, by whatever measure, adds further support to my conclusion that a cause of action in public nuisance is made out.

52. In addition, the care that must be exercised when responding to any impediment to the progress of tankers as described in the unchallenged evidence also justifies a cause of action in public nuisance. One need only take, as an example, the three days that were needed safely to free a protester from atop an intercepted tanker to understand the degree of obstruction (as well as risk of serious harm) that actions by some protesters have provoked. This too justifies the Claimants in bringing an action in public nuisance under s222 LGA as well as in the guise of the relevant Highways Authority under s130 HA. As to a cause of action in trespass, Mr Simblet acknowledged that Thurrock would at the very least be entitled to rely on this, as a result of the tunnelling activities described and depicted in the evidence.
53. Mr Simblet makes a good point that not all protesters have been directly involved in the differing acts complained of. However, I reject the submission that the Court must assess the conduct of an individual tortfeasor, on the basis that one is not dealing with a single group of individuals congregating in one place. In my judgment, a proper analysis of the acts engaged in by protesters entitles the Claimants and the Court to treat as a broad-based composite the Defendants, whose individual actions are intended to contribute to the goal of an alliance that shares a belief in the tactics promulgated by JSO, however loosely connected each person may be to it. Any other approach would neuter the Claimants in the exercise of their statutory duties. I use the word ‘duties’ because it seems to me that contrary to the distinction sought to be made by Mr Simblet between actions of a local authority that are mandatory, such as under the Shops Act 1950 in *B & Q Ltd.*, and what he characterised as the voluntary nature of the Claimants in bringing the instant proceedings, section 130 HA explicitly creates a duty on the Highway Authority to act in the circumstances envisaged in the section. Although section 222 LGA is framed in a permissive way, one need only contemplate this from the perspective of a powerful challenge in judicial review were a local authority to fail to determine the events of 1-15 April 2022 as sufficient justification for a requirement to act to promote or protect the interests of the inhabitants of their area. This applies both to Thurrock and, in terms of apprehended action, to Essex.
54. I turn now to the identity of the Defendants, named and persons unknown. Although the heading of the documents prepared for the return date referred to 222 named Defendants, Schedule 1 to the order actually contained 250 names of individuals arrested during the April incidents. This demonstrates the continuing efforts of Essex Police to provide the Claimants with the details of those who can be identified. Mr Simblet raised understandable concerns about blank sections of the Schedule where further details would be expected, but I accept the explanation by Ms Bolton that detailed arrest information is still being gathered. Some Defendants have been arrested more than once and the

presently empty cells in the schedule will, I am told, be populated as further information is received from the police. A cursory analysis of Schedule 1 reveals the following:

Number of times arrested 1-15 April 2022	Number of named Defendants (Total 250)
1	121
2	66
3	35
4	20
5	6
6	1
7	1

55. Though admittedly a fairly crude measure, the above table representing 481 arrests does provide an at-a-glance snapshot of the scale of activity with which Thurrock and Essex Police were having to cope in the period 1-15 April 2022.
56. As far as the remaining Defendants are concerned they are in seven categories of Persons Unknown drafted, as required, to reflect the specific acts to which the injunction is directed. The point was made by Ms Bolton that I am dealing with interim injunctive relief and its availability against categories of Persons Unknown is not in doubt on the authorities. Such categories include those who are either not yet known, for reasons set out above, or what have become known in the authorities as ‘newcomers’.
57. It is worthwhile restating that in *Ineos (CA)* Longmore LJ said this about the Cameron categories enunciated by Lord Sumption:

27. ...

“The distinction is that in the first category the defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further inquiry whether he is the same as the person identified in the claim form, whereas in the second category it is not.”

Those in the second category could not therefore be sued because to do so would be contrary to the fundamental principle that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as would enable him to be heard (para 17).

28. Ms Harrison submitted that these categories were exclusive categories of unnamed or unknown defendants and that the defendants as described in the present case did not fall within the first category since they are not described in a way

that makes it possible to locate or communicate with them, let alone to know whether they are the same as the persons described in the claim form, because until they committed the torts enjoined, they did not even exist. To the extent that they fell within the second category they cannot be sued as unknown or unnamed persons.

29. Despite the persuasive manner in which these arguments were advanced, I cannot accept them. In my judgment it is too absolutist to say that a claimant can never sue persons unknown unless they are identifiable at the time the claim form is issued. That was done in both the Bloomsbury and the Hampshire Waste cases and no one has hitherto suggested that they were wrongly decided. Ms Harrison shrank from submitting that Bloomsbury was wrongly decided since it so obviously met the justice of the case but she did submit that Hampshire Waste was wrongly decided. She submitted that there was a distinction between injunctions against persons who existed but could not be identified and injunctions against persons who did not exist and would only come into existence when they breached the injunction. But the supposedly absolute prohibition on suing unidentifiable persons is already being departed from. Lord Sumption's two categories apply to persons who do exist, some of whom are identifiable and some of whom are not. But he was not considering persons who do not exist at all and will only come into existence in the future. I do not consider that he was intending to say anything adverse about suing such persons. On the contrary, he referred (para 11) to one context of the invocation of the jurisdiction to sue unknown persons as being trespassers and other torts committed by protesters and demonstrators and observed that in some of those cases proceedings were allowed in support of an application for a quia timet injunction

“where the defendant could be identified only as those persons who might in future commit the relevant acts.”

But he did not refer in terms to these cases again and they do not appear to fit into either of the categories he used for the purpose of deciding the Cameron case.”

58. The Court of Appeal's approach in *Ineos (CA)* has now been affirmed by the decision in *Barking*.
59. Having concluded that there are legitimate causes of action underpinning the proceedings brought by the Claimants, I accept Ms Bolton's submissions that in principle the Claimants are entitled to seek interim injunctive relief against the described newcomers, albeit that their final description will depend upon the parameters of the actual terms of any injunction granted.

60. Before considering the matters relevant to granting injunctive relief against persons unknown, it is important to restate the fundamental principles when assessing the extent to which, if at all, an interference with article 10 and/or 11 rights is justified. The Supreme Court in *Ziegler* (at paragraph 58) approved that which the Divisional Court described as “the usual enquiry” under the HRA, which requires consideration of five questions:
- (a) Is what the defendant did in exercise of one of the rights in Articles 10 or 11?
 - (b) If so, is there an interference by a public authority with that right?
 - (c) If there is an interference, is it prescribed by law?
 - (d) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Article 10 or Article 11, for example the protection of the rights of others?
 - (e) If so, is the interference ‘necessary in a democratic society’ to achieve the legitimate aim?
61. The Divisional Court in *Ziegler* had noted that question (e) above would in turn require consideration of the sub-questions which arise in order to assess whether an interference is proportionate. The sub-questions are:
- (a) Is the aim sufficiently important to justify interference with a fundamental right?
 - (b) Is there a rational connection between the means chosen and the aim in view?
 - (c) Are there less restrictive alternative means available to achieve that aim?
 - (d) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?
62. Putting aside an observation made later in this judgment about article 11, the ‘usual enquiry’ in this case yields positive responses (a) to (d) above, the legitimate aim certainly encompassing the protection of the rights of others. As to the sub-questions considering the necessity in a democratic society of the interference, (a) and (b) are answered in the affirmative. Bearing in mind my conclusions on the restrictions sought, I do not find that there are less restrictive alternative means of achieving the aim in view. The fact that protest in geographically proximate locations is facilitated by the order sought, I am satisfied that overall a fair balance is achieved, bearing in mind the risks that could be created by a repeat of action in April.

63. In *Ineos (CA)* Longmore LJ tentatively framed the requirements for granting a *quia timet* injunction against persons unknown, as follows:

- 1) there must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief;
- 2) it is impossible to name the persons who are likely to commit the tort unless restrained;
- 3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;
- 4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct;
- 5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and
- 6) the injunction should have clear geographical and temporal limits.

64. This checklist must now be considered with the additional gloss on requirement 4) provided by Leggatt LJ (who was a member of the Court in *Ineos (CA)*) in *Cuadrilla*:

“50. In the light of precedents which were not cited in the *Ineos* case but which have been drawn to our attention on the present appeal, I would enter a caveat in relation to the fourth of these requirements. While it is undoubtedly desirable that the terms of an injunction should correspond to the threatened tort and not be so wide that they prohibit lawful conduct, this cannot be regarded as an absolute rule. The decisions of the Court of Appeal in *Hubbard v Pitt* [1976] QB 142 and *Burris v Azadani* [1995] 1 WLR 1372 demonstrate that, although the court must be careful not to impose an injunction in wider terms than are necessary to do justice, the court is entitled to restrain conduct that is not in itself tortious or otherwise unlawful if it is satisfied that such a restriction is necessary in order to afford effective protection to the rights of the claimant in the particular case. In both those cases the injunction was granted against a named person or persons. What, if any, difference it makes in this regard that the injunction is sought against unknown persons is a question which does not need to be decided on the present appeal but which may, as I understand, arise on a pending appeal from the decision of Nicklin J in *Canada Goose UK Retail Ltd v Persons Unknown* [2019] EWHC 2459 (QB); and in these circumstances I express no opinion on the point.

In the *Ineos* case the judge had proceeded on the basis that the evidence adduced by the claimants of protests against other

companies engaged in fracking (including Cuadrilla) would, if accepted at trial, be sufficient to show a real and imminent threat of trespass on the claimants' land, interference with the claimants' rights of passage to and from their land and interference with their supply chain. On that basis he granted an injunction in similar – although in some respects wider and more vaguely worded – terms to the Injunction granted in the present case. The Court of Appeal allowed an appeal brought by two individuals who objected to the order made on the ground that the judge's approach – which simply accepted the claimants' evidence at face value – did not adequately justify granting a *quia timet* injunction which might affect the exercise of the right to freedom of expression, as it did not satisfy the requirement in section 12(3) of the Human Rights Act 1998 that the applicant is "likely" to establish at trial that such an injunction should be granted. The Court of Appeal also held that the parts of the injunction seeking to restrain future acts which would amount to an actionable nuisance or a conspiracy to cause loss by unlawful means should be discharged in any event, as the relevant terms were too widely drafted and lacked the necessary degree of certainty..."

65. The distinction to be drawn with *Ineos (CA)* and the present proceedings is that there is in my judgment detailed and reliable evidence from the Claimants to be drawn from past experience, the repetitive nature of the actions of a significant number of protesters already identified through arrests and the sufficiently real and immediate anticipated return to protest activity within Thurrock and Essex to justify granting interim injunctive relief. Longmore LJ's requirements 2) and 3) are also satisfied, although I will deal with service in more detail below.

In what terms should injunctive relief be granted?

66. Mr Simblet's submissions that protest on the highway is lawful and that therefore no terms could be drafted that would not impinge on lawful conduct covered by articles 10 and 11 is, to borrow Longmore LJ's terminology, too absolutist. As all of the case law cited extensively in *Ziegler* and the Supreme Court's judgment itself in *Ziegler* makes clear, protest on the highway might be lawful, but its lawfulness, or the extent to which it can withstand interference, will depend on an individual, multifactorial assessment. Moreover, an interference with article 10 and 11 rights may arise in at least two ways: it may be due to a judicial conclusion that in balancing Convention rights, article 10 and 11 rights are outweighed by the rights of others, which may remove a lawful excuse or cause an activity to become a tortious act; alternatively as expressed in *Cuadrilla*, if it is necessary in order to afford effective protection to the rights of a claimant, conduct which is not itself tortious or unlawful may have to be restrained.

67. Mr Simblet relied on paragraph 93 of *Canada Goose (CA)* in which Sir Terence Etherton MR criticised the claimant company in that case for seeking to utilise the civil jurisdiction of the courts in circumstances in which private law remedies were ill-suited:

“93. As Nicklin J correctly identified, *Canada Goose's* problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters. It wishes to use remedies in private litigation in effect to prevent what it sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to *Canada Goose*, its customers and suppliers and protesters. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, *Dulgheriu v Ealing London Borough Council* [2019] EWCA Civ 1490, [2020] 1 WLR 609. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it.”

68. Mr Simblet also invoked the *Dulgheriu* case as support for his proposition that the Claimants have available statutory powers to make public spaces protection orders and that they were in essence wrong on both counts to seek an injunction from this court. I accept Ms Bolton’s response to these points, namely that paragraph 93 of *Canada Goose (CA)* is considering final injunctive relief and, in any event, the Claimants in the instant proceedings are not a private company seeking to regulate a public space, but rather public authorities seeking an order of the Court pursuant to their statutory responsibilities. As to alternative statutory powers available to local authorities, I agree with Ms Bolton’s observation that the process involved is lengthy and cannot adequately respond to the concerns of the Claimants in these proceedings. It is also correct to note that there is no exclusion zone sought by the Claimants. Indeed they seek to facilitate lawful protest by permitting it along routes used by tankers as long as it is not in the carriageway and does not interfere with the delivery of fuel.

69. These proceedings clearly engage articles 10 and 11 rights, being freedom of expression and freedom of assembly, in a combination that has understandably been termed a right to protest, about which Leggatt LJ in *Cuadrilla* said:

“41. The right to engage in public protest is an important aspect of the fundamental rights to freedom of expression and freedom of peaceful assembly which are protected by articles 10 and 11 of the Human Rights Convention. Those rights, and hence the right to protest, are not absolute; but any restriction on their exercise will be a breach of articles 10 and 11 unless the restriction (a) is prescribed by law, (b) pursues one (or more) of the legitimate aims stated in articles 10(2) and 11(2) of the Convention and (c) is "necessary in a democratic society" for the achievement of that aim. Applying the last part of this test requires the court to assess the proportionality of the interference with the aim pursued.

42. Exercise of the right to protest – for example, holding a demonstration in a public place – often results in some disruption to ordinary life and inconvenience to other citizens. That by itself does not justify restricting the exercise of the right. As Laws LJ said in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23, para 43:

"Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them."

Such side-effects of demonstrations and protests are a form of inconvenience which the state and other members of society are required to tolerate.

43. The distinction between protests which cause disruption as an inevitable side-effect and protests which are deliberately intended to cause disruption, for example by impeding activities of which the protestors disapprove, is an important one, and I will come back to it later. But at this stage I note that even forms of protest which are deliberately intended to cause disruption fall within the scope of articles 10 and 11. Restrictions on such protests may much more readily be justified, however, under articles 10(2) and 11(2) as "necessary in a democratic society" for the achievement of legitimate aims.

44. The clear and constant jurisprudence of the European Court of Human Rights on this point was reiterated in the judgment of the Grand Chamber in *Kudrevicius v Lithuania* (2016) 62 EHRR 34. That case concerned a demonstration by a group of farmers complaining about a fall

in prices of agricultural products and seeking increases in state subsidies for the agricultural sector. As part of their protest, some farmers including the applicants used their tractors to block three main roads for approximately 48 hours causing major disruption to traffic. The applicants were convicted in the Lithuanian courts of public order offences and received suspended sentences of 60 days imprisonment. They complained to the European Court that their criminal convictions and sentences violated articles 10 and 11 of the Convention. In examining their complaints, the Grand Chamber first considered whether the case fell within the scope of article 11 and concluded that it did. The court noted (at para 97) that, on the facts of the case, "the disruption of traffic cannot be described as a side-effect of a meeting held in a public place, but rather as the result of intentional action by the farmers, who wished to attract attention to the problems in the agricultural sector and to push the government to accept their demands". The judgment continues:

"In the Court's view, although not an uncommon occurrence in the context of the exercise of freedom of assembly in modern societies, physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by article 11 of the Convention."

Despite this, the court did not consider that the applicants' conduct was "of such a nature and degree as to remove their participation in the demonstration from the scope of protection of ... article 11" (see para 98)."

70. It is not necessary to reach a conclusion as to whether the danger created by the actions described in the current proceedings is sufficiently in excess of "serious disruption" such that it could potentially put protesters outside the ambit of article 11. However, the following observation is relevant to the extent of any interference with Convention rights that would flow from imposing an injunction. Individual protesters are conceivably at liberty in certain circumstances to put their own lives in danger, but the untrammelled exercise of their article 10 and 11 rights cannot extend the ambit of that danger such as to imperil the lives (a) of other protesters joining in who may not appreciate or acquiesce in the extent of such danger, (b) of members of the emergency services or (c) of the public at large. The protest actions directed at impeding tankers carries with it such a high level of established risk that it can only be ameliorated by framing injunctive relief in sufficiently wide terms to prevent both the blocking of routes used by the tankers and any interference with the vehicles themselves. This includes from the point of tankers leaving a terminal, through the full process of delivery and then return to the terminal. The measures are in my view unavoidable as being both necessary and

proportionate interferences with the protesters' Convention rights. It remains important in that assessment that the injunction does not seek to prohibit protest along the routes taken by the tankers so long as it is confined to places other than the carriageway. This approach permits proper account to be taken of the significance of the object and location of the protest to those wishing to take part.

71. I acknowledge the correctness of Mr Simblet's submissions on the need for the terms of any injunction to be clear and capable of enforcement. However, his submission that they must not include lawful conduct is inconsistent with Leggatt LJ's view in paragraph 50 of *Cuadrilla*. The terms of the injunction must be "necessary to afford effective protection to the rights of the claimant in the particular case".
72. My conclusions justify the terms in the order at paragraphs 2.1 to 2.16. Though superficially there seems to be a plethora of terms that might conceivably lack clarity, this is merely the result of a more comprehensive term having been broken down into more digestible and understandable units. There is room for improvement in the form of collating those affecting Thurrock separately from those affecting Essex and with headers that highlight the distinction. This would enhance clarity and readability.
73. As to paragraph 2.17, this generated what might almost be termed satellite litigation, in that further evidence was filed by both sides after the hearing to address whether or not other judges in other protest injunction applications had or had not made or maintained a provision in the terms sought by the Claimants in this case. However laudable the principles of consistency and predictability are, the very nature of Convention rights is such that each situation must be judged individually. An order which may be proportionate in the context of one application may, notwithstanding all appearances of similarity or confluence, be quite disproportionate in another context. Despite the submissions on both sides in the instant application, in my judgment, the specific provisions of any injunction made, at whatever stage, in other proceedings are of limited persuasive value. The Supreme Court in *Ziegler* emphasised:

“59. Determination of the proportionality of an interference with EHCR rights is a fact-specific enquiry which requires evaluation of the circumstances in the individual case.”
74. Reminding myself of the comprehensive nature of the other injunctive provisions which I have approved as necessary and proportionate, I am not persuaded that paragraph 2.17 can be justified in addition and it will be deleted from the approved order.

Enforceability & Power of arrest

75. Mr Simblet's arguments flowed from the foundations he laid on the lack of clarity and therefore enforceability of the order sought. I do not share his pessimism about the way in which attaching a power of arrest will unleash an uncontrollable loss of liberty. For the reasons set out above, the wording in the order is clear, uses ordinary English language and is capable of ready comprehension. The geographic delineation between where protest is permitted and where it is not is plain, both for protesters and for the police. The list of roads is long, but necessarily so not only to provide clarity to the protesters, but equally to fix the Claimants with the duty to serve the order on each and every listed road. This acts as a further protection for those in and coming to the Claimants' areas, who should be confident from the presence or absence of a notice as to the whether the road they are on is included in the order.
76. Ms Bolton's submission about the undermining of the injunction if there is no power of arrest and identification of those who should become named Defendants is thwarted is one that is highly persuasive.

Service

77. Service on named Defendants is achieved in the usual way pursuant to the CPR. It is clear that at least for a period of time and in some locations full copies of the order were posted, including details about named Defendants. Although such information may be in the public domain as a matter of court record, I repeat my disquiet about this for two reasons. First, if as was being suggested some of those named are, in law, children, they should have had an opportunity to make representations to the Court as to whether they might be entitled to any order protecting release of their details. Secondly, the actions of the protesters are not universally supported or welcomed and I acknowledge the concern that individual Defendants, such as Ms Eason, may fear reprisals in one form or another from the publication of her details including her home address. Ms Bolton assured me that this state of affairs was unintended and short-lived, but Ms Hardy's first statement indicated that the situation lasted sufficiently long for the photographs exhibited to be taken.
78. There is a proper balance to be struck between achieving the required publicity of the injunction's existence for persons unknown and inadvertently representing the injunction as having wider reach than it does, such that there is a 'chilling effect' on permissible protest. I welcome further submissions on the exact wording to be used. *[At the consequential hearing a suitable wording was alighted on, as reflected in the order.]* Beyond this, the various methods of alternative service are required to ensure that the existence of the

injunction is made known to anyone whom it might affect and the exact terms of it are readily accessible to promote compliance.

Duty of candour

79. A “NOTE OF HEARING 24 April 2022”, filed by the Claimants, reflects a contemporaneous short-form record of the without notice application to Ritchie J. It is not a transcript. The hearing lasted two hours and the judge indicated that he had concerns about the application early on, having read some of the documents. He then asked to be taken through the statements, cross-referenced to the skeleton. Specifically on page 6 the judge queries why the application is without notice and could not be scheduled on notice with hearing a few days later. There was reference by Ms Bolton to swift mobilisation if notice given, which the Judge considered may be eclipsed by evidence of activity in breach of injunctions. He referred to the elements of *American Cyanamid* and acknowledged the application of *Kirklees* in respect of damages (dealt with separately below). Ritchie was referred to s12 HRA by Ms Bolton, although, on Ms Bolton’s own admission, this can only be to s12(2) as the Claimants’ position was that s12(3) did not apply.

Should an order have been made without notice?

80. The simple answer is yes. Ritchie J was entitled to grant the application at what Mr Simblet termed “a secret hearing”. The moratorium on protest activity was coming to an end without JSO securing any acceptable commitment from government, and there was strong evidence to suggest a resumption of activity from 25 April 2022, the nature of which could justifiably be quantified as at least similar to that which occurred earlier in the month. The evidence available at the hearing supported Ritchie J’s conclusion that notice of a hearing without interim relief would be self-defeating as much could be done quickly in advance of such hearing to act in exactly the ways the order sought to prevent, with the inescapable risks described in the evidence.

Section 12(3) HRA

81. The applicability of s12(3) HRA arises first in the context of the submission that the Claimants’ deliberately failed in their duty of candour to bring it to Ritchie J’s attention, such that he applied the lesser standard test for the grant of injunctive relief. That submission turns simply on whether the Claimants should have raised the possibility that it did, given the differing conclusions in different judgments of equal standing. Ms Bolton’s suggestion, for it was no more than that, as to how Morgan J in *Ineos (HC)* might have concluded that s12(3) applied in the circumstances of that case, lacked the quality of adequacy to support a conclusion by the Claimants that s12(3) could not apply

– all the more so when dealing with a without notice application. Ms Bolton may be right about the section's non-applicability, but the divergence of judicial opinion should at the very least have been raised. That divergence is well illustrated by Johnson J's exposition in *Shell UK Oil Products Ltd v Persons Unknown*, although the judgment was only published on 20 May 2022 and his support for the Claimants' contention on s12(3) is only after the event.

82. The question of whether the failure that I have identified during the without notice hearing should lead to setting aside the order without consideration of the merits is one to be answered by reference to the principles set out by Warby J at paragraph 21 of *Afsar* (1). The failure being deliberate is not determinative; neither did the Claimants obtain advantage they would not otherwise have achieved. The evidence available to Ritchie J would have caused him to grant the order even on application of the s12(3) test. Even if I were not in a position to reach that conclusion and felt compelled to discharge the order, I would have regranted it.
83. As to whether I am bound to apply s12(3), I respectfully adopt Johnson J's analysis at paragraphs 66 - 76, particularly because he was considering 'publication' in a context closely aligned with that before me. The crafting of s12 does appear to draw a distinction between relief affecting the exercise of article 10 and the restraint of publication as a sub-set of that Convention right. Nothing in the instant proceedings affects any act that would appear to come within the admittedly broad definition of 'publication'. The restrictions sought relate to where protesters are free to express themselves not what they are free to express. The result is that I do not find that s12(3) is directly applicable to the Claimants' application. If, at such time as the point is authoritatively determined, I am wrong in my analysis, I am nonetheless satisfied that the Claimants would likely succeed at final trial for the reasons identified above in relation to strength of evidence and need for an order.

Undertaking in damages

84. A further point taken by Mr Simblet, both as to the conduct of the without notice hearing and the return date hearing, was that the Claimants' reliance on *Kirklees* to avoid being bound by cross-undertakings in damages was wrong. Reliance was principally placed on *Afsar* (2) in which Warby J dealt in some detail with the applicability of such an undertaking to a situation said to be akin to the present proceedings. At paragraph 5, Warby J said this:

"5. Here, I take account of the following: (1) The Council has a duty to protect public rights to use the highway, but that is not at the centre of its claim. The provisions that are principally relied on (s 222 of the Local Government Act and, in particular, the 2014 Act) are permissive. (2) The main target of the action is anti-social behaviour

in the form of speech. The nature of the behaviour is harassment, causing alarm or distress, to individuals. The action is not being taken on behalf of the public at large but rather a section, or some sections, of the public. The main beneficiaries are teachers, other staff, and pupils at the school. (3) The individuals concerned could, in principle, bring their own private law actions to prevent harassment, if it attained the level of criminal behaviour required by the Protection from Harassment Act 1997. If they did so, they would undoubtedly be required to give undertakings as to damages. (4) There is nothing wrong with the Council pursuing this action in their stead, but there is no particular magic in the fact that a public authority is taking on that burden. It seems to me to be reasonable to provide the respondent/defendants with a corresponding level of protection. (5) The fact that the action is brought by a public authority, and (by concession) interferes with the Convention rights of the respondent/defendants is a factor in favour of exercising my discretion to require the undertakings. Breaches of the Convention by public authorities can sound in damages, where that is necessary. This is one of the recognised exceptions to the general rule. The provision of an undertaking sets up a relatively simple mechanism for the resolution of any such claim. Finally, (6) there is little prospect that the provision of these undertakings will in practice impose a great burden on the Council. It is improbable that the injunctions will cause any material loss; the damage which could realistically be suffered is injury to rights and freedoms. Those are not to be treated lightly, but the scale of any compensation required, even if unlawful conduct were established, would probably be relatively modest. Again, the provision of undertakings is a proportionate means of dealing with the assessment of any such compensation.”

85. I have quoted the paragraph in full so that it should not be suggested that I have cherry-picked from the judge’s list of considerations. However, it is evident that Warby J was dealing with a very different, and far more confined, type of protest. His considerations (1) and (2) taken on their own permit immediate distinguishing of *Afsar* (2) from the case before me. Arguably, the only consideration that causes pause for the thought is consideration (5), but it creates no more than a factor in favour of exercising the discretion to require an undertaking, rather than creating anything more mandatory. Having previously addressed the duty on the Claimants to bring proceedings as the Highway Authority and the way in which s222 operates in this case, I do not find any reasoning in *Sinaloa Gold* to cause me to impose a cross-undertaking in damages. I have concluded that the principle in *Kirklees* properly applies in this case.

American Cyanamid & Ineos/Cuadrilla

86. Consequent on my conclusions above as to the test that applies, I am satisfied that (a) there is a serious question to be tried in these proceedings; (b) damages would not be an adequate remedy; and (c) the balance of convenience certainly lies in favour of granting injunctive relief.
87. I am also satisfied that the checklist in *Ineos/Cuadrilla* can be met. There is geographic limitation to the ambit of the injunction. The temporal limitation is a matter upon which further submissions will be needed as they will in relation to the specifics of alternative service. *[Following the consequentialia hearing, I am satisfied that the provisions of the order adequately address my concerns.]*
88. *[For the reasons given orally at the consequentialia hearing, I make the order for costs in the terms now set out in the order.]*
89. *Mr Simblet QC sought permission to appeal in respect of my conclusion as to the operation of the causes of action and/or in relation to the costs order. For the reason given briefly at the consequentialia hearing, I refused permission.]*

ANNEX 1

SUBSTANTIVE HEARING

[Names in brackets are the short-forms used in the judgment]

American Cyanamid Co (No 1) v Ethicon Ltd [1975] UKHL 1 (**American Cyanamid**)

Stoke on Trent City Council v B&Q (Retail) Ltd. [1984] 1 AC 754 (**B&Q**)

City of London Corporation v Bovis Construction Ltd CA 18 Apr 1988 (**Bovis**)

Lawrence David Ltd v Anthony Lenglet Ltd [1988] judgment transcript

R v Secretary of State for Transport ex p Factortame Ltd (No. 2) [1991] 1 AC 603 (HL)

Kirklees Metropolitan BC v Wickes Building Supplies Ltd [1993] AC 227 92 (**Kirklees**)

DPP v Jones [1999] 2 AC 240 149 (**Jones**)

Langley v Liverpool City Council and Anor [2006] 1 WLR 375

South Cambridgeshire DC v Gammell [2006] 1 WLR 658 (**Gammell**)

R (Laporte) v Chief Constable of Gloucestershire Constabulary [2007] 2 AC 105 (**Laporte**)

Mayor of London v Hall [2010] EWCA Civ 817 (**Hall**)

CEF Holdings Ltd v Munday [2012] FSR 35

City of London Corporation v Samede and others [2012] EWCA Civ 160 (**Samede**)

Financial Services Authority v Sinaloa Gold plc and Ors [2013] 2 AC 28 (**Sinaloa Gold**)

Ineos Upstream Ltd & Ors v Persons Unknown & Ors [2017] EWHC 2945 (Ch) (**Ineos (HC)**)

Birmingham City Council v Afsar and Ors [2019] EWHC 1560 (**Afsar (1)**)

Birmingham City Council v Afsar and Ors [2019] EWHC 1619 (**Afsar (2)**)

Canada Goose UK Retail Ltd and Anor v Persons Unknown and Ors [2019] EWHC 2459 (QB) (**Canada Goose (HC)**)

Boyd & Ors v Ineos Upstream Ltd & Ors [2019] EWCA Civ 515 251 (**Ineos (CA)**)

Canada Goose UK Retail Ltd and Anor v Persons Unknown and Ors [2019] EWCA Civ 303 (**Canada Goose (CA)**)

Dulgheriu and Anor v LB Ealing and Anor [2019] EWCA Civ 1490 (**Dulgheriu**)

Cameron v Liverpool Victoria Insurance Co Ltd [2019] UKSC 6 267 (**Cameron**)

Sharif v Birmingham City Council [2020] EWCA Civ 1488

Director of Public Prosecutions v Ziegler and Ors [2020] QB 253

DPP v Ziegler and Others [2021] UKSC 23 285 (**Ziegler**)

National Highways Ltd v Persons Unknown [2021] EWHC 3081 (QB)

LB Barking & Dagenham & Ors v Persons Unknown & Ors [2022] EWCA Civ 13 (**Barking**)

Shell UK Oil Products Ltd v Persons Unknown [2022] EWHC 1215 (QB)

COSTS

Ineos Upstream Ltd & Ors v Persons Unknown & Ors [2017] EWHC 3427 (Ch)

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

Claim No. In process

In the matter of an application for an injunction made pursuant to the Local Government Act 1972, s222 and the Highways Act 1980, s130(5)

24 April 2022

Before Mr Justice Ritchie

B E T W E E N :

(1) THURROCK COUNCIL

(2) ESSEX COUNTY COUNCIL



**QB-2022-001317
Claimants**

-and-

(1) MADELINE ADAMS

(2)-(222) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM FORM

(223) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF OR ALONG THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(224) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES OR AFFIXING ANY ITEM TO ANY VEHICLE TRAVELLING ON TO, OFF, ALONG OR WHICH IS ACCESSING OR EXITING THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(225) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO, INTO OR OFF ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(226) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH

VEHICULAR ACCESS TO OR FROM ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(227) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(228) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(229) PERSONS UNKNOWN WHO ARE TRESPASSING ON, UNDER OR ADJACENT TO THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM BY UNDERTAKING EXCAVATIONS, DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE RELEVANT HIGHWAY AUTHORITY

Defendants

ORDER

PENAL NOTICE

IF YOU, THE ABOVE NAMED DEFENDANTS OR PERSONS UNKNOWN OR ANY OF YOU DISOBEY THIS ORDER OR INSTRUCT OR ENCOURAGE OTHERS TO BREACH THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED

POWER OF ARREST

THIS ORDER CONTAINS A POWER OF ARREST ATTACHED AT SCHEDULE 3 OF THIS ORDER FOR BREACH OF PARAGRAPHS 2.1 TO 2.16 OF THIS ORDER PURSUANT TO SECTION 27 OF THE POLICE AND JUSTICE ACT 2006. ANY

**PERSON CAUGHT BREACHING PARAGRAPHS 2.1 TO 2.16 OF THIS ORDER
MAY BE ARRESTED AND BROUGHT BEFORE THE COURT**

BEFORE the Honourable Mr Justice Ritchie sitting out of hours on 24 April 2022 in London.

UPON the Claimants making an application on the 24 April 2022 for an injunction, without notice to the Defendants and out of hours.

AND UPON hearing Counsel for the Claimants Miss Caroline Bolton and Miss Natalie Pratt, without attendance by the Defendants.

AND UPON the Court reading the application and the witness statements listed in Schedule B.

AND UPON the Court being satisfied that pursuant to s.12(2)(b) Human Rights Act 1998 that the Claimants had compelling reasons why the Defendants should not be notified of the application for the interim injunction prior to the Court hearing the application.

AND UPON the Court having particular regard to the importance of the Defendants' Article 10 and Article 11 Convention rights to freedom of expression and freedom of lawful assembly.

AND UPON the Court being satisfied that the order sought does not prohibit peaceful protest.

AND UPON the Court considering its discretion to grant injunctive relief pursuant to s.37(1) Senior Courts Act 1981 and considering it just and convenient to do so.

AND UPON the Court being satisfied for the purposes of s.27(3) Police and Justice Act 2006, that there is a significant risk of harm to a person or persons from the conduct prohibited by this Order and that a power of arrest should be attached to some of the prohibitions contained in this Order.

AND UPON the Court accepting the undertakings given in Schedule A of this Order.

NOW IT IS ORDERED THAT:

Definitions

1. For the purpose of this Order, the:

- 1.1 "The Roads" shall mean the Roads identified in Annexe 1 to this Order and to the Claim Form as marked in red on the maps at Annexes 2 and 3 to this Order and to the Claim Form.
- 1.2 "The Administrative Area of Thurrock" shall mean the administrative area as marked with the purple line on the map at Annexe 2 to this Order and to the Claim Form.
- 1.3 "The Administrative Area of Essex" shall mean the administrative area as marked with the pink line on the map at Annexe 3 to this Order and to the Claim Form.

- 1.4 “The Administrative areas of Thurrock and Essex” shall mean those areas in 1.2 and 1.3 above.
- 1.5 “The Fuel Terminals” shall refer to the following four sites collectively:
 - 1.5.1 The Navigator Fuel Terminal, Oliver Road, West Thurrock RM20 3ED;
 - 1.5.2 The Esso Fuel Terminal, London Road, Purfleet RM19 1RS;
 - 1.5.3 Exolum Storage Ltd, off Askews Farm Lane, London Road, Grays RM17 5YZ; and
 - 1.5.4 Oikos Storage Limited, Haven Road, Hole Haven Wharf, Canvey Island, Essex SS8 0NR.

Prohibitions

2. The Defendants and each of them (whether by themselves or by instructing, encouraging or allowing any other person) are forbidden from:
 - 2.1 Blocking, slowing down, endangering, obstructing or otherwise interfering with the flow of traffic onto or along or off **the Roads** for the purpose of protesting.
 - 2.2 Blocking, slowing down, endangering, obstructing or otherwise interfering with **access to or from the Roads**, and on any adjacent roads, slip roads or roundabouts which are not vested in the Claimants, for the purpose of protesting.
 - 2.3 Entering, climbing onto, climbing into, climbing under **any vehicle** travelling on to, off or along **the Roads** or accessing or exiting the Roads: (a) without the permission of the registered keeper of the vehicle; and (b) for the purpose of protesting.
 - 2.4 Entering, climbing onto, climbing into, climbing under **any vehicle** on any **adjacent roads, slip roads or roundabouts to the Roads**, whether or not those roads are vested in the Claimants: (a) without the permission of the registered keeper of the vehicle; and (b) for the purpose of protesting.
 - 2.5 **Affixing themselves** (“locking on”) to any vehicle travelling on to, off or along the Roads or accessing or exiting the Roads.
 - 2.6 Affixing themselves (“locking on”) to any vehicle on any adjacent roads, slip roads or roundabouts to the Roads, whether or not those roads are vested in the Claimants, where the “locking on” is for the purpose of protesting.
 - 2.7 Affixing themselves (“locking on”) or any other items to any of the Roads or any other person or object on, under or over the Roads.
 - 2.8 Affixing themselves (“locking on”) or any other items to any adjacent roads, slip roads or roundabouts to the Roads, whether or not those roads are vested in the Claimants where the “locking on” is for the purpose of protesting.

- 2.9 **Erecting any structure** on the Roads.
- 2.10 **Tunnelling**, excavating, drilling or digging under or adjacent to the Roads.
- 2.11 **Occupying** existing tunnels under the Roads for the purpose of protesting.
- 2.12 **Causing damage** to the surface of or to any apparatus on or adjacent to the Roads or any vehicle on the Roads for the purpose of protesting.
- 2.13 **Abandoning any vehicle** or item on any Roads, adjacent roads, slip roads or roundabouts to the Roads, whether or not those roads are vested in the Claimants for the purpose of protesting.
- 2.14 Blocking, slowing down, obstructing or otherwise interfering with vehicular access to **any petrol station** in the administrative areas of Thurrock and Essex for the purpose of protesting.
- 2.15 Blocking, endangering, slowing down, obstructing or otherwise interfering with vehicular access to any **petrol station forecourt or access road**, in the administrative areas of Thurrock and Essex for the purpose of protesting.
- 2.16 Blocking, endangering, slowing down, obstructing or otherwise interfering with the offloading by **delivery tankers of fuel supplies** and/or the refuelling of vehicles at any petrol station within the administrative areas of Thurrock and Essex.
- 2.17 **Refusing to leave** the Roads when asked to do so by a police officer.
- 2.18 **Causing, assisting** or encouraging any other person to do any act prohibited by paragraphs 2.1 to 2.16 above.
- 2.19 **Continuing any acts** prohibited by paragraphs 2.1 to 2.16 above.

Power of arrest

- 3. Pursuant to s.27 Police and Justice Act 2006, a power of arrest shall apply to paragraphs 2.1 to 2.16 above in the form attached at schedule 3 of this Order.

Return Date

- 4. This Order shall be reconsidered at a further hearing at 10.30am on 10th and 11th May 2022 at the Royal Courts of Justice, Strand, London, WC2A 2LL, with a time estimate of 2 days, including ½ day judicial pre-reading.

Alternative Service

- 5. Pursuant to CPR rules 6.15 and 6.27, the Claimants are permitted, in addition to personal service, or in the alternative to personal service, to serve the **1st to 222nd Defendants** and any further named Defendants with the Claim Form, Application for an Interim Injunction, the supporting documents relied on in this Claim, and this Order and the power of arrest by the following methods:

- 5.1 **Websites:** placing a copy of the Claim Form, Application for an Interim Injunction, the supporting documents relied on in this Claim, and this Order and the power of arrest on the Claimants' websites and Facebook page/s; and
- 5.2 **email:** sending a copy of this Order to Just Stop Oil, Youth Climate Swarm, Extinction Rebellion and Insulate Britain at the following email addresses: juststopoilpress@protonmail.com; youthclimateswarm@protonmail.com; press@extinctionrebellion.uk; insulatebritainpress@protonmail.com and providing a web link at which they can access the Claim Form, Application for an Interim Injunction, the supporting documents relied on in this Claim, and this Order; and
- 5.3 **Post:** where an address of a named Defendant is known to the Claimants, by posting a copy of this Order together with a covering letter through the letterbox of the named Defendant's address (or by leaving in a separate mailbox) with a notice affixed to the front door if necessary, drawing the recipient's attention to the fact that the package contains a court order. If the premises do not have a letterbox, or mailbox, or the package will not fit through the letterbox, a package may be left next to the front door and a notice containing this Order may be affixed to the front door marked with a notice drawing the recipient's attention to the fact that the package contains a court order and Claim Form and should be read urgently. The notices shall be given in the form set out in Schedule 2 to this Order; and
- 5.4 **Text messages:** sending a text message to any named Defendant for whom the Claimants have a mobile telephone number, notifying them that an injunction order has been granted against them with a power of arrest, and providing a web link at which the Defendant can access the Claim Form, Application for an Interim Injunction, the supporting documents relied on in this Claim, and this Order. The notice shall be given in the form set out in Schedule 2 to this Order; and
- 5.5 **Placing signs** on A-Road entry points and exit points to the administrative area of Thurrock, and within 50 metres of The Fuel Terminals and on the A130 and B1014 between the entrance to Canvey Island and the roundabout known as the Waterside Road roundabout on Canvey Island, stating that there is a High Court Injunction in place prohibiting protest on the highway and providing a web link and QR code at which the Claim Form, Application for an Interim Injunction, the supporting documents relied on in this Claim, and this Order and the power of arrest can be accessed; or
- 5.6 **Where requested:** the Claim Form, Application for an Interim Injunction, the supporting documents relied on in this Claim, and this Order and the power of arrest may be served by email where the Defendant has requested that they be served by email and by sending the email to the address provided by the Defendant; or

- 5.7 **Lawyers:** By serving any solicitor acting for a Defendant who has filed a notice of acting in these proceedings.
6. The **deemed date of service** of any documents referred to in paragraph 5 above shall be the day on which service of the document or documents is completed in accordance with paragraph 5 above.
7. The Claimants are permitted to serve the **223rd to the 229th Defendants** with the Claim Form, Application for an Interim Injunction, the supporting documents relied on in this Claim, and this Order and the power of arrest by the methods in paragraphs 5.1, 5.2 or 5.5 above.
8. The **deemed date of service** of any of the documents referred to in paragraph 7 above shall be the day on which service of the document or documents is completed in accordance with paragraph 7 above.

Further Directions

9. The Defendants or any other person affected by this order may apply to the Court at any time to vary or discharge it but if they wish to do so they must inform the Claimants solicitors at the same time as the application is filed at court (and in any event not less than 48 hours before the hearing of any such application, not to include weekends or public holidays).
10. Any person applying to vary or discharge this order must provide their full name and address, an address for service, and must also apply to be joined as a named defendant to the proceedings at the same time (to the extent they are not already so named).
11. The Claimant has permission to apply to extend or vary this Order or for further directions.

Ritchie J

Date this order is made [CPR r.40.7(1)]: **24 April 2022 at 23.00 hours**

GUIDANCE NOTES

Effect of this Order – the Defendants

12. A Defendant who is an individual and who is ordered not to do something must not do it him or herself or in any other way nor must he/she do it through others acting on his/her behalf or on his/her instructions or with his/her encouragement.

Interpretation of this Order

13. In this Order references to ‘the Defendant’ means any or all of them (unless expressly stated otherwise).
14. A requirement to serve on ‘Defendant’ means on each of them. However, the Order is effective against any Defendant on whom it is served in accordance with this Order.
15. An Order requiring ‘the Defendant’ not to do anything applies to all Defendants.
16. This Order contains the following schedules and annexes

- (i) Schedule A-Undertakings;
- (ii) Schedule B-Witness Statements;
- (iii) Schedule 1-List of Named Defendants;
- (iv) Schedule 2-Notices;
- (v) Schedule 3-The Power of Arrest;
- (vi) Annexe 1-The List of “The Roads” in Thurrock;
- (vii) Annex 2-The map of the Administrative Area of Thurrock; and
- (viii) Annexe 3-The map of the Administrative Area of Essex.

Communications with the Court

17. All communications with the Court about this Order should be sent to Room WG08, The Royal Courts of Justice, Strand, London, WC2A 2LL. The telephone number is 020 7947 6010. The offices are open between 10am and 4.30pm Monday to Friday.

SCHEDULE A-UNDERTAKINGS

1. The Claimants undertake to use reasonable endeavours to personally serve the named Defendants with a copy of this Order.
2. The Claimants undertake to identify and name Defendants and apply to add them as named Defendants to this Order and the Claim as soon as reasonably practicable.
3. The Claimants undertake to pay the application fee for this application on Monday 25th April 2022 and to issue the Claim Form by 4pm on Tuesday 26th April 2022 and to serve the same within 7 working days on the currently named Defendants.

SCHEDULE B-WITNESS STATEMENTS

1. The Court read the following witness statements filed on behalf of the Claimants:
 - (a) The witness statement of Adewale Adesina 23.4.2022;
 - (b) The witness statement of Morgan Cronin 23.4.2022;
 - (c) The witness statement of Paul Crick 23.4.2022;
 - (d) The witness statement of Adam Rulewski 24.4.2022;

SCHEDULE 1-NAMED DEFENDANTS

1. Madeline Adams
2. Mary Adams
3. David Addy
4. Amber Alexandar
5. Mina-Mae Alexander
6. Eric Anderson
7. Christine Aslett
8. Nicholas Aslett
9. Lachlan Ayles
10. Stephanie Aylett
11. Pete Bailey
12. William Bajwa
13. Jeremy Banks
14. Colin Barrington
15. Kai Bartlett
16. Joshua Bates
17. Christopher Bennett
18. Gillian Bird
19. John Blanco
20. John Blewett
21. Poppy Bliss
22. Hilary Bond
23. Trevor Boulden
24. Geoffroy Bowman
25. Simon Bramwell
26. Joseph Bream
27. Scott Breen
28. Stephen Brett
29. Emily Brocklebank
30. Claire Brook
31. Emma Brooker
32. Michael Brown
33. Judith Bruce
34. Madeleine Budd
35. Tes Burns
36. Benjamin Buse
37. Catherine Cannon
38. Rebecca Cassar
39. Jessica Causby
40. Susan Chamberlayne
41. Sally Chapman
42. Vishal Chauhan
43. Katherine Chesterman
44. Phillipa Clarke
45. Oliver Clegg
46. Orla Coghlan
47. John Coghlan
48. Ruth Cook

49. Heather Cooper
50. Jasmine Corkhill Harris
51. Joy Susan Corrigan
52. Richard Crane
53. David Crawford
54. Rosemary Croft
55. Joseph Daldorph
56. Beverley Ann Daniel
57. Ben Delap
58. Gaie Delap
59. Gabriella Ditton
60. Igors Djomins
61. Laura Doehlei
62. Marguerite Doubleday
63. Ella Eason
64. Christine Essex
65. Janet Flynn
66. Michael Forton
67. Phoebe Frewer
68. Amy Friel
69. Robin Gardner
70. Cressida Gething
71. Alasdair Gibson
72. Hugo Glashier
73. Stephanie Golder
74. William Goldring
75. Xavier Gonzalez Trimmer
76. Alfie Goodland
77. Emma-Rose Goodwin
78. Sophie Greenland
79. Aaron Gunning
80. Louisa Hadden
81. Catherine Hallett
82. Finn Halsall
83. Jake Handling
84. Gareth Harper
85. Louise Harris
86. Patrick Hart
87. Yvonne Hayward
88. Selma Heimedinger
89. Jonathan Herbert
90. Noah Herfort
91. Suzanne Hetherington
92. Sarah Hirons
93. Rupert Horlick
94. Adrian Howlett
95. Eric Hoyland
96. Abigail Hubbucks
97. Hannah Hunt
98. Emma Ireland

99. Pavel Ivanov
100. Rik Jansen
101. Ruth Jarman
102. Stephen Jarvis
103. Russell Jarvis
104. John Johnson
105. Hannah Johnston
106. Timothy Jones
107. Pascale Kann
108. Hallum Kelly
109. Linda Latter
110. Charles Laurie
111. Peter Lay
112. Eben Lazarus
113. Isobel Lewis
114. Elanor Lewis-Holmes
115. Joseph Linheart
116. El Litten
117. Rebecca Lockyer
118. Felix Lozano
119. Barbara Lund
120. Jacqueline Macey
121. Catharine Maclean
122. Jacob Main
123. Elizabeth McCormack
124. Eilidh McFadden
125. Nathan McGovern
126. Louis McKechnie
127. Lilah McKim
128. Grace McMeekin
129. Adalaide Meaney
130. Anna Middleton
131. Hannah Miles
132. Benjamin Mitchell
133. Darcy Mitchell
134. Deborah Mitchell
135. Teddy Monroe
136. Fiona Moore
137. Stefania Morosi
138. Paul Morozzo
139. Virgenia Morris
140. Paul Morrison
141. Zak Mullen
142. Alexandra Mulvey
143. Reuben Mychalecky
144. Richard Newell-Price
145. Ben Newman
146. Alexander Newnham
147. Jessica Norgard
148. Rachel Norris

149. Rose Norris
150. George Oakenfold
151. Nicholas Onley
152. Jakub Pabiniak
153. Ella-Rose Paez
154. Sophie Page-Hall
155. Susan Parfitt
156. Dillon Parsons
157. Rose Patterson
158. Ethan Paul
159. Rosalind Pears
160. Abigail Percy-Ratcliff
161. Ursula Pethick
162. Jacqueline Phillips
163. Mitchel Phillips-White
164. Robert Possnett
165. Matthew Powell
166. Emily Price
167. Robert Price
168. Amy Pritchard
169. Felix Reeves-Whymark
170. Anna Retallack
171. Anne Richards
172. Bethan Roberts
173. Jasmin Robertson
174. Sebastian Roblyn
175. Isabel Rock
176. Elizabeth Rosser
177. Christian Rowe
178. Finn Roweth
179. Adelheid Russenberger
180. Isla Sandford
181. Daniel Sargison
182. James Sargison
183. Cat Scothorne
184. James Sebley
185. Rosa Sharkey
186. Sophie Sharples
187. Susan Sidey
188. James Skeet
189. Hannah Skwarska
190. Jacqueline Slade
191. Oliver Slaughter
192. David Smartknight
193. Heather Smith
194. Joshua Smyth
195. David Squire
196. Katherine Steer
197. Oliver Stevens
198. Madeleine Stewart

199. Ferdi Suleyman
200. Vivien Talbot
201. Ben Taylor
202. Jacqueline Tegg
203. Zachary Tenquist
204. David Thorneywork
205. Hannah Torrance-Bright
206. Lucy Trinder
207. Morgan Trowland
208. Jan Van Der Knapp
209. Rik Venhoutteghem
210. Sally Webber
211. Leonard Weber
212. Miranda Whelehan
213. Philip White
214. Edred Whittingham
215. Alexander Wilcox
216. Clare Wilson
217. Thomas Winter
218. Carol-Ann Wood
219. Lizia Woolf
220. Amorel Kennedy
221. Grace Lally
222. Morien Morgan

SCHEDULE 2-NOTICES

On the package containing this Order:

“VERY URGENT: THIS PACKAGE CONTAINS AN ORDER OF THE HIGH COURT AND YOU SHOULD READ IT IMMEDIATELY AND SEEK LEGAL ADVICE. IF YOU NEED ANOTHER COPY PLEASE DOWNLOAD IT FROM <https://www.thurrock.gov.uk/protest-injunction> OR CALL 020 7405 4600”

to affix to the front door when the package has been posted through the letterbox or placed in a mailbox:

“VERY URGENT: A PACKAGE HAS BEEN LEFT THAT CONTAINS AN ORDER OF THE HIGH COURT AND YOU SHOULD READ IT IMMEDIATELY AND SEEK LEGAL ADVICE. IF YOU NEED ANOTHER COPY PLEASE DOWLOAD IT FROM <https://www.thurrock.gov.uk/protest-injunction> OR CALL 020 7405 4600”

For service by text message:

“VERY URGENT: A HIGH COURT INJUNCTION ORDER HAS BEEN MADE AGAINST YOU, THE LINK PROVIDED IN THIS TEXT MESSAGE CONTAINS AN ORDER OF THE HIGH COURT AND THE SUPPORTING DOCUMENTS RELIED UPON BY THE CLAIMANTS. YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE. IF YOU NEED ANOTHER COPY PLEASE CALL 020 7405 4600”

SCHEDULE 3-POWER OF ARREST

Power of arrest

Name of defendant

(1) Madeline Adams, (2)-(222) Other Named Defendants,
(223)-(229) Persons Unknown (see continuation sheet)

Defendant's address

See attached continuation sheet

Name of court

High Court of Justice
Queen's Bench Division

Claim No.

QB-2022-
001317

Claimant's name (including ref.)

(1) Thurrock Council
(2) Essex County Council

Defendant's name (including ref.)

(1) Madeline Adams(2)-(222) Other Named
Defendants

Date order made 2 4 / 0 4 / 2 0 2 2

Name of judge Mr Justice Ritchie

Order made

under (insert
statutory provision)

Local Government Act 1972, s222 and Highways Act 1980, s130(5)

This order includes a power of arrest under (insert statutory provision)

Police and Justice Act 2006, s27

The relevant paragraphs of the order to which a power of arrest has been attached are:

(set out those paragraphs of the order to which the power of arrest is attached, if necessary continue on a separate sheet)

Paragraphs 2.1 to 2.16 of the Order of Mr Justice Ritchie dated 24 April 2022 (see attached continuation sheet)

This power of arrest was ordered on 2 4 / 0 4 / 2 0 2 2

and expires on the 2 4 / 1 0 / 2 0 2 2

Note to Arresting OfficerWhere the defendant is arrested under the power given by
section 155 of the Housing Act 1996, or section 27 of the Police and
Justice Act 2006; or section 43 of the Policing and Crime Act 2009; or
section 4 of the Anti-Social Behaviour, Crime and Policing Act 2014:-

- the defendant shall be brought before the judge within the period
of 24 hours beginning at the time of their arrest;
- a constable shall inform the person on whose application the
injunction was granted, forthwith where the defendant is arrested
under the power given by section 155 of the Housing Act 1996 or
as soon as reasonably practicable where the defendant is arrested
under the power given by section 27 of the Police and Justice Act
2006 or section 43 of the Policing and Crime Act 2009 or section 4
of the Anti-Social Behaviour, Crime and Policing Act 2014.

Nothing in section 155 of the Housing Act 1996 or section 27 of the
Police and Justice Act 2006 or section 43 of the Policing and Crime Act
2009 or section 4 of the Anti-Social Behaviour, Crime and Policing Act
2014, shall authorise the detention of the respondent after the expiry
of the period of 24 hours beginning at the time of their arrest.In calculating any period of 24 hours, no account shall be taken of
Christmas Day, Good Friday or any Sunday.

Name of Claimant

(1) Thurrock Council
(2) Essex Council

Claimant's address

Sharpe Pritchard LLP
Elm Yard
10-16 Elm Street
London
WC1X 0BJ

Claimant's phone number

020 7405 4600



IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Claim No.

In the matter of an application for an injunction made pursuant to the Local Government Act 1972, s222 and the Highways Act 1980, s130(5)

24 April 2022
Before Mr Justice Ritchie

B E T W E E N :

(1) THURROCK COUNCIL

(2) ESSEX COUNTY COUNCIL

Claimants

-and-

(1) MADELINE ADAMS

(2)-(222) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM FORM

(223) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF OR ALONG THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(224) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES OR AFFIXING ANY ITEM TO ANY VEHICLE TRAVELLING ON TO, OFF, ALONG OR WHICH IS ACCESSING OR EXITING THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(225) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO, INTO OR OFF ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(226) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO OR FROM ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(227) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(228) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(229) PERSONS UNKNOWN WHO ARE TRESPASSING ON, UNDER OR ADJACENT TO THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM BY UNDERTAKING EXCAVATIONS, DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE RELEVANT HIGHWAY AUTHORITY

Defendants

POWER OF ARREST: CONTINUATION SHEET

NAMES AND ADDRESSES OF DEFENDANTS

Surname	Forename	Address	Defendant Number
ADAMS	MARY		2
ADAMS	MADELINE		1
ADDY	DAVID		3
ALEXANDER	AMBER		4
ALEXANDER	MINA-MAE		5
ANDERSON	ERIC		6
ASLETT	NICHOLAS		8
ASLETT	CHRISTINE		7

AYLES	LACHLAN		9
AYLETT	STEPHANIE		10
BAILEY	PETE		11
BAJWA	WILLIAM		12
BANKS	JEREMY		13
BARRINGTON	COLIN		14
BARTLETT	KAI		15
BATES	JOSHUA		16
BENNETT	CHRISTOPHER		17
BIRD	GILLIAN		18
BLANCO	JOHN		19
BLEWETT	JOHN		20
BLISS	POPPY		21
BOND	HILARY		22
BOULDEN	TREVOR		23
BOWMAN	GEOFFREY		24
BRAMWELL	SIMON		25
BREAM	JOSEPH		26
BREEN	SCOTT		27
BRETT	STEPHEN		28
BROCKLEBANK	EMILY		29
BROOK	CLAIRE		30
BROOKER	EMMA		31
BROWN	MICHAEL		32

BRUCE	JUDITH		33
BUDD	MADELEINE		34
BURNS	TES		35
BUSE	BENJAMIN		36
CANNON	CATHERINE		37
CASSAR	REBECCA		38
CAUSBY	JESSICA		39
CHAMBERLAYNE	SUSAN		40
CHAPMAN	SALLY		41
CHAUHAN	VISHAL		42
CHESTERMAN	KATHERINE		43
CLARKE	PHILIPPA		44
CLEGG	OLIVER		45
COGHLAN	ORLA		46
COGHLAN	JOHN		47
COOK	RUTH		48
COOPER	HEATHER		49
CORKHILL HARRIS	JASMINE		50
CORRIGAN	JOY SUSAN		51
CRANE	RICHARD		52
CRAWFORD	DAVID		53

CROFT	ROSEMARY		54
DALDORPH	JOSEPH		55
DANIEL	BEVERLEY ANN		56
DELAP	BEN		57
DELAP	GAIE		58
DITTON	GABRIELLA		59
DJOMINS	IGORS		60
DOEHLEI	LAURA		61
DOUBLEDAY	MARGUERITE		62
EASON	ELLA		63
ESSEX	CHRISTINE		64
FLYNN	JANET		65
FORTON	MICHAEL		66
FREWER	PHOEBE		67
FRIEL	AMY		68
GARDNER	ROBIN		69
GETHING	CRESSIDA		70
GIBSON	ALASDAIR		71
GLASHIER	HUGO		72
GOLDER	STEPHANIE		73
GOLDRING	WILLIAM		74
GONZALEZ TRIMMER	XAVIER		75
GOODLAND	ALFIE		76
GOODWIN	EMMA-ROSE		77
GREENLAND	SOPHIE		78

GUNNING	AARON		79
HADDEN	LOUISA		80
HALLETT	CATHERINE		81
HALSALL	FINN		82
HANDLING	JAKE		83
HARPER	GARETH		84
HARRIS	LOUISE		85
HART	PATRICK		86
HAYWARD	YVONNE		87
HEIMEDINGER	SELMA		88
HERBERT	JONATHAN		89
HERFORT	NOAH		90
HETHERINGTON	SUZANNE		91
HIRONS	SARAH		92
HORLICK	RUPERT		93
HOWLETT	ADRIAN		94
HOYLAND	ERIC		95
HUBBUCKS	ABIGAIL		96
HUNT	HANNAH		97
IRELAND	EMMA		98
IVANOV	PAVEL		99
JANSEN	RIK		100
JARMAN	RUTH		101

JARVIS	STEPHEN		102
JARVIS	RUSSELL		103
JOHNSON	JOHN		104
JOHNSTON	HANNAH		105
JONES	TIMOTHY		106
KANN	PASCALE		107
KELLY	HALLUM		108
LATTER	LINDA		109
LAURIE	CHARLES		110
LAY	PETER		111
LAZARUS	EBEN		112
LEWIS	ISOBEL		113
LEWIS-HOLMES	ELANOR		114
LINHART	JOSEPH		115
LITTEN	EL		116
LOCKYER	REBECCA		117
LOZANO	FELIX		118
LUND	BARBARA		119
MACEY	JACQUELINE		120
MACLEAN	CATHERINE		121
MAIN	JACOB		122
MCCORMACK	ELIZABETH		123
MCFADDEN	EILIDH		124

MCGOVERN	NATHAN		125
MCKECHNIE	LOUIS		126
MCKIM	LILAH		127
MCMEEKIN	GRACE		128
MEANEY	ADALAIDE		129
MIDDLETON	ANNA		130
MILES	HANNAH		131
MITCHELL	DARCY		133
MITCHELL	BENJAMIN		132
MITCHELL	DEBORAH		134
MONROE	TEDDY		135
MOORE	FIONA		136
MOROSI	STEFANIA		137
MOROZZO	PAUL		138
MORRIS	VIRGENIA		139
MORRISON	PAUL		140
MULLEN	ZAK		141
MULVEY	ALEXANDRA		142
MYCHALECKYJ	REUBEN		143
NEWELL-PRICE	RICHARD		144
NEWMAN	BEN		145
NEWNHAM	ALEXANDER		146
NORGARD	JESSICA		147

NORRIS	RACHEL		148
NORRIS	ROSE		149
OAKENFOLD	GEORGE		150
ONLEY	NICHOLAS		151
PABINIAK	JAKUB		152
PAEZ	ELLA-ROSE		153
PAGE HALL	SOPHIE		154
PARFITT	SUSAN		155
PARSONS	DILLON		156
PATTERSON	ROSE		157
PAUL	ETHAN		158
PEARS	ROSALIND		159
PERCY-RATCLIFF	ABIGAIL		160
PETHICK	URSULA		161
PHILLIPS	JACQUELINE		162
PHILLIPS-WHITE	MITCHEL		163
POSSNETT	ROBERT		164
POWELL	MATTHEW		165
PRICE	ROBERT		167
PRICE	EMILY		166
PRITCHARD	AMY		168
REEVES-WHYMARK	FELIX		169

RETALLACK	ANNA		170
RICHARDS	ANNE		171
ROBERTS	BETHAN		172
ROBERTSON	JASMIN		173
ROBLYN	SEBASTIAN		174
ROCK	ISABEL		175
ROSSER	ELIZABETH		176
ROWE	CHRISTIAN		177
ROWETH	FINN		178
RUSSENBERGER	ADELHEID		179
SANDFORD	ISLA		180
SARGISON	DANIEL		181
SARGISON	JAMES		182
SCOTHORNE	CAT		183
SEBLEY	JAMES		184
SHARKEY	ROSA		185
SHARPLES	SOPHIE		186
SIDEY	SUSAN		187
SKEET	JAMES		188
SKWARSKA	HANNAH		189
SLADE	JACQUELINE		190
SLAUGHTER	OLIVER		191

SMARTKNIGHT	DAVID		192
SMITH	HEATHER		193
SMYTH	JOSHUA		194
SQUIRE	DAVID		195
STEER	KATHERINE		196
STEVENS	OLIVER		197
STEWART	MADELEINE		198
SULEYMAN	FERDI		199
TALBOT	VIVIEN		200
TAYLOR	BEN		201
TEGGIN	JACQUELINE		202
TENQUIST	ZACHARY		203
THORNEYWORK	DAVID		204
TORRANCE- BRIGHT	HANNAH		205
TRINDER	LUCY		206
TROWLAND	MORGAN		207
VAN DER KNAAP	JAN		208
VANHOUTTEGHEM	RIK		209
WEBBER	SALLY		210
WEBER	LEONARD		211
WHELEHAN	MIRANDA		212

WHITE	PHILIP		213
WHITTINGHAM	EDRED		214
WILCOX	ALEXANDER		215
WILSON	CLARE		216
WINTER	THOMAS		217
WOOD	CAROL-ANN		218
WOOLF	LIZIA		219
KENNEDY	AMOREL		220
LALLY	GRACE		221
MORGAN	MORIEN		222
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THE RELEVANT PARAGRAPHS OF THE ORDER TO WHICH A POWER OF ARREST HAVE BEEN ATTACHED ARE:

Paragraphs 2.1 to 2.16 of the Order of Ritchie J dated 24 April 2022:

2. The Defendants and each of them (whether by themselves or by instructing, encouraging or allowing any other person) are forbidden from:
 - 2.1 Blocking, slowing down, endangering, obstructing or otherwise interfering with the flow of traffic onto or along or off the Roads for the purpose of protesting.
 - 2.2 Blocking, slowing down, endangering, obstructing or otherwise interfering with access to or from the Roads, and on any adjacent roads, slip roads or roundabouts which are not vested in the Claimants, for the purpose of protesting.
 - 2.3 Entering, climbing onto, climbing into, climbing under any vehicle travelling on to, off or along the Roads or accessing or exiting the Roads: (a) without the permission of the registered keeper of the vehicle; and (b) for the purpose of protesting.
 - 2.4 Entering, climbing onto, climbing into, climbing under any vehicle on any adjacent roads, slip roads or roundabouts to the Roads, whether or not those roads are vested in the Claimants: (a) without the permission of the registered keeper of the vehicle; and (b) for the purpose of protesting.
 - 2.5 Affixing themselves ("locking on") to any vehicle travelling on to, off or along the Roads or accessing or exiting the Roads.

- 2.6 Affixing themselves (“locking on”) to any vehicle on any adjacent roads, slip roads or roundabouts to the Roads, whether or not those roads are vested in the Claimants, where the “locking on” is for the purpose of protesting.
- 2.7 Affixing themselves (“locking on”) or any other items to any of the Roads or any other person or object on, under or over the Roads.
- 2.8 Affixing themselves (“locking on”) or any other items to any adjacent roads, slip roads or roundabouts to the Roads, whether or not those roads are vested in the Claimants where the “locking on” is for the purpose of protesting.
- 2.9 Erecting any structure on the Roads.
- 2.10 Tunnelling, excavating, drilling or digging under or adjacent to the Roads.
- 2.11 Occupying existing tunnels under the Roads for the purpose of protesting.
- 2.12 Causing damage to the surface of or to any apparatus on or adjacent to the Roads or any vehicle on the Roads for the purpose of protesting.
- 2.13 Abandoning any vehicle or item on any Roads, adjacent roads, slip roads or roundabouts to the Roads, whether or not those roads are vested in the Claimants for the purpose of protesting.
- 2.14 Blocking, slowing down, obstructing or otherwise interfering with vehicular access to any petrol station in the administrative areas of Thurrock and Essex for the purpose of protesting.
- 2.15 Blocking, endangering, slowing down, obstructing or otherwise interfering with vehicular access to any petrol station forecourt or access road, in the administrative areas of Thurrock and Essex for the purpose of protesting.
- 2.16 Blocking, endangering, slowing down, obstructing or otherwise interfering with the offloading by delivery tankers of fuel supplies and/or the refuelling of vehicles at any petrol station within the administrative areas of Thurrock and Essex.

IN THE HIGH COURT OF JUSTICE

Claim No.

QUEEN'S BENCH DIVISION

In the matter of an application for an injunction made pursuant to the Local Government Act 1972, s222 and the Highways Act 1980, s130(5)

24 April 2022

Before [Judge]

B E T W E E N :

(1) THURROCK COUNCIL

(2) ESSEX COUNTY COUNCIL

Claimants

-and-

(1) MADELINE ADAMS

(2)-(222) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM FORM

(223) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF OR ALONG THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(224) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES OR AFFIXING ANY ITEM TO ANY VEHICLE TRAVELLING ON TO, OFF, ALONG OR WHICH IS ACCESSING OR EXITING THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(225) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO, INTO OR OFF ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

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(229) PERSONS UNKNOWN WHO ARE TRESPASSING ON, UNDER OR ADJACENT TO THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM BY UNDERTAKING EXCAVATIONS,

**DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE
RELEVANT HIGHWAY AUTHORITY**

Defendants

ANNEX 1 - ROADS

Thurrock Council Roads

NORTH ROAD	B186
SANDY LANE	B1335
ROMFORD ROAD ROUNDABOUT	B1335
MILL ROAD	C Class
PURFLEET ROAD	C Class
WEST ROAD	C Class
ARISDALE AVENUE	C Class
DAIGLEN DRIVE	C Class
STIFFORD ROAD	B1335
LANCE CORPORAL NICKY MASON WAY	B1335
STIFFORD ROAD	B1335
ARTERIAL ROAD	A1306
THURROCK SERVICES ROAD	Unclassified
POND ROAD ROUNDABOUT	Unclassified
LONDON ROAD ROUNDABOUT	A1306
LONDON ROAD	A1306
ENTRY ON SLIP WELLINGTON INTERCHANGE TO A13 EASTBOUND	A13
EXIT OFF SLIP A13 TO WELLINGTON INTERCHANGE WESTBOUND	A13
PURFLEET BYPASS	B1335
LINK ROAD FROM A13 SOUTHBOUND TO A1306	A1090
CANTERBURY WAY SLIP ROAD ANTICLOCKWISE	A282
LINK ROAD FROM A1306 TO A13 NORTHBOUND	A282
CANTERBURY WAY SLIP ROAD CLOCKWISE	A282
STONEHOUSE CORNER ROUNDABOUT	A1090
ARTERIAL ROAD ROUNDABOUT	A1090
STONEHOUSE LANE	A1090
CYGNET VIEW	Unclassified
ARTERIAL ROAD ROUNDABOUT A1306	A1306
WEST THURROCK WAY RETAIL PARK ROUNDABOUT	B186
ARTERIAL ROAD	A1306
LAKE RISE	Unclassified
OLIVER CLOSE	A1090
ST CLEMENTS WAY ROUNDABOUT	A1090
ST CLEMENTS WAY	A1090
LONDON ROAD	A1090
WEST THURROCK WAY	A126
Access road Cost Co	Unclassified

JUNCTION 30 M25 TO BOROUGH BOUNDARY WESTBOUND	A13
BOROUGH BOUNDARY TO M25 JUNCTION 30 EASTBOUND	A13
ACCESS ROAD FROM BURGHLEY ROAD TO SUPERSTORE	Private Road
BURGHLEY ROAD ROUNDABOUT	B146
SEALLY ROAD	Unclassified
BURGHLEY ROAD	B146
PILGRIMS LANE ROUNDABOUT	A1306
ARTERIAL ROAD	A1306
ENTRY ON SLIP NORTH SLIFFORD ROUNDABOUT TO A13 EASTBOUND	A13
ENTRY ON SLIP NORTH STIFFORD ROUNDABOUT TO A13 WESTBOUND	A13
EXIT OFF SLIP A13 TO NORTH STIFFORD ROUNDABOUT WESTBOUND	A13
EXIT OFF SLIP A13 TO NORTH STIFFORD ROUNDABOUT EASTBOUND	A13
STIFFORD ROUNDABOUT	A1012
TREACLE MINE ROUNDABOUT	A1012
LINK FROM A1012 ROUNDABOUT TO A1306 INTERCHANGE	A1012
HOGG LANE	A1012
ELIZABETH ROAD	A1012
HOGG LANE ROUNDABOUT	A1012
LONDON ROAD	A126
HOGG LANE ROUNDABOUT	A1012
EASTERN WAY	A126
LAKESIDE INTERCHANGE TO NORTH STIFFORD ROUNDABOUT EASTBOUND	A13
NORTH STIFFORD ROUNDABOUT TO LAKESIDE INTERCHANGE WESTBOUND	A13
LAKESIDE INTERCHANGE TO M25 JUNCTION 30 WESTBOUND	A13
JUNCTION 30 M25 TO LAKESIDE INTERCHANGE EASTBOUND	A13
BRENTWOOD ROAD	A128
STANFORD ROAD	A1013
SOUTHEND ROAD	A1013
CEMENT BLOCK COTTAGES	Unclassified
DOCK ROAD	A126
ORSETT COCK ROUNDABOUT	A1013
ENTRY ON SLIP ORSETT COCK ROUNDABOUT TO A13 WESTBOUND	A13
EXIT OFF SLIP A13 EASTBOUND TO ORSETT COCK ROUNDABOUT	A13
EXIT OFF SLIP A13 WESTBOUND TO ORSETT COCK ROUNDABOUT	A13
DENEHOLES ROUNDABOUT	A1013
WOOD VIEW	B149
LODGE LANE	A1013
CHADWELL HILL	C Class
EXIT OFF SLIP A1089 TO A126 SOUTHBOUND	A1089
ENTRY ON SLIP A126 TO A1089 NORTHBOUND	A1089
MARSHFOOT ROAD ROUNDABOUT	A126
ST CHADS ROAD ROUNDABOUT	A126
GATEWAY ACADEMY ROUNDABOUT MARSHFOOT ROAD	A126
MARSHFOOT ROAD	A126
MARSHFOOT ROAD	A126
BROADWAY	A126
THURROCK PARK WAY	Unclassified
ACCESS ROADS FOR ASDA SUPPERSTORE	Unclassified

NORTH STIFFORD ROUNDABOUT TO A1089 EASTBOUND	A13
A1089 TO NORTH STIFFORD ROUNDABOUT WESTBOUND	A13
A1089 TO ORSETT COCK ROUNDABOUT EASTBOUND	A13
ORSETT COCK ROUNDABOUT TO A1089 WESTBOUND	A13
DOCK APPROACH ROAD	A1089
DOCK APPROACH ROAD	A1089
DOCK APPROACH ROAD	A1089
THURROCK PARK WAY ROUNDABOUT	A1089
SLIP ROAD FROM DOCK APPROACH ROAD TO A13	A13
SLIP ROAD FROM DOCK APPROACH ROAD TO A13	A13
STANFORD ROAD	A1013
LONDON ROAD	C Class
ENTRY ON SLIP ORSETT COCK ROUNDABOUT TO A13 EASTBOUND	A13
Orsett Cock FS West Slip Roads	A13
Orsett Cock FS East Slip Roads	A13
STANFORD ROAD	A1013
STANFORD BYPASS INTERCHANGE	A1014
ENTRY ON SLIP STANFORD INTERCHANGE TO A13 EASTBOUND	A13
EXIT OFF SLIP A13 EASTBOUND TO STANFORD INTERCHANGE	A13
EXIT OFF SLIP A13 WESTBOUND TO STANFORD INTERCHANGE	A13
ENTRY ON SLIP STANFORD INTERCHANGE TO A13 WESTBOUND	A13
SOUTHEND ROAD	B1420
THE MANORWAY SOUTHEND ROAD LINK WESTBOUND	A1014
THE MANORWAY SOUTHEND ROAD LINK EASTBOUND	A1014
THE MANORWAY	A1014
CORRINGHAM ROAD A1014 ROUNDABOUT	A1014
ORSETT COCK ROUNDABOUT TO STANFORD INTERCHANGE EASTBOUND	A13
STANFORD INTERCHANGE TO ORSETT COCK ROUNDABOUT WESTBOUND	A13
STANFORD INTERCHANGE TO BOROUGH BOUNDARY AT FIVE BELLS EASTBOUND	A13
BOROUGH BOUNDARY AT FIVE BELLS TO STANFORD INTERCHANGE WESTBOUND	A13
BELLS CORNER PARADE SOUTHEND ROAD	A176
BELLS CORNER ROUNDABOUT	A176
SOUTHEND ROAD	B1420
LINK ROAD FROM B1420 AND BELLS CORNER ROUNDABOUT TO BOUNDARY	B1420
THE MANORWAY	A1014
GIFFORDS CROSS ROAD	C Class
FOBBING ROAD	C Class
CHURCH ROAD	B1420
LAMPITS HILL	B1420
SOUTHEND ROAD	B1420
ENTRY ON SLIP FIVE BELLS ROUNDABOUT TO A13 WESTBOUND	A13
FIVE BELLS ROUNDABOUT SOUTH	A176
FIVE BELLS ROUNDABOUT NORTH	A176
EXIT OFF SLIP A13 EASTBOUND TO FIVE BELLS ROUNDABOUT	A13
FIVE BELLS SLIP ROAD FROM SOUTHEND ROAD WESTBOUND	A13

ASKEWS FARM LANE	Unclassified
WOULDHAM ROAD	Unclassified
LONDON ROAD	A126
ST CLEMENTS WAY ROUNDABOUT	A1090
BURNLEY ROAD	Unclassified
ST CLEMENTS WAY	A1090
STONEHOUSE CORNER ROUNDABOUT	A1090
SHIP LANE	C Class
ARTERIAL ROAD ROUNDABOUT	A1306
STONEHOUSE LANE	A1090
ARTERIAL ROAD	A1306
LONDON ROAD	A1090
LONDON ROAD	A1090
OLIVER ROAD	A1090
OLIVER CLOSE	A1090
STANFORD BYPASS INTERCHANGE	A1014
CORRINGHAM ROAD A1014 ROUNDABOUT	A1014
THE MANORWAY	A1014
THE MANORWAY	A1014
THE MANORWAY	A1014
ENTRY ON SLIP STANFORD INTERCHANGE TO A13 WESTBOUND	A13
EXIT OFF SLIP A13 EASTBOUND TO STANFORD INTERCHANGE	A13
ENTRY ON SLIP STANFORD INTERCHANGE TO A13 EASTBOUND	A13
EXIT OFF SLIP A13 WESTBOUND TO STANFORD INTERCHANGE	A13
CANTERBURY WAY SLIP ROAD ANTICLOCKWISE	A282
CANTERBURY WAY SLIP ROAD CLOCKWISE	A282
LINK ROAD FROM A13 SOUTHBOUND TO A1306	A13
LINK ROAD FROM A1306 TO A13 NORTHBOUND	A13

Essex County Council Roads

HAVEN ROAD, CANVEY ISLAND
 ROSCOMMON WAY, CANVEY ISLAND
 NORTHWICK ROAD, CANVEY ISLAND
 A130 FROM SADDLERS FARM ROUNDABOUT TO JUNCTION WITH HAVEN ROAD
 SADLERS FARM ROUNDABOUT
 SLIPROADS LEADING TO AND FROM A13 FROM SADLERS FARM ROUNDABOUT
 SLIPROADS LEADING TO AND FROM A130 FROM SADLERS FARM ROUNDABOUT
 B1014 CANVEY ROAD FROM WATERSIDE ROUNDABOUT TO ROUNDABOUT ON HIGH STREET BENFLEET
 CANVEY ISLAND PUBLIC FOOTPATH NUMBER 8
 A130 AND B1014 BETWEEN THE ENTRANCE TO THE ISLAND AND ROUNDABOUT KNOWN AS THE WATERSIDE ROAD ROUNDABOUT

IN THE HIGH COURT OF JUSTICE

Claim No.

QUEEN'S BENCH DIVISION

In the matter of an application for an injunction made pursuant to the Local Government Act 1972, s222 and the Highways Act 1980, s130(5)

24 April 2022

Before [Judge]

B E T W E E N :

(1) THURROCK COUNCIL

(2) ESSEX COUNTY COUNCIL

Claimants

-and-

(1) MADELINE ADAMS

(2)-(222) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM FORM

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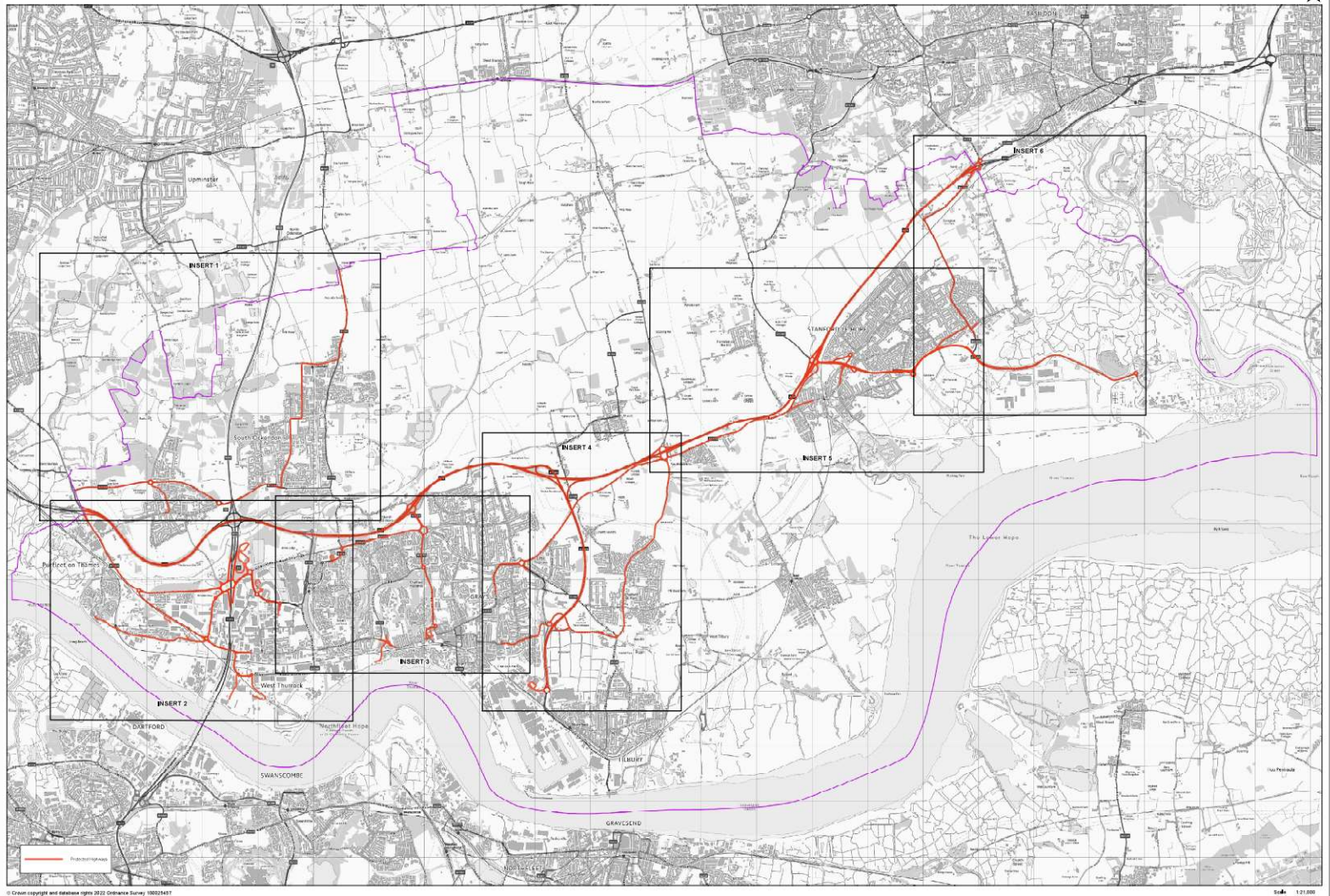
(228) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

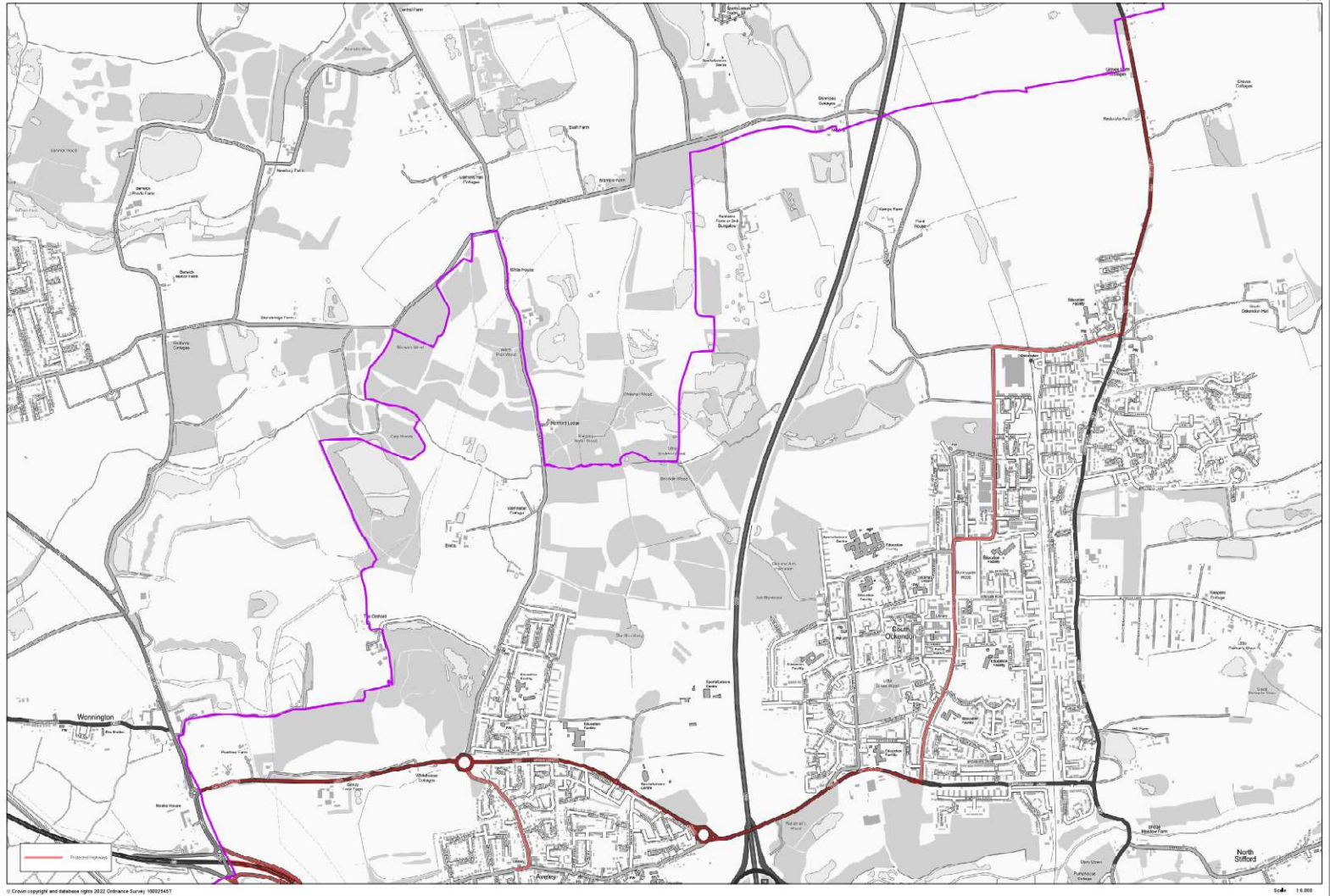
(229) PERSONS UNKNOWN WHO ARE TRESPASSING ON, UNDER OR ADJACENT TO THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM BY UNDERTAKING EXCAVATIONS,

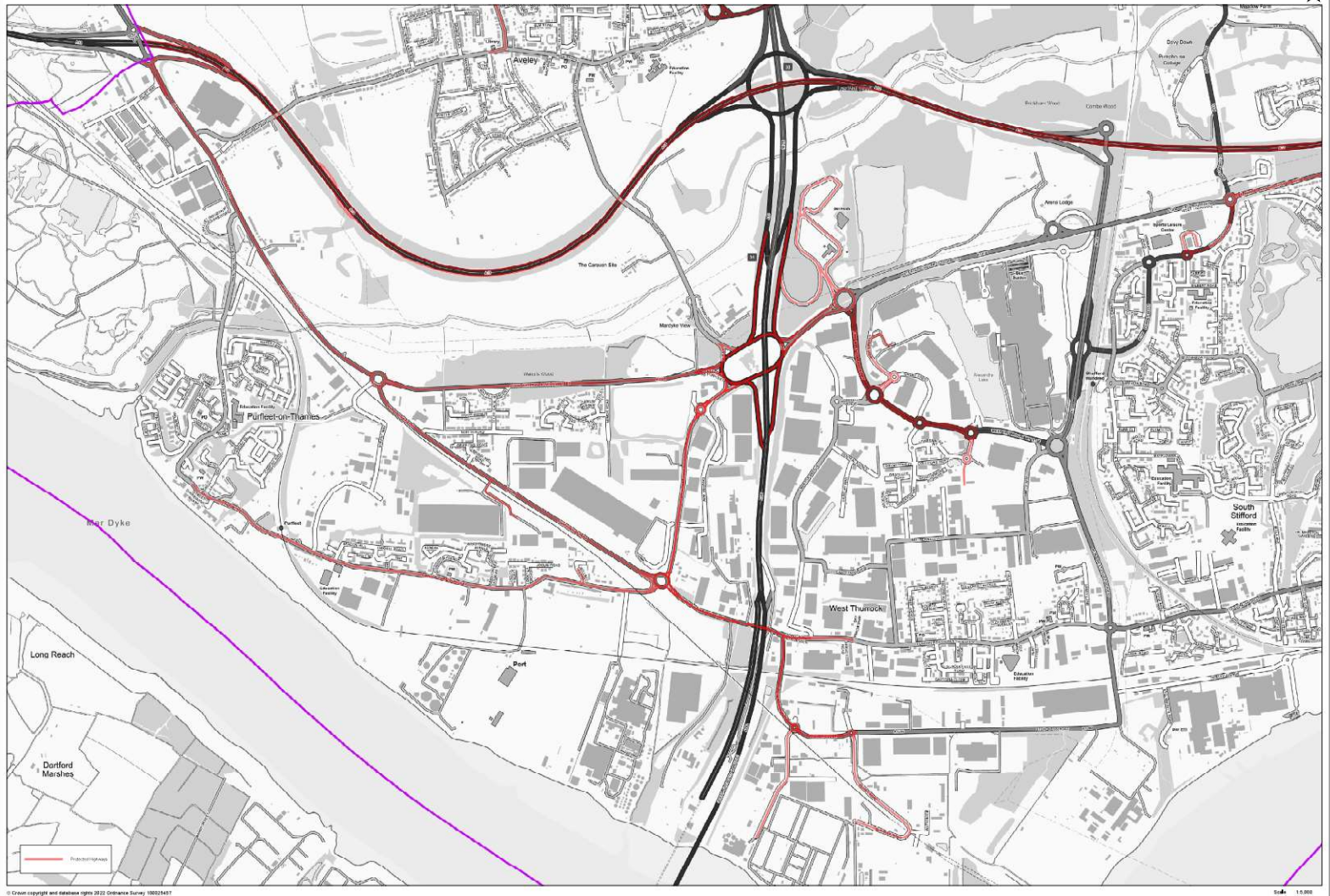
**DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE
RELEVANT HIGHWAY AUTHORITY**

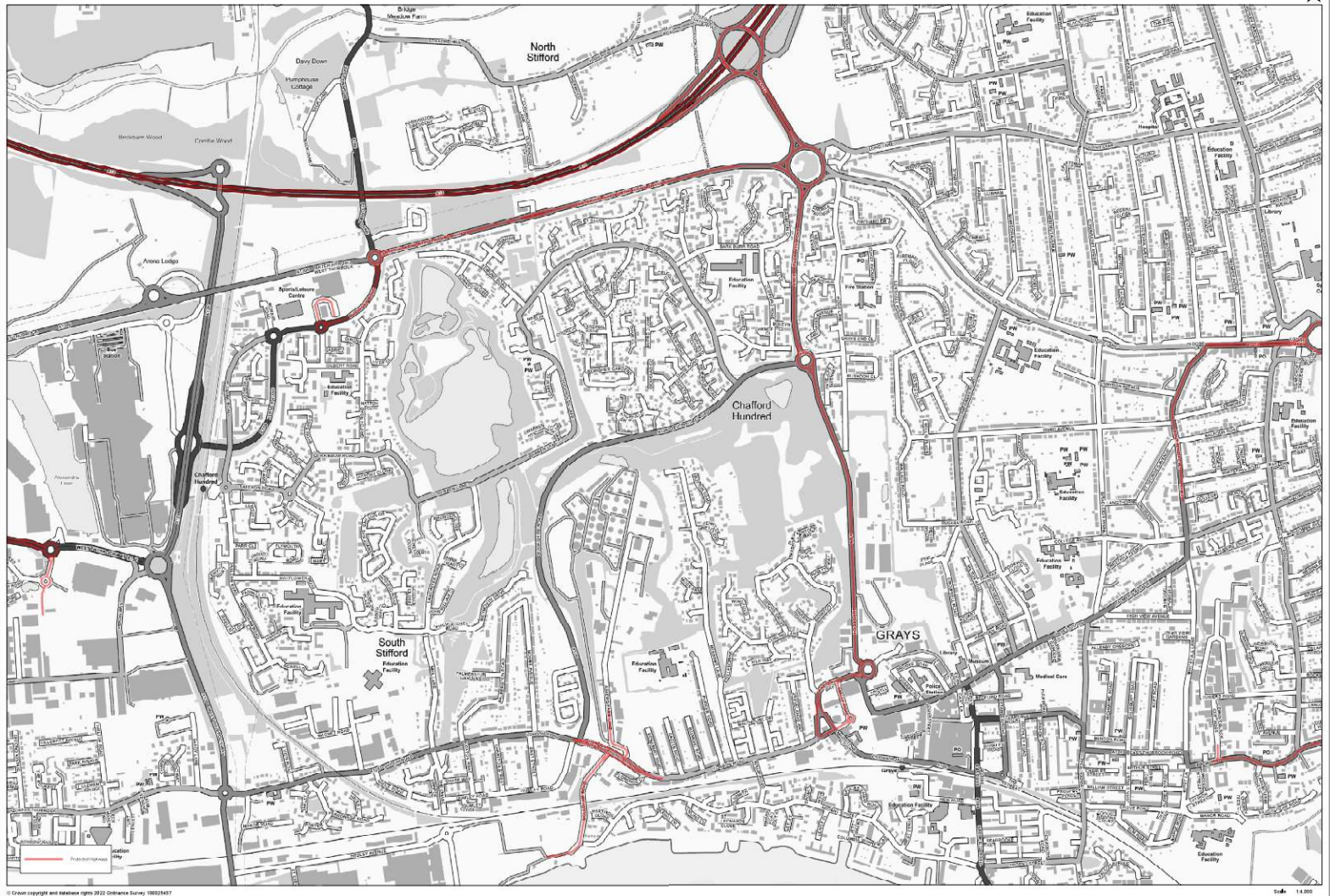
Defendants

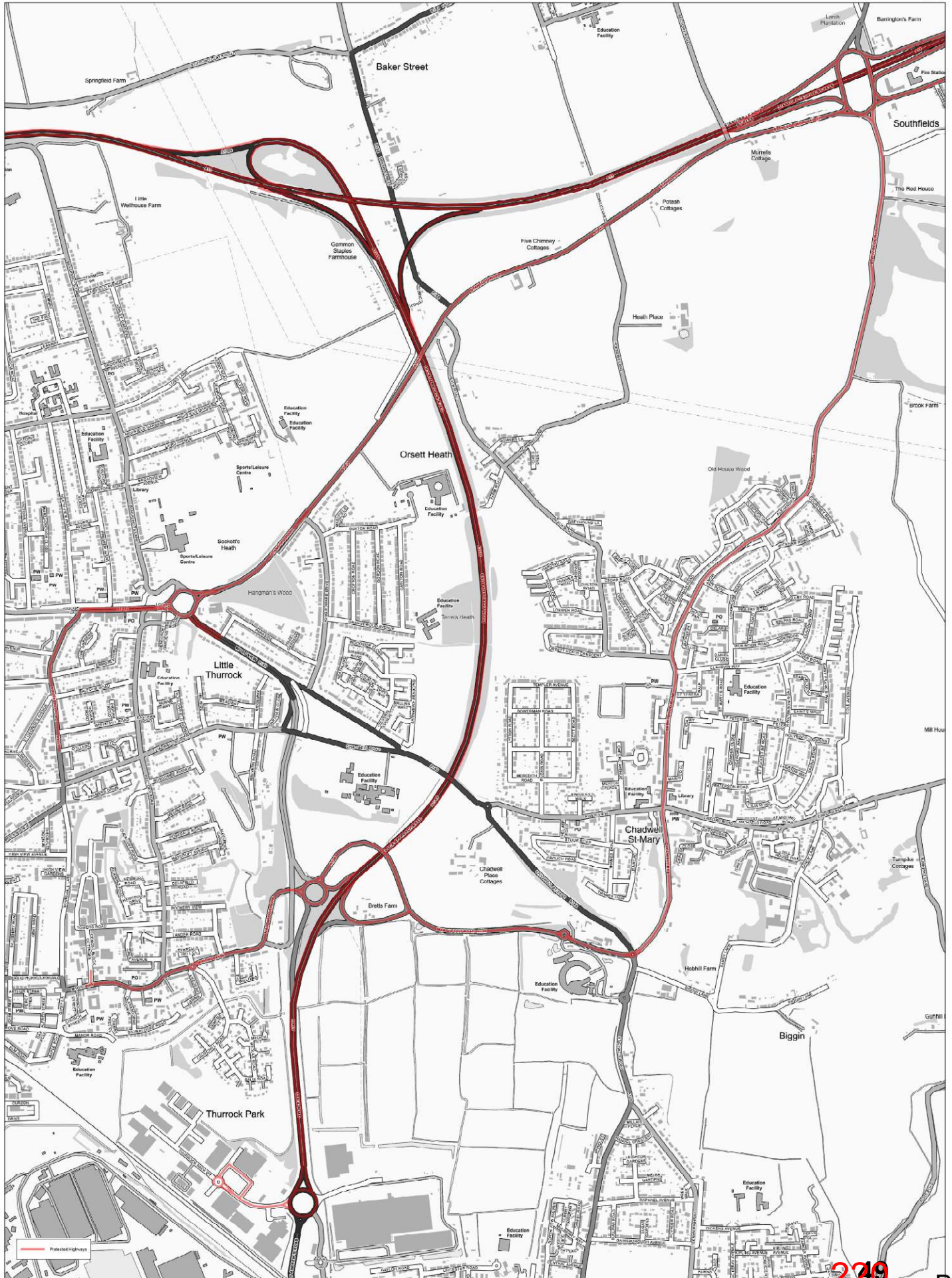
ANNEX 2 – THURROCK MAP



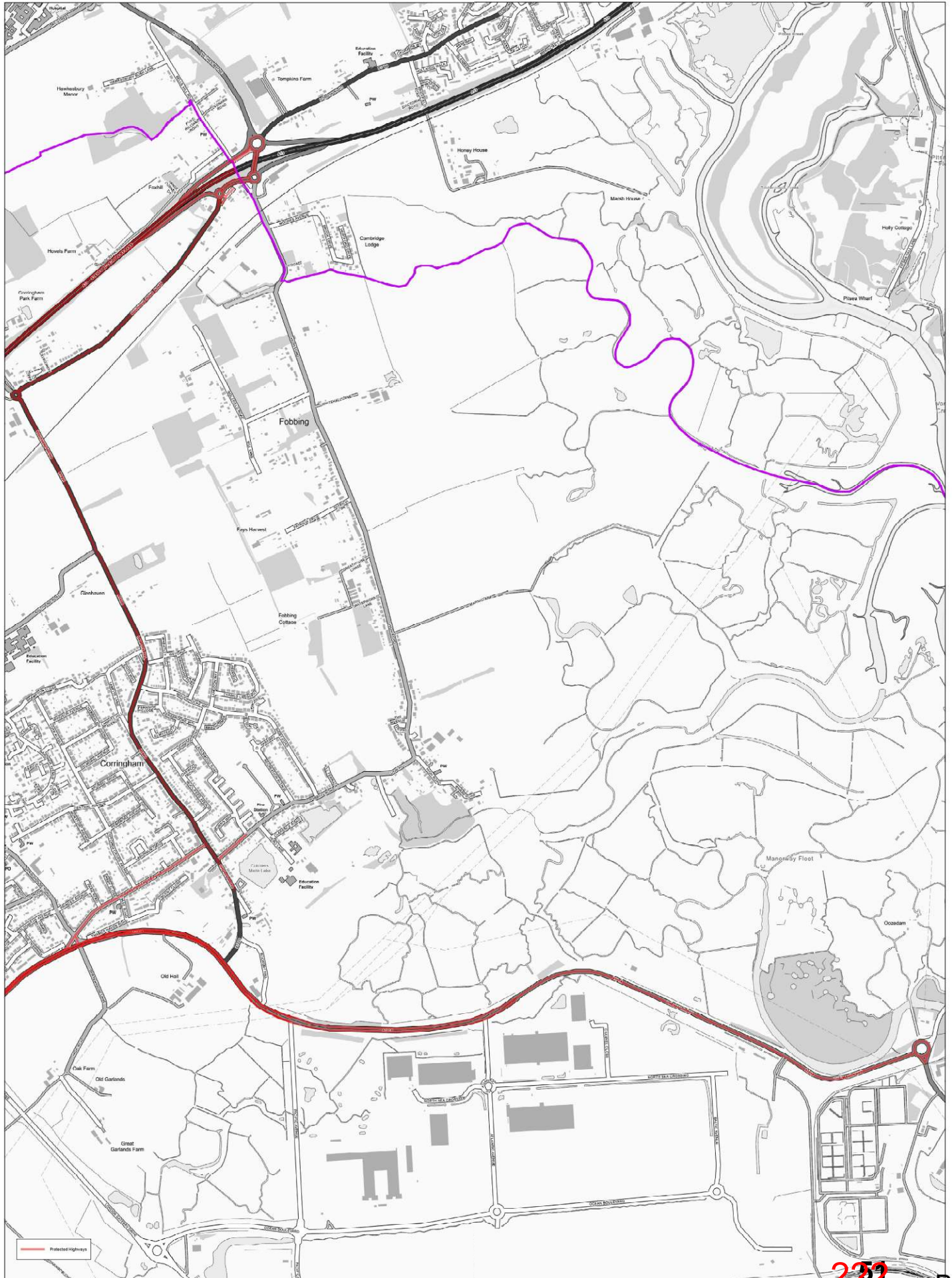












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**DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE
RELEVANT HIGHWAY AUTHORITY**

Defendants

ANNEX 3 – ESSEX COUNTY COUNCIL MAP



ANNEX 3

ADEWALE ADESINA

Senior Emergency Planning and Resilience Officer - Thurrock

The statement of Mr Adesina described how, since 1 April 2022, Thurrock had been experiencing persistent and large-scale incidents of protest in and around the Thurrock terminals. These terminals supply fuel not only to the South-East but 25% of fuel nationally, as well as the supply of aviation fuel to major international airports. This explains the importance of the sites in terms of infrastructure, but also their significance for the protesters, who have sought to disrupt the supply of fuel. The protests have either spilled out onto the highway, from the privately owned terminal sites, or have been conducted on the highway with the purpose of intercepting fuel delivery vehicles.

Mr Adesina explained the application for interim relief against persons unknown. It has not yet been possible to identify all those who will be named as defendants to the claim. Essex has used its best endeavours to identify as many defendants as possible at this stage, with the assistance of Essex Police. However, it remains an ongoing process. Even once the pool of named and identified Defendants has become more settled, the nature of the protests and those who become involved therein is such that there will inevitably be ‘newcomers’, who are both unknown and unidentified at the point at which relief has been granted. Mr Adesina relied on open-source material from JSO (and XR) that indicated an active campaign to encourage more people to join in with the protests, including the direct action and protesting of the type complained of by the Council.

The specific types of action that the Claimants seek to prohibit is that which goes beyond peaceful and lawful protest, causing either mass disruption to the inhabitants of Thurrock and/or a danger to them. Specifically, the Claimants are concerned with the obstruction of the way over extended periods, damage to the highway network through tunnelling and other destructive activity and dangerous activities, such as interfering with fuel transport tankers. In relation to obstruction of the highway and interfering with tankers, the Claimants also point to the tactics adopted by the protesters, which include gluing or otherwise affixing themselves in ways that require specialist intervention to remove them.

Mr Adesina further relied on open-source material from websites maintained by JSO and XR to suggest that the protest groups are “well-co-ordinated, well-supported and well-resourced”. He noted that workshops operated by XR include how to block a road such that disruption is not a by-product of direct action. He also referred to the groups as having long-term aims and ambitions. Following the protests in the first half of April, JSO announced a moratorium on action for a period to allow the government to respond to a letter delivered to it by the group. This explained the timing of the application for an injunction at the point at which the moratorium was due to expire, announced as 25 April 2022. The evidence of Mr Adesina identified ‘hotspots’ for protest in terms of highways, which are in the immediate vicinity of the Thurrock terminals. He exhibited to his statement twelve Council Incident Logs,

which he had compiled, dealing with an incident from 1-3 April 2022 and logs for each day thereafter to 14 April 2022.

Mr Adesina expressed concern for the impact on fuel supplies resulting from interference with tankers, not just the geographic extent but also on blue-light services and essential deliveries, such as food. Beyond these, Thurrock (and Essex) would be particularly concerned by the impact on critical services provided to residents through: adult social care, including the administration of medication to vulnerable people and mental health support; children's social care for 107 children with a child protection plan and others requiring safeguarding visits; education transport, particularly for those attending special schools or those placed outside of Thurrock; public safety on the highways as provided by highways officers; and council officers charged with emergency planning in response to major incidents at any of Thurrock's seven COMAH sites. All of these specified concerns added to the more generalised disruption caused to the general public.

Mr Adesina exhibited a set of graphs from the Department for Business, Energy & Industrial Strategy (BEIS) detailing fuel stock levels at petrol forecourts from 15 March 2022 to 17 April 2022 [noting that levels below 40% are outside of the normal range]. The information disclosed "a steep decline in stock levels in London" from 1 April 2022 to below 30%, the level at which stock outages at forecourt pumps can be expected. On the 14/15 April 2022, stocks were as low as 20%. This was replicated in the South East between 11 to 14 April 2022 and the East of England between 7 to 10 April 2022. He suggested that the impact of the protests on the highway and fuel operations is "almost immediate", noting that the supply chain does not have tolerance to "'wait-out' the disruption". The data demonstrated a very real risk of forecourts running dry across regions.

As to the tunnelling activities undertaken by some protesters, Mr Adesina described them as "incredibly dangerous", not only for the protesters themselves but for other road users due to undermining the road structure. Additional inconvenience in then caused during the necessary remedial work. He referred to two specific tunnels, both of which involved excavation close to either live power cables or apparatus connected to water or electricity supply. He exhibited photographs that sought to show that the excavations were both significant and dangerous. There was concern that remedial work was not capable of being carried out optimally and this would be the case if there were repetition.

The apprehension of further protests in Thurrock and/or Essex was reasonable, according to Mr Adesina's statement, because of the persistence of previous activity, the intentions expressed online by JSO to escalate their campaign of civil resistance if their expectation of a government announcement were not made (as was the case) and the significance of the four specified sites in the administrative areas of the Claimants.

T/ DETECTIVE CHIEF SUPERINTENDENT MORGAN CRONIN

Essex Police

TDCS Cronin has been deployed to the Essex Police response to the protest activity in Thurrock, known as Operation Hazel. He was tasked with overseeing the investigative and intelligence function of the operation. Prior to the commencement of activity by JSO, TDCS Cronin was engaged in a similar role in relation to the Insulate Britain protests. He exhibited a document compiled by the National Police Co-Ordination Centre summarising information about the protests and the groups involved, describing current activity and tactics employed, arrests made as a result of the protests and intelligence about future protests. He provided the details of those arrested as a result of protests between 1 to 15 April 2022 in Thurrock, together with the offences allegedly committed. He provided a list of common examples of activity complained of by the Claimants, namely:

- i. *“Protestors sitting and/or laying in the road, preventing the free flow of traffic, and often blocking the road entirely. Often the protestors must be forcibly removed from the road by being carried by Police Officers;*
- ii. *Protestors gluing themselves to the road or road furniture, preventing the free flow of traffic and often blocking the road entirely. These instances are particularly frustrating, as Police Officers need to use a solvent solution to de-bond the protestor from the road (or other item to which they have glued themselves), before then having to forcibly remove them from the road (again, often by being carried), all of which is time consuming;*
- iii. *Protestors intercepting and climbing aboard fuel transport lorries. This activity is also often coupled with protestors either gluing themselves to the tankers (especially the roof), or by attaching themselves to the tanker by other means (D-ring bicycle locks are a common method of attachment used). Often, to remove these protestors, and due to the risks of working at height, specially trained Police Officers are required to use cherry-pickers to reach the top of the tanker and de-bond the protestor. For the protestors’ safety whilst they are aboard the tanker, and to conduct any required de-bonding safely, the tanker cannot be moved until all protestors have been removed from the vehicle. Sometimes, the highway can be blocked for hours whilst protestors are aboard tankers in this way. I am not aware of any fuel transport lorries being damaged in the Borough as a result of the protestors climbing on them, I am however aware from reports that I have received from other Police forces that protestors have made efforts to tamper with brake lines to disable vehicles.”*

TDCS Cronin characterised each of these examples as “extremely dangerous” for all involved or affected. In particular, the highly hazardous and flammable product carried in large quantities gave rise to significant safety risks when interfering or tampering with fuel tankers. He made reference to the activities of protesters within the Thurrock terminals to demonstrate the degree of risk-taking and the dangers of similar conduct in the vicinity of tankers. He also described arrests made as a result of tunnelling activities under the highway. He expressed concern at the way in which some protests had been conducted unlawfully, had

caused disruption and endangerment to the wider public and had become a source of enormous drain on Police resources.

TDCS Cronin also explained the process by which Essex Police have assisted the Claimants with the identification of as many Defendants as possible, a continuing process due to the scale of the police operation and the involvement of officers from other forces. He expressed no doubt that the police would not have been able to arrest and obtain identifying details for all those involved in protest action, due to the sheer number of them in the context of available resources.

TDCS Cronin exhibited a timeline in relation to incidents between 1 April and 15 April within Thurrock. In his statement he summarised the key incidents, which I reproduce at Annex 3 of this judgment to provide context for my conclusions. His professional opinion was that an injunction would help to calm and moderate the protesters' behaviour, reducing the safety risk, the level of disruption and the impact on police resources. Actions towards tankers involve a very real and serious risk of accident, whether falling from height or other road traffic incident, let alone the potential consequences of damage to a tanker or risk in seeking to remove protesters, especially when glued or otherwise locked-on. That risk extends to the protesters themselves, police officers (however specially trained) involved in removal and the public at large. The forced halting of vehicles then creates the recognised dangers of obstructing busy roads. TDCS Cronin echoed the views of Mr Adesina about disruption to fuel supply resulting from the protest action. He also described the extensive deployment of police officers necessary to respond to the protest action, both in terms of manpower being directed away from other duties (both general and involving pre-existing operations) and the significant additional expenditure incurred.

TDCS Cronin also dealt specifically with apprehension as to future protests, based on police intelligence, which confirms, to the extent that information can be disclosed, that the protest activity will continue and escalate unless the Government responds in a manner that is acceptable to the protesters. He referred to the NPCOC's briefing note, dated 20 April 2022, which described three phases of action by JSO. They are:

- i. Phase 1 – protestors will block the oil networks to demand that HM Government 'just stop oil'. Protestors will block refineries, storage units and adjacent roads/motorways;*
- ii. Phase 2A – protestors will block petrol stations in the South East with forecourt sit-ins. Other protestors may carry out tanker 'lorry-surfing' and spray paint filling points;*
- iii. Phase 2B – high stakes resistance against oil (no further details known).*

The moratorium expired on the eve of 25 April 2022 without an acceptable response from the Government such that TDCS Cronin believed that Phase 2A would now see an escalation in activity. The details of Phase 2A above gave great cause for concern, again in relation to disruption for the wider public but also for emergency and critical services, particularly the proposed targeting of petrol station forecourts. TDCS Cronin indicated that Phase 2B involved currently no greater indication of what might be involved, save that it would be intended to

act over and above the “severity and dangerous nature” of protest action already experienced and currently described in Phase 2A.

TDCS Cronin exhibited documents (all signed statements, bar one) that addressed various aspects of the policing of the protests, the geographic setup and capacity of the Thurrock terminals, and detailing accounts of protester activity within the terminal sites. The witness statements made on behalf of the companies responsible for the Thurrock terminals gave details of the particular risks involved by activity onsite by protesters as well as when interfering with the progress of tankers.

PAUL CRICK

Director of Highways and Transport – Essex County Council

Paul Crick, the Director of Highways and Transport for Essex, provided a statement in which he explained the justification for seeking injunctive relief, beyond that sought by Thurrock. His concern was the potential for an extension of the protests seen in Thurrock to the wider county, but specifically to Canvey Island where the Oikos site is situated. Having in essence adopted the evidence from Mr Adesina as to past protest activity, Mr Crick described the particular additional impact of such activity were it to occur in the vicinity of the Oikos terminal. The terminal makes a material contribution to the import of jet fuels for the London airports through pipelines towards Heathrow. Having identified the roads that would be likely areas for protest related to the oikos terminal, Mr Crick explains that Canvey Island only has two access points by road, hence the potential for protesters to effectively prevent access to and from the Island unless injunctive relief covered the main routes from the terminal off the Island. He exhibited a note from Oikos Storage Ltd expressing concern that the site had been ‘surveyed’ by someone whose responses to challenge were deemed suspicious. He expressed concern that if only Thurrock were to be granted an injunction, the Oikos site would be very vulnerable.

ADAM RULEWSKI

Legal Services Department of the London Borough of Barking and Dagenham

Mr Rulewski represents Thurrock in these proceedings. His first statement dealt with the reasons for seeking a without notice injunction, the necessity of interim relief, the background to the named and ‘persons unknown’ Defendants, the *American Cyanamid* criteria, s12(1) & (2) HRA and the point about undertakings in damages. He also dealt with service, including alternative service.

Mr Rulewski’s second statement sought to address two points raised by Mr Simblet in his skeleton argument, being the suggestion of restraint of lawful activities and the applicability of s12(3) HRA. The statement also provided an update on events since the interim injunction was obtained.

ALICE HARDY

Hodge Jones & Allen Ltd Solicitors

For the purposes of the return date, I received a statement from Ms Hardy, who acts on behalf of Ella Eason, the single named Defendant who appeared and was represented at the hearing. Ms Hardy also acts on behalf of Jessica Branch who is concerned about the impact of the current injunction on her right to engage in peaceful protest, without what is described as “unacceptable personal risk”. Ms Branch is described in Ms Hardy’s evidence as “associated with Extinction Rebellion” and that she became aware of the injunction through associates with XR, some of whom had received it via the XR press email address. The purpose of Ms Hardy’s statement was twofold: to exhibit copies of warning notices put up by the Claimants in accordance with the terms of the injunction relating to service as well as pictures of other notices and examples of the full injunction order being attached to a lamppost; and secondly, to draw on her experience of professional involvement in other similar proceedings.

ELLA EASON

Named Defendant no. 63

Ms Eason provided a statement in support of her challenge to the injunction. She described herself as “not technically a member of Extinction Rebellion”, but someone who has attended some XR protests since they began. Ms Eason expressed real fear about the future given the climate change crisis and her wholehearted belief in the importance of peaceful protests to achieve change. The stopping of each fuel tanker, she characterised, as “less pollution poisoning our air and pushing us further towards climate breakdown”. This explained the great significance of the Navigator terminal as a site for protest. She described being arrested during a protest at the Navigator terminal on 1 April 2022 and afterwards receiving the injunction by post. Ms Eason referred to the long list of roads covered by the injunction and various maps annexed to it, which she said were printed faintly and in small scale, such that she was left unsure which roads were covered by it. She also questioned some of the language in the injunction, such as ‘interference’ and ‘adjacent’, as being imprecise, leading her to be concerned about unintended breach, such that she is frightened about participating in peaceful protests in Essex or Thurrock in the future. She complained about the way in which copies of the injunction, in full, appeared throughout Thurrock, disclosing her name, address, the fact she had been arrested and the alleged offence. She expressed concern about the repercussions of this, given the hostility that some people have to XR and the potential that disclosure of her personal information in this way may lead to intimidation or harassment. Ms Eason finds the situation “immensely frustrating” in that she feels that she cannot take part in further protests “without taking very substantial risks” for her liberty and safety, despite protesting being the only way to make known her feelings about climate change.

JESSICA BRANCH

Ms Branch is resident in Essex and has been a member of XR since April 2019. She is not a member of Insulate Britain, has not attended any of their protests, nor has she taken part in any of the protests thus far at the Thurrock terminals. She provided background for her commitment to seeking to protect the future of her children from the climate and ecological emergency. She too referred to the long list of roads named in the injunction and the lack of clarity from the maps. Ms Branch also expressed concern about the imprecise nature of words such as ‘interference’ and ‘adjacent’, suggesting that “it would be very easy to inadvertently do something” that would cause her to fall within at least one of the definitions of persons unknown, even though she would only be engaged in peaceful and proportionate protest. This made her feel unsafe participating in protests so as not to risk arrest or any consequences thereof, despite “the moral imperative that we voice our objections” to the climate and ecological emergency and “the need to avert this catastrophe”. As well as the injunction restricting her ability to protest, Ms Branch noted the way in which personal details, including of arrest, had been posted in various areas of Thurrock and Essex. This was “disturbing” and was a further reason to worry about participating in future protests in her home area due to the potential compromising of her and her children’s safety.

ANNEX 4

“25. On 1 April 2022 the following occurred:

- i. Esso, London Road, Purfleet – protestors arrived at the site and blocked the entrance to the site by sitting and gluing themselves to the road. Other protestors climbed on top of, and locked themselves to, fuel transport vehicles. 13 protestors were arrested.
- ii. Navigator Terminals, Oliver Road, West Thurrock – protestors blocked the roads around and leading to the site, and the entrances to the site. Some protestors glued themselves to the road. Further, some protestors dug a tunnel under the road, and built a wooden structure to cover the entrance. 41 protestors were arrested.
- iii. Exolum, Askews Farm Lane, Grays – protestors arrived at the site and some blocked the entrance to the site by sitting and gluing themselves to the road. Other protestors climb on top of, and lock themselves to, fuel transport vehicles. 13 protestors were arrested.

26. On 2 April 2022 the following occurred:

- i. Esso, London Road, Purfleet – protestors arrived at the site, blocked the roads, and glued themselves to the road and barriers at the entrance to the site. 14 protestors were arrested.
- ii. Navigator Terminals, Oliver Road, West Thurrock – protestors blocked the road and the entrance to the site, some glued themselves to the road, and others continued digging a tunnel under the road (which digging had been started on 1 April). 35 protestors were arrested.
- iii. Exolum, Askews Farm Lane, Grays – protestors remained at the site and continued blocking the road, some also started to dig tunnels. Two protestors were arrested.

27. On 3 April 2022 the following occurred:

- i. Navigator Terminals, Oliver Road, West Thurrock – protestors remained on site and blocking roads, as well as in underground tunnels. One further protestor was arrested.
- ii. Exolum, Askews Farm Lane, Grays – protestors remained at site and blocking the road and digging tunnels. One further protestor was arrested.³⁷⁴
- iii. Manorway A1014, Corringham – protestors blocked the main road to the fuel terminals by sitting in the road and gluing themselves down. Other protesters climbed aboard fuel transport vehicles held up in the traffic, and locked/tied themselves on. 26 protestors were arrested.

28. On 4 April 2022 the following occurred:

- i. Esso, London Road, Purfleet – protestors arrived at the site equipped with signs, tabards, sleeping bags, and glue, amongst other items. 25 protestors were arrested.

- ii. Navigator Terminals, Oliver Road, West Thurrock – protestors arrived at the site equipped with items to cause a public nuisance. 4 further protesters were arrested.
- iii. Exolum, Askews Farm Lane, Grays –protestors remained at the site and blocking the road. One protestor was arrested.

29. On 5 April 2022 the following occurred:

- i. Exolum, Askews Farm Lane, Grays – protestors arrived at the site and glued themselves to the road and locked themselves to the gates. Seven protestors were arrested.

30. On 6 April 2022 the following occurred:

- i. Esso, London Road, Purfleet – protestors arrived at the site, blocked the roads, glued themselves to the roads and gates, and also climbed aboard fuel transport vehicles and locked themselves on to the same. 21 protesters were arrested.
- ii. Navigator Terminals, Oliver Road, West Thurrock – protesters entered the site and climbed on structures, fuel containers and fuel transport vehicles, and affixed themselves to the same using locks and glue. 27 protesters were arrested.
- iii. Titan Truck Park, Stoneness Road, Grays – a group of protesters entered the site equipped with items such as locks, glue, and other items which could be used to affix themselves to vehicles/structures within the site. 12 protesters were arrested.
- iv. Lancaster Way –protestors sat in the main road servicing the fuel depot sites and used glue to affix themselves to slow the process in removing them. Eight protesters were arrested.

31. On 8 April 2022 the following occurred:

- i. Esso, London Road, Purfleet – a large group of protestors descended on the area and block the road by sitting in it and gluing themselves down. 68 protestors were arrested.
- ii. Exolum, Askews Farm Lane, Grays – a protestor gained access to the site and glued himself to fuel pipes. One protestor was arrested.

32. On 11 April 2022 the following occurred:

- i. Exolum, Askews Farm Lane, Grays – a group of protesters gained access to the site and scaled large structures and high-level fuel pumping stations, before locking themselves on to the same. A large-scale operation was required to remove the protestors. 18 protesters were arrested.

33. On 13 April 2022 the following occurred:

- i. Esso, London Road, Purfleet – a group of protesters arrived at the location and sat in the road and refused to leave. Glue was used by some of the protesters to affix themselves to the road. 15 protesters were arrested. I exhibit at [MC/6] a draft statement from PC Paul Scott of Hampshire Police, who is an officer

specially trained in removal of protests at height. PC Scott attended the Esso Site, and in his statement, he describes seeing eight to ten protestors blocking the road, and two fuel transport vehicles with protestors on top. PC Scott was called upon to remove protestors from the top of one of the tankers by himself climbing on the tanker, and using a solvent solution to de-bond the protestors, who had superglued their hands to the tanker.

- ii. Navigator Terminals, Oliver Road, West Thurrock – a group of protesters attempted to scale perimeter fences to gain access to the site; some were successful and made it in the site equipped with glue. Eight protesters were arrested. I again refer the Court to the draft statement of PC Paul Scott of Hampshire Police, who attended this incident, and was required to remove protestors who has affixed themselves to the roof structure. I also exhibit at [MC/7] a statement from Jason Hornsby, who is the CEO for the Navigator Terminal) describing this incident.
- iii. Exolum, Askews Farm Lane, Grays – protestors gained access to the site and used glue to affix themselves to structures, fuel transport vehicles, and fuel pumps within the site. 10 protesters were arrested.

34. On 15 April 2022 the following occurred:

- i. Esso, London Road, Purfleet – protestors arrived at the site, glued themselves to the road to block access to the site, and glued/locked themselves to fuel transport vehicles. 10 protesters were arrested.
- ii. Exolum, Askews Farm Lane, Grays – a group of protesters glued themselves to the road, and others climbed up onto fuel transport vehicles and locked themselves on to the same. 15 protesters were arrested.
- iii. Titan Truck Park, Stoneness Road, Grays – protestors climbed onto fuel transport vehicles at the location and locked themselves on to the same. 11 Protesters were arrested.”

A

Supreme Court

Wolverhampton City Council and others v London Gypsies and Travellers and others

[On appeal from *Barking and Dagenham London Borough Council v Persons Unknown*]

B

[2023] UKSC 47

2023 Feb 8, 9;
Nov 29

Lord Reed PSC, Lord Hodge DPSC,
Lord Lloyd-Jones, Lord Briggs JJSC, Lord Kitchen

C

Injunction — Trespass — Persons unknown — Local authorities obtaining injunctions against persons unknown to restrain unauthorised encampments on land — Whether court having power to grant final injunctions against persons unknown — Whether limits on court's power to grant injunctions against world — Senior Courts Act 1981 (c 54), s 37

D

With the intent of preventing unauthorised encampments by Gypsies or Travellers within their administrative areas, a number of local authorities issued proceedings under CPR Pt 8 seeking injunctions under section 37 of the Senior Courts Act 1981¹ prohibiting “persons unknown” from setting up such camps in the future. Injunctions of varying length were granted to some 38 local authorities, or groups of local authorities, on varying terms by way of both interim and permanent injunctions. After the hearing of an application to extend one of the injunctions which was coming to an end, a judge ordered a review of all such injunctions as remained in force and which the local authority in question wished to maintain. The judge discharged the injunctions which were final and directed at unknown persons, holding that final injunctions could only be made against parties who had been identified and had had an opportunity to contest the order sought. The Court of Appeal allowed appeals by some of the local authorities and restored those final injunctions which were the subject of appeal, holding that final injunctions against persons unknown were valid since any person who breached one would as a consequence become a party to it and so be entitled to contest it.

E

F

On appeal by three intervener groups representing the interests of Gypsies and Travellers—

G

Held, dismissing the appeal, (1) that although now enshrined in statute, the court's power to grant an injunction was, and continued to be, a type of equitable remedy; that although the power was, subject to any relevant statutory restrictions, unlimited, the principles and practice which the court had developed governing the proper exercise of that power did not allow judges to grant or withhold injunctions purely on their own subjective perception of the justice and convenience of doing so in a particular case but required the power to be exercised in accordance with those equitable principles from which injunctions were derived; that, in particular, equity (i) sought to provide an effective remedy where other remedies available under the law were inadequate to protect or enforce the rights in issue, (ii) looked to the substance rather than to the form, (iii) took an essentially flexible approach to the formulation of a remedy and (iv) was not constrained by any limiting rule or principle, other than justice and convenience, when fashioning a remedy to suit new circumstances; and that the application of those principles had not only allowed the general limits or conditions within which injunctions were granted to be adjusted over time as circumstances changed, but had allowed new kinds of injunction to be formulated in response to the emergence of particular problems, including

H

¹ Senior Courts Act 1981, s 37: see post, para 145.



Neutral Citation Number: [2024] EWHC 134 (KB)

Claim no: QB-2022-000904

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
THE ROYAL COURTS OF JUSTICE

Date: 26th January 2024

Before:

MR JUSTICE RITCHIE

BETWEEN

- (1) VALERO ENERGY LTD
- (2) VALERO LOGISTICS UK LTD
- (3) VALERO PEMBROKESHIRE OIL TERMINAL LTD

Claimants

-and-

(1) PERSONS UNKNOWN WHO,
IN CONNECTION WITH ENVIRONMENTAL PROTESTS
BY THE 'JUST STOP OIL' OR 'EXTINCTION REBELLION'
OR 'INSULATE BRITAIN' OR 'YOUTH CLIMATE
SWARM' (ALSO KNOWN AS YOUTH SWARM)
MOVEMENTS ENTER OR REMAIN WITHOUT THE
CONSENT OF THE FIRST CLAIMANT UPON ANY OF
THE 8 SITES (defined below)

(2) PERSONS UNKNOWN WHO,
IN CONNECTION WITH ENVIRONMENTAL PROTESTS
BY THE 'JUST STOP OIL' OR 'EXTINCTION REBELLION'
OR 'INSULATE BRITAIN' OR 'YOUTH CLIMATE
SWARM' (ALSO KNOWN AS YOUTH SWARM)
MOVEMENTS CAUSE BLOCKADES, OBSTRUCTIONS OF
TRAFFIC AND INTERFERE WITH THE PASSAGE BY
THE CLAIMANTS AND THEIR AGENTS, SERVANTS,
EMPLOYEES, LICENSEES, INVITEES WITH OR
WITHOUT VEHICLES AND EQUIPMENT TO, FROM,

OVER AND ACROSS THE ROADS IN THE VICINITY OF
THE 8 SITES (defined below)

(3) MRS ALICE BRENCHER AND 16 OTHERS

Defendants

Katharine Holland KC and Yaaser Vanderman
(instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Claimant**.
The Defendants did not appear.

Hearing date: 17th January 2024

Approved Judgment

This judgment was handed down remotely at 14.00pm on Friday 26th January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Ritchie:

The Parties

1. The Claimants are three companies who are part of a large petrochemical group called the Valero Group and own or have a right to possession of the 8 Sites defined out below.
2. The “4 Organisations” relevant to this judgment are:
 - 2.1 Just Stop Oil.
 - 2.2 Extinction Rebellion.
 - 2.3 Insulate Britain.
 - 2.4 Youth Climate Swarm.

I have been provided with a little information about the persons who set up and run some of these 4 Organisations. They appear to be crowdfunded partly by donations. A man called Richard Hallam appears to be a co-founder of 3 of them.
3. The Defendants are firstly, persons unknown (PUs) connected with 4 Organisations who trespass or stay on the 8 Sites defined below. Secondly, they are PUs who block access to the 8 Sites defined below or otherwise interfere with the access to the 8 Sites by the Claimants, their servants, agents, licensees or invitees. Thirdly, they are named persons who have been involved in suspected tortious behaviour or whom the Claimants fear will be involved in tortious behaviour at the 8 Sites and the relevant access roads.

The 8 Sites

4. The “8 Sites” are:
 - 4.1 the first Claimant’s Pembroke oil refinery, Angle, Pembroke SA71 5SJ (shown outlined red on plan A in Schedule 1 to the Order made by Bourne J on 28.7.2023);
 - 4.2 the first Claimant’s Pembroke oil refinery jetties at Angle, Pembroke SA71 5SJ (as shown outlined red on plan B in Schedule 1 to the Order made by Bourne J on 28.7.2023);
 - 4.3 the second Claimant’s Manchester oil terminal at Churchill Way, Trafford Park, Manchester M17 1BS (shown outlined red on plan C in Schedule 1 to the Order made by Bourne J on 28.7.2023);
 - 4.4 the second Claimant’s Kingsbury oil terminal at plot B, Trinity Road, Kingsbury, Tamworth B78 2EJ (shown outlined red on plan D in Schedule 1 to the Order made by Bourne J on 28.7.2023);
 - 4.5 the second Claimant’s Plymouth oil terminal at Oakfield Terrace Road, Cattedown, Plymouth PL4 0RY (shown outlined red on plan E in Schedule 1 to the Order made by Bourne J on 28.7.2023);
 - 4.6 the second Claimant’s Cardiff oil terminal at Roath Dock, Rover Way, Cardiff CF10 4US (shown outlined red on plan F in Schedule 1 to the Order made by Bourne J on 28.7.2023);

- 4.7 the second Claimant's Avonmouth oil terminal at Holesmouth Road, Royal Edward dock, Avonmouth BS11 9BT (shown outlined red on the plan G in Schedule 1 to the Order made by Bourne J on 28.7.2023);
- 4.8 the third Claimant's Pembrokeshire terminal at Main Road, Waterston, Milford Haven SA73 1DR (shown outlined red on plan H in Schedule 1 to the Order made by Bourne J on 28.7.2023).

Bundles

- 5. For the hearing I was provided with a core bundle and 5 lever arch files making up the supplementary bundle, a bundle of authorities, a skeleton argument, a draft order and a final witness statement from Ms Hurle. Nothing was provided by any Defendant.

Summary

- 6. The 4 Organisations and members of the public connected with them seek to disrupt the petrochemical industry in England and Wales in furtherance of their political objectives and demands. After various public threats and protests and on police intelligence the Claimants issued a Claim Form on the 18th of March 2022 alleging that they feared tortious trespass and nuisance by persons unknown connected with the 4 Organisations at their 8 Sites and their access roads and seeking an interim injunction prohibiting that tortious behaviour.
- 7. Various interim prohibitions were granted by Mr Justice Butcher on the 21st of March 2022 in an ex-parte interim injunction protecting the 8 Sites and access thereto. However, protests involving tortious action took place at the Claimant's and other companies' Kingsbury site between the 1st and the 15th of April 2022 leading to not less than 86 protesters being arrested. The Claimants applied to continue their injunction and it was renewed by various High Court judges and eventually replaced by a similar interim injunction made by Mr Justice Bourne on the 28th of July 2023.
- 8. On the 12th of December 2023 the Claimants applied for summary judgment and for a final injunction to last five years with annual reviews. This judgment deals with the final hearing of that application which took place before me.
- 9. Despite valid service of the application, evidence and notice of hearing, none of the named Defendants attended at the hearing which was in open Court and no UPs attended at the hearing, nor did any member of the public as far as I could see in Court. The Claimants' counsel informed me that no communication took place between any named Defendant and the Claimants' solicitors in relation to the hearing other than by way of negotiations for undertakings for 43 of the named Defendants who all promised not to commit the feared torts in future.

The Issues

- 10. The issues before me were as follows:

- 10.1 Are the elements of CPR Part 24 satisfied so that summary judgment can be entered?
- 10.2 Should a final injunction against unknown persons and named Defendants be granted on the evidence presented by the Claimants?
- 10.3 What should the terms of any such injunction be?

The ancillary applications

11. The Claimants also made various tidying up applications which I can deal with briefly here. They applied to amend the Claimants' names, to change the word "limited" to a shortened version thereof to match the registered names of the companies. They applied to delete two Defendants, whom they accepted were wrongly added to the proceedings (and after the hearing a third). They applied to make minor alterations to the descriptions of the 1st and 2nd Defendants who are unknown persons. The Claimants also applied for permission to apply for summary judgment. This application was made retrospectively to satisfy the requirements of CPR rule 24.4. None of these applications was opposed. I granted all of them and they are to be encompassed in a set of directions which will be issued in an Order.

Pleadings and chronology of the action

12. In the Claim Form the details of the claims were set out. The Claimants sought a *quia timet* (since he fears) injunction, fearing that persons would trespass into the 8 Sites and cause danger or damage therein and disrupt the processes carried out therein, or block access to the 8 Sites thereby committing a private nuisance on private roads or a public nuisance on public highways. The Claimants relied on the letter sent by Just Stop Oil dated 14th February 2022 to Her Majesty's Government threatening intervention unless various demands were met. Just Stop Oil asserted they planned to commence action from the 22nd of March 2022. Police intelligence briefings supported the risk of trespass and nuisance at the Claimants' 8 Sites. 3 unidentified groups of persons in connection with the 4 Organisations were categorised as Defendants in the claim as follows: (1) those trespassing onto the 8 Sites; (2) those blockading or obstructing access to the 8 Sites; (3) those carrying out a miscellany of other feared torts such as locking on, tunnelling or encouraging others to commit torts at the 8 Sites or on the access roads thereto. The Claim Form was amended by order of Bennathan J. in April 2022; Re amended by order of Cotter J. in September 2022 and re re amended in July 2023 by order of Bourne J.
13. In late March 2022 Mr Justice Butcher issued an interim ex parte injunction on a *quia timet* basis until trial, expressly stating it was not intended to prohibit lawful protest. He prohibited the Defendants from entering or staying on the 8 sites; impeding access to the 8 sites; damaging the Claimants' land; locking on or causing or encouraging others to breach the injunction. The Order provided for various alternative methods of service for the unknown persons by fixing hard copies of the injunction at the entrances and on access road at the 8 Sites, publishing digital copies online at a specific website and sending emails to the 4 Organisations.

14. Despite the interim injunction, between the 1st and the 7th of April 2022 protesters attended at the Claimants' Kingsbury site and 48 were arrested. Between the 9th and 15th of April 2022 further protesters attended at the Kingsbury site and 38 were arrested. No application to commit any person to prison for contempt was made. The protests were not just at the Claimants' parts of the Kingsbury site. They targeted other owners' sites there too.
15. On the return date, the original interim injunction was replaced by an Order dated 11th of April 2022 made by Bennathan J. which was in similar terms and provided for alternative service in a similar way and gave directions for varying or discharging the interim injunction on the application by any unknown person who was required provide their name and address if they wished to do so (none ever did). Geographical plans were attached to the original injunction and the replacement injunction setting out clearly which access roads were covered and delineating each of the 8 Sites. Undertakings were given by the Claimants and directions were given for various Chief Constables to disclose lists and names of persons arrested at the 8 Sites on dates up to the 1st of June 2022.
16. The Chief Constables duly obliged and on the 20th of September 2022 Mr Justice Cotter added named Defendants to the proceedings, extended the term of the interim injunction, provided retrospective permission for service and gave directions allowing variation or discharge of the injunction on application by any Defendant. Unknown persons who wished to apply were required to self-name and provide an address for service (none ever did). Then, on the 16th of December 2022 Mr Justice Cotter gave further retrospective permission for service of various documents. On the 20th of January 2023 Mr Justice Soole reviewed the interim injunction, gave permission for retrospective service of various documents and replaced the interim injunction with a similar further interim injunction. Alternative service was again permitted in a similar fashion by: (1) publication on a specified website, (2) e-mail to the 4 Organisations, (3) personal service on the named Defendants where that was possible because they had provided addresses. At that time no acknowledgement of service or defence from any Defendant was required.
17. In April 2023 the Claimants changed their solicitors and in June 2023 Master Cook gave prospective alternative service directions for future service of all Court documents by: (1) publication on the named website, (2) e-mail to the 4 Organisations, (3) fixing a notification to signs at the front entrances and the access roads of the 8 Sites. Normal service applied for the named Defendants who had provided addresses.
18. On the 28th of July 2023, before Bourne J., the Claimants agreed not to pursue contempt applications for breaches of the orders of Mr Justice Butcher and Mr Justice Bennathan for any activities before the date of the hearing. Present at that hearing were counsel for Defendants 31 and 53. Directions were given permitting a redefinition of "Unknown

Persons” and solving a substantial range of service and drafting defects in the previous procedure and documents since the Claim Form had been issued. A direction was given for Acknowledgements of Service and Defences to be served by early October 2023 and the claim was discontinued against Defendants 16, 19, 26, 29, 38, 46 and 47 on the basis that they no longer posed a threat. A direction was given for any other Defendant to give an undertaking by the 6th of October 2023 to the Claimants’ solicitors. Service was to be in accordance with the provisions laid down by Master Cook in June 2023.

19. On the 30th November 2023 Master Eastman ordered that service of exhibits to witness statements and hearing bundles was to be by: (1) uploading them onto the specific website, (2) emailing a notification to the 4 Organisations, (3) placing a notice at the 8 Sites entrances and access roads, (4) postal service to of a covering letter named Defendants who had provided addresses informing them where the exhibits could be read.
20. The Claimants applied for summary judgment on the 12th of December 2023.
21. By the time of the hearing before me, 43 named Defendants had provided undertakings in accordance with the Order of Mr Justice Bourne. Defendants 14 and 44 were wrongly added and so 17 named Defendants remained who had refused to provide undertakings. None of these attended the hearing or communicated with the Court.

The lay witness evidence

22. I read evidence from the following witnesses provided in statements served and filed by the Claimants:
 - 22.1 Laurence Matthews, April 2022, June 2023.
 - 22.2 David Blackhouse, March and April 2022, January, June and November 2023.
 - 22.3 Emma Pinkerton, June and December 2023.
 - 22.4 Kate McCall, March and April 2022, January (x3) 2023.
 - 22.5 David McLoughlin, March 2022, November 2023.
 - 22.6 Adrian Rafferty, March 2022
 - 22.7 Richard Wilcox, April and August 2022, March 2023.
 - 22.8 Aimee Cook, January 2023.
 - 22.9 Anthea Adair, May, July and August 2023.
 - 22.10 Jessica Hurle, January 2024 (x2).
 - 22.11 Certificates of service: supplementary bundles pages 3234-3239.

Service evidence

23. The previous orders made by the Judges who have heard the interlocutory matters dealt with all previous service matters. In relation to the hearing before me I carefully checked the service evidence and was helpfully led through it by counsel. A concern of substance arose over some defective evidence given by Miss Hurle which was hearsay but did not state the sources of the hearsay. This was resolved by the provision

of a further witness statement at the Court's request clarifying the hearsay element of her assertion which I have read and accept.

24. On the evidence before me I find, on the balance of probabilities, that the application for summary judgment and ancillary applications and the supporting evidence and notice of hearing were properly served in accordance with the orders of Master Cook and Master Eastman and the CPR on all of the Defendants.

Substantive evidence

25. **David Blackhouse.** Mr. Blackhouse is employed by Valero International Security as European regional security manager. In his earlier statements he evidenced his fears that there were real and imminent threats to the Claimants' 8 Sites and in his later statements set out the direct action suffered at the Claimants' sites which fully matched his earlier fears.
26. In his first witness statement he set out evidence from the police and from the Just Stop Oil website evidencing their commitment to action and their plans to participate in protests. The website set out an action plan asking members of the public to sign up to the group's mailing list so that the group could send out information about their proposed activities and provide training. Intervention was planned from the 22nd of March 2022 if the Government did not back down to the group's demands. Newspaper reports from anonymous spokespersons for the group threatened activity that would lead to arrests involving blocking oil sites and paralysing the country. A Just Stop Oil spokesperson asserted they would go beyond the activities of Extinction Rebellion and Insulate Britain through civil resistance, taking inspiration from the old fuel protests 22 years before when lorries blockaded oil refineries and fuel depots. Mr. Blackhouse also summarised various podcasts made by alleged members of the group in which the group asserted it would train up members of the public to cause disruption together with Youth Climate Swarm and Extinction Rebellion to focus on the oil industry in April 2022 with the aim of causing disruption in the oil industry. Mr. Blackhouse also provided evidence of press releases and statements by Extinction Rebellion planning to block major UK oil refineries in April 2022 but refusing to name the actual sites which they would block. They asserted their protests would "*continue indefinitely*" until the Government backed down. Insulate Britain's press releases and podcasts included statements that persons aligned with the group intended to carry out "*extreme protests*" matching the protests 22 years before which allegedly brought the country to a "*standstill*". They stated they needed to cause an "*intolerable level of disruption*". Blocking oil refineries and different actions disrupting oil infrastructure was specifically stated as their objective.
27. In his second witness statement David Blackhouse summarised the protest events at Kingsbury terminal on the 1st of April 2022 (which were carried out in conjunction with similar protests at Esso Purfleet, Navigator at Thurrock and Exolum in Grays). He was present at the Site and was an eye-witness. The protesters blocked the access roads which were public and then moved onto private access roads. More than 30 protesters

blocked various tankers from entering the site. Some climbed on top of the tankers. Police in large numbers were used to tidy up the protest. On the next day, the 2nd of April 2022, protesters again blocked public and private access roads at various places at the Kingsbury site. Further arrests were made. Mr Blackhouse was present at the site.

28. In his third witness statement he summarised the nationwide disruption of the petrochemical industry which included protests at Esso West near Heathrow airport; Esso Hive in Southampton, BP Hamble in Southampton, Exolum in Essex, Navigator terminals in Essex, Esso Tyburn Road in Birmingham, Esso Purfleet in Essex, and the Kingsbury site in Warwickshire possessed by the Claimants and BP. In this witness statement Mr. Blackhouse asserted that during April 2022 protesters forcibly broke into the second Claimant's Kingsbury site and climbed onto pipe racks, gantries and static tankers in the loading bays. He also presented evidence that protesters dug and occupied tunnels under the Kingsbury site's private road and Piccadilly Way and Trinity Road. He asserted that 180 arrests were made around the Kingsbury site in April 2022. He asserted that he was confident that the protesters were aware of the existence of the injunction granted in March 2022 because of the signs put up at the Kingsbury site both at the entrances and at the access roads. He gave evidence that in late April and early May protesters stood in front of the signs advertising the injunction with their own signs stating: "*we are breaking the injunction*". He evidenced that on the Just Stop Oil website the organisation wrote that they would not be "intimidated by changes to the law" and would not be stopped by "private injunctions". Mr. Blackhouse evidenced that further protests took place in May, August and September at the Kingsbury site on a smaller scale involving the creation of tunnels and lock on positions to facilitate road closures. In July 2022 protesters under the banner of Extinction Rebellion staged a protest in Plymouth City centre marching to the entrance of the second Claimant's Plymouth oil terminal which was blocked for two hours. Tanker movements had to be rescheduled. Mr. Blackhouse summarised further Just Stop Oil press releases in October 2022 asserting their campaign would "continue until their demands were met by the Government". He set out various protests in central London and on the Dartford crossing bridge of the M25. Mr. Blackhouse also relied on a video released by one Roger Hallam, who he asserted was a co-founder of Just Stop Oil, through YouTube on the 4th of November 2022. He described this video as a call to arms making analogies with war and revolution and encouraging the "*systematic disruption of society*" in an effort to change Government policies affecting global warming. He highlighted the sentence by Mr Hallam:

"if it's necessary to prevent some massive harm, some evil, some illegality, some immorality, it's justified, *you have a right of necessity to cause harm*".

The video concluded with the assertion "there is no question that disruption is effective, the only question is doing enough of it". In the same month Just Stop Oil was encouraging members of the public to sign up for arrestable direct action. In November

2022 Just Stop Oil tweeted that they would escalate their legal disruption. Mr. Blackhouse then summarised what appeared to be statements by Extinction Rebellion withdrawing from more direct action. However Just Stop Oil continued to publish in late 2022 that they would not be intimidated by private injunctions. Mr Blackhouse researched the mission statements of Insulate Britain which contained the assertion that their continued intention included a campaign of civil resistance, but they only had the next two to three years to sort it out and their next campaign had to be more ambitious. Whilst not disclosing the contents of the briefings received from the police it was clear that Mr. Blackhouse asserted, in summary, that the police warned that Just Stop Oil intended to have a high tempo civil resistance campaign which would continue to involve obstruction, tunnelling, lock one and at height protests at petrochemical facilities.

29. In his 4th witness statement Mr Blackhouse set out a summary of the direct actions suffered by the Claimants as follows (“The Refinery” means Pembroke Oil refinery):

“September 2019

6.5 The Refinery was the target of protest activity in 2019, albeit this was on a smaller scale to that which took place in 2022 at the Kingsbury Terminal. The activity at the Refinery involved the blocking of access roads whereby the protestors used concrete “Lock Ons” i.e. the protestors locked arms, within the concrete blocks placed on the road, whilst sitting on the road to prevent removal. Although it was a non-violent protest it did impact upon employees at the Refinery who were prevented from attending and leaving work. Day to day operations and deliveries were negatively impacted as a result.

6.6...

Friday 1st April 2022

Protestors obstructed the crossroads junction of Trinity Road, Piccadilly Way, and the entrance to the private access road by sitting in the road. They also climbed onto two stationary road tanker wagons on Piccadilly Way, about thirty metres from the same junction, preventing the vehicles from moving, causing a partial obstruction of the road in the direction of the terminal. They also climbed onto one road tanker wagon that had stopped on Trinity Road on the approach to the private access road to the terminal. Fuel supplies from the Valero terminal were seriously disrupted due to the continued obstruction of the highway and the entrance to the private access road throughout the day. Valero staff had to stop the movement of road tanker wagons to or from the site between the hours of 07:40 hrs and 20:30 hrs. My understanding is that up to twenty two persons were arrested by the Police before Valero were able to receive road tanker traffic and resume normal supplies of fuel.

Sunday 3rd April 2022

6.6.1 Protestors obstructed the same entrance point to the private shared access road leading from Trinity Road. The obstructions started at around 02:00 hrs and continued until 17:27 hrs. There was reduced access for road tankers whilst Police completed the removal and arrest of the protestors.

Tuesday 5th April 2022

6.6.2 Disruption started at 04:49 hrs. Approximately twenty protestors blocked the same entrance point to the private shared access road from Trinity Road. They were reported to have used adhesive to glue themselves to the road surface or used equipment to lock themselves together. Police attended and I understand that eight persons were arrested. Road tanker movements at Valero were halted between 04:49 hrs and 10:50 hrs that day.

Thursday 7th April 2022

6.6.3 This was a day of major disruption. At around 00:30 hrs the Valero Terminal Operator initiated an Emergency Shut Down having identified intruders on CCTV within the perimeter of the site. Five video files have been downloaded from the CCTV system showing a group of about fifteen trespassers approaching the rear of the Kingsbury Terminal across the railway lines. The majority appear to climb over the palisade fencing into the Kingsbury Terminal whilst several others appear to have gained access by cutting mesh fencing on the border with WOSL. There is then footage of protestors in different areas of the site including footage at 00:43 hrs of one intruder walking across the loading bay holding up what appears to be a mobile phone in front of him, clearly contravening site safety rules. He then climbed onto a stationary road tanker on the loading bay. There is clear footage of several others sitting in an elevated position in the pipe rack adjacent to the loading bay. I am also aware that Valero staff reported that two persons climbed the staircase to sit on top of one of the gas oil storage tanks and four others were found having climbed the staircase to sit on the roof of a gasoline storage tank. Police attended and spent much of the day removing protestors from the site enabling it to reopen at 18:00 hrs. There is CCTV footage of one or more persons being removed from top of the stationary road tanker wagon on the loading bays.

6.6.4 The shutdown of more than seventeen hours caused major disruption to road tanker movements that day as customers were unable to access the site.

Saturday 9th April 2022

6.6.5 Protest activity occurred involving several persons around the entrance to the private access road. I believe that Police made three arrests and there was little or no disruption to road tanker movements.

Sunday 10th April 2022

6.6.6 A caravan was left parked on the side of the road on Piccadilly way, between the roundabout junction with the A51 and the entrance to the Shell fuel terminal. Police detained a small group of protestors with the caravan including one who remained within a tunnel that had been excavated under the road. It appeared to be an attempt to cause a closure of one of the two routes leading to the oil terminals.

6.6.7 By 16:00 hrs police responded to two road tankers that were stranded on Trinity Road, approximately 900 metres north of the entrance to the private access road. Protestors had climbed onto the tankers preventing them from being driven any further, causing an obstruction on the second access route into the oil terminals.

6.6.8 The Police managed to remove the protestors on top of the road tankers but 18:00 hrs and I understand that the individual within the tunnel on Piccadilly Way was removed shortly after.

6.6.9 I understand that the Police made twenty-two arrests on the approach roads to the fuel terminals throughout the day. The road tanker wagons still managed to enter and leave the Valero site during the day taking whichever route was open at the time. This inevitably meant that some vehicles could not take their preferred route but could at least collect fuel as required. I was subsequently informed that a structural survey was quickly completed on the road tunnel and deemed safe to backfill without the need for further road closure.

Friday 15th April 2022

6.6.10 This was another day of major disruption. At 04:25 hrs the Valero operator initiated an emergency shutdown. The events were captured on seventeen video files recording imagery from two CCTV cameras within the site between 04:20 hrs and 15:45 hrs that day.

6.6.11 At 04:25 a group of about ten protestors approached the emergency access gate which is located on the northern corner of the site, opening out onto Trinity Road, 600 metres north of the entrance to the shared private access road. They were all on foot and could be seen carrying ladders. Two ladders were used to climb up the outside of the emergency gate and then another two ladders were passed over to provide a means of climbing down inside the Valero site. Seven persons managed to climb over before a police vehicle pulled up alongside the gate. The seven then dispersed into the Kingsbury Terminal.

6.6.12 The video footage captures the group of four males and three females sitting for several hours on the pipe rack, with two of them (one male and one female) making their way up onto the roof of the loading bay area nearby. The two on the roof sat closely together whilst the male undressed and sat naked for a considerable time sunbathing. The video footage concludes with footage of Police and the Fire and Rescue service working together to remove the two individuals.

6.6.13 The Valero terminal remained closed between 04:30 hrs and 16:00 hrs that day causing major disruption to fuel collections. The protestors breached the site's safety rules and the emergency services needed to use a 'Cherry Picker' (hydraulic platform) during their removal. There were also concerns that the roof panels would not withstand the weight of the two persons sitting on it.

6.6.14 I understand that Police made thirteen arrests in or around Valero and the other fuel terminals that day and had to request 'mutual aid' from neighbouring police forces.

Tuesday 26th April 2022

6.6.15 I was informed that approximately twelve protestors arrived outside the Kingsbury Terminal at about 07:30 hrs, increasing to about twenty by 09:30 hrs. Initially they engaged in a peaceful non obstructive protest but by 10:00 hrs had blocked the entrance to the private access road by sitting across it. Police then made a number of arrests and the obstructions were cleared by 10:40 hrs. On this occasion there was minimal disruption to the Valero site.

Wednesday 27th April 2022

6.6.16 At about 16:00 hrs a group of about ten protestors were arrested whilst attempting to block the entrance to the shared private access road.

Thursday 28th April 2022

6.6.17 At about 12:40 hrs a similar protest took place involving a group of about eight persons attempting to block the entrance to the shared private access road. The police arrested them and opened the access by 13:10 hrs.

Wednesday 4th May 2022

6.6.18 At about 13:30 hrs twelve protestors assembled at the entrance to the shared private access road without incident. I was informed that by 15:49 hrs Police had arrested ten individuals who had attempted to block the access.

Thursday 12th May 2022

6.6.19 At 13:30 hrs eight persons peacefully protested at the entrance to the private access road. By 14:20 hrs the numbers increased to eleven. The activity continued until 20:15 hrs by which time Police made several arrests of persons causing obstructions. I have retained images of the obstructions that were taken during the protest.

Monday 22nd August 2022

6.6.20 Contractors clearing undergrowth alerted Police to suspicious activity involving three persons who were on land between Trinity Road and the railway tracks which lead to the rear of the Valero and WOSL terminals. The location is about 1.5 km from the entrance to the shared private access road to the Kingsbury Terminal. A police dog handler attended and arrested two of the persons with the third making

off. Three tunnels were found close to a tent that the three were believed to be sleeping in. The tunnels started on the roadside embankment and two of them clearly went under the road. The entrances were carefully prepared and concealed in the undergrowth. Police agreed that they were 'lock in' positions for protestors intending to cause a road closure along one of the two approach roads to the oil terminals. The road was closed awaiting structural survey. I have retained a collection of the images taken by my staff at the scene.

Tuesday 23rd August 2022

6.6.21 During the morning protestors obstructed a tanker in Trinity Road, approximately 1km from the Valero Terminal. There was also an obstruction of the highway close to the Shell terminal entrance on Piccadilly Way. I understand that both incidents led to arrests and a temporary blockage for road tankers trying to access the Valero site. Later that afternoon another tunnel was discovered under the road on Trinity Way, between the roundabout of the A51 and the Shell terminal. It was reported that protestors had locked themselves into positions within the tunnel. Police were forced to close the road meaning that all road tanker traffic into the Kingsbury Terminal had to approach via Trinity road and the north. It then became clear that the tunnels found on Trinity Road the previous day had been scheduled for use at the same time to create a total closure of the two routes into the fuel terminals.

6.6.22 The closure of Piccadilly Way continued for another two days whilst protestors were removed and remediation work was completed to fill in the tunnels.

Wednesday 14th September 2022

6.6.23 There was serious disruption to the Valero Terminal after protestors blocked the entrance to the private access road. I believe that Police made fifty one arrests before the area was cleared to allow road tankers to access the terminal.

6.6.24 Tanker movements were halted for just over seven hours between mid-day and 19:00 hrs. On Saturday 16th July and Sunday 17th July 2022, the group known as Extinction Rebellion staged a protest in Plymouth city centre. The protest was planned and disclosed to the police in advance and included a march of about two hundred people from the city centre down to the entrance to the Valero Plymouth Terminal in Oakfield Terrace Rd. The access to the terminal was blocked for about two hours. Road tanker movements were re-scheduled in advance minimising any disruption to fuel supplies."

I note that the events of 16th July 2022 are out of chronological order.

30. In his 5th witness statement the main threats identified by Mr Blackhouse were; (1) protestors directly entering the 8 Sites. He stated there had been serious incidents in the

past in which protestors forcibly gained access by cutting through mesh border fencing or climbing over fencing and then carrying out dangerous activities such as climbing and sitting on top of storage tanks containing highly flammable fuel and vapour. He warned that the risk of fire for explosion at the 8 Sites is high due to the millions of litres of flammable liquid and gas stored at each. Mobile phones and lighters are heavily controlled or prohibited. (2) He warned that any activity which blocked or restricted access roads would be likely to create a situation where the Claimants were forced to take action to reduce the health and safety risks relating to emergency access which might include evacuating the sites or shutting some activity on the sites.

31. Mr. Blackhouse warned of the knock-on effects of the Claimants having to manage protester activity to mitigate potential health and safety risks which would impact on the general public. If activity on the 8 Sites is reduced or prevented due to protester activity this would reduce the level of fuel produced, stored and transported, which would ultimately result in shortages at filling station forecourts, potentially panic buying and the adverse effects thereof. He referred to the panic buying that occurred in September 2021. Mr Blackhouse described the various refineries and terminals and the businesses carried on there. He also described the access roads to the sites. He described the substantial number of staff accessing the sites and the substantial number of tanker movements per day accessing refineries. He also described the substantial number of ship movements to and from the jetties per annum. He warned of the dangers of blocking emergency services getting access to the 8 Sites. He stated that if access roads at the 8 Sites were blocked the Claimants would have no option but to cease operations and shut down the refineries to ensure compliance with health and safety risk assessments. He informed the Court that one of the most hazardous times at the refineries was when restarting the processes after a shut down. The temperatures and pressures in the refinery are high and during restarting there is a higher probability of a leak and resultant explosions. Accordingly, the Claimants seek to limit shutdown and restart activity as much as possible. Generally, these only happen every four or five years under strictly controlled conditions.
32. Mr. Blackhouse referred to an incident in 2019 when Extinction Rebellion targeted the Pembroke oil refinery and jetties by blocking the access roads. He warned that slow walking and blocking access roads remained a real risk and a health and safety concern. He also informed the Court that local police at this refinery took a substantial time to deal with protesters due to locking on and climbing in, resulting in significant delay. He further evidenced this by reference to the Kingsbury terminal protest in 2022.
33. Mr. Blackhouse asserted that all of the 8 Sites are classified as “Critical National Infrastructure”. The Claimants liaise closely with the National Protective Security Authority and the National Crime Agency and the Counter Terrorism Security Advisor Service of the police. Secret reports received from those agencies evidenced continuing potential activity by the 4 Organisations. In addition, on the 8th of July 2023 Extinction Rebellion stickers were placed on a sign at the refinery.

34. Overall Mr. Blackhouse asserted that the deterrent effect of the injunctions granted has diminished the protest activity at the 8 Sites but warned that it was clear that at least some of the 4 Organisations maintained an ongoing campaign of protest activity throughout the UK. He asserted it was critical that the injunctive relief remained in place for the protection of the Claimants' employees, visitors to the sites, the public in surrounding areas and the protesters themselves.
35. **David McLoughlin.** Mr McLoughlin is a director employed by the Valero group responsible for pipeline and terminals. His responsibilities include directing operations and logistics across all of the 8 Sites.
36. He warned the Court that blocking access to the 8 Sites would have potentially very serious health and safety and environmental consequences and would cause significant business disruption. He described how under the *Control of Major Accidents Hazards Involving Dangerous Substances Regulations 2015* the 8 Sites are categorised according to the risks they present which relate directly to the quantity of dangerous substances held on each site. Heavy responsibilities are placed upon the Claimants to manage their activities in a way so as to minimise the risk to employees, visitors and the general public and to prevent major accidents. The Claimants are required to carry out health and safety executive guided risk assessments which involve ensuring emergency services can quickly access the 8 Sites and to ensure appropriate manning. He warned that there were known safety risks of causing fires and explosions from lighters, mobile phones, key fobs and acrylic clothing. The risks are higher around the storage tanks and loading gantries which seemed to be favoured by protestors. He warned that the Plymouth and Manchester sites were within easy reach of large populations which created a risk to the public. He warned that blocking access roads to the 8 Sites would give rise to a potential risk of breaching the 2015 Regulations which would be both dangerous and a criminal offence. Additionally blocking access would lead to a build-up of tankers containing fuel which themselves posed a risk. He warned of the potential knock-on effects of an access road blockade on the supply chain for in excess of 700 filling stations and to the inward supply chain from tankers. He warned of the 1-2 day filling station tank capacity which needed constant and regular supply from the Claimants' sites. He also warned about the disruption to commercial contracts which would be caused by disruption to the 8 Sites. He set out details of the various sites and their access roads. He referred to the July 2022 protest at the Plymouth terminal site and pointed out the deterrent effect of the injunction, which was in place at that time, had been real and had reduced the risk.
37. **Emma Pinkerton.** Miss Pinkerton has provided 5 witness statements in these proceedings, the last one dated December 2023. She is a partner at CMS Cameron McKenna Nabarro Olswang LLP.

38. In her 3rd statement she set out details relating to the interlocutory course of the proceedings and service and necessary changes to various interim orders made.
39. In her last witness statement she gave evidence that the Claimants do not seek to prevent protesters from undertaking peaceful lawful protests. She asserted that the Defendants had no real prospect of successfully defending the claim and pointed out that no Acknowledgments of Service or Defences had been served. She set out the chronology of the action and service of proceedings. She dealt with various errors in the orders made. She summarised that 43 undertakings had been taken from Defendants. She pointed out that there were errors in the naming of some Defendants. Miss Pinkerton summarised the continuing threat pointing out that the Just Stop Oil Twitter feed contained a statement dated 9th June 2023 setting out that the writer explained to Just Stop Oil connected readers that the injunctions banned people from taking action at refineries, distribution hubs and petrol stations and that the punishments for breaking injunctions ranged from unlimited fines to imprisonment. She asserted that the Claimants' interim injunctions in combination with those obtained by Warwickshire Borough Council had significantly reduced protest activity at the Kingsbury site.
40. Miss Pinkerton provided a helpful summary of incidents since June 2023. On the 26th of June 2023 Just Stop Oil protesters carried out four separate slow marches across London impacting access on King's College Hospital. On the 3rd of July 2023 protesters connected with Extinction Rebellion protested outside the offices of Wood Group in Aberdeen and Surrey letting off flares and spraying fake oil across the entrance in Surrey. On 10th July 2023 several marches took place across London. On the 20th of July 2023 supporters of Just Stop Oil threw orange paint over the headquarters of Exxon Mobile. On the 1st of August 2023 protesters connected with Just Stop Oil marched through Cambridge City centre. On the 13th of August 2023 protesters connected with Money Rebellion (which may be associated with Extinction Rebellion) set off flares at the AIG Women's Open in Tadworth. On the 18th of August 2023 protesters associated with Just Stop Oil carried out a slow march in Wells, Somerset and the next day a similar march took place in Exeter City centre. On the 26th of August 2023 a similar march took place in Leeds. On the 2nd of September 2023 protesters associated with Extinction Rebellion protested outside the London headquarters of Perenco, an oil and gas company. On the 9th of September 2023 there was a slow march by protesters connected with Just Stop Oil in Portsmouth City centre. On the 18th of September 2023 protesters connected with Extinction Rebellion poured fake oil over the steps of the Labour Party headquarters and climbed the building letting off smoke grenades and one protester locked on to a handrail. On the 1st of October 2023 protesters connected with Extinction Rebellion protested in Durham. On the 10th of October 2023 protesters connected with Just Stop Oil sprayed orange paint over the Radcliffe Camera library building in Oxford and the facade of the forum at Exeter University. On the 11th of October 2023 protesters connected with Just Stop Oil sprayed orange paint over parts of Falmouth University. On the 17th of October 2023 various protesters were arrested in connection with the Energy Intelligence forum in London. On the 19th of October

2023 protests took place in Canary Wharf targeting financial businesses allegedly supporting fossil fuels and insurance companies in the City of London. On the 30th of October 2023 60 protesters were arrested for slow marching outside Parliament. On the 10th of November 2023 protesters connected with Extinction Rebellion occupied the offices of the Daily Telegraph. On the 12th of November 2023 protesters connected with Just Stop Oil marched in Holloway Road in London. On the 13th of November 2023 protesters connected with Just Stop Oil marched from Hendon Way leading to a number of arrests. On the 14th of November 2023 protesters connected with Just Stop Oil marched from Kennington Park Rd. On the same day the Metropolitan Police warned that the costs of policing such daily marches was becoming unsustainable to the public purse. On the 15th of November 2023 protesters connected with Just Stop Oil marched down the Cromwell Road and 66 were arrested. On the 18th of November 2023 protestors connected with Just Stop Oil and Extinction Rebellion protested outside the headquarters of Shell in London and some arrests were made. On the 20th of November 2023 protesters connected with Just Stop Oil gathered in Trafalgar Square and started to march and some arrests were made. On the 30th of November 2023 protesters connected with Just Stop Oil gathered in Kensington in London and 16 were arrested.

41. Miss Pinkerton extracted some quotes from the Just Stop Oil press releases including assertions that their campaign would be “*indefinite*” until the Government agreed to stop new fossil fuel projects in the UK and mentioning their supporters storming the pitch at Twickenham during the Gallagher Premiership Rugby final. Further press releases in June and July 2023 encouraging civil resistance against oil, gas and coal were published. In an open letter to the police unions dated 13th September 2023 Just Stop Oil stated they would be back on the streets from October the 29th for a resumption after their 13 week campaign between April and July 2023 which they asserted had already cost the Metropolitan Police more than £7.7 million and required the equivalent of an extra 23,500 officer shifts.
42. Miss Pinkerton also examined the Extinction Rebellion press statements which included advice to members of the public to picket, organise locally, disobey and asserted that civil disobedience works. On the 30th of October 2023 a spokesperson for Just Stop Oil told the Guardian newspaper that the organisation supporters were willing to slow march to the point of arrest every day until the police took action to prosecute the real criminals who were facilitating new oil and gas extraction.
43. Miss Pinkerton summarised the various applications for injunctions made by Esso Oil, Stanlow Terminals Limited, Infranorth Limited, North Warwickshire Borough Council, Esso Petroleum, Exxon Mobile Chemical Limited, Thurrock Council, Essex Council, Shell International, Shell UK, UK Oil Pipelines, West London Pipeline and Storage, Exolum Pipeline Systems, Exolum Storage, Exolum Seal Sands and Navigator Terminals.

44. Miss Pinkerton asserted that the Claimants had given full and frank disclosure as required by the Supreme Court in *Wolverhampton v London Gypsies* (citation below). In summary she asserted that the Claimants remained very concerned that protest groups including the 4 Organisations would undertake disruptive, direct action by trespass or blocking access to the 8 Sites and that a final injunction was necessary to prevent future tortious behaviour.

Previous decision on the relevant facts

45. In *North Warwickshire v Baldwin and 158 others and PUs* [2023] EWHC 1719, Sweeting J gave judgment in relation to a claim brought by North Warwickshire council against 159 named defendants relating to the Kingsbury terminal which is operated by Shell, Oil Pipelines Limited, Warwickshire Oil Storage Limited and Valero Energy Ltd. Findings of fact were made in that judgment about the events in March and April 2022 which are relevant to my judgment. Sweeting J. found that protests began at Kingsbury during March 2022 and were characterised by protesters glueing themselves to roads accessing the terminal; breaking into the terminal compounds by cutting through gates and trespassing; climbing onto storage tanks containing unleaded petrol, diesel and fuel additives; using mobile phones within the terminal to take video films of their activities while standing on top of oil tankers and storage tanks and next to fuel transfer equipment; interfering with oil tankers by climbing onto them and fixing themselves to the roofs thereof; letting air out of the tyres of tankers; obstructing the highways accessing the terminal generally and climbing equipment and abseiling from a road bridge into the terminal. In relation to the 7th of April Sweeting J found that at 12:30 (past midnight) a group of protesters approached one of the main terminal entrances and attempted to glue themselves to the road. When the police were deployed a group of protesters approached the same enclosure from the fields to the rear and used a saw to break through an exterior gate and scaled fences to gain access. Once inside they locked themselves onto a number of different fixtures including the top of three large fuel storage tanks containing petrol diesel and fuel additives and the tops of two fuel tankers and the floating roof of a large fuel storage tank. The floating roof floated on the surface of stored liquid hydrocarbons. Sweeting J found that the ignition of liquid fuel or vapour in such a storage tank was an obvious source of risk to life. On the 9th of April 2022 protesters placed a caravan at the side of the road called Piccadilly Way which is an access road to the terminal and protesters glued themselves to the sides and top of the caravan whilst others attempted to dig a tunnel under the road through a false floor in the caravan. That was a road used by heavily laden oil tankers to and from the terminal and the collapse of the road due to a tunnel caused by a tanker passing over it was identified by Sweeting J as including the risk of injury and road damage and the escape of fuel fluid into the soil of the environment.

Assessment of lay witnesses

46. I decide all facts in this hearing on the balance of probabilities. I have not seen any witness give live evidence. None were required for cross-examination by the Defendants. None were challenged. I take that into account.

47. Having carefully read the statements I accept the evidence put before me from the Claimants' witnesses. I have not found sloppiness, internal inconsistency or exaggeration in the way they were written or any reason to doubt the evidence provided.

The Law

Summary Judgment

48. Under CPR part 24 it is the first task of this Court to determine whether the Defendants have a realistic prospect of success in defending the claim. Realistic is distinguished from a fanciful prospect of success, see *Swain v Hillman* [2001] 1 ALL ER 91. The threshold for what is a realistic prospect was examined in *ED and F Man Liquid Products v Patel* [2003] EWCA Civ. 472. It is higher than a merely arguable prospect of success. Whilst it is clear that on a summary judgement application the Court is not required to effect a mini trial, it does need to analyse the evidence put before it to determine whether it is worthless, contradictory, unimpressive or incredible and overall to determine whether it is credible and worthy of acceptance. The Court is also required to take into account, in a claim against PUs, not only the evidence put before it on the application but also the evidence which could reasonably be expected to be available at trial both on behalf of the Claimants and the Defendants, see *Royal Brompton Hospitals v Hammond (#5)* [2001] EWCA Civ. 550. Where reasonable grounds exist for believing that a fuller investigation of the facts of the case at trial would affect the outcome of the decision then summary judgement should be refused, see *Doncaster Pharmaceuticals v Bolton Pharmaceutical Co* [2007] F.S.R 3. I take into account that the burden of proof rests in the first place on the applicant and also the guidance given in *Sainsbury's Supermarkets v Condek Holdings* [2014] EWHC 2016, at paragraph 13, that if the applicant has produced credible evidence in support of the assertion that the applicant has a realistic prospect of success on the claim, then the respondent is required to prove some real prospect of success in defending the claim or some other substantial reason for the claim going to trial. I also take into account the guidance given at paragraph 40 of the judgment of Sir Julian Flaux in the Court of Appeal in *National Highways Limited v Persons Unknown* [2023] EWCA Civ. 182, that the test to be applied when a final anticipatory injunction is sought through a summary judgment application is the same as in all other cases.
49. CPR part 24 r.24.5 states that if a respondent to a summary judgment application wishes to put in evidence he "must" file and serve written evidence 7 days before the hearing. Of course, this cannot apply to PUs who will have no knowledge of the hearing. It does apply to named and served Defendants.
50. But what approach should the Court take where named Defendant served nothing and PUs are also Defendants? In *King v Stiefel* [2021] EWHC 1045 (Comm) Cockerill J. ruled as follows on what to do in relation to evidence:

“21. The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the court will be entitled to draw a line and say that - even bearing well in mind all of those points - it would be contrary to principle for a case to proceed to trial.

22. So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up . . .”

51. In my judgment, in a case such as this, where named Defendants have taken no part and where other Defendants are PUs, the safest course is to follow the guidance of the Supreme Court and treat the hearing as ex-parte and to consider the defences which the PUs could run.

Final Injunctions

52. The power of this Court to grant an injunction is set out in S.37 of *the Senior Courts Act 1981*. The relevant sections follow:

“37 Powers of High Court with respect to injunctions

(1) The High Court may by order (whether interlocutory or final) grant an injunction ... in all cases in which it appears to the court to be just and convenient to do so.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.”

53. An injunction is a discretionary remedy which can be enforced through contempt proceedings. There are two types, mandatory and prohibitory. I am only dealing with an application for the latter type and only on the basis of quia timet – which is the fear of the Claimants that an actionable wrong will be committed against them. Whilst the balance of convenience test was initially developed for interim injunctions it developed such that it is generally used in the granting of final relief. I shall refer below to how it is refined in PU cases.

54. In law a landowner whose title is not disputed is prima facie entitled to an injunction to restrain a threatened or apprehended trespass on his land: see Snell’s Equity (34th ed) at para 18-012. In relation to quia timet injunctions, like the one sought in this case, the Claimants must prove that there is a real and imminent risk of the Defendant causing the torts feared, not that the torts have already been committed, per Longmore LJ in *Ineos Upstream v Boyd* [2019] 4 WLR 100, para 34(1). I also take account of the

judgment of Sir Julian Flaux in *National Highways v PUs* [2023] 1 WLR 2088, in which at paras. 37-40 the following ruling was provided:

“37. Although the judge did correctly identify the test for the grant of an anticipatory injunction, in para 38 of his judgment, unfortunately he fell into error in considering the question whether the injunction granted 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, in relation to each defendant, that that 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. That error infected both his approach as to whether a final anticipatory injunction should be granted and as to whether summary judgment should be granted.

38. As regards the former, it is not a necessary criterion for the grant of an anticipatory injunction, whether final or interim, that the defendant should have already committed the relevant tort which is threatened. *Vastint* [2019] 4 WLR 2 was a case where a final injunction was sought and no distinction is drawn in the authorities between a final prohibitory anticipatory injunction and an interim prohibitory anticipatory injunction in terms of the test to be satisfied. Marcus Smith J summarises at para 31(1) the effect of authorities which do draw a distinction between final prohibitory injunctions and final mandatory injunctions, but that distinction is of no relevance in the present case, which is only concerned with prohibitory injunctions.

39. There is certainly no requirement for the grant of a final anticipatory injunction that the claimant prove that the relevant tort has already been committed. The essence of this form of injunction, whether interim or final, is that the tort is threatened and, as the passage from *Vastint* at para 31(2) quoted at para 27 above makes clear, for some reason the claimant’s cause of action is not complete. It follows that the judge fell into error in concluding, at para 35 of the judgment, that he could not grant summary judgment for a final anticipatory injunction against any named defendant unless he was satisfied that particular defendant had committed the relevant tort of trespass or nuisance.

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 r 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.”

55. In relation to the substantive and procedural requirements for the granting of an injunction against persons unknown, guidance was given in *Canada Goose v Persons Unknown* [2021] WLR 2802, by the Court of Appeal. In a joint judgment Sir Terence Etherton and Lord Justices Richards and Coulson ruled as follows:

“82 Building on *Cameron* [2019] 1 WLR 1471 and the *Ineos* requirements, it is now possible to set out the following procedural guidelines applicable to proceedings for interim relief against “persons unknown” in protestor cases like the present one:

(1) The “persons unknown” defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The “persons unknown” defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the “persons unknown”.

(2) The “persons unknown” must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as “persons unknown”, must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) 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.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant’s intention if that is strictly necessary to correspond to the threatened tort and done in non-technical

language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose’s application for a final injunction on its summary judgment application.”

56. I also take into account the guidance and the rulings made by the Supreme Court in *Wolverhampton City Council v London Gypsies* [2023] UKSC 47; [2024] 2 WLR 45 on final injunctions against PUs. This was a case involving a final injunction against unknown gypsies and travellers. The circumstances were different from protester cases because Local Authorities have duties in relation to travellers. In their joint judgment the Supreme Court ruled as follows:

“167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:

(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority’s boundaries.

(ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong *prima facie* objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226—231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction

varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

(iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

(v) It is, on the particular facts, just and convenient that such an injunction be granted. ...”

...

“5. The process of application for, grant and monitoring of newcomer injunctions and protection for newcomers’ rights

187. We turn now to consider the practical application of the principles affecting an application for a newcomer injunction against Gypsies and Travellers, and the safeguards that should accompany the making of such an order. As we have mentioned, these are matters to which judges hearing such applications have given a good deal of attention, as has the Court of Appeal in considering appeals against the orders they have made. Further, the relevant principles and safeguards will inevitably evolve in these and other cases in the light of experience. Nevertheless, they do have a bearing on the issues of principle we have to decide, in that we must be satisfied that the points raised by the appellants do not, individually or collectively, preclude the grant of what are in some ways final (but regularly reviewable) injunctions that prevent persons who are unknown and unidentifiable at the date of the order from trespassing on and occupying local authority land. We have also been invited to give guidance on these matters so far as we feel able to do so having regard to our conclusions as to the nature of newcomer injunctions and the principles applicable to their grant.

Compelling justification for the remedy

188. Any applicant for the grant of an injunction against newcomers in a Gypsy and Traveller case must satisfy the court by detailed evidence that there is a compelling justification for the order sought. This is an overarching principle that must guide the court at all stages of its consideration (see para 167(i)).”

...

“(viii) A need for review

(2) Evidence of threat of abusive trespass or planning breach

218. We now turn to more general matters and safeguards. As we have foreshadowed, any local authority applying for an injunction against

persons unknown, including newcomers, in Gypsy and Traveller cases must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought (see para 167(i) above). There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further, the threat must be real and imminent. We have no doubt that local authorities are well equipped to prepare this evidence, supported by copies of all relevant documents, just as they have shown themselves to be in making applications for injunctions in this area for very many years.

219. The full disclosure duty is of the greatest importance (see para 167(iii)). We consider that the relevant authority must make full disclosure to the court not just of all the facts and matters upon which it relies but also and importantly, full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This is a continuing obligation on any local authority seeking or securing such an order, and it is one it must fulfil having regard to the one-sided nature of the application and the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application.

220. The evidence in support of the application must therefore err on the side of caution; and the court, not the local authority, should be the judge of relevance.

(3) Identification or other definition of the intended respondents to the application

221. The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in *Cameron* [2019] 1 WLR 1471, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference

to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible.

(4) The prohibited acts

222. It is always important that an injunction spells out clearly and in everyday terms the full extent of the acts it prohibits, and this is particularly so where it is sought against persons unknown, including newcomers. The terms of the injunction and therefore the prohibited acts must correspond as closely as possible to the actual or threatened unlawful conduct. Further, the order should extend no further than the minimum necessary to achieve the purpose for which it was granted; and the terms of the order must be sufficiently clear and precise to enable persons affected by it to know what they must not do.

223. Further, if and in so far as the authority seeks to enjoin any conduct which is lawful viewed on its own, this must also be made absolutely clear, and the authority must be prepared to satisfy the court that there is no other more proportionate way of protecting its rights or those of others.

224. It follows but we would nevertheless emphasise that the prohibited acts should not be described in terms of a legal cause of action, such as trespass or nuisance, unless this is unavoidable. They should be defined, so far as possible, in non-technical and readily comprehensible language which a person served with or given notice of the order is capable of understanding without recourse to professional legal advisers.

(5) Geographical and temporal limits

225. The need for strict temporal and territorial limits is another important consideration (see para 167(iv)). One of the more controversial aspects of many of the injunctions granted hitherto has been their duration and geographical scope. These have been subjected to serious criticism, at least some of which we consider to be justified. We have considerable doubt as to whether it could ever be justifiable to grant a Gypsy or Traveller injunction which is directed to persons unknown, including newcomers, and extends over the whole of a borough or for significantly more than a year. It is to be remembered that this is an exceptional remedy, and it must be a proportionate response to the unlawful activity to which it is directed. Further, we consider that an injunction which extends borough-wide is likely to leave the Gypsy and Traveller communities with little or no room for manoeuvre, just as Coulson LJ warned might well be the case (see generally, *Bromley* [2020] PTSR 1043, paras 99—109. Similarly, injunctions of this kind must be reviewed periodically (as Sir Geoffrey Vos MR explained in these appeals at paras 89 and 108) and in our view ought to come to an end (subject to any order of the judge), by effluxion of time in all cases after no more than a year unless an application is made for their renewal. This will give all parties an opportunity to make

full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.

(6) Advertising the application in advance

226. We recognise that it would be impossible for a local authority to give effective notice to all newcomers of its intention to make an application for an injunction to prevent unauthorised encampments on its land. That is the basis on which we have proceeded. On the other hand, in the interests of procedural fairness, we consider that any local authority intending to make an application of this kind must take reasonable steps to draw the application to the attention of persons likely to be affected by the injunction sought or with some other genuine and proper interest in the application (see para 167(ii) above). This should be done in sufficient time before the application is heard to allow those persons (or those representing them or their interests) to make focused submissions as to whether it is appropriate for an injunction to be granted and, if it is, as to the terms and conditions of any such relief.

227. Here the following further points may also be relevant. First, local authorities have now developed ways to give effective notice of the grant of such injunctions to those likely to be affected by them, and they do so by the use of notices attached to the land and in other ways as we describe in the next section of this judgment. These same methods, appropriately modified, could be used to give notice of the application itself. As we have also mentioned, local authorities have been urged for some time to establish lines of communication with Traveller and Gypsy communities and those representing them, and all these lines of communication, whether using email, social media, advertisements or some other form, could be used by authorities to give notice to these communities and other interested persons and bodies of any applications they are proposing to make.

228. Secondly, we see merit in requiring any local authority making an application of this kind to explain to the court what steps it has taken to give notice of the application to persons likely to be affected by it or to have a proper interest in it, and of all responses it has received.

229. These are all matters for the judges hearing these applications to consider in light of the particular circumstances of the cases before them, and in this way to allow an appropriate practice to develop.

(7) Effective notice of the order

230. We are not concerned in this part of our judgment with whether respondents become party to the proceedings on service of the order upon them, but rather with the obligation on the local authority to take steps actively to draw the order to the attention of all actual and potential

respondents; to give any person potentially affected by it full information as to its terms and scope, and the consequences of failing to comply with it; and how any person affected by its terms may make an application for its variation or discharge (again, see para 167(ii) above).

231. Any applicant for such an order must in our view make full and complete disclosure of all the steps it proposes to take (i) to notify all persons likely to be affected by its terms; and (ii) to ascertain the names and addresses of all such persons who are known only by way of description. This will no doubt include placing notices in and around the relevant sites where this is practicable; placing notices on appropriate websites and in relevant publications; and giving notice to relevant community and charitable and other representative groups.

(8) Liberty to apply to discharge or vary

232. As we have mentioned, we consider that an order of this kind ought always to include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the order (again, see para 167(ii) above). This is so whether the order is interim or final in form, so that a respondent can challenge the grant of the injunction on any grounds which might have been available at the time of its grant.

(9) Costs protection

233. This is a difficult subject, and it is one on which we have received little assistance. We have considerable concern that costs of litigation of this kind are way beyond the means of most if not all Gypsies and Travellers and many interveners, as counsel for the first interveners, Friends of the Earth, submitted. This raises the question whether the court has jurisdiction to make a protective or costs capping order. This is a matter to be considered on another day by the judge making or continuing the order. We can see the benefit of such an order in an appropriate case to ensure that all relevant arguments are properly ventilated, and the court is equipped to give general guidance on the difficult issues to which it may give rise.

(10) Cross-undertaking

234. This is another important issue for another day. But a few general points may be made at this stage. It is true that this new form of injunction is not an interim order, and it is not in any sense holding the ring until the final determination of the merits of the claim at trial. Further, so far as the applicant is a public body acting in pursuance of its public duty, a cross undertaking may not in any event be appropriate. Nevertheless, there may be occasions where a cross undertaking is considered appropriate, for reasons such as those given by Warby J in *Birmingham City Council v Afsar* [2019] EWHC 1619 (QB), a protest case. These are matters to be considered on a case-by-case basis, and the applicant must equip the court asked to make or continue the order with the most up-to-date guidance and assistance.

(11) *Protest cases*

235. The emphasis in this discussion has been on newcomer injunctions in Gypsy and Traveller cases and nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protesters who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2's land with the intention of disrupting construction. Each of these activities may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers. Any of these persons who have notice of the order will be bound by it, just as effectively as the injunction in the proceedings the subject of this appeal has bound newcomer Gypsies and Travellers.

236. Counsel for the Secretary of State for Transport has submitted and we accept that each of these cases has called for a full and careful assessment of the justification for the order sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, in so far as the applicant seeks an injunction against newcomers, the judge must be satisfied there is a compelling need for the order. Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained."

57. I conclude from the rulings in *Wolverhampton* that the 7 rulings in *Canada Goose* remain good law and that other factors have been added. To summarise, in summary judgment applications for a final injunction against unknown persons ("PUs") or newcomers, who are protesters of some sort, the following 13 guidelines and rules must be met for the injunction to be granted. These have been imposed because a final injunction against PUs is a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future so must be used only with due safeguards in place.

58. **(A) Substantive Requirements**
Cause of action

- (1) There must be a civil cause of action identified in the claim form and particulars of claim. The usual *quia timet* (since he fears) action relates to the fear of torts such as trespass, damage to property, private or public nuisance, tortious interference with trade contracts, conspiracy with consequential damage and on-site criminal activity.

Full and frank disclosure by the Claimant

- (2) There must be full and frank disclosure by the Claimant (applicant) seeking the injunction against the PUs.

Sufficient evidence to prove the claim

- (3) There must be sufficient and detailed evidence before the Court on the summary judgment application to justify the Court finding that the immediate fear is proven on the balance of probabilities and that no trial is needed to determine that issue. The way this is done is by two steps. Firstly stage (1), the claimant has to prove that the claim has a realistic prospect of success, then the burden shifts to the defendant. At stage (2) to prove that any defence has no realistic prospect of success. In PU cases where there is no defendant present, the matter is considered ex-parte by the Court. If there is no evidence served and no foreseeable realistic defence, the claimant is left with an open field for the evidence submitted by him and his realistic prospect found at stage (1) of the hearing may be upgraded to a balance of probabilities decision by the Judge. The Court does not carry out a mini trial but does carry out an analysis of the evidence to determine if it the claimant's evidence is credible and acceptable. The case law on this process is set out in more detail under the section headed "The Law" above.

No realistic defence

- (4) The defendant must be found unable to raise a defence to the claim which has a realistic prospect of success, taking into account not only the evidence put before the Court (if any), but also, evidence that a putative PU defendant might reasonably be foreseen as able to put before the Court (for instance in relation to the PUs civil rights to freedom of speech, freedom to associate, freedom to protest and freedom to pass and repass on the highway). Whilst in *National Highways* the absence of any defence from the PUs was relevant to this determination, the Supreme Court's ruling in *Wolverhampton* enjoins this Court not to put much weight on the lack of any served defence or defence evidence in a PU case. The nature of the proceedings are "ex-parte" in PU cases and so the Court must be alive to any potential defences and the Claimants must set them out and make submissions upon them. In my judgment this is not a "Micawber" point, it is a just approach point.

Balance of convenience – compelling justification

- (5) In interim injunction hearings, pursuant to *American Cyanamid v Ethicon* [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in PU cases, pursuant to *Wolverhampton*, this balance is angled against the applicant to a greater extent than is required usually, so that there

must be a “compelling justification” for the injunction against PUs to protect the claimant’s civil rights. In my judgment this also applies when there are PUs and named defendants.

- (6) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UKSC 23, if the PUs’ rights under the European Convention on Human Rights (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect the Claimants’ right.

Damages not an adequate remedy

- (7) For the Court to grant a final injunction against PUs the claimant must show that damages would not be an adequate remedy.

(B) Procedural Requirements

Identifying PUs

- (8) The PUs must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (b) clearly defined geographical boundaries, if that is possible.

The terms of injunction

- (9) The prohibitions must be set out in clear words and should not be framed in legal technical terms (like “tortious” for instance). Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

The prohibitions must match the claim

- (10) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form.

Geographic boundaries

- (11) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

Temporal limits - duration

- (12) The duration of the final injunction should be only such as is proven to be reasonably necessary to protect the claimant’s legal rights in the light of the evidence of past tortious activity and the future feared (quia timet) tortious activity.

Service

- (13) Understanding that PUs by their nature are not identified, the proceedings, the evidence, the summary judgment application and the draft order must be served by alternative means which have been considered and sanctioned by the Court. The applicant must, under the Human Rights Act 1998 S.12(2), show that it has taken all practicable steps to notify the respondents.

The right to set aside or vary

- (14) The PUs must be given the right to apply to set aside or vary the injunction on shortish notice.

Review

- (15) Even a final injunction involving PUs is not totally final. Provision must be made for reviewing the injunction in the future. The regularity of the reviews depends on the circumstances. Thus such injunctions are “Quasi-final” not wholly final.
59. Costs and undertakings may be relevant in final injunction cases but the Supreme Court did not give guidance upon these matters.
60. I have read and take into account the cases setting out the historical growth of PU injunctions including *Ineos Upstream v PUs* [2019] EWCA Civ. 515, per Longmore LJ at paras. 18-34. I do not consider that extracts from the judgment are necessary here.

Applying the law to the facts

61. When applying the law to the facts I take into account the interlocutory judgments of Bennathan J and Bourne J in this case. I apply the balance of probabilities. I treat the hearing as an ex-parte hearing at which the Claimants must prove their case and put forward the potential defences of the PUs and show why they have no realistic prospect of success.

(A) Substantive Requirements

Cause of action

62. The pleaded claim is fear of trespass, crime and public and private nuisance at the 8 Sites and on the access roads thereto. In the event, as was found by Sweeting J, Bennathan J. and Bourne J. all 3 feared torts were committed in April 2022 and thereafter mainly at the Kingsbury site but also in Plymouth later on. In my judgment the claim as pleaded is sufficient on a quia timet basis.

Full and frank disclosure

63. By their approach to the hearing I consider that the Claimant and their legal team have evidenced providing full and frank disclosure.

Sufficient evidence to prove the claim

64. In my judgment the evidence shows that the Claimants have a good cause of action and fully justified fears that they face a high risk and an imminent threat that the remaining 17 named Defendants (who would not give undertakings) and/or that UPs will commit the pleaded torts of trespass and nuisance at the 8 Sites in connection with the 4 Organisations. I consider the phrase “in connection with” is broad and does not require membership of the 4 Organisations (if such exists), or proof of donation. It requires merely joining in with a protest organised by, encouraged by or at which one or more of the 4 Organisations were present or represented. The history of the invasive and dangerous protests in April 2022, despite the existence of the interim injunction made

by Butcher J, is compelling. Climbing onto fuel filled tankers on access roads is a hugely dangerous activity. Invading and trespassing upon petrochemical refineries and storage facilities and climbing on storage tanks and tankers is likewise very dangerous. Tunnelling under roads to obstruct and damage fuel tankers is also a dangerous tort of nuisance. I accept the evidence of further torts committed between May and September 2022. I have carefully considered the reduction in activity against the Claimants' Sites in 2023, however the threats from the spokespersons who align themselves or speak for the 4 Organisations did not reduce. I find that the reduction or abolition of direct tortious activity against the Claimants' 8 Sites was probably a consequence of the interim injunctions which were restraining the PUs connected with the 4 Organisations and that it is probable that without the injunctions direct tortious activity would quickly have recommenced and in future would quickly recommence.

No realistic defence

65. The Defendants have not entered any appearance or defence. Utterly properly Miss Holland KC dealt with the potential defences which the Defendants could have raised in her skeleton. Those related to Articles 10 and 11 of the European Convention on Human Rights. In *Cuciurean v Secretary of State for Transport* [2021] EWCA 357, [9(1)]-[9(2)] (emphasis added) Warby LJ said:

“9. The following general principles are well-settled, and uncontroversial on this appeal.

(1) Peaceful protest falls within the scope of the fundamental rights of free speech and freedom of assembly guaranteed by Articles 10(1) and 11(1) of the European Convention on Human Rights and Fundamental Freedoms. Interferences with those rights can only be justified if they are necessary in a democratic society and proportionate in pursuit of one of the legitimate aims specified in Articles 10(2) and 11(2). Authoritative statements on these topics can be found in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 [43] (Laws LJ) and *City of London v Samede* [2012] EWCA Civ 160 [2012] 2 All ER 1039, reflecting the Strasbourg jurisprudence.

(2) But the right to property is also a Convention right, protected by Article 1 of the First Protocol ('A1P1'). In a democratic society, the protection of property rights is a legitimate aim, which may justify interference with the rights guaranteed by Article 10 and 11. Trespass is an interference with A1P1 rights, which in turn requires justification. In a democratic society, Articles 10 and 11 cannot normally justify a person in trespassing on land of which another has *the right to possession*, just because the defendant wishes to do so for the purposes of protest against government policy. Interference by trespass will rarely be a necessary and proportionate way of pursuing the right to make such a protest.”

66. I consider that any defence assertion that the final injunction amounts to a breach of the Defendants' rights under Articles 10 and 11 of the *European Convention on Human Rights* would be bound to fail. Trespass on the Claimants' 8 sites and criminal damage thereon is not justified by those Articles and they are irrelevant to those pleaded causes. As for private nuisance the same reasoning applies. The Articles would only be relevant to the public nuisance on the highways. The Claimants accept that those rights would be engaged on public highways. However, the injunction is prescribed by law in that it is granted by the Court. It is granted with a legitimate aim, namely to protect the Claimant's civil rights to property and access thereto, to avoid criminal damage, to avoid serious health and safety dangers, to protect the right to life of the Claimants' staff and invitees should a serious accidents occur and to enable the emergency services by enabling to access the 8 Sites. There is also a wider interest in avoiding the disruption to emergency services, schools, transport and national services from disruption in fuel supplies. In my judgment there are no less restrictive means available to achieve the aim of protecting the Claimants' civil rights and property than the terms of the final injunction. The Defendants have demonstrated that they are committed to continuing to carry out their unlawful behaviour. In my judgment an injunction in the terms sought strikes a fair balance. In particular, the Defendants' actions in seeking to *compel* rather than *persuade* the Government to act in a certain way (by attacking the Claimants 8 Sites), are not at the core of their Article 10 and 11 rights, see *Attorney General's Reference (No 1 of 2022)* [2023] KB 37, at para 86. I take into account that direct action is not being carried out on the highway because the highway is in some way important or related to the protest. It is a means by which the Defendants can inflict significant disruption, see *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (KB), at para 40(4)(a) per Lavender J and *Ineos v Persons Unknown* [2017] EWHC 2945 (Ch), at para.114 per Morgan J. I take into account that the Defendants will still be able to protest and make their points in other lawful ways after the final injunction is granted, see *Shell v Persons Unknown* [2022] EWHC 1215, at para. 59 per Johnson J. I take into account that the impact on the rights of others of the Defendants' direct action, for instance at Kingsbury, is substantial for the reasons set out above. As well as being a public nuisance, the acts sought to be restrained are also offences contrary to s.137 of the *Highways Act 1980* (obstruction of the highway), s.1 of the *Public Order Act 2023* (locking-on) and s.7 of the *Public Order Act 2023* (interference with use or operation of key national infrastructure). In these circumstances I do not consider that the Defendants have any realistic prospect of success on their potential defences.

Balance of convenience – compelling justification

67. In my judgment the balance of convenience and justice weigh in favour of granting the final injunction. The balance tips further in the Claimants' favour because I consider that there are compelling justifications for the injunction against the named Defendants and the PUs to protect the Claimants' 8 Sites and the nearby public from the threatened torts, all of which are at places which are part of the National Infrastructure. In

addition, there are compelling reasons to protect the staff and visitors at the 8 Sites from the risk of death or personal injury and to protect the public at large who live near the 8 Sites. The risk of explosion may be small, but the potential harm caused by an explosion due to the tortious activities of a protester with a mobile phone or lighter, who has no training in safe handling in relation to fuel in tankers or storage tanks or fuel pipes, could be a human catastrophe.

68. I also take into account the dangers involved in shutting down any refinery site. I take into account that a temporary emergency shutdown had to be put in place at Kingsbury on 7th April 2022 and the dangers that such safety measures cause on restart.
69. I take into account that no spokesperson for any of the 4 Organisations has agreed to sign undertakings and that 17 Defendants have refused to sign undertakings. I take into account the dark and ominous threats made by Roger Hallam, the asserted co-founder of Just Stop Oil and the statements of those who assert that they speak for the Just Stop Oil and the other organisations, that some will continue action using methods towards a more excessive limit.

Damages not an adequate remedy

70. I consider that damages would not be an adequate remedy for the feared direct action incursions onto or blockages of access at the 8 Sites. None of the named Defendants are prepared to offer to pay costs or damages. 43 have sought to exchange undertakings for the prohibitions in the interim injunctions, but none offered damages or costs. Recovery from PUs is impossible and recovery from named Defendants is wholly uncertain in any event. No evidence has been put before this Court about the 4 Organisations' finances or structure or legal status or to identify which legal persons hold their bank accounts or what funding or equipment they provided to the protesters or what their legal structure is. Whilst no economic tort is pleaded the damage caused by disruption of supply and of refining works may run into substantial sums as does the cost to the police and emergency services resulting from torts or crimes at the 8 Sites and the access roads thereto. Finally, any health and safety risk, if triggered, could potentially cause fatalities or serious injuries for which damages would not be a full remedy. Persons injured or killed by tortious conduct are entitled to compensation, but they would always prefer to suffer no injury.

(B) Procedural Requirements

Identifying PUs

71. In my judgment, as drafted the injunction clearly and plainly identifies the PUs by reference to the tortious conduct to be prohibited and that conduct mirrors the feared torts claimed in the Claim Form. The PUs' conduct is also limited and defined by reference to clearly defined geographical boundaries on coloured plans.

The terms of the injunction

72. The prohibitions in the injunction are set out in clear words and the order avoids using legal technical terms. Further, in so far as the prohibitions affect public highways, they do not prohibit any conduct which is lawful viewed on its own save to the extent that such is necessary and proportionate. I am satisfied that there is no other more proportionate way of protecting the Claimants' rights or those of their staff, invitees and suppliers.

The prohibitions must match the claim

73. The prohibitions in the final injunction do mirror the torts feared in the Claim Form.

Geographic boundaries

74. The prohibitions in the final injunction are defined by clear geographic boundaries which in my judgment are reasonable.

Temporal limits - duration

75. I have carefully considered whether 5 years is an appropriate duration for this quasi-final injunction. The undertakings expire in August 2026 and I have thought carefully about whether the injunction should match that duration. However, in the light of the threats of some of the 4 Organisations on the longevity of their campaigns and the continued actions elsewhere in the UK, the express aim of causing financial waste to the police force and the Claimants and the total lack of engagement in dialogue with the Claimants throughout the proceedings, I do not consider it reasonable to put the Claimants to the further expense of re-issuing for a further injunction in 2 years 7 months' time. I have seen no evidence suggesting that those connected with the 4 organisations will abandon or tire of their desire for direct tortious action causing disruption, danger and economic damage with a view to forcing Government to cease or prevent oil exploration and extraction.

Service

76. I find that the summary judgment application, evidence in support and draft order were served by alternative means in accordance with the previous Orders made by the Court.

The right to set aside or vary

77. The final injunction gives the PUs the right to apply to set aside or vary the final injunction on short notice.

Review

78. Provision has been made in the quasi-final injunction for review annually in future. In the circumstances of this case I consider that to be a reasonable period.

Conclusions

79. I grant the quasi-final injunction sought by the Claimants for the reasons set out above.

END



Neutral Citation Number: [2024] EWHC 1277 (KB)

Case No: QB-2022-BHM-000044

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
THE BIRMINGHAM DISTRICT REGISTRY

Date: 24th May 2024

Before :

MR JUSTICE RITCHIE

Between :

HIGH SPEED TWO (HS2) LIMITED [1]
THE SECRETARY OF STATE FOR TRANSPORT [2]

Claimant

- and -

(1) NOT USED

Defendants

**(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE
CONSENT OF THE CLAIMANTS ON, IN OR UNDER THE HS2 LAND
WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR
HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS,
CONTRACTORS, SUBCONTRACTORS, GROUP COMPANIES,
LICENSEES, INVITEES AND/OR EMPLOYEES**

**(3) PERSONS UNKNOWN OBSTRUCTING AND/OR INTERFERING WITH
ACCESS TO AND/OR EGRESS FROM THE HS2 LAND IN CONNECTION
WITH THE HS2 SCHEME WITH OR WITHOUT VEHICLES, MATERIALS
AND EQUIPMENT, WITH THE EFFECT OF DAMAGING AND/OR
DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS,
SERVANTS, CONTRACTORS, SUBCONTRACTORS, GROUP
COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES WITHOUT
THE CONSENT OF THE CLAIMANTS**

**(4) PERSONS UNKNOWN CUTTING, DAMAGING, MOVING, CLIMBING
ON OR OVER, DIGGING BENEATH OR REMOVING ANY ITEMS
AFFIXED TO ANY TEMPORARY OR PERMANENT FENCING OR GATES
ON OR AT THE PERIMETER OF THE HS2 LAND, OR DAMAGING,
APPLYING ANY SUBSTANCE TO OR INTERFERING WITH ANY LOCK**

**OR ANY GATE AT THE PERIMETER OF THE HS2 LAND WITHOUT THE
CONSENT OF THE CLAIMANTS**

(5) MR ROSS MONAGHAN (AKA SQUIRREL / ASH TREE)

**(6) MR JAMES ANDREW TAYLOR (AKA JIMMY KNAGGS / JAMES
KNAGGS / RUN AWAY JIM)**

**(7-65) THE OTHER NAMED DEFENDANTS AS SET OUT IN ANNEX A
HERETO**

Michael Fry & Jonathan Welch of Counsel (instructed by **DLA Piper Solicitors**) for the
Claimant

Stephen Simblet KC (instructed by **Robert Lizar Solicitors**) for the **6th Defendant**

Hearing dates: 15th May 2024

Approved Judgment

This judgment was handed down remotely at 10.30pm on Friday 24th May 2024 by
circulation to the parties or their representatives by e-mail and by release to the National
Archives.

.....

Mr Justice Ritchie:

The Parties

1. The first Claimant is constructing the high speed railway from London to Crewe and was then planning to construct onwards to Manchester and Leeds. The second Claimant is the Secretary of State for Transport.
2. There are two types of Defendant. Persons Unknown (PUs) and named Defendants. The 6th Defendant (D6) attended the hearing. Many of the other named Defendants have been removed as parties to the proceedings as the claim has progressed. Most have been removed because they provided undertakings in similar format to the prohibitory interim injunctions granted to the Claimants. Some have been found in contempt of the CPL (Cotter J.) injunction and imprisoned.

Bundles

3. For the hearing I was provided with hard copy and digital bundles, beautifully prepared as follows: core bundles: A and B; supplementary bundles: A, B1 and 2, C; authorities bundles: main and supplementary. I was also provided with a skeleton argument by the Claimants and by D6 and a “Written Reasons” from D6 to amend the draft Order proposed by the Claimants.

The hearing

4. This was a review hearing of a routewide interim injunction granted to prohibit unlawful interference by known Defendants and PUs with the work being carried out by the Claimants to build the HS2 railway from London to Manchester and Leeds on land in HS2 possession. To understand the project as it stood when the claim was issued, it may help to see a simple map of it provided in evidence by the Claimants, which I set out below. There are three parts. Phase 1 is from London to the West Midlands and is shown in blue. Phase 2A was from West Midlands to Crewe and is shown in purple. Phase 2B is in orange, which takes the Western line from Crewe to Manchester and the Eastern line from West Midlands to Leeds. I shall refer to these phases both by colour and by the phase numbers.



Dark blue = P1

Purple = P2A

Orange=P2B

The chronology

5. The HS2 project was authorised by Parliament through Acts dated 2017 and 2021. There were supporters of this project and there were objectors to it. Some of the objectors decided to take what they called direct action. Some of those taking direct action chose to break criminal and/or civil law as part of their direct action. Their publicly stated purposes included: causing huge expense to the Claimants by unlawful direct action on HS2 land through incurring security costs to deal with the direct action; delaying the construction of HS2 and thereby increasing the costs; persuading

Government to cease to build each and all of the phases set out above and saving the environments affected by the project. All such increased costs have been funded by UK taxpayers. It is not the role of this Courts to make any comment on any of those matters. In relation to civil unlawfulness, the Courts deal with applications and claims made by parties.

6. On 19 February 2018 Baring J. (PT 2018 000098) made an interim injunction protecting the Claimants' HS2 Harvil Road site from unlawful actions by PUs and named Defendants. Those included D28, 33, 36, and 39 in the action before me. I do not know how the claim progressed. This was renewed on 18 September 2020 by David Holland QC sitting as a Deputy High Court Judge.
7. On 23 March 2022 (QB 2022 BHM 000016) Linden J. made an interim injunction protecting the Claimants' HS2's contractor's land leased at Swynnerton, which was being used by Balfour Beatty (the contractor), which is very near to Cash's Pit Land (CPL) which the protesters called Bluebell Woods Camp. The interim injunction was to remain in force until further order and expired after 12 months. D6 in the action before me was a Defendant and appeared at that hearing. Directions were given for the claim to be pleaded out and for evidence to be filed and protection was given to PUs by the right to vary or set aside the order. I do not know how that claim progressed.
8. On 10 February 2021 (CO/361/2021) Steyn J. made an interim injunction order protecting the Claimants' HS2 land at Euston Square, London." On 28.3.2022 (QB 2021 004465) Linden J. made an interim injunction order protecting the Claimants' HS2 land at Euston Square, London. This was against Larch Maxey; Daniel Hooper (one of the Defendants in the case before me); Isla Sandford; J Stephenson-Clarke and B Croarkin. I do not know how that claim progressed.
9. The claim before me started by the issuing of the Claim Form on 28.3.2022. The Claimants sought possession of land at CPL and sought an injunction prohibiting PUs and named Defendants from trespassing and interfering with the construction of the project. They sought delivery up of possession of CPL, declaratory relief relating to possession of CPL, an injunction and costs.
10. The Claimants issued an application for urgent interim injunctions relating to CPL and routewide at the same time. D6 was represented at the hearing. Cotter J. made: (1) an order for possession of CPL against D6 and all the other Defendants, and (2) an interim injunction order against PUs and certain named Defendants who were believed to be occupying CPL (D5-20, 22, 31 and 63). The numbers and remaining Defendants' names (many have since been released from the claim) are set out in the Annex to this judgment. The original interim injunction was to last until trial or further order and expired on 24.10.2022 in any event.

11. On 20.9.2022 Julian Knowles J. handed down judgment on the Claimants' application in this action for a routewide interim injunction covering all HS2 land. At the hearing the Claimants had sought a final injunction. Julian Knowles J. noted that he was dealing not just with PUs but also with named Defendants and some of them might wish to dispute the claims against them, and indeed D6 objected to there being a final injunction. Thus, Knowles J. refused to make a final injunction and dealt with the application as one for an interim injunction (see para. 9 of his judgment). Knowles J. dealt with a wealth of evidence but no witness was cross-examined. I refer to and incorporate the chronology of events set out in the judgment. At para. 24 he set out the bit by bit litigation put in evidence before him which had preceded the routewide injunction application. He set out the Claimants' rights to the HS2 land; the Claimants' action for trespass and nuisance; the Defendants' clearly publicised intention to continue direct action protests against the construction of HS2 across the whole of the HS2 land; D6's submissions in opposition (lawful protest, no right to possession, lack of real and imminent risk, inadequate definition of PUs, inadequate constraint terms in the draft order, discretionary relief should not be granted, disproportionate exercise of power, breach of Art. 10 and 11 of the ECHR, challenges to service methods and other complaints). Julian Knowles J. set out the legal principles relating to trespass and nuisance and then covered the law relating to interim injunctions at paras. 91-102. In summary, he considered such injunctions were to "hold the ring pending the final hearing"; the Court was to apply the just and convenient test; adequacy of damages was to be considered; where wrongs had already been committed by the Defendant/s the quia timet threshold was lower and the evidential inference was that such infringements would continue until trial unless restrained; the Claimants had to show more than a real issue to be tried, he followed the principle in *Ineos v PUs* [2019] 4 WLR 100, at paras. 44-48, that the Court must be satisfied that the Claimants will likely obtain an injunction (preventing trespass) at the final hearing; and, for precautionary relief (what we fear, or quia timet), whether there was a sufficiently real and imminent risk of torts being committed which would cause harm sufficient to justify the relief. Knowles J. then set out the *Canada Goose* structural requirements for PU injunctions and considered the Defendants' ECHR rights. He then applied the law and made findings. He found that the Claimants had sufficient title to the HS2 land to make the claims. He accepted the Claimants' evidence of trespass and damage at CPL by PUs and Defendants "to the requisite standard at this stage" (para. 159). He found significant violence and criminality. He found that there was a real and imminent risk of continuing unlawfulness (para. 168). He rejected D6's submission that he had to find a risk of actual damage occurring on HS2 land and that there was no such risk. Knowles J. took account of the many past unlawful acts and the clearly expressed intention of many protesters to continue direct action by unlawful means. He found, at para. 177, that a precautionary interim injunction was appropriate and that to fail to grant one would be a licence for guerrilla tactics. These findings were not made on the "real issue to be tried" basis, but instead on the "likely to obtain the relief sought at trial" basis (para. 217); damages would not be an adequate remedy and the balance of convenience strongly favoured protecting the Claimants' HS2 land until trial. A helpful schedule of

the Defendants' responses was appended to the judgment. Some Defendants had put in defences; others had emailed or put in responses, submissions or witness statements.

12. D6 appealed the judgment of Knowles J. but permission was refused on 9.12.2022 by Coulson LJ.
13. The routewide interim injunction made by Julian Knowles J. in September 2022 was extended by me in May 2023 for another year. In para. 16 of that order and Schedule D to that order I made provision for any Defendant to apply to bring the proceedings to a final trial. This provided PUs and all named Defendants with the right to end being a party to the proceedings by that route. It provided each with the right to force the Claimants to prove their allegations on the balance of probabilities at trial, under cross-examination and after disclosure of relevant evidence and documentation. No Defendant has done so. Provisions were made for review of the interim injunction by May this year.
14. The Cotter J. version of the CPL interim injunction was breached by various Defendants back in 2022, who stayed at CPL despite the prohibitions therein. Committal proceedings were commenced and heard by me in July and September 2022. Two protestors who had been occupying CPL in treehouses gave undertakings and walked free: D62, (Leanne Swateridge, aka Flowery Zebra) and D31, (Rory Hooper). Five Defendants who had occupied tunnels were sentenced to imprisonment for contempt of Court, two of the sentences were suspended: D18, (William Harewood, aka Satchel/Satchel Baggins); D33 (Elliot Cuciurean, aka Jellytot); D61 (David Buchan, aka David Holliday); D64 (Stefan Wright); D65 (Liam Walters). One of these (Wright) never attended and is still at large.

The applications

15. Pursuant to the order I made in May 2023 the Claimants have faithfully applied for review of the interim injunction. By a notice of application dated 1.3.2024 they seek a 12 month extension of the routewide interim injunction, redefinition of the HS2 land plans; permission to update the definition of HS2 land and an extension of the prohibited acts to cover drone flying over their works on HS2 land.
16. The evidence in support of the application is set out in the following witness statements: James Dobson dated 28.2.2024; John Groves dated 28.2.2024; Julie Dilcock dated 28.2.2024 and Robert Shaw dated 27.2.2024.
17. The opposition to the application comes only from D6. Interestingly, now he submits that the Claimants should be required to progress the claim to a final hearing against all other Defendants, having submitted to Knowles J. that a final injunction should not be granted at that hearing. He wishes to be released from the claim himself. His counsel informed me at the hearing that he is crowd funded, that explains why he attends so

many of these HS2 hearings. The Claimants have never sought to enforce their costs against the crowd funding bank accounts or trustees.

The Issues

18. There were 5 substantive matters to be determined:
 - 18.1 Should the Claimants be required to take the claim to a final hearing?
 - 18.2 Should the duration of the routewide interim injunction be extended?
 - 18.3 Should the routewide injunction relating to the purple land be ended?
 - 18.4 Should the amendments to the details of the routewide injunction be permitted?
 - 18.5 Should D6 and 13 other Defendants be removed as parties to the claim?

The lay witness evidence

19. I have read the evidence from the Claimants' witnesses and from D6.
20. **James Dobson** is a security consultant and advisor to HS2. He reviewed the internal computer and documentary sources. He set out the Claimants' evidence. He asserted that the Claimants no longer considered 13 of the named Defendants to be a sufficient risk to the HS2 project for them to remain parties to the claim. These were D5, 6, 7, 22, 27, 28, 33, 36, 39, 48, 57, 58 and 59. After the removal of these Defendants, only 5 named Defendants would remain.
21. Mr Dobson informed the Court that since 17th March 2023 there had been no major direct action activist events or incidents targeting the HS2 project that had resulted in a delay of works by more than an hour. He considered there was direct evidence from activists that the reason the disruption to the HS2 project had stopped was the deterrent effect of the injunction and gave evidence by way of a few examples. However, he set out what he described as "minor incidences" of random trespasses to land which had not impacted on the works of the project. He asserted there were *increasing* incidences of unlawful occupation of phase 2 property and set these out. There were 24 events set out in a five column table. I summarise them below. Unfortunately he did not specify which was on phase 1 land and which was on phase 2 land. I have done my best to identify which is which in brackets below. In March 2023 urban explorers broke into the Grimstock Hotel in Birmingham (phase 1). The same month 10 caravans trespassed upon a business park in Saltley in Birmingham (phase 1) and, when challenged, left after about 10 hours. In May and June 2023 a group called Universal Law Community Trust occupied a building at Whitmore Heath, which is part of the phase 2A land. The description of the group paints them as debt buyers who control the debtors' behaviour after taking over their debt, for anarchic purposes. In May 2023 in Old Oak Common Road, London (phase 1), a man, who had previously trespassed on HS2 land, assaulted a security officer on a closed road. In July 2023 graffiti and some criminal damage had been done in Westbury Viaduct near Brackley (phase 1 land). In August 2023 three children set up a small campsite on HS2 land in Buckinghamshire (phase 1 land) and, when their parents were asked to remove them, they left. In the same month two people trespassed on land in Greatworth, Oxfordshire (phase 1) and interfered with some

machinery. In the same month a naked rambler walked onto an HS2 site in Western Cutting near Brackley (phase 1) and was escorted off. In the same month a local resident blocked access to an HS2 site at Washwood Heath in Birmingham (phase 1) but left when shown the injunction. In September 2023 D16 and another person entered HS2 land in Warwickshire (phase 1) and two other areas and took photographs which were posted on social media. The next day they went to two further HS2 sites in Warwickshire. The next day they went to one or two sites in Staffordshire (phase 2). In October 2023, at Addison Road, Calvert, (phase 1) fire extinguishers were discharged overnight. In the same month a group of urban explorers entered property at Drayton Lane, Tamworth (phase 1) and posted images. In the same month a group of urban explorers trespassed at Whitmore Heath, Whitmore (phase 2A) and shared photos with other urban explorers online. In the same month fireworks were fired towards security officers on HS2 land at Leather Lane, Great Missenden (phase 1). In November 2023 five members of a group called Unite The Union attended Old Oak Common Road, London (phase 1) with a megaphone but left when informed of the injunction. Later in November, a farm property at Swynnerton in Staffordshire (phase 2A) was entered by urban explorers. Later in November, 13 Unite The Union activists blocked access to HS2 logistics hubs at Channel Gate Road in London (phase 1). In December through to January 2024, D69 flew drones over multiple HS2 sites. However, he has given an undertaking which is satisfactory to the Claimants and so he is not being joined to the claim. In December 2023 vandalism occurred to a site in Aylesbury (phase 1). In January 2024 urban explorers entered an HS2 building at Birmingham Interchange (phase 1) and were escorted off site. Later that month urban explorers trespassed at Drayton Lane, Tamworth (phase 1). Finally, in February 2024 a person asserting to be a social media auditor flew drones over HS2 land at Victoria Road in London (phase 1) and caused a nuisance.

22. In his evidence Mr Dobson set out records of what he described as the displacement of activists to other causes and unlawful direct actions by them for other causes. He asserts that direct action protesters have transferred their interest to other causes including Palestine Action and Just Stop Oil. Mr Dobson asserts that activists will look for loopholes in injunction orders, relying on evidence that D6 made such a pronouncement in relation to Balfour Beatty and the injunction they obtained, which I have set out above, asserting that protesters would attack Balfour Beatty elsewhere, outside the scope of the injunction. Mr Dobson also sought to raise his concern that the group: Universal Law Community Trust had ties with protesters wishing to Stop HS2 because their occupation of a property owned by HS2 was mentioned on some anti HS2 websites. Mr Dobson also raised his concern about urban explorers.
23. Mr Dobson summarised an announcement by the Prime Minister on the 4th of October 2023 that phase two of the HS2 project had been abandoned but he did not set out the Prime Minister's words. Mr Dobson summarised various pronouncements about hit and run tactics published by Lousy Badger, social media threats to re-enter CPL and vague threats to "be back". Overall, Mr Dobson asserted that the Claimants reasonably fear a

return to the levels of unlawful activity experienced prior to the interim injunction if it is allowed to lapse and asserts that the interim injunction has been remarkably successful in reducing direct unlawful action against HS2 land and saving taxpayers money.

24. John Groves is the chief security officer for HS2 and gave evidence that the costs of the unlawful direct action to date to the taxpayer, through HS2, have totalled £121,000,000. He asserted that the September 2022 interim routewide injunction had had a dramatic effect by reducing direct action, which diminished the quarterly security expenditure from over half a million down to just £100,000. He produced a forecast of the costs of future unlawful direct action of £7 million for phase two, ending in 2024, due to increased security. He said that activists had started campaigning for other causes but they may believe they can cancel the whole of the HS2 scheme. He asserted that unhappy land owners, whose land was taken away in phase 2, may get involved. He asserted that the Claimants need the deterrence of the injunction or the Claimants might need to spend another £12 million on protection. He was concerned about attacks on bridges over motorways as a potential weak spot in the project. He asserted that activity was still continuing despite the injunction but relied solely on the evidence of Mr Dobson.
25. Julie Dilcock, the in house lawyer for HS2, set out a history of the claims and then the rationale for the various alterations needed to the draft order. Robert Shaw gave evidence which assisted in various tidying up operations that are going to be needed.
26. I take into account what D6 set out in his written reasons. He was content to take no further part in the claim and agreed that the Claimants could no longer maintain an injunction against him. He asserted that, according to the Civil Procedure Rules, the Claimants had to issue notice of discontinuance, obtain the Court's permission and, by implication, pay his costs under CPR part 38, if they wished to discontinue against him. However, in my judgment, this was wanting his cake and to eat it. He asserted that, because he would still be bound by the injunction under the umbrella of the term "PU", he could still make submissions at the hearing and I permitted him to do so. His submissions were that the terms of the injunction should be modified so that it no longer covers the land relating to phase 2A of the project because the Prime Minister has announced that the project is not going ahead on phase 2 and therefore the protesters have achieved what they wanted. He suggested that the geographic scope of the injunction should be reduced so that it does not cover the purple land set out in the 2021 Act. He also raised the point that this is an interim injunction binding the world and that the Claimants were under a continuing, onerous, responsibility to disclose relevant matters to the Court as they arose. He asserted that the Claimants had failed, in a timely way, to inform the Court of the Prime Minister's announcement in October 2023 that phase 2 was being abandoned and therefore had failed in their responsibilities and that the sanction for this should be the discharge of the whole interim injunction.

27. I asked the Claimants' counsel to point the Court to the evidence, after the Prime Minister's announcement, that protesters were still going to take direct action against the HS2 land involved in phase 2A, the purple land, on which no construction work will be carried out in future because the project had been cancelled. The Claimants identified Core Bundle pages 152-155. This amounted to little more than announcements on social media of self-congratulation by a few campaigners (for instance Lousy Badger), a desire for a party at Bluebell Wood (CPL) and a call to continue to fight to persuade the Government to scrap phase 1 of the project.

The Law

28. I will set out the key points from the relevant case law put before me below. In *National Highways v PUs, Rodger and 132 Ors* [2023] EWCA Civ. 182, the claimant applied for summary judgment and final (quia timet, what we fear) injunctions, having obtained interim injunctions. The trial Judge granted summary judgment against various defendants found in contempt but not against 109 defendants who had not entered defences and were not individually identified as past tortfeasors. This was overturned on appeal. For an anticipatory injunction, whether interim or final, proof of a past tort by the individual Defendant is not a pre-requisite. The normal rules apply. So, for summary judgment, the normal application of CPR r.24.2 applied and for the quia timet (what we fear) injunction, the normal thresholds applied. The President of the KBD ruled thus:

“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.”

29. In *TfL v Lee & PUs & Ors* [2023] EWHC 402, Cavanagh J. was considering renewal of a PU injunction about roads and Just Stop Oil protesters. He ordered an expedited trial. He then considered the extension of the interim injunction. He accepted and adopted Freeman J.’s judgment on the earlier review and asked himself this question:

“20. ... The real issue before me, therefore, is whether the evidence of events that have taken place since 31 October 2022 provides grounds for declining to extend the injunction on materially identical terms.

21. The answer is that there are no such grounds. 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.”

30. Since the extension of the HS2 interim injunction in May 2023 the Supreme Court has passed judgment in *Wolverhampton City Council v London Gypsies* [2023] UKSC 47. This clarified that PU or newcomer injunctions can be granted on an interim or final basis subject to clear conditions and restraints. I summarised the guidance recently in *Valero Energy v PUs & Bencher & Ors* [2024] EWHC 134. I was considering both a summary judgment application and a final PU/named Defendants injunction. At paras. 57 – 60 I ruled thus:

“57. I conclude from the rulings in *Wolverhampton* that the 7 rulings in *Canada Goose* remain good law and that other factors have been added. To summarise, in summary judgment applications for a final injunction against unknown persons ("PUs") or newcomers, who are protesters of some sort, the following 13 guidelines and rules must be met for the injunction to be granted. These have been imposed because a final injunction against PUs is a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future so must be used only with due safeguards in place.

58. (A) Substantive Requirements

Cause of action

(1) There must be a civil cause of action identified in the claim form and particulars of claim. The usual *quia timet* (since he fears) action relates to the fear of torts such as trespass, damage to property, private or public nuisance, tortious interference with trade contracts, conspiracy with consequential damage and on-site criminal activity.

Full and frank disclosure by the Claimant

(2) There must be full and frank disclosure by the Claimant (applicant) seeking the injunction against the PUs.

Sufficient evidence to prove the claim

(3) There must be sufficient and detailed evidence before the Court on the summary judgment application to justify the Court finding that the immediate fear is proven on the balance of probabilities and that no trial is needed to determine that issue. The way this is done is by two steps. Firstly stage (1), the claimant has to prove that the claim has a realistic prospect of success, then the burden shifts to the defendant. At stage (2) to prove that any defence has no realistic prospect of success. In PU cases where there is no defendant present, the matter is considered ex-parte by the Court. If there is no evidence served and no foreseeable realistic defence, the claimant is left with an open field for the evidence submitted by him and his realistic prospect found at stage (1) of the hearing may be upgraded to a balance of probabilities decision by the Judge. The Court does not carry out a mini trial but does carry out an analysis of the evidence to determine if it the claimant's evidence is credible and acceptable. The case law on this process is set out in more detail under the section headed "The Law" above.

No realistic defence

(4) The defendant must be found unable to raise a defence to the claim which has a realistic prospect of success, taking into account not only the evidence put before the Court (if any), but also, evidence that a putative PU defendant might reasonably be foreseen as able to put before the Court (for instance in relation to the PU s civil rights to freedom of speech, freedom to associate, freedom to protest and freedom to pass and repass on the highway). Whilst in *National Highways* the absence of any defence from the PUs was relevant to this determination, the Supreme Court's ruling in *Wolverhampton* enjoins this Court not to put much weight on the lack of any served defence or defence evidence in a PU case. The nature of the proceedings are "ex-parte" in PU cases and so the Court must be alive to any potential defences and the Claimants must set them out and make submissions upon them. In my judgment this is not a "Micawber" point, it is a just approach point.

Balance of convenience - compelling justification

(5) In interim injunction hearings, pursuant to *American Cyanamid v Ethicon* [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in PU cases, pursuant to *Wolverhampton*, this balance is angled against the applicant to a greater extent than is required usually, so that there must

be a "compelling justification" for the injunction against PUs to protect the claimant's civil rights. In my judgment this also applies when there are PUs and named defendants.

(6) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UK.SC 23, if the PUs' rights under the *European Convention on Human Rights* (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect the Claimants' right.

Damages not an adequate remedy

(7) For the Court to grant a final injunction against PUs the claimant must show that damages would not be an adequate remedy.

(B) Procedural Requirements - Identifying PUs

(8) The PUs must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (b) clearly defined geographical boundaries, if that is possible.

The terms of the injunction

(9) The prohibitions must be set out in clear words and should not be framed in legal technical terms (like "tortious" for instance). Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed

on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

The prohibitions must match the claim

(10) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form.

Geographic boundaries

(11) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

Temporal limits - duration

(12) The duration of the final injunction should be only such as is proven to be reasonably necessary to protect the claimant's legal rights in the light of the evidence of past tortious activity and the future feared (quia timet) tortious activity.

Service

(13) Understanding that PUs by their nature are not identified, the proceedings, the evidence, the summary judgment application and the draft order must be served by alternative means which have been considered and sanctioned by the Court. The applicant must, under the *Human Rights Act 1998* S.12(2), show that it has taken all practicable steps to notify the respondents.

The right to set aside or vary

(14) The PUs must be given the right to apply to set aside or vary the injunction on shortish notice.

Review

(15) Even a final injunction involving PUs is not totally final. Provision must be made for reviewing the injunction in the future. The regularity of the reviews depends on the circumstances. Thus such injunctions are "Quasi-final" not wholly final.

59. Costs and undertakings may be relevant in final injunction cases but the Supreme Court did not give guidance upon these matters."

31. Before me is a quia timet interim injunction. The Claimants had to and still have to prove a real and imminent risk of serious harm caused by tortious or criminal activity on their land, see *Canada Goose v PUs* [2020] EWCA Civ. 303, per Sir Terence Etherton MR at para. 82(3) (approved in *Wolverhampton*).
32. Drawing these authorities together, on a review of an interim injunction against PUs and named Defendants, this Court is not starting de novo. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the quia timet, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.
33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply.
34. In relation to the issue of whether final quia timet injunctions can be granted against PUs, the Court of Appeal in *Canda Goose* ruled that they could not be granted (para. 89) in a protester case against persons unknown who were not parties at the date of the final order, since a final injunction operated only between the parties to the proceedings. The Supreme Court in *Wolverhampton* overruled this decision. At para. 134 they together stated:

"134. Although we do not doubt the correctness of the decision in *Canada Goose*, we are not persuaded by the reasoning at paras 89-93, which we summarised at para 103 above. In addition to the criticisms made by the Court of Appeal which we have summarised at para 107

above, and with which we respectfully agree, we would make the following points.”

At para 143 they ruled as follows:

“143. The distinguishing features of an injunction against newcomers are in our view as follows:

(i) They are made against persons who are truly unknowable at the time of the grant, rather than (like Lord Sumption’s class 1 in *Cameron*) identifiable persons whose names are not known. They therefore apply potentially to anyone in the world.

(ii) They are always made, as against newcomers, on a without notice basis (see para 139 above). However, as we explain below, informal notice of the application for such an injunction may nevertheless be given by advertisement.

(iii) In the context of Travellers and Gypsies they are made in cases where the persons restrained are unlikely to have any right or liberty to do that which is prohibited by the order, save perhaps Convention rights to be weighed in a proportionality balance. The conduct restrained is typically either a plain trespass or a plain breach of planning control, or both.

(iv) Accordingly, although there are exceptions, these injunctions are generally made in proceedings where there is unlikely to be a real dispute to be resolved, or triable issue of fact or law about the claimant’s entitlement, even though the injunction sought is of course always discretionary. They and the proceedings in which they are made are generally more a form of enforcement of undisputed rights than a form of dispute resolution.

(v) Even in cases where there might in theory be such a dispute, or a real prospect that article 8 rights might prevail, the newcomers would in practice be unlikely to engage with the proceedings as active defendants, even if joined. This is not merely or even mainly because they are newcomers who may by complying with the injunction remain unidentified. Even if identified and joined as defendants, experience has shown that they generally decline to take any active part in the proceedings, whether because of lack of means, lack of pro bono representation, lack of a wish to undertake costs risk, lack of a perceived defence or simply because their wish to camp on any particular site is so short term that it makes more sense to move on than to go to court about continued camping at any particular site or locality.

(vi) By the same token the mischief against which the injunction is aimed, although cumulatively a serious threatened invasion of the claimant’s rights (or the rights of the neighbouring public which the

local authorities seek to protect), is usually short term and liable, if terminated, just to be repeated on a nearby site, or by different Travellers on the same site, so that the usual processes of eviction, or even injunction against named parties, are an inadequate means of protection.

(vii) For all those reasons the injunction (even when interim in form) is sought for its medium to long term effect even if time-limited, rather than as a means of holding the ring in an emergency, ahead of some later trial process, or even a renewed interim application on notice (and following service) in which any defendant is expected to be identified, let alone turn up and contest.

(viii) Nor is the injunction designed (like a freezing injunction, search order, Norwich Pharmacal or Bankers Trust order or even an anti-suit injunction) to protect from interference or abuse, or to enhance, some related process of the court. Its purpose, and no doubt the reason for its recent popularity, is simply to provide a more effective, possibly the only effective, means of vindication or protection of relevant rights than any other sanction currently available to the claimant local authorities.

144. Cumulatively those distinguishing features leave us in no doubt that the injunction against newcomers is a wholly new type of injunction with no very closely related ancestor from which it might be described as evolutionary offspring, although analogies can be drawn, as will appear, with some established forms of order. It is in some respects just as novel as were the new types of injunction listed in sub-paragraph (viii) above, and it does not even share their family likeness of being developed to protect the integrity and effectiveness of some related process of the courts.” (My emboldening).

Furthermore at para. 167 they ruled that:

“167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle.”

35. It is clear from this passage that quia timet injunctions against PUs, relating to private land owned or possessed by a claimant, are different beasts from old fashion injunctions against known defendants which need to be taken to trial. They do not “hold the ring pending trial”. They are an end in themselves for the short or the medium term and may

never lead to service of defences from the PUs, whether or not the PUs become crystallised as Defendants.

Changes in the law

36. Just before and since the interim injunction was extended, new offences relating to protesters and others were created as follows. They are in the *Public Order Act 2023*.

“6. Obstruction etc of major transport works

(1) A person commits an offence if the person—

(a) obstructs the undertaker or a person acting under the authority of the undertaker—

(i) in setting out the lines of any major transport works,

(ii) in constructing or maintaining any major transport works, or

(iii) in taking any steps that are reasonably necessary for the purposes of facilitating, or in connection with, the construction or maintenance of any major transport works, or

(b) interferes with, moves or removes any apparatus which—

(i) relates to the construction or maintenance of any major transport works, and

(ii) belongs to a person within subsection (5).

(2) It is a defence for a person charged with an offence under subsection (1) to prove that—

(a) they had a reasonable excuse for the act mentioned in paragraph (a) or (b) of that subsection, or

(b) the act mentioned in paragraph (a) or (b) of that subsection was done wholly or mainly in contemplation or furtherance of a trade dispute.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both.

(4) In subsection (3) “the maximum term for summary offences” means—

(a) if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, six months;

(b) if the offence is committed after that time, 51 weeks.

(5) The following persons are within this subsection—

(a) the undertaker;

(b) a person acting under the authority of the undertaker;

(c) a statutory undertaker;

(d) a person acting under the authority of a statutory undertaker.

- (6) In this section “major transport works” means—
- (a) works in England and Wales—
 - (i) relating to transport infrastructure, and
 - (ii) the construction of which is authorised directly by an Act of Parliament, or
 - (b) works the construction of which comprises development within subsection (7) that has been granted development consent by an order under section 114 of the Planning Act 2008.
- (7) Development is within this subsection if—
- (a) it is or forms part of a nationally significant infrastructure project within any of paragraphs (h) to (l) of section 14(1) of the Planning Act 2008,
 - (b) it is or forms part of a project (or proposed project) in the field of transport in relation to which a direction has been given under section 35(1) of that Act (directions in relation to projects of national significance) by the Secretary of State, or
 - (c) it is associated development in relation to development within paragraph (a) or (b).”

...

“7. Interference with use or operation of key national infrastructure

- (1) A person commits an offence if—
- (a) they do an act which interferes with the use or operation of any key national infrastructure in England and Wales, and
 - (b) they intend that act to interfere with the use or operation of such infrastructure or are reckless as to whether it will do so.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that—
- (a) they had a reasonable excuse for the act mentioned in paragraph (a) of that subsection, or
 - (b) the act mentioned in paragraph (a) of that subsection was done wholly or mainly in contemplation or furtherance of a trade dispute.
- (3) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, to a fine or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months, to a fine or to both.
- (4) For the purposes of subsection (1) a person’s act interferes with the use or operation of key national infrastructure if it prevents the infrastructure from being used or operated to any extent for any of its intended purposes.

- (5) The cases in which infrastructure is prevented from being used or operated for any of its intended purposes include where its use or operation for any of those purposes is significantly delayed.
- (6) In this section “key national infrastructure” means—
 - (a) road transport infrastructure,
 - (b) rail infrastructure,
 - (c) air transport infrastructure,
 - (d) harbour infrastructure,
 - (e) downstream oil infrastructure,
 - (f) downstream gas infrastructure,
 - (g) onshore oil and gas exploration and production infrastructure,
 - (h) onshore electricity generation infrastructure, or
 - (i) newspaper printing infrastructure.

Section 8 makes further provision about these kinds of infrastructure.”

Submissions

37. The Claimants submitted that the Act of 2021 (phase 2A) remains in force, despite the Government announcement on the 4th of October 2023 that construction would not go ahead on phase 2. In addition, the high speed rail link between Crewe and Manchester was covered by a bill that was still in the Parliamentary process. The second Claimant had acquired 60% of the phase 2A land and had not announced what it was going to do with it. The Claimants relied on the evidence from Mr Groves and Mr Dobson and asserted that the routewide injunction had reduced unlawful protests and reduced the wasted costs paid by the taxpayer from spending of around £100 million to spending of around £100,000. The Claimants accepted there had been no major direct action since the 17th of March 2023, there had only been isolated incidents, but they submitted this showed that the injunction was working not that it should be terminated. There were individual protests by urban explorers, drone flyers and some “freeman of the land” groups. It was submitted that the Claimants should not lose the protection of the injunction on the purple land just because the injunction had been effective, that would be self defeating.
38. In response, D6 submitted that circumstances had changed since the granting and renewal of the routewide injunction. Firstly, the Government announcement took away the very sub strata for the injunction covering the purple land of phase 2A. It was submitted that the campaigners had “won”, that they had no continued interest in phase 2A and therefore the injunction should no longer cover it. No written evidence or submission was made that the injunction should not be renewed for the blue part of the track, phase 1, which is currently under construction, although an en-passant verbal attempt was so made in the hearing. Furthermore, D6 submitted that new criminal offences had been created in the *Public Order Act*, in sections 7 and 6, which meant

that there was no need for the continuation of the civil injunction. It was submitted that the Claimants had an alternative remedy through the *Public Order Act*. Thirdly, it was submitted that the Claimants had substantially broken their duty to the Court of full and frank disclosure, which is required during the life of an injunction which is anticipatory and against newcomers/PUs, because the Claimants had failed to inform the Court of the Prime Minister's announcement until finally making the application in March 2023. That failure, it was submitted, should lead the Court to refuse to deploy its equitable power to continue the injunction. Further, it was submitted that it was inappropriate for the Claimants to “warehouse” the action against the named Defendants and the PUs and to fail to seek a final hearing. It was submitted that warehousing is contrary to the Civil Procedure Rules and is an abuse of process. In addition, D6 submitted that the claim against D6 should be struck out because the Claimants now admitted that the Claimants had no continuing cause of action against D6 or any good reason to pursue the injunction any further. Alternatively, D6 submitted that the Claimants should have issued a notice of discontinuance under CPR Part 38 which would have led to a liability for costs under CPR rule 38.6, unless the Court ordered otherwise. No notice of discontinuance having been issued D6 submitted that the claim against D6 should be struck out.

Changes to material matters

39. In my judgment, there have been clear and obvious changes which are material to the interim injunction. Firstly, phase 2A to Crewe is no longer going ahead. Nor is 2B to Manchester and Leeds. This means that no construction will take place on the purple and the orange land. This takes away the primary objective of the anti-HS2 protesters in relation to that land. Secondly, there are new criminal offences which will deter and punish protesters taking direct action, with penalties including imprisonment. Thirdly, some HS2 protesters have been imprisoned for breaching the injunction. Fourthly, no protester has applied for a final hearing.

Applying the law to the facts

40. I shall consider each of the requirements for granting and, where necessary, continuing an interim injunction in turn.

(A) Substantive Requirements -

Cause of action

41. In this case there is a civil cause of action identified in the claim form and particulars of claim. A *quia timet* (since he fears) action is pleaded and relates to the fear of torts such as trespass, damage to property, private and public nuisance, potential tortious interference with trade contracts and on-site criminal activity. The Claimants have proven, to the satisfaction of previous judges, under the enhanced test for injunctive remedies against PUs, that previous torts (and potentially crimes) have been committed on HS2 land and proven that their fears were justified. Previous interim injunctions have been granted routewide. This condition is satisfied.

Full and frank disclosure by the Claimants

42. There has mostly been full and frank disclosure by the Claimants seeking the injunction renewal against the PUs, save that there has been delay informing the Court about the Prime Minister's announcement. That delay amounts to about 4 months. I must ask: what would the Court have done if informed in November or December about the announcement, alongside an application for a review hearing? It is likely that, taking into account the alternative service requirements necessary for PUs and Defendants, the hearing would have been listed before a High Court judge at some time in the late Winter of 2023 or Spring of 2024. In the event the application was made in March 2024 and listed in May 2024. Whilst not as serious as the default in *Ineos v PUs* [2022] EWHC 684 (Ch), this delay was inappropriate and I shall take it into account when considering the equitable remedy below.

No realistic defence

43. The Defendants have not yet been required to enter any formal defence, although some did before Knowles J. for the hearing of the application for the routewide interim injunction and many emailed their case to the Court. None have put forwards a defence to any of the past tortious or criminal actions. This, as anticipated or summarised by the Supreme Court in *Wolverhampton* is not unusual in protester PU injunction cases.

Sufficient evidence to prove the claim/likely to succeed at trial and compelling justification

44. The Claimants provided sufficient evidence to prove their claim before Knowles J. The test which I must apply when considering continuing the injunction is more than whether there is a serious issue to be tried. This is a *contra mundum* (against the world) PU injunction. So the test is whether the Claimants are likely to succeed at trial against the PUs and the Defendants and that there is a compelling reason for granting or continuing the interim injunction. I am aware, of course, that Julian Knowles J. has already made that finding on the evidence before him and that I renewed it in May 2023 using the same test, but that was then and this is now. This is a review. Circumstances have changed. I am not at all convinced that the Claimants will succeed at trial in relation to the purple land on the evidence before me. If the evidence had been sufficient, on the balance of probabilities, to find that the Claimants are likely to be awarded an injunction at trial over the purple land, this Court must then take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UK.SC 23. The PUs' rights under the *European Convention on Human Rights* (for instance under Articles 10(2) and 11(2)) are engaged and may be restricted by the extension of the injunction. Julian Knowles J. has also considered and ruled on that point. It is crucial to remember that I am dealing mainly but not wholly with private land. I take into account that the injunction must be necessary and proportionate to the need to protect the Claimants' rights. I take into account that the Government is no longer pursuing the purple route. I take into account that there are now specific criminal offences in s.s 6 and 7 of the *Public Order Act 2023* to punish and deter protesters

from interfering with national infrastructure, only one of which was in force when I last renewed the injunctions. Whether or not a protestor in future, entering phase 2A land on which no HS2 project construction is taking place or will ever again take place, but intent on causing loss by interfering with the effort to rewild or restore the land or to sell it, would be sufficient to justify a renewed injunction, will be a matter for another Judge dependent on the facts. I have no sufficient evidence before me which goes to show that the remaining 5 Defendants or any anti HS2 PUs wish to interfere with: rewilding or restoration, deconstruction of any HS2 construction, HS2 selling land back to previous or new owners or otherwise disposing of the purple or orange land. Quite the opposite. As the Claimants assert, many of the anti HS2 phase 2 protesters, who themselves consider that they have won, are engaged in supporting other causes. The situation is quite different for phase 1. There has been no question of any win for the anti HS2 protesters there.

45. I have carefully considered the evidence put before the Court by the Claimants. I summarised much of it, but not all, above. I also take into account the evidence accepted and found by Knowles J. Standing back, the current evidence consists of a recognition that the protestors feel that they have won in relation to stopping the construction on the purple land of phase 2A. Their motivation for using direct action against that has gone. Such future action will not delay any construction works. It is no longer a construction project on the purple land. In addition, the evidence of quia timet (what we fear) is watery, thin, scattered geographically (some of the relied on events were in London) and un-compelling. Naked rambles, children setting up tented camps for a few hours, some graffiti and some anti-law/establishment groups are included, but these are hardly enough, in my judgment, to prove a substantial and real fear of imminent and serious harm through direct action on the purple land. I do not accept, even from experienced security experts, that the mere assertion of fear is enough. It must be logically based and it must be sufficiently evidenced. Nor do I consider that the postings of crowing or gloating by some protesters about their perceived success on phase 2A and the need to continue vaguely against HS2 generally, bites on the purple land sufficiently. The past and the recent evidence does however support the continued injunction covering the construction works in phase 1.

Damages not an adequate remedy

46. In my judgment the Claimants continue to show that damages would not be an adequate remedy in relation to their phase 1 construction work on the blue land. They have not shown that this threshold is still justified for the purple land upon which no construction is being carried out.

(B) Procedural Requirements - Identifying PUs

47. In my judgment, in the draft injunction, the PUs are clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct mirrors the

torts claimed in the particulars of claim (as re-amended) and (b) clearly defined geographical boundaries. Subject to the purple land being excluded from the extended interim injunction this requirement is satisfied.

The terms of the injunction

48. In my judgment, the prohibitions remain set out in clear words and are not framed in legal technical terms. Further, they do not seek to prohibit conduct which viewed on its own is lawful. In my judgment they should be extended to cover drone flying which is likely to interfere with any construction work or operations carried out by the first Claimant and is dangerously close to such works.

The prohibitions must match the claim

49. In my judgment the prohibitions in the extended injunction mirror the torts claimed (or feared) in the re-amended particulars of claim. The pleading will need re amendment to cover drones.

Geographic boundaries

50. The prohibitions in the injunctions to be extended are defined by clear geographic boundaries, but shall be altered to cover only the phase 1 blue land, not the phase 2 purple land.

Temporal limits - duration

51. The duration of the injunction is to be extended by 12 months. In the light of the continued HS2 construction of phase 1, I am satisfied that it is proven to be compellingly necessary to protect the Claimants' legal rights in the light of the evidence of past hugely extensive tortious activity and the future feared (*quia timet*) tortious activity for the HS2 construction work on phase 1.

Service

52. Because PUs are, by their nature, not identified, the proceedings, the evidence, this judgment and the order will be served by the alternative means which have been previously considered and sanctioned by this Court. I consider that under the *Human Rights Act 1998* S.12(2), the Claimants have previously shown that they have taken all practicable steps to notify the Defendants.

The right to set aside or vary

53. The PUs are given the right to apply to set aside or vary the injunction on shortish notice by the existing interim injunction and this will continue.

Review

54. In the extended order I shall make provision for reviewing the injunction in the future. The regularity of the reviews depends on the circumstances and I consider that 12 months is the right length of time.

Conclusion on the extension application and balance of convenience

55. I do not consider that there are compelling reasons to continue the injunction over the purple land or that the balance of convenience test is satisfied for the purple land. For the reasons set out above I do not consider that the injunction should be extended in future in relation to the purple HS2 land acquired or possessed for the purposes of phase 2A. In summary, the reasons are that this part of the project has been abandoned; there are alternative remedies because the new *Public Order Act* provisions are in place; the evidence provided to the Court did not reach the required level to show a real and imminent need, in part because the protesters' motivation to take direct action against the purple land has gone and in part because taking direct action against purple land would not cause disruption to the construction works for the HS2 project, it would cause peripheral nuisance. In addition, the Claimants have failed fully to comply with their clear duty to inform the Court of material change which occurred when the Prime Minister announced phase 2A would not be built.

Removing various Defendants as parties.

56. Because none of the 13 Defendants to be released has made any submissions to this Court, despite due alternative service of the application and because the Claimants are content on their own information to release them and no further costs orders are sought against them, I give permission for the above listed 13 Defendants to be removed as parties to the proceedings, save in relation to D6 who I shall consider below. I dispense with the need for the Claimants to file a Notice of Discontinuance pursuant to CPR 38.3(1)(a) for the 13 Defendants and make an order under CPR 6.28 dispensing with service of a Notice of Discontinuance. I note that Morris J. took a different route in *Tfl v PUs & Ors* [2023] EWHC 1038, and took that into account.

Removing D6 as a party

57. Whilst in actions in which there are only a few Defendants the procedure in Part 38 should clearly be followed. In PU injunction claims with multiple defendants, different and more flexible procedures are being developed by the Courts to bind and yet to safeguard PUs, add and then release defendants and to streamline costs. So far, many Defendants have been deleted from this claim. Some have been added. Another 13 have just been deleted with my permission in the previous paragraph. D6, wishes to be different. He has objected to any more simple method. He requires the Claimants to serve a formal Notice of Discontinuance. His rationale was nothing more than the desire for his own costs of the claim to be paid. I suspect also a desire to increase the Claimants' costs. I dealt with the costs of the hearing at the hearing so, because D6 had succeeded on the purple land point, I awarded some costs to D6 against the Claimants. Inter alia I reduced counsel's brief fee (which included the skeleton) from £18,000 to £5,000. There was no need for a Notice of Discontinuance to enable this Court to award costs for succeeding on that issue. So, the rationale for the submission was without weight in relation to costs. CPR r.38.2 requires a claimant to seek the permission of the Court to discontinue where the Court has granted an interim injunction. This the Claimants did, via their witness statements and skeleton, a formal method but not in

accordance with CPR r.38.3, which sets out the procedure and is mandatory for discontinuance. A form N279 notice is required. In this case I do not consider that such formality assists. Of the 65 named Defendants, 60 have now been removed. It has been efficient to remove and add Defendants at the various reviews. So, to the extent that it is necessary, I grant the Claimants relief from sanctions and expressly permit the Claimants to delete D6 as a Defendant to the claim and the injunction without the need for a notice. D6 had notice in the application notice anyway. No other Defendant has objected. I also bear in mind that this Court could have removed D6 as a party at the start of the hearing and then heard argument on whether he should have been heard at all on the substantive issues, but I considered that it was helpful and just to have a voice for the Defendants and the PUs at the hearing. I therefore dispense with the need for the Claimants to file a Notice of Discontinuance pursuant to CPR 38.3(1)(a) in respect of D6 and make an order under CPR 6.28 dispensing with service of any Notice of Discontinuance.

Should the claim be brought to a final hearing?

58. There is no summary judgment application made by the Claimants. I set out the law above and in particular highlighted in bold passages from the Supreme Court on the nature of these injunctions concerning private land against PUs. I have carefully considered whether D6 was right, in submissions, to assert that such claims, against named Defendants (as distinct from PUs only claim) should be brought to trial with reasonable expedition. It was submitted that claims against named Defendants should not be left on the shelf or in the warehouse. However, no Defendant has made use of the power granted to them in the May 2023 Order I made to bring the case to trial. I take into account that it is normally the Claimants' responsibility to follow through to trial with the claim which they issued. However, in claims for possession of land where a final order for possession has been granted and the trespassers have been removed, there is no longer a need for another order. What then should be done about the interim injunction? Should it be brought to a final hearing? This would usually be answered: "yes". But in claims against PUs only and claims against named defendants and PUs, different factors apply. The Claimants have been and are required to keep the list of Defendants under review. When some have been (1) evicted, or (2) proven in contempt and imprisoned, or (3) have withdrawn or truthfully disavowed their previous intention to engage in unlawful direct action, the Claimants have properly released them from the action with this Court's permission. Others have given undertakings. Procedurally, it would be a nonsense to take the actions to a final hearing for a final injunction, based on the past tortious actions of the evicted ex-Defendants and proven contemnors, who have already been released as parties. As for the claims against the 5 remaining Defendants, if they had wished to be released from the action, they could have applied to bring the action to final determination, or asked the Claimants to be released, but have not. I see little point in requiring the Claimants to go to trial against them when the basis remains quia timet, only to have them submit at trial, that the released ex-Defendants were the tortfeasors, not them. The real mischief being addressed is the Claimants' need for protection from the PUs. That is fully satisfied on a continuing

basis already by the interim injunction. I would see the merit of requiring a final hearing if the test for the interim injunction was merely a “serious issue to be tried”, but in these PU claims the test is higher. It is “likely to succeed at trial”. So, in relation to the burden of proof, there is no injustice in the absence of a final injunction, so long as each Defendant has the right to apply for a final hearing. In addition, the reviews give each the opportunity to gain release from the action by applying for that.

59. I shall not be making a direction requiring the Claimants to bring the claim to trial or to finality through a summary judgment application or directing defences to be filed and served, disclosure and evidence. I do not see the need for it to achieve justice in this claim. I do not seek to lay down any general rule by this decision.

Variations to the terms of the injunction

60. Certain variations were requested to the terms of the injunction for the extension. I give permission for those which were not in dispute and are necessary.
61. The potential Defendant, D69, had been identified and there was a request to add him to the claim but he signed an undertaking so I do not have to consider that application.
62. There was a typing error in the May 2023 injunction relating to service of the review papers, which should be corrected.

Conclusion

63. I shall extend the interim injunction for 12 months. It will be limited to the phase 1 works and land. I do not consider that the Claimants should be required to bring the action to finality. D6 is released from the claim and the injunction. I invite the Claimants to draft the necessary orders and directions and to submit them before 31.5.2024.

ANNEX A

SCHEDULE OF DEFENDANTS 7-65

DEFENDANT NUMBER	NAMED DEFENDANTS
(7)	Ms Leah Oldfield
(8)	Not Used
(9)	Not Used
(10)	Not Used
(11)	Not Used
(12)	Not Used
(13)	Not Used
(14)	Not Used
(15)	Not Used

(16)	Ms Karen Wildin (aka Karen Wilding / Karen Wilden / Karen Wilder)
(17)	Mr Andrew McMaster (aka Drew Robson)
(18)	Not Used
(19)	Not Used
(20)	Mr George Keeler (aka C Russ T Chav / Flem)
(21)	Not Used
(22)	Mr Tristan Dixon (aka Tristan Dyson)
(23)	Not Used
(24)	Not Used
(25)	Not Used
(26)	Not Used
(27)	Mr Lachlan Sandford (aka Laser / Lazer)
(28)	Mr Scott Breen (aka Scotty / Digger Down)
(29)	Not Used
(30)	Not Used
(31)	Not Used
(32)	Not Used
(33)	Mr Elliot Cuciurean (aka Jellytot)
(34)	Not Used
(35)	Not Used
(36)	Mr Mark Keir
(37)	Not Used
(38)	Not Used
(39)	Mr Iain Oliver (aka Pirate)
(40)	Not Used
(41)	Not Used
(42)	Not Used
(43)	Not Used
(44)	Not Used
(45)	Not Used
(46)	Not Used
(47)	Not Used
(48)	Mr Conner Nichols
(49)	Not Used
(50)	Not Used
(51)	Not Used
(52)	Not Used
(53)	Not Used

(54)	Not Used
(55)	Not Used
(56)	Not Used
(57)	Ms Samantha Smithson (aka Swan / Swan Lake)
(58)	Mr Jack Charles Oliver
(59)	Ms Charlie Inskip
(60)	Not Used
(61)	Not Used
(62)	Not Used
(63)	Mr Dino Misina (aka Hedge Hog)
(64)	Stefan Wright (aka Albert Urtubia)
(65)	Not Used

END



Neutral Citation Number: [2024] EWHC 1786 (Ch)

Case No: BL-2023-000713

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 9th July 2024

Before :

SIR ANTHONY MANN
Sitting as a Judge of the High Court

Between :

JOCKEY CLUB RACECOURSES LIMITED

Claimant

- and -

**(2) PERSONS UNKNOWN ENTERING THE
AREA DESCRIBED BELOW AS THE "RACE
TRACK" ON THE DAY OF A "RACING
FIXTURE", EXCEPT AT "CROSSING
POINTS" WITH "AUTHORISATION", AS
DESCRIBED BELOW**

**(3) PERSONS UNKNOWN ENTERING
AND/OR REMAINING ON ANY
"CROSSING POINTS" WITHOUT
"AUTHORISATION" ON THE DAY OF A
"RACING FIXTURE", AS DESCRIBED
BELOW**

**(4) PERSONS UNKNOWN ENTERING THE
AREA DESCRIBED BELOW AS THE
"PARADE RING" WITHOUT
"AUTHORISATION" ON THE DAY OF A
"RACING FIXTURE", AS DESCRIBED
BELOW**

**(5) PERSONS UNKNOWN ENTERING
AND/OR REMAINING ON ANY PART OF
THE AREAS DESCRIBED BELOW AS THE
"HORSES' ROUTE TO THE PARADE
RING" AND/OR THE "HORSES' ROUTE
TO THE RACE TRACK" WITHOUT
"AUTHORISATION" ON THE DAY OF A**

**“RACING FIXTURE”, AS DESCRIBED
BELOW
(6) PERSONS UNKNOWN
INTENTIONALLY OBSTRUCTING THE
“HORSE RACES”, AS DESCRIBED BELOW
(7) PERSONS UNKNOWN
INTENTIONALLY CAUSING ANY OBJECT
TO ENTER ONTO AND/OR REMAIN ON
THE “RACE TRACK” WITHOUT
“AUTHORISATION” ON THE DAY OF A
“RACING FIXTURE”, AS DESCRIBED
BELOW
(8) PERSONS UNKNOWN
INTENTIONALLY ENDANGERING ANY
PERSON AT THE LOCATION DESCRIBED
BELOW AS THE “EPSOM RACECOURSE”
ON THE DAY OF A “RACING FIXTURE”,
AS DESCRIBED BELOW**

Defendants

**Alan Maclean KC and Antonia Eklund (instructed by Pinsent Masons LLP) for the
Claimant**

The Defendants did not appear and were not represented.

Hearing date: 8th July 2024

Approved Judgment

Sir Anthony Mann :

Background

1. This is the disposal hearing of these Part 8 proceedings in which the claimant, the Jockey Club, seeks a continuation of injunctive relief against persons unknown to restrain them from trespassing on certain parts of their property at Epsom racecourse.
2. This action has its origins in a fear of the claimant that its running of the Derby race in June 2023 would be disrupted by animal rights protesters, orchestrated, at least to some extent, by a loose association known as Animal Rising. That association (if that is the right word) does not have any apparent corporate or unincorporated existence, but it appears to be a form of movement in which those interested in its objectives can participate. Its object seems to be to prevent what it considers to be cruelty to animals which is said to take various forms, including, for present purposes, horseracing. It has a website whose content has a significance to these proceedings.
3. The claimant is the freehold owner of land at Epsom which comprises the racecourse and a number of ancillary buildings and areas. Its rights are, however, circumscribed by various rights of the public in relation to Epsom Downs. The scope of the ownership, and the nature of those public rights, appear from a previous judgement of mine on an application for an interim injunction which I granted in May 2023 – see [2023] EWHC 1811 (Ch). I do not propose to set out again here matters appearing in that judgement; they should, so far as necessary, be taken as incorporated in this judgement.
4. In 2023, before the running of the Derby, the claimant became aware of a threat to disrupt the running of the Derby by entering various parts of the Jockey club land and, in various potential ways, interfering with the race. Attempts had previously been made to disrupt the running of the Grand National, and indeed the start of that race in that year was delayed as a result. In those circumstances the Jockey club commenced these proceedings in order to restrain interference with its running of the race.
5. An application for an interim injunction was made to me and I granted it. The reasons for the grant of that injunction appear in the judgement to which I have just made reference. An account of the background to the grant of the injunction, and to the circumstances of my granting it, appear fully in that judgement and again I do not propose to repeat them here. They should be treated as incorporated into this judgement. In particular, that judgement explains the various areas of the racecourse affected.
6. At the time of the commencement of these proceedings and of the hearing of the injunction the claimant had been able to identify one particular individual who it was thought was threatening to interfere with the race. That was a Mr Daniel Kidby, and he was made the first defendant to the proceedings. Otherwise the claimant was unable to identify the various animal activists who threatened or planned to disrupt the race. In those circumstances they sought an injunction against persons unknown described in various ways by reference to the geographical or topographical areas which it was anticipated would be or might be affected. That was in line with authorities at the time dealing with the obtaining of injunctions against persons unknown. How that technique worked in practice is apparent from the heading to this judgment.

7. When the race meeting took place the event was heavily policed and stewarded. One protester entered the actual racetrack by way of protest shortly after the race had started. That was a Mr Ben Newman. He was duly charged with a public order offence and served a number of weeks in prison on remand. He was joined as 9th defendant to these proceedings and also became the subject of committal proceedings for infringement of my order and on 11 October 2023 he was sentenced by Miles J to 2 months imprisonment, suspended.
8. These proceedings were restored before Roth J on 15 March 2024, on which occasion he ordered that Mr Kidby and Mr Newman take appropriate steps if they were going to defend the claim against them and gave permission to the Jockey Club to file further evidence. The Club duly availed itself of that opportunity.
9. Shortly after the hearing before Roth J Mr Kidby and Mr Newman both settled with the Jockey Club, giving undertakings not to do the acts complained of, those undertakings lasting five years. Thus for practical purposes they fell out of these proceedings and they continued as proceedings against the various categories of persons unknown to which I have referred above. In a witness statement dated 4 October 2023 Mr Newman accepted that he had wrongfully breached the injunction and reflected on the fact that his time in prison had caused him to reflect on his actions and he expressed his regret for them. In his case it would appear that the threat of prison had become a real deterrent. One can draw the inference that it would be the same for others.
10. The evidence before me on this occasion comprised, first, a witness statement of Mr Nevin Truesdale, chief executive of the Jockey Club, which was the witness statement originally provided in support of these Part 8 proceedings and which was deployed on the interim application before me (along with other limited witness statements). That evidence set out the property background to the case and the reasons for supposing that persons were proposing to disrupt the race and thereby commit trespasses. Pursuant to the permission given by Roth J Mr Truesdale filed a second witness statement signed on 5 April 2024. That witness statement gives evidence of various public pronouncements of Animal Rising on its website, on its Facebook page and in press releases. That material boasted of previous activities of its members in disruptive protests and indicated intentions to carry on activities including disrupting race meetings, albeit that a press release of 4 April 2024 stated that it would not target the Grand National this year and it was suspending its campaign of direct action against racing indefinitely. The reason for not targeting the Grand National meeting was said to be that there was a “huge public conversation” since the Grand National and Derby, and it would appear that the public had in large part been convinced that they do not want racing to be part of the fabric of British culture going forward. The claimant does not accept the genuineness of that analysis. Mr Truesdale gave evidence of attendance figures at some race meetings which gainsay it and points to statements on the then website which threatened disruption of race meetings. That is material on the basis of which I am invited to view with suspicion any protestations that animal rising does not intend to disrupt race meetings. He also pointed to the disruption of other sporting events by other activists, such as throwing confetti, jigsaw puzzle pieces and orange paint variously at Wimbledon, the golf Open Championship, the Ashes and the World Snooker Championship. I am invited to infer, and I do, that the claimant’s race meetings are potentially vulnerable to such protests even if Animal Rising is genuine in its

statement that its own disruptive activities in that area have been suspended indefinitely, which I do not accept is a strong enough assertion.

11. There has, however, been a recent change in the website. The claimant has made an application to adduce further evidence as part of its duty of full and frank disclosure. During the hearing I indicated that I would allow in the new evidence and give reasons in this judgment. That evidence takes the form of a witness statement of Julian Diaz-Rainey, a solicitor at Pinsent Masons, solicitors acting for the claimant. In that witness statement Mr Diaz-Rainey provides evidence that the Animal Rising website has recently been updated to remove references to plans to disrupt horse-racing activities. The material to which Mr Truesdale referred in his second witness statement which professed an intention to disrupt in that way have been removed – indeed the pages which evidence that intention have been removed. It is not known when that change happened, but it must be since Mr Truesdale's second witness statement. That is drawn to my attention because, quite properly, the claimant is aware of its obligation to draw adverse material to my attention.
12. I allow that evidence in in order that the claimant can fulfil its obligation of full and frank disclosure. Mr Diaz-Rainey's witness statement goes on to point out, as a counter to his earlier disclosure, that Animal Rising has not given up its challenge to the horse-racing industry and its intention to try to stop it, and that it trumpets what it calls its successes to date. This material appears in website and Facebook postings. I allow that evidence too. It is a legitimate counter to the evidence disclosed under the full and frank disclosure obligation.
13. The result of this evidence is the following findings, which I make:
 - i) The claimant is the freehold owner of the racecourse property which it is trying to protect.
 - ii) Animal rights protesters have no legal right to be on the property in order to carry out disruptive protests.
 - iii) Despite Animal Rising's statement that is it suspending the disruption of horse-racing activities, there remains a serious risk that its members, or others, will try to disrupt the claimant's races in order to gain publicity unless restrained by this court. It is not possible to identify the individuals who would be concerned, but nonetheless there is a very serious risk.
 - iv) That disruption, if it occurred, would give rise to a serious risk to life and limb of humans and horses, and would cause damage to the Jockey Club of the nature referred to in my earlier judgment. Damages would not be an adequate remedy for any disruption to racing activities.
 - v) The disruption would be an actionable trespass and an actionable interference with the claimant's rights to hold races under the Epsom and Walton Downs Regulation Act 1984 (see my earlier judgment) and to manage its part of the Downs accordingly.

Relevant law

14. The ability of the courts to grant injunctions against persons unknown, and the requirements for the exercise of that jurisdiction, have recently (and since my first judgment) been the subject of consideration by the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2024] 2 WLR 45. The case deals with “persons unknown” who are sought to be barred, being persons who are not identifiable as parties to the proceedings at the time when the injunction is granted, as opposed to persons whose current attributes are known but whose identities are not. In that case the persons unknown were Travellers. That category of persons unknown were designated as “newcomers”, and injunctions of the kind sought in that case, and in other protester cases, were called “newcomer injunctions”. I shall, of course, adopt the same nomenclature.
15. The court analysed the jurisdiction to grant injunctions against such persons and found that injunctions which in other contexts would be regarded as “final” (as opposed to interim) were not in fact properly so regarded but were of a distinct kind. After an extensive review the court held:

“139 ... In sympathy with the Court of Appeal on this point we consider that this constant focus upon the duality of interim and final injunctions is ultimately unhelpful as an analytical tool for solving the problem of injunctions against newcomers. In our view the injunction, in its operation upon newcomers, is typically neither interim nor final, at least in substance. Rather it is, against newcomers, what is now called a without notice (ie in the old jargon ex parte) injunction, that is an injunction which, at the time when it is ordered, operates against a person who has not been served in due time with the application so as to be able to oppose it, who may have had no notice (even informal) of the intended application to court for the grant of it, and who may not at that stage even be a defendant served with the proceedings in which the injunction is sought. This is so regardless of whether the injunction is in form interim or final.”
16. This has consequences as to the requirements:

“142. Recognition that injunctions against newcomers are in substance always a type of without notice injunction, whether in form interim or final, is in our view the starting point in a reliable assessment of the question whether they should be made at all and, if so, by reference to what principles and subject to what safeguards. Viewed in that way they then need to be set against the established categories of injunction to see whether they fall into an existing legitimate class, or, if not, whether they display features by reference to which they may be regarded as a legitimate extension of the court’s practice.”
17. That case involved Travellers, but while that context informed some of the requirements that the court indicated should be fulfilled before an injunction is granted, most of its

requirements are equally applicable to other types of cases such as protest cases like the present (of which there now a number):

“167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:

(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority’s boundaries.

(ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong *prima facie* objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

(iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

(v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries.”

18. Later in the judgment the court returned to procedural safeguards to give effect to those matters of principle, and set out the following procedural and other matters. I omit some points that are relevant to Traveller cases and which have no counterpart in this case, and adjust others by omitting specific Traveller references and by making the wording applicable to the present (and similar) cases.

- i) Any applicant for an injunction against newcomers must satisfy the court by detailed evidence that there is a compelling justification for the order sought. There must be a strong possibility that a tort is to be committed and that that will cause real harm. The threat must be real and imminent. See paragraphs 188 and 218. “Imminent” in this context means “not premature” – *Hooper v Rogers* [1975] Ch 43 at 49E.
- ii) The applicant must show that all reasonable alternatives to an injunction have been exhausted, including negotiation – paragraph 189.
- iii) It must be demonstrated that the claimant has taken all other appropriate steps to control the wrong complained of – paragraph 189.
- iv) If byelaws are available to control the behaviour complained of then consideration must be given to them as a relevant means of control in place of an injunction. However, the court seemed to consider that in an appropriate case it should be recognised that byelaws may not be an adequate means of control. See paragraphs 216 and 217.
- v) There is a vital duty of full disclosure on the applicant, extending to “full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This is a continuing obligation on any local authority seeking or securing such an order, and it is one it must fulfil having regard to the one-sided nature of the application and the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application.” – paragraph 219. Although this is couched in terms of the local authority’s obligations, that is because that was the party seeking the injunction in that case. In my view it plainly applies to any claimant seeking a newcomer injunction. It is a duty derived from normal without notice applications, of which a claim against newcomers is, by definition, one.
- vi) The court made it clear that the evidence must therefore err on the side of caution, and the court, not the applicant should be the judge of relevance – paragraph 220.
- vii) “The actual or intended respondents to the application must be identified as precisely as possible.” – paragraph 221.
- viii) The injunction must spell out clearly, and in everyday terms, the full extent of the acts it prohibits, and should extend no further than the minimum necessary to achieve its proper purpose – paragraph 222.
- ix) There must be strict temporal and territorial limits – paragraph 225. The court doubted if more than a year would be justified in Traveller cases – paragraph 125 again. In my view that particular period does not necessarily apply in all cases, or in the present one, because they do not involve local authorities and Travellers.

- x) Injunctions of this kind should be reviewed periodically – paragraph 225. “This will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.”
 - xi) Where possible, the claimant must take reasonable steps to draw the application to the attention of those likely to be affected – paragraph 226.
 - xii) Effective notice of the order must be given, and the court must disclose to the court all steps intended to achieve that – paragraphs 230ff.
 - xiii) The order must contain a generous liberty to apply – paragraph 232.
 - xiv) The court will need to consider whether a cross-undertaking in damages is appropriate even though the application is not technically one for an interim injunction where such undertakings are generally required.
19. The court recognised that not all the general requirements laid down will be applicable in protester, as opposed to Traveller, cases. I have borne that in mind, and have, as I have indicated, omitted reference to some of the matters which do not seem to me to be likely to apply in protester cases.
20. In the course of argument Mr MacLean drew to my attention two decisions of Ritchie J in *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB) and *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134, and to the decision of Farbey J in *Exolum Pipeline System Ltd v Persons Unknown* [2024] EWHC 1015 (KB). Other than to observe that in the third of those cases Farbey J drew attention to the need to balance the claimant’s claim against the Article 10 (free speech) and Article 11 (freedom of association) rights of the protesters (which I shall do) I do not think it necessary to refer to those cases which apply *Wolverhampton* to their particular circumstances. I have, however, borne those cases in mind.

Decision

21. Taking all those matters into account, I find that it is appropriate to grant a newcomers injunction in this case, with the appropriate safeguards. I deal with the procedural matters which *Wolverhampton* requires to be taken into account in the following manner, following the sub-paragraph numbering appearing above.
- (i) It is clear enough that there is a threat of wrongful behaviour against which the Jockey Club with its proprietary rights is entitled to be protected. Real harm will be caused if it is not stopped – see my earlier judgment. There plainly was a very substantial risk of wrongdoing when I made my first order in the case, and that is demonstrated by the acts of Mr Newman which were carried out in the face of the injunction. The greater risk is to the running of the Derby meeting because of the publicity and attention which that race involves, but there still a risk to other meetings. The only question about this is whether that risk should be seen to have gone away because of the more recent pronouncements of Animal Rising and the removal of the threats from the website. I do not consider that it has gone away. Those who associate

themselves with Animal Rising have been shown to be vehement in their cause. The reasons given for suspending the campaign against racing are not plausible. They give the appearance of seeking to find some justification for the ostensible abandonment of the campaign to mask what is really going on. It is not plausible that the real reason is that those behind the website have changed their minds about racing. It is more plausible that the statements and the withdrawal of references to horse racing are some sort of tactical move, leaving open the real possibility that the campaign and the unlawful activities associated with it will be re-ignited, which could happen at short notice. The ostensible withdrawal of the horse racing campaign came only after Mr Kidby and Mr Newman were served with the second witness statement of Mr Truesdale, which pointed up the then references to the campaign against horse racing. It looks as though the withdrawal was a tactical response to that. I consider that there is still a compelling case and a strong possibility of a risk of disruption.

(ii) I am satisfied that there is no practical alternative to an injunction. Before the 2023 Derby the Jockey Club sought to negotiate a peaceful protest mechanism by proffering a site within the racecourse premises at which Animal Rising could promote its cause peacefully, but that was turned down. The activities might contravene some of the byelaws, but not all of them, and in any event the only remedy under those is a fine capped at £50, and that is not going to be a deterrent. There may be criminal sanctions for the sort of activities which are threatened, but the Jockey Club is not a prosecuting authority and it is impractical to suppose that they are a deterrent in themselves. If they were the threats would not be real. An injunction is the only practical answer. It provides a real risk of punishment and its prosecution is in the hands of the claimant, not prosecuting authorities. The case of Mr Newman suggests that committal proceedings are likely to be perceived as a cogent deterrent against infringement.

(iii) I am satisfied that there are no other practical steps that the Club can take to prevent the wrong. See (ii). It is not practical to suppose that the activities of the protesters can be completely prevented by any sensible levels of policing or stewarding, though obviously stewarding and policing have a part to play in the overall strategy.

(iv) As to byelaws, see (ii) above.

(v) The Jockey Club is obviously aware of its duty of full and frank disclosure, as is demonstrated by the evidence of Mr Diaz-Rainey referred to above. I am as satisfied as I can be that this duty has been fulfilled.

(vi) I am satisfied that this requirement has been fulfilled.

(vii) This point arose on the application for the interim injunction. The order proposes the same technique of identifying defendants by reference to their specific intended activities. This is effective and adequate.

(viii) I will ensure that the order achieves this objective. The present draft seems to do so but it will be considered further after this judgment has been delivered.

(ix) The territorial limits will appear in the order. They will be clearly limited to the racecourse and particular areas, which will be delineated by maps and plans. This has already been achieved in the interim injunction. A time limit of 5 years is proposed. I agree that that is an appropriate limit. The one year which the Supreme Court thought

would be prima facie appropriate in Traveller cases is too short to deal with a campaign such as that of the animal rights activists. In the case of an annual event like the Derby it would lead to an annual application. An annual review (see below) is more appropriate.

(x) The claimant proposes an annual review. That is sensible.

(xi) I am satisfied that proper notice of this application has been given. This has been done by posting it on the Club's website page and Facebook page, and by emailing to Animal Rights at its website. It has also posted at at least 2 locations on its racecourse. These methods of service are in accordance with directions given by Roth J in his order of 15 March 2024.

(xii) Service of the order will be dealt with in the order. It will largely mirror the technique for service of the proceedings, though extra steps will be appropriate in the period of, and leading up to, race meetings.

(xiii) The order will contain a liberty to apply, as the draft before me reflects.

(xiv) I cannot see that any cross-undertaking in damages is appropriate in this case.

22. The satisfaction of those matters will fulfil the requirements of the Supreme Court as set out in paragraph 167 of its judgment and the later paragraphs dealing with procedural matters. The only other matter left for consideration is the interaction with the Article 10 and Article 11 rights of the newcomers. Insofar as the injunction would impinge on those rights it is quite plain that it falls within the qualification of those rights in those Articles as being necessary in a democratic society to prevent disorder and crime and to protect the rights of others – the claimants and those wishing to attend race meetings. The balance is clearly in favour of granting the injunction.

Conclusion

23. In all the circumstances I will grant the relief sought, subject to such adjustments as emerge from further consideration after this judgment has been delivered.



Neutral Citation Number: [2024] EWHC 1952 (Ch)

Claim No.BL-2022-001396

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)**

26 July 2024

Before :

Jonathan Hilliard KC sitting as Deputy Judge of the High Court

B E T W E E N :

(1) ARLA FOODS LIMITED

(2) ARLA FOODS HATFIELD LIMITED

Claimants

-and-

(1) PERSONS UNKNOWN WHO ARE, WITHOUT THE CONSENT OF THE CLAIMANTS, ENTERING OR REMAINING ON LAND AND IN BUILDINGS ON ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM (“the Sites”), THOSE BEING:

- a. “THE AYLESBURY SITE” MEANING ARLA FOODS LIMITED’S SITE AT AYLESBURY DAIRY, SAMIAN WAY, ASTON CLINTON, AYLESBURY HP22 5EZ, AS MARKED IN RED ON THE PLANS AT ANNEXE 1 TO THE CLAIM FORM;**
- b. “THE OAKTHORPE SITE” MEANING ARLA FOODS LIMITED’S SITE AT OAKTHORPE DAIRY, CHEQUERS WAY, PALMERS GREEN, LONDON N13 6BU, AS MARKED IN RED ON THE PLANS AT ANNEXE 2 TO THE CLAIM FORM;**
- c. “THE HATFIELD SITE” MEANING ARLA FOODS HATFIELD LIMITED’S SITE AT HATFIELD DISTRIBUTION WAREHOUSE, 4000 MOSQUITO WAY, HATFIELD BUSINESS PARK, HATFIELD, HERTFORDSHIRE AL10 9US, AS MARKED IN RED ON THE PLANS AT ANNEXE 3 TO THE CLAIM FORM; AND**

d. “THE STOURTON SITE” MEANING ARLA FOODS LIMITED’S DAIRY AT PONTEFRAC T ROAD, LEEDS LS10 1AX AND NATIONAL DISTRIBUTION CENTRE AT LEODIS WAY, LEEDS LS10 1NN AS MARKED IN RED ON THE PLANS AT ANNEXE 4 TO THE CLAIM FORM

(2) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING FROM THE HIGHWAY THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(3) PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTESTING ARE OBSTRUCTING ANY VEHICLE ACCESSING THE HIGHWAY FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(4) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING CAUSING THE BLOCKING, SLOWING DOWN, OBSTRUCTING, OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF, OR ALONG THE ROADS LISTED AT ANNEXE 1A, 2A, 3A, AND 4A TO THE CLAIM FORM

(5) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO ANY VEHICLE WHICH IS ACCESSING OR EXITING THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(6) PERSONS UNKNOWN WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES ON TO, ANY VEHICLE WHICH IS TRAVELLING TO OR FROM ANY OF THE SITES LISTED IN SCHEDULE 2 OF THE CLAIM FORM

(7) 34 OTHER NAMED DEFENDANTS LISTED AT SCHEDULE 1 OF THE INJUNCTION ORDER

Defendants

**Caroline Bolton and Natalie Pratt (instructed by Walker Morris LLP) for the Claimants
The Defendants did not appear and were not represented
Hearing date: 23 July 2024**

APPROVED JUDGMENT

JONATHAN HILLIARD KC sitting as a Deputy Judge of the High Court:

Introduction

1. The First Claimant is the largest farmer-owned dairy co-operative in Europe, owned by approximately 9600 dairy farmers, 2,400 of whom are in the UK. It provides 40% of the milk supplied to supermarkets in the UK and is the largest supplier of milk in the UK. While it operates from several sites in the UK producing a range of dairy products, the present proceedings concern four of those sites that produce and distribute milk (the “**Sites**”). The four sites are at Aylesbury Dairy, Samian Way, Aston Clinton Aylesbury HP22 5EZ (the “**Aylesbury Site**”), Oakthorpe Dairy, Chequers Way, Palmers Green, London N13 6BU (the “**Oakthorpe Site**”), Hatfield Distribution Warehouse, 4000 Mosquito Way, Hatfield Business Park, Hatfield, Hertfordshire AL10 9US (the “**Hatfield Site**”) and finally Pontefract Road, Leeds LS10 1AX and the National Distribution Centre at Leodis Way, Leeds LS10 1NN (the “**Leeds Site**”).
2. The Second Claimant, a wholly owned subsidiary of the First Claimant, holds the leasehold title to the Hatfield Site.
3. By the present Part 8 proceedings, the Claimants seek injunctions against a number of identified defendants and persons unknown to restrain future action at the Sites by animal rights activists associated with the protest group initially known as Animal Rebellion, which rebranded last year to Animal Rising (the “**Claim**”).
4. The Claimants sought and obtained from Bacon J on 31 August 2022 urgent and without notice relief to restrain apprehended unlawful acts of protest. The interim relief was continued by Fancourt J at a return date on 4 October 2022, and the Judge permitted the Claimants to add 31 named defendants. By way of a 25 October 2022 order, three further defendants were added, one of whom was identified only by a photograph rather than by name. Following the Claimants’ 12 January 2023 application, the final disposal of the claim was adjourned pending the expedited appeal to the Supreme Court in *Wolverhampton City Council and Others v London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2 WLR 45, which concerned whether injunctions could be granted against persons unknown and if so what the test for doing so should be. Following the handing down of the Supreme Court decision in *Wolverhampton* on 29 November 2023, the case was brought on for a final hearing before me to deal with the disposal of the claim against the identified Defendants and a continuation of the injunction order against the defendant persons unknown. This is my judgment following that hearing.
5. Therefore, the Defendants fall into two categories: 34 named or identified Defendants and six categories of persons unknown. 33 of the former category of Defendants are named and one- the 40th Defendant- identified by photograph. All 33 of the named Defendants have now agreed to stays of the proceedings through consent orders in return for the giving of undertakings.

6. That leaves the 40th defendant, who is identified by image 1 at Schedule 1A of the re-Amended Claim Form but whose name is not known by the Claimants and therefore who cannot be asked by them to sign an undertaking.
7. A number of the signed draft consent orders supplied to the Claimants at midnight the day before the hearing contained an error in the main body of it, so I agreed not to provide a draft judgment for 24 hours in order that these could be corrected, and I have duly made the consent orders in the terms sought.
8. The Claimants were represented before me by Caroline Bolton and Natalie Pratt. I am grateful for their submissions. The Defendants did not appear, were not represented, and have not acknowledged service or filed any evidence in the proceedings.

Decision

9. For the reasons set out below, I grant the order sought.
10. I shall take first the relevant factual background, before setting out the law and then applying it.

Relevant factual background

11. Animal Rising have two stated objections to the dairy industry: what they see as its contribution to climate change and its use of animals in the production of milk. For convenience, I shall refer to the individuals involved as animal rights protestors in this judgment.
12. The Claimants have adduced witness evidence from a number of sources:
 - (1) Four individuals to explain, among other things, the operation of the sites and the past actions on them: Joanne Taylor (Aylesbury), Melanie Savage (Hatfield); David Dons (Oakthorpe) and Anne-Frances Ball (Leeds);
 - (2) Nicholas McQueen (partner) and James Damarell (senior associate) of Walker Morris LLP, their solicitors;
 - (3) one of their directors; Afshin Amirahmadi; and
 - (4) Samantha Sage, the Quality, Environmental, Health and Safety Manager at the Aylesbury Site.
13. I have not had the benefit of having the evidence tested by arguments from the defendants. However, having considered it carefully, I have no reason to doubt its veracity or accuracy, and I accept it. I set out the key points from its below.
14. To understand the actions that have occurred and the causes of action relied on, it is first necessary to understand in outline the layout of the Sites and their operation.

The layout and operation of the Sites

15. The First Claimant holds the freehold title to the Aylesbury Site. The Aylesbury Site is the largest dairy in the UK, processing around 10% of the milk in the UK. Therefore, it

is a significant contributor to the UK dairy industry. 700 members of staff are employed at the dairy and it is very busy, such that free access to the Site is required at all times to ensure that operations at the dairy can run, and that the surrounding road network remains free-flowing and is not adversely impacted by operations at the dairy. Around 300 trucks enter and leave the dairy each day, consisting of 160 raw milk deliveries and 140 outbound departures.

16. The trucks that enter and leave the site are a mixture of tankers and other HGV lorries, and as the A41 is the only access road to the site, apart from Samian Way, all vehicles travelling to and from the site use this road. There are three access points to the site, Gatehouses 1 to 3, each of which serves a different function: one is used for raw milk intake and outbound exits, another for access to the employee and visitor car park and the third as the outbound access. All of the access points are from Samian Way, which is an adopted highway for which the local highway authority is responsible. Gatehouses 1 and 2 are manned, and Gatehouse 3 is unmanned but visitors enter using a swipe-card at the barrier or by ringing the intercom to make themselves known to the security staff.
17. Significant security measures have been put in place at the site since the anticipation of protests in September 2022.
18. The Second Claimant holds a 15 year lease to the Hatfield Site. Arla operates the Hatfield Site as a distribution centre, employing 500 staff there. The centre handles around 350 million kilograms of palletised food products and around 520 million kilograms of fresh milk, which is delivered direct to the stores of Arla's customers, mostly supermarkets. The centre processes a very significant proportion of the total milk supplied by Arla in the UK. It also stores and processes significant proportions of the UK's cheese and other dairy product supply. The Site is like the Aylesbury Site a busy one, with around 400 vehicular movements a day: around 180 inbound and 220 outbound.
19. Most if not all of these vehicles will use the A1001 and/or A1(M) when travelling to and from the Site. There are two vehicular access points to the Site, both directly off adopted highways maintained by the local highway authority. The first is Gypsy Moth Avenue, from which the HGVs access and exit the site. They travel a short way along a private road into the site before coming to a manned entry barrier. The second is Mosquito Way, where cars access and exit the Site from. That access is controlled by a barrier that is operated by a swipe-card and intercom system. Pedestrian access to the Site is located at the Mosquito Way access, next to the vehicle barrier, through a swipe-card and intercom operated turnstile.
20. The Site is staffed around the clock by a security team so that two people are always on duty, it is fully fenced and it is monitored by CCTV.
21. The First Claimant holds the freehold title to the Oakthorpe Site. It operates a dairy business at the Site, processing 350 million litres of milk every year and employing approximately 200 staff. It produces fresh milk, organic milk and fresh cream products for major retailers. It also produces fresh organic milk under its Yeo Valley brand at the dairy.
22. The Site is busy with vehicular movements, and relies on the same for the operation of its business. There are around 40-50 inbound HGV vehicles a day and around 50-60

outbound HGVs, together with the movement of around 10-20 other vehicles, such as contractors, goods deliveries and waste collections.

23. The Site is surrounded by a perimeter fence, although access is possible from the bank of Pymmes Brooke, which runs along the southern and eastern boundaries of the Site. It could in theory also be possible to access the site from neighbouring properties, but Arla considers that both of these routes would be incredibly challenging.
24. There are 5 vehicular access points to the Site:
 - (1) Chequers Way, which is an adopted highway. There is a swing gate at the access point which is left open to facilitate HGV access. Inside the access point HGVs can turn left to access the dairy's intake or straight on, in which case they encounter a barrier preventing access to the rest of the Site, which is operated by a swipe-card and intercom system.
 - (2) There is a second access point off Chequers Way, which can be used by cars, larger vehicles and small trucks but not for tankers, trailers or larger vehicles. It is accessed through a swing gate, which is left open to facilitate access to the Site, and just inside the gate is a barrier and pedestrian access point which require swipe-card access or use of the intercom to contact the Site's security staff.
 - (3) There are two vehicle access points from Owen Road, which is a public highway: one facilitates inbound traffic and the other outbound traffic. They utilise a barrier requiring swipe-card access or use of an intercom to speak to the Site's security staff. There is also a pedestrian turnstile.
 - (4) There is a vehicular access off Ostcliffe Road, a highway, which utilises a barrier requiring the same measures to enter as set out above. This access is used only as an exit point and almost exclusively as the HGV exit, although temporary use can be made as an exist for all vehicles.
25. Aside the measures set out above, there is a security building on the site, vehicle barriers operate automatic number plate recognition cameras, all entry and exit points are covered by CCTV and monitored by security staff, and one vehicular access pointt is closed between 7pm and 7am to minimise disruption to local residents.
26. The First Claimant holds freehold title to the Leeds Site. The Site actually comprises two sites: the Stourton dairy and Arla's national distribution centre. The two sites are next to each other, linked by an inter-site gate, such that they form one large site. 450 Arla employees work at the dairy, along with 150 embedded contractors for various services, and the distribution centre employs 405 staff. The dairy processes just over 750 million litres of milk each year. It is the third largest dairy in the UK and Arla's second largest dairy, the Aylesbury Site being the largest. The dairy accounts for around 7% of the UK's milk supply output. The dairy produces own label milk for supermarkets, Arla's branded Cravendale filtered milk, fresh creams, fermented creams, cottage cheese, custard, alcohol cream and milkshake and ice-cream sundae products.
27. Like the other Sites, the Leeds Site is busy with vehicular movements and relies on the same for the operation of its business. There are around 300 vehicular movements a day

around the dairy and around 225 around the distribution centre. Most, if not all, of these vehicles will use the A639 and/or the M1 when travelling to or from the Site. There are four vehicular access points:

- (1) The distribution centre can be accessed from two points off Leodis Way, a highway, which are a few metres apart. One is the HGV entry and exit point and the second the entry and exit point to the car park that services the distribution centre, including for pedestrians. Access through the former is by barrier, controlled by a full-time manned security gatehouse. Access to the latter is by keycard- controlled automatic gate, and only be used to access the car park and not the rest of the site.
 - (2) The dairy can be accessed at two points off Pontefract Road, a highway. One is for HGVs and cars to enter, and the other, which is 200 metres away, is for their exit. One security guard is present in the gatehouse at the entrance, and the entrance and exit are controlled by keycard operated gates.
28. Each of the access points is well signed and utilise distinctive green fencing, so their location could be easily identified by protestors. Arla could, if the Pontefract Road access points were blocked, run its operation from the access points on Leodis Way. However, if all access points were blocked, operations would likely have to cease within a matter of hours, with the consequence that a significant volume of milk would be lost, and the distribution centre would have to cease operations within around two hours.
29. In addition to the security measures above, the dairy is surrounded by a security fence, most of its internal doors are keycard controlled, and around 75% of its internal areas are covered by CCTV. The distribution centre is also surrounded by a perimeter fence, has a significant CCTV system both externally and internally, and all staff at the distribution centre are issued with a security access card which must be used at strategic points of the site to allow access and to pass through the Site.

Past animal rights protests at the Sites

30. There have been past animal rights protests at three of the sites: the Oakthorpe, Aylesbury and Hatfield Sites.
31. Animal rights protestors first entered one of the sites in March 2020. Animal Rebellion has claimed on its website that members of its group were responsible for the relevant action. On 3 March, two protestors entered the Oakthorpe Site and climbed on silos in which dairy product was stored. They were arrested and a minor delay in production operations was caused. Four days later, a much larger demonstration occurred, to which the 3 March demonstration appears to have been a precursor. Around 100 Animal Rebellion protestors entered the site and handcuffed themselves to the railings next to the tanker bay at the Site. They were removed by the Police. The protestors also erected a makeshift structure outside the site and attached themselves to it. They were removed and arrested. The protests came at a financial cost to the Claimants' business, both in the additional resources needed to protect the business and the adjustments needed to mitigate the impact.
32. On 31 August 2021, at around 5.30 am, around 50 protestors associated with Animal Rebellion attended the Aylesbury Site. The protest lasted approximately 24 hours. They

- (a) prevented access to the dairy by blocking Samian Way between the roundabout and first gatehouse; (b) erected two bamboo towers on Samian Way and attached themselves to the towers; and (c) parked a Luton-style van lengthways across the road, making the road impassable and locked themselves to the van. Further (d) several protestors sat in the road and erected and occupied tents on the grass verges, which are within Arla's freehold title.
33. Thames Valley Police arrived at the Site at around 6 am and remained there for the majority of the 24 hour period. They removed the protestors that had attached themselves to the bamboo structure, and dismantled the structure itself. Around twelve of the protestors were arrested. The blocking of access to the dairy necessitated the closure of the A41 for most of the day, Samian Way was closed for most of the 24 hour period and there was also significant traffic disruption caused in the neighbouring village of Buckland as a result of the closure of the A41.
34. Animal Rebellion's website, as it stood at 28 August 2022, details a campaign called "Down with Dairy", which includes a description of the campaign, stating, among other things, that:
- "The action is part of a sustained campaign, which saw a march and blockade of the Arla Factory by Animal Rebellion in March the previous year."*
- "Thirteen of the world's largest dairy corporations, including Arla, together emitted more greenhouse gases in 2017 than major polluters BHP and ConocoPhillips, mining and oil giants respectively."*
- "We're not just demanding that Arla go plant-based by 2025, we're demanding that the government supports companies like Arla by funding a just transition for workers in meat and dairy industries to just and sustainable alternatives."*
- "You can read more about some of those involved in our campaign against Arla here."*
35. More generally, the website explained the "Down with Dairy" campaign as follows:
- "Animal Rebellion is calling on the dairy industry to transition to plant-based production by 2025..."*
36. The August 2021 protests caused the following harm: (a) it prevented inbound deliveries of raw milk and other raw materials to the Aylesbury Site, which were all diverted elsewhere, and which in turn meant that around 80 farms could not have their milk collected; (b) outbound deliveries were disrupted, which caused disruption to 76 stores operated by Arla customers in the UK and impacted international cream products; (c) finished product went to waste; (d) other activities at the Aylesbury site were also impacted, customer audits of Arla's facilities were cancelled, tenants on other areas of Arla's land away from its dairies and distribution centres were impacted, and their operations stopped. The main financial loss was the loss of revenue from uncollected milk of around £170,000. There were also additional cleaning and security costs.

37. The following accommodations also needed to be made, which caused a significant disruption to Arla's operations: (a) Arla staff were required to park on Samian Way, walk to work, or use the emergency access; (b) raw milk deliveries were diverted away from the Aylesbury Site; (c) planned deliveries such as fuel, bottle resin and packaging, were rescheduled for the following day; (d) outbound vehicles were stuck at the dairy and unable to leave, and no empty vehicles could enter the Site to load outbound deliveries; (e) the dairy only had 250 milk cages on-site due to the inability to replenish stocks and could not therefore run; and (f) additional security was requested to cover the third gatehouse and patrols.
38. Moving forward to 2022, in or around August 2022 the Claimants became aware from Animal Rebellion's website of a plan to disrupt the dairy supply in the UK in September over a one to two week period. The website included a section entitled "*This Changes Everything- A Plant Based Future*", which stated, among other things, as follows:

"The near term goal is fairly simple, this September we will be disrupting the dairy supply across the UK with 500 people over a 1-2 week period, cutting off the supply of milk to supermarkets and causing unignorable high-level disruption which will be felt by tens of millions of people across the UK and be a sustained no.1 news story. This will result in more than one thousand arrests and put the damage and exploitation of animal agriculture at centre stage. We will then build on that momentum with a large-scale occupation in the centre of London..."

This is the beginning of a long term civil resistance project, where we will be raising the stakes through the actions we take and also continuing our resistance through the court systems...

Strategy

The two key mechanisms / tools to achieve our aims are large-scale material disruption and the drama of interactions with the public by more localised disruptions...

We need to make sure we create a crisis at the start, so going in with maximum intensity to make sure our issue is a number one news story, and after that we can keep the debate going with relatively minimal effort....

A key action design principle is all actions must be "simple, unbeatable and repeatable".

...

Action plan:

Phase 1- warm up actions and mobilisation starting at the beginning of June

...

Phase 2- two weeks high-intensity in September with 500+ people

The objective is simple- we are going to have supermarket shelves empty of milk for two weeks, and will stack all energy and mobilisation towards this goal. We will be asking for people to commit to taking one week off. This phase will have a clear end and a clear ask for people to join us at phase 3...

Phase 3- mobilise to the city

Phase 3 will be an openly-organised mass occupation in London with no barrier to entry. We will mobilise during Phase 2 and we can double down on this by taking out newspaper adverts and by our spokespeople press releases talking about the meeting date and location. This will happen a week or so after Phase 2 and may be part of a broader coalition with XR [Extinction Rebellion] and JSO [Just Stop Oil].”

39. There was also a concern that the Leeds Site may have been surveyed by potential protestors and/or other persons associated with Animal Rebellion, because a dog-walker was seen on 24 August 2022 walking near the Leeds Site and appearing to be recording a video when doing so.
40. This all led to the 31 August 2022 without notice application, and order bearing the same date made by Bacon J against the persons unknown described in the heading to this judgment e.g. “*Persons unknown, who are, without the consent of the Claimants, entering into or remaining on land and in buildings on any of the sites listed in Schedule 2 of the Claim Form*”. The order barred the following acts: (a) entering into, entering onto, tunnelling under or remaining on the Sites (paragraph 2.1 of the order); (b) blocking, slowing down, obstructing or otherwise interfering with vehicular access to or from the highway at the Sites (paragraph 2.2); (c) approaching, slowing down, or obstructing any vehicle on or moving along the roads identified in various annexes to the order, for the purpose of (i) disrupting vehicular access to or from the Sites or (ii) protesting (paragraph 2.3); (d) entering, climbing onto, climbing into, or climbing under any vehicle travelling to or from the Sites (paragraph 2.4); (e) affixing themselves (“locking on”) to any vehicle on, entering or existing the Sites where the locking on is for the purpose of protesting (paragraph 2.5); (f) affixing themselves or any other items to any of the roads in (c) or any other person or object on, under or over those roads for the purposes of (i) disrupting vehicular access to or from any of the Sites; or (ii) protesting (paragraph 2.6); or (g) erecting any structure on those roads for the purpose of (i) disrupting vehicular access to or from any of the Sites or (i) protesting (paragraph 2.7).
41. Alternative service was allowed by a number of methods, including placing the order and documents leading to it on the First Claimant’s websites and Facebook pages, e-mailing a copy of this order to Animal Rebellion, and placing signs and/or notices on the perimeter of each of the Sites. The injunction order was duly placed on the First Claimant’s website on 2 September 2022, a relevant entry added to the First Claimant’s Facebook page the same day, an e-mail sent to Animal Rebellion the same day, which led to an auto-reply from two Animal Rebellion e-mail addresses, and signs placed on the perimeters of the Sites that day.
42. However, three protest incidents occurred a few days later in September 2022 at the Sites: one on 4th September at the Aylesbury Site, one on 5th September at the Aylesbury Site and one on 8th September at the Hatfield Site.

43. The incident at the Aylesbury Site on 4 September 2022 started at about 5.30 am. Four protestors entered the Site and climbed on top of four milk silos, where they stayed for the next 10 to 12 hours. As a result of this, and the risk of contamination to the milk product contained in the silos, it was necessary to dispose of 640,000 litres of milk. Trespassing on the Aylesbury Site was a breach of paragraph 2.1 of the 31 August 2022 injunction order, so this appears to have breached that order.
44. Six protestors entered the Site and climbed on top of three raw milk tankers. Again, that appears to have been a breach of paragraph 2.1 of the 31 August 2022 injunction order.
45. Several protestors also blocked 'College Road', one of the access routes to the Site, which was protected under the injunction order, and climbed aboard and occupied vehicles on the road. It took until approximately 1.30 pm for all of the protestors to be removed from the road and vehicles in the vicinity of the Site, and for free access to the Site to recommence. These actions appear to have been in breach of paragraphs 2.2 to 2.5 of the injunction order.
46. 23 protestors were arrested in connection with the incident.
47. The next morning, 5 September 2022, at around 2.30 am, approximately 6 protestors entered the Site, and climbed aboard tankers or lay in the loading areas. All protestors were removed by around midday and 4 protestors were arrested.
48. Three days later, on 8 September 2022, at around 10 am, approximately 20 supporters of Animal Rebellion entered the Hatfield Site. A number of them caused physical damage by drilling into tyres and/or cutting the valves off lorry tyres to immobilise the lorries, before climbing onto a lorry in the loading bay and occupying the site. Over 400 tyres were either drilled or had their valves cut and had to be disposed of. The costs of replacement would be over £170,000. 17 people were arrested for aggravated trespass and criminal damage.
49. There were no similar incidents in September 2022 at the other two Sites, namely the Oakthorpe and Leeds Sites.
50. However, there were a number of other actions taken in relation to the dairy campaign between 3 and 8 September 2022. These included protests on 4 September at three sites owned by Muller, entering two Muller facilities on 5 September, disrupting three dairy sites on 6 September (including one of Muller), staging a sit in at four supermarkets and preventing customers at those stores accessing dairy and meat products, staging a protest at Westminster, and again entering a Muller facility on 8 September, blocking entry to the site and gluing themselves to the entry to the site.
51. The period of protest was temporarily paused on 8 September because of the death of Queen Elizabeth II.

Developments since September 2022

52. When the matter came back before Fancourt J on 4 October 2022 for the return date of the injunction, the Claimants applied to add 31 persons as named defendants in light of their involvement in the September 2022 incidents, and an order was made continuing the injunction and adding them.

53. Following the pause for the death of Queen Elizabeth II, Animal Rebellion engaged in a number of pieces of direct action protest in October to December 2022, including attending Fortnum & Mason, Harrods and supermarkets in London, Norwich, Manchester and Edinburgh and pouring milk taken from the shelves of those shops onto the floor. Three of the individuals named in the 25 October 2022 order appear each to have been involved in or linked to one of the acts. Of the remaining named defendants, Rosa Sharkey is stated in an Animal Rebellion website article to be the spokesperson for the 12 supporters of Animal Rebellion who broke into and took 18 beagle puppies from the MBR Acres facility in Wyton, Cambridgeshire on 20 December 2022.
54. As explained above, the final disposal of the claim was adjourned in light of the Supreme Court proceedings in the *Wolverhampton* case.
55. There have not been any further cases of direct action against the dairy industry since the matters set out above. Animal Rising have focused largely, although not exclusively, on animal-related sporting events in 2023, such as high-profile horse racing events, although there was at least one farming-related incident, where three Animal Rising activists entered the Appleton Farm on the Sandringham Estate, from which they removed three lambs without the permission of the owner of the animals.
56. However, the Claimants remain concerned that future acts of direct action and protest will occur. This is largely for a combination of the following reasons:
- (1) The Animal Rebellion website continues to seek the support of new activists.
 - (2) The August 2022 website entry described the September 2022 intended action as the start of a long-term civil resistance project that stated that it would include large scale disruption.
 - (3) That website specifically, in its reporting of the 2021 incident, named and targeted Arla as a large dairy producer.
 - (4) The campaign against the dairy industry has, from Animal Rising's perspective, not been won.
 - (5) On the contrary, the plan to bring about a transition to a plant-based system by 2025 is now more pressing than ever given how close 2025 is. Given that the Claimants supply 40% of milk to UK supermarkets, and the stated aim of Animal Rising of stopping the supply of dairy to UK supermarkets, achieving their aim is likely in their minds to involve further action against the Claimants' Sites.
 - (6) The Claimants consider that the September 2022 action was not as extensive as Animal Rebellion had hoped, given the statements made on its website in August 2022 about the scale of the action planned.
 - (7) There was further direct action in October to December 2022, including in relation to the dairy industry.
 - (8) The Claimants consider that the absence of action since September 2022 is a product in large part of the injunctions in place. Therefore, were they to fall away, that deterrent would be lost. They accept that the September 2022 action against the Claimants occurred despite the injunction, but contend that other dairy and

distribution sites, particularly those operated by Muller, appeared to be disproportionately targeted, and the Claimants infer this is because Muller has no such injunction.

57. Therefore, the Claimants seek draft orders, with the same substantive restrictions as in the orders sought before and granted by Bacon J and Fancourt J, but for five years with annual review in respect of the element of the order relating to persons unknown.
58. It was explained to me, in response to a question that I asked during the hearing, that the website was changed around 10 days before the hearing, and that as part of this it removed reference to the specific plan to bring about a transition to a plant-based system by 2025. I asked for a witness statement to evidence the points that I was told of orally, and this was duly provided the next day. While I think it would have been desirable for this to be provided before the hearing started, I consider it appropriate to admit this in so that the duty of full and frank disclosure can be satisfied.
59. The website appears to have been revamped. As part of the description of Animal Rising's activities, it states that "*the key solution to these challenges [the challenges caused by the animal farming and fishing industries] is to support farming and fishing communities in the necessary and urgent transition to a sustainable and just plant-based food system*". The "*How We Achieve It*" section contains three routes. The first is "[b]y generating a national conversation on the need to transform our food system with bold and impactful campaigns", the second is supporting local people to create change for themselves, and the third is building alliances with key stakeholders. There is a page on previous campaigns, which states under "*2022 PLANT-BASED FUTURE*" that those involved "*successfully stopped the supply of milk to supermarkets across the South of England*".

The evidence relating to the named defendants who have not signed consent orders

60. Finally, I set out a summary of the evidence in relation to the remaining identified defendant who has- necessarily- not signed a consent order, namely the 40th Defendant.
61. The 40th Defendant appears to be female and have blue hair on the basis of a video taken of the 8 September incident at the Hatfield Site. There is video evidence of her trespassing on the Hatfield Site during the 8 September 2022 incident and filming the activities of the Animal Rebellion protestors. Such filming appears to have been carried out for Animal Rebellion, who post footage of their incidents on their website. In the video evidence, she is seen leaving the site by herself before arrests were made.

The legal test

62. The injunction is sought to restrain:
- (1) trespass on the Claimants' Sites;
 - (2) interference with the Claimants' common law rights, and the rights of their assigns and licensees, to access the highway from the Claimants' Sites; and
 - (3) public nuisance caused by obstruction of the highway.

63. I shall start with the requirements of (1), (2) and (3), and then deal with what must be shown in the present case to order (a) an injunction against the 40th Defendant as an identified defendant and (b) against persons unknown.

Trespass to land

64. Starting with trespass to land, that consists of any unjustifiable intrusion by one person upon land in the possession of another. No further elaboration is necessary for present purposes.

65. The Claimants submitted that deciding whether a trespass has occurred (or in the present case would or might occur in the future) does not involve any balancing of the Claimants' rights to possession with the Defendants' rights of expression or freedom of assembly under Articles 10 and 11 of the European Convention on Human Rights ("ECHR"), because:

- (1) Articles 10 and 11 do not include any right to trespass when exercising those rights: *Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515 at [36]-[37] per Longmore LJ;
- (2) trespass is a blatant and significant interference with the Claimants' rights under Article 1 of the First Protocol to the ECHR; and
- (3) 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 359 ("**Cuciurean (2021)**") at [9(1)] to [9(2)] per Warby LJ.

66. I accept that submission.

67. Article 10 provides as follows:

"10(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

68. Article 11 provides as follows:

"(1) Everyone has the right to freedom of peaceful assembly ...

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ...”

69. Article 1 of the First Protocol provides that:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.”

70. The other provision to mention is section 12 of the Human Rights Act 1998 (“**HRA**”). Section 12(1) provides that section 12 applies if a Court is considering whether to grant any relief which, if granted, might affect the exercise of the ECHR right to freedom of expression, namely that in article 10. Where section 12 applies, then, among other things, the Court must have particular regard to the importance of the ECHR right to freedom of expression: section 12(4).

71. In *DPP v Ziegler* [2021] UKSC 23; [2022] AC 408, the Supreme Court endorsed at [58] the Divisional Court’s identification of the five questions that arise when an Article 10 or 11 right may be engaged, which was expressed in the following terms by the Divisional Court:

“63. That then calls for the usual enquiry which needs to be conducted under the HRA. It requires consideration of the following questions:

(1) Is what the defendant did in exercise of one of the rights in articles 10 or 11?

(2) If so, is there an interference by a public authority with that right?

(3) If there is an interference, is it ‘prescribed by law’?

(4) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of article 10 or article 11, for example the protection of the rights of others?

(5) If so, is the interference ‘necessary in a democratic society’ to achieve that legitimate aim?

64. That last question will in turn require consideration of the well-known set of sub-questions which arise in order to assess whether an interference is proportionate:

(1) Is the aim sufficiently important to justify interference with a fundamental right?

(2) Is there a rational connection between the means chosen and the aim in view?

(3) Are there less restrictive alternative means available to achieve that aim?

(4) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?”

In *Ziegler*, the question arose in the context of a statutory provision, namely section 137(1) of the Highways Act 1980.

72. It is convenient to deal in this section on the legal principles with whether Articles 10 and 11 could justify a trespass in the present case. In my judgment, they could not, for the following reasons:

(1) The exercising of rights under Articles 10 and 11 cannot normally justify a trespass: *Cuciurean (2021)* at [9(1)] to [9(2)]. Here, I see nothing to take this out of the ordinary case.

(2) Articles 10 and 11 do not include any right to trespass when exercising those rights: *Boyd* (above) at [36]-[37]. The reason for that is that Articles 10 and 11 do not contain any right to protest on privately owned land: *Secretary of State for Transport v Cuciurean* [2022] EWCA Civ 661 (“*Cuciurean (2022)*”) at [31], applying the European Court of Human Rights decision in *Appleby v UK* (2003) 37 EHRR 38. The Court of Appeal endorsed in the latter case the explanation of the Divisional Court at [45] of its judgment, where Lord Burnett CJ and Holgate J explained that:

“there is no basis in the Strasbourg jurisprudence to support the respondent’s proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded. Instead, it has consistently said that articles 10 and 11 do not “bestow any freedom of

forum” in the specific context of interference with property rights (see Appleby at [47] and [52]). There is no right of entry to private property or to any publicly owned property. The further that the Strasbourg Court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights under articles 10 and 11, or of destroying the essence of those rights, then it would not exclude the possibility of a State being obliged to protect them by regulating property rights.”

(3) As the European Court explained in *Appleby* at [43], one must also consider the rights under Article 1 of Protocol 1: “*while freedom of expression is an important right, it is not unlimited. Nor is it the only Convention right at stake. Regard must also be had to the property rights of the owner of the shopping centre under Article 1 of Protocol No.1*”. That underlies the specific points in (1) and (2) above.

(4) It appears that the result of the application of the above principles is that the proportionality exercise does not apply in a case where the protest takes place on private land: *Cuciurean* (2022) at [33].

73. Therefore, as did Ritchie J in *Valero Energy Limited v Persons Unknown* [2024] EWHC 134 (KB), I do not consider that articles 10 and 11 provide any defence to what would otherwise constitute a trespass in the present case.

74. It was accepted by the Claimants that I should consider whether articles 10 and 11 are engaged here, whether as a result of considering whether section 12 of the HRA applies, and if so in having particular regard to the importance of the ECHR right to freedom of expression, or the Court’s duty as a public authority under section 6(1) of the HRA. Therefore, I do not need to consider that question further.

Public nuisance

75. As in *Ineos* (above), the Claimants asked me to proceed on the basis that the same core principles applied to public nuisance and the criminal offence of obstructing the highway under section 137(1) of the Highways Act 1980. I am content to do so, and would expect the two to march hand in hand.

76. As explained at [65] of that judgment, for there to be an offence under section 137(1), it must be shown that:

“(1) *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...*

(2) *The obstruction must be wilful, ie. deliberate;*

(3) *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.”*

77. The purposes for which a highway may be used are not limited to travelling. As Lord Irvine stated in *DPP v Jones* [1999] 2 AC 240 at 245G-255A:

“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.”

78. A highway may be put to many other uses. It would be surprising if “two friends who meet in the street and stop to talk are committing a trespass; so too a group of children playing on the pavement outside their homes; so too charity workers collecting donations; or political activists handing out leaflets; and so too a group of Salvation Army singing hymns and addressing those who gather to listen”: [1999] AC 240 at 254F-G. Therefore, there is a right to peaceful assembly on the highway.
79. As Lord Reed explained in *The Safe Access Zones Bill Reference* [2022] UKC 32 at [22], the approach in *Jones* was, prior to the coming into force of the HRA, to use *common law* rights of freedom of speech and assembly as an important factor in assessing whether the use of the highway was reasonable. That would apply equally to section 137(1) as it would to the Public Order Act 1986 offence considered in *Jones*.
80. In *Ziegler* the Supreme Court considered the interaction of section 137(1) with Articles 10 and 11 in light of the coming into force of the HRA. The Court held that section 137 has to be read and given effect, in accordance with section 3 of the HRA, on the basis that the availability of the defence of lawful excuse, in a case raising issues under Articles 10 or 11, depends on a proportionality assessment, as the Divisional Court had considered.
81. Their Lordships in *Ziegler* adopted at [72] the non-exhaustive list of factors to consider when evaluating proportionality that had been set out by Lord Neuberger MR in *City of London Corporation v Samede* [2012] EWCA Civ 160 at [39]-[41]. Paraphrasing that content, those factors are:
 - (1) the extent to which the continuation of the protest would breach domestic law;
 - (2) the importance of the precise location to the protestors;
 - (3) the duration of the protest;
 - (4) the degree to which the protestors occupy the land;
 - (5) 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;
 - (6) 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
 - (7) whether the protestors ‘believed in the views that they were expressing’.

82. In the *Safe Access Zones Bill Reference* case, Lord Reed, giving the judgment of the Court, considered that the Divisional Court in *Ziegler* should- before resorting to the special interpretative duty imposed by section 3 of the HRA- have considered whether the established interpretation of section 137, as stated for example by Lord Irvine in *Jones*, would result in a breach of Convention rights: [23]. However, given that the question of the need to apply in the context of section 137 the proportionality test set out in *Ziegler* was not before the Court, Lord Reed made no specific comment on it: [26].
83. What he did address was the comment in *Ziegler* at [59] that “[d]etermination of the proportionality of an interference with ECHR rights is a fact-sensitive enquiry which requires the evaluation of the circumstances in the individual case”. He stated that while this might be the useful position in a criminal trial of offences charged under section 137 where Article 9, 10 or 11 rights were engaged, if the section was interpreted as it was in *Ziegler*, that would not universally be the case: [28]-[29]. Questions of proportionality, particularly where they concerned the compatibility of a *rule or policy* with ECHR rights, are often decided as a matter of general principle, rather than on an evaluation of the circumstances of each individual case: [29]. Further, it is possible for a piece of legislation to ensure that its application in individual circumstances will meet the proportionality requirements under the ECHR without any need for evaluation of the circumstances in the individual case: [34].
84. Therefore, when a defendant relies on Article 9, 10 or 11 in the defence of a protest-related defence, the Court should- if those articles are engaged- consider whether the ingredients of the defence themselves strike the proportionality balance: [55]. If it considers that they do not strike such a balance, the Court’s duty under section 6 of the HRA is to consider whether there is a means by which the proportionality of a conviction can be ensured, whether through using the interpretative duty under section 3 in the case of construing the legislation creating a statutory offence or developing the common law where the offence arises at common law: [56]-[61].
85. In the present case, the Claimants accept, as explained above, that the requirements for public nuisance should be the same as those in section 137 of the Highways Act 1980. Therefore, on the face of it, the proportionality requirements set out in *Ziegler* would apply, and I consider that I should apply them given that Lord Reed made clear in *Safe Access Zones Bill Reference* that he was not specifically considering this point in the context of section 137.
86. The Claimants submit in relation to the injunction sought against persons unknown that it is not possible to apply the proportionality requirements under the ECHR to *specific individual* protestors because by definition the identity and circumstances of those individuals is not presently known. Rather at one should apply a proportionality test to the restrictions imposed by the draft order sought with future protests in mind. I accept that I should take the latter course.
87. As explained below, I consider that the order sought satisfies that test.

Right to access the public highway

88. Lord Atkin explained this right with characteristic succinctness in *Marshall v Blackpool Corporation* [1935] AC 16 at 22:

“The owner of land adjoining a highway has a right of access to the highway from any part of his premises. This is so...whether he is entitled to the whole or some interest in the ground subjacent to the highway or not. The rights of the public to pass along the highway are subject to this right of access; just as the right of access is subject to the rights of the public and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway.”

89. An interference with the right is actionable without proof of loss, and if an interference does cause a loss, then damages can be obtained.
90. Taking the last part of the extract from *Marshall* above, in my judgment the key question here is the qualification of the right of access by the rights of the public. In *Ineos Upstream Ltd v Persons Unknown* [2017] EWHC 2945 (Ch), Morgan J considered at [107] the interaction of the adjoining landowner’s right of access to the highway with the protestors’ right to a reasonable use of the highway. He assumed in favour of the protestors that if they were carrying on a reasonable use of the highway which impacted on the rights of the claimants in that case to access the highway, that would not be an infringement of the right of access to the highway.
91. While Morgan J did not have to decide the point, because the claimants in that case put their case on the basis of public nuisance rather than the landowner’s right to access the highway, in my judgment that is correct and I should take the same approach here. The rights of the public include the right to reasonable use of the highway. Therefore, applying the principles set out in *Marshall*, a reasonable use of the highway by members of the public will not constitute unlawful interference with the adjoining landowner’s right to access the highway.
92. It was submitted by the Claimants that the decision of Julian Knowles J in *High Speed Two (HS2) Limited v Four Categories of Persons Unknown & Monaghan & Others* [2022] EWHC 2360 (KB) at [196] suggests that no balancing act is to be applied between the right to access the highway and the Article 10 and 11 rights of the defendants, because in a claim under this cause of action much, if not all, of the relevant protest is taking place on private land. I do not take Julian Knowles J to be going so far in [196]. Rather he simply put forward the fact that in the case before him much if not all of the protests had taken place on private land as being the first of three reasons why there was no unlawful interference with Articles 10 and 11 on the facts before him. Further, here, the Claimants rely on the obstruction of the highway, such as by protestors mounting and affixing themselves to vehicles on it, as future acts that would breach their right to access the highway, and that acts are not taking place on private land.
93. However, as set out below, I consider that the apprehended actions would amount to a violation of the Claimants’ right to access the highway whether or not such a balancing act is to be applied. Therefore, I do not consider it necessary to consider further the question of whether such a balancing act needs to be applied.

Test for a precautionary injunction against named defendants

94. The test for a precautionary injunction against named defendants is as set out by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 at [31], as applied in

Koninklijke Philips NV v Guandong Oppo Mobile Telecommunications Corp Ltd [2022] EWHC 1703 (Pat) (*Koninklijke*) and approved by the Court of Appeal in *London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] EWCA Civ 13 at [83]. That requires the following two questions to be asked and answered in the affirmative:

- i) Is there a strong probability that unless restrained by injunction the defendant will act in breach of the claimant's rights?
 - ii) If the defendant did an act in contravention of the claimant's rights would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of actual infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy in damages would be inadequate?
95. If those questions are answered in the affirmative, the Court will consider whether it is just and convenient to make the order as envisaged by section 37(1) of the Senior Courts Act 1981.

Test for an injunction against persons unknown

96. The Claimants submit that the test laid down in *Wolverhampton* has helpfully been summarised by Sir Anthony Mann in his recent decision in *Jockey Club Racecourses Limited v Persons Unknown* [2024] EWHC 1786 at [17]-[19], which also concerned Animal Rising. I agree and set out those paragraphs:

"17. That case [Wolverhampton] involved Travellers, but while that context informed some of the requirements that the court indicated should be fulfilled before an injunction is granted, most of its requirements are equally applicable to other types of cases such as protest cases like the present (of which there now a number):

"167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:

(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.

(ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima

facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

(iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

(v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries."

18. Later in the judgment the court returned to procedural safeguards to give effect to those matters of principle, and set out the following procedural and other matters. I omit some points that are relevant to Traveller cases and which have no counterpart in this case, and adjust others by omitting specific Traveller references and by making the wording applicable to the present (and similar) cases.

i) Any applicant for an injunction against newcomers must satisfy the court by detailed evidence that there is a compelling justification for the order sought. There must be a strong possibility that a tort is to be committed and that that will cause real harm. The threat must be real and imminent. See paragraphs 188 and 218. "Imminent" in this context means "not premature" – Hooper v Rogers [1975] Ch 43 at 49E.

ii) The applicant must show that all reasonable alternatives to an injunction have been exhausted, including negotiation – paragraph 189.

iii) It must be demonstrated that the claimant has taken all other appropriate steps to control the wrong complained of – paragraph 189.

iv) If byelaws are available to control the behaviour complained of then consideration must be given to them as a relevant means of control in place of an injunction. However, the court seemed to consider that in an appropriate case it should be recognised that byelaws may not be an adequate means of control. See paragraphs 216 and 217.

v) *There is a vital duty of full disclosure on the applicant, extending to "full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This is a continuing obligation on any local authority seeking or securing such an order, and it is one it must fulfil having regard to the one-sided nature of the application and the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application."* – paragraph 219. Although this is couched in terms of the local authority's obligations, that is because that was the party seeking the injunction in that case. In my view it plainly applies to any claimant seeking a newcomer injunction. It is a duty derived from normal without notice applications, of which a claim against newcomers is, by definition, one.

vi) *The court made it clear that the evidence must therefore err on the side of caution, and the court, not the applicant should be the judge of relevance* – paragraph 220.

vii) *"The actual or intended respondents to the application must be identified as precisely as possible."* – paragraph 221.

viii) *The injunction must spell out clearly, and in everyday terms, the full extent of the acts it prohibits, and should extend no further than the minimum necessary to achieve its proper purpose* – paragraph 222.

ix) *There must be strict temporal and territorial limits* – paragraph 225. *The court doubted if more than a year would be justified in Traveller cases* – paragraph 125 again. In my view that particular period does not necessarily apply in all cases, or in the present one, because they do not involve local authorities and Travellers.

x) *Injunctions of this kind should be reviewed periodically* – paragraph 225. *"This will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made."*

xi) *Where possible, the claimant must take reasonable steps to draw the application to the attention of those likely to be affected* – paragraph 226.

xii) *Effective notice of the order must be given, and the court must disclose to the court all steps intended to achieve that* – paragraphs 230ff.

xiii) *The order must contain a generous liberty to apply* – paragraph 232.

xiv) The court will need to consider whether a cross-undertaking in damages is appropriate even though the application is not technically one for an interim injunction where such undertakings are generally required.

19. The court recognised that not all the general requirements laid down will be applicable in protester, as opposed to Traveller, cases. I have borne that in mind, and have, as I have indicated, omitted reference to some of the matters which do not seem to me to be likely to apply in protester cases.”

97. As comes through clearly from the above extracts, an injunction against persons unknown, who I shall refer to as “newcomers” as in *Wolverhampton*, is a novel exercise of an equitable discretionary power and therefore its limits and requirements must be carefully articulated and observed.

Applying the law to the facts

Precautionary injunction against named defendants

98. In my judgment, there is a strong probability that unless restrained by an injunction the 40th Defendant will act in breach of the Claimants’ rights, and it is just and convenient that an injunction be ordered in the terms applied for by the Claimants.
99. I shall:
- (1) start with the question of whether there is a strong probability that the 40th defendant will be involved in action in the future against the Claimants if not restrained by injunction, then
 - (2) consider whether such action would be in breach of the Claimants’ rights, and
 - (3) then consider whether it is just and convenient to grant an injunction.
100. The cumulative reasons why I consider that question (1) should be answered in the affirmative are as follows:
- (a) The 40th Defendant was involved in the action against Arla on 8 September 2022.
 - (b) Further, she was willing to trespass on the Claimant’s land to do so.
 - (c) On the basis of the video evidence before me, I consider that she was filming the incident for Animal Rebellion, including for example the damaging of HGV tyres, and infer that her involvement with their cause therefore did not end immediately at the end of the action on the 8th September 2022.
 - (d) She appears to me to have left the scene before she could be arrested. This is what the video evidence before me suggests and Ms Savage explains that it appears that she is the third protestor that the Hertfordshire Constabulary believe fled the scene. The other two were arrested in the days following the incident. Therefore, at present she has not faced any sanction that I am aware of for her past actions that would deter her from future action.

- (e) The mission statement of Animal Rebellion stated that the acts in September 2022 were “*the beginning of a long term civil resistance project*”. This ties in with their stated desire to bring about a transition from reliance on the dairy industry by 2025, which has not yet from their perspective been achieved.
 - (f) These views are plainly strongly held by those participating, and I have no reason to doubt that this includes the 40th Defendant.
 - (g) Arla, as producer of 40% of the milk in the UK, is an obvious target for Animal Rising.
 - (h) While there have not been direct acts against the Claimants since the September 2022 incidents, in my judgment there is a strong probability that this is because of the injunctions in place. Refusing to order a final injunction would immediately come to the notice of Animal Rising, who the Claimants’ solicitors have been corresponding with over the consent orders, and therefore in my judgment there is a strong probability that this would be regarded as removing an important impediment to taking direct action against Arla. It is true that the September 2022 incidents occurred despite the injunction, but they were considerably smaller than one would have taken from the plan on the website in August 2022, so it appears to me very likely that the injunction had some deterrent effect.
101. I have considered specifically whether the absence of acts against Arla since September 2022 suggests that further incidents of direct action against Arla are unlikely, or at least means that there is not a strong probability of them in the event of me declining to grant the injunction.
 102. However, I consider that the features above, taken in combination, suggest that there is a strong probability.
 103. I do not consider that the change to the website shortly before the hearing affects this. It does not indicate a shift in the views of Animal Rising towards the dairy industry, one would not expect such a shift, and Animal Rising knew of the impending Court date at the time the website was changed so I am reluctant to regard it as indicating a significant shift in their intended plans. Further, the first route stated in the current version of the website for achieving change is “[b]y generating a national conversation on the need to transform our food system with bold and impactful campaigns”, which wording seems to me to encompass direct action to disrupt the supply of dairy and food that is reliant on animals.
 104. I have also taken into account in this regard that the Leeds Site has not been the subject of action to date.
 105. I consider that these anticipated actions would be in breach of the Claimants’ rights.
 106. Some of the past action occurred in the Sites themselves, and therefore amounted to trespass, and I would expect that to be repeated in the future.
 107. As far as public nuisance is concerned:
 - (1) The past acts deliberately obstructed the relevant parts of the highway to a significant degree in a way that was designed to, and did, disrupt the Claimants’

business, albeit temporarily, to a significant extent and caused them significant financial loss, together with affecting members of the public who needed or wished to use the highway and other surrounding roads that could be blocked through its obstruction. A good example of this is the blocking of College Road during the incident at the Aylesbury Site on 4 September, when protestors climbed aboard and occupied vehicles on the road. Therefore, Articles 10 and 11 aside, it would constitute a public nuisance and this is the type of action that would likely be repeated absent an injunction because it is part of disrupting the passage of vehicles to and from the Sites.

(2) I have carefully considered the factors set out in *Ziegler* to be taken into account when assessing proportionality, which I summarised at paragraph 81 above. Taking them in turn:

- (a) Future protests of the same type would breach domestic law for the reasons given in relation to trespass, public nuisance and access to the highway set out in this section of my judgment.
- (b) The location of the protests is important to the protestors, because their intended aim is to disrupt the supply of milk from the Sites and therefore the obvious location for their action is at and immediately outside the Sites.
- (c) The protests were significant in duration, lasting in one case for 24 hours. Unlike in *Ziegler*, they were not a one-off one-hour occurrence, and one cannot expect future incidents to be.
- (d) Future protests are likely to involve occupation of and climbing aboard vehicles on the highway.
- (e) Their significant duration together with the other features of the action, caused significant financial harm to the Claimants by disrupting their supply of milk. Unlike in *Ziegler* there is not an alternative route of access: the Sites were and could again be completely blocked. Further, the protests are likely to block entire roads, as was the case at the Aylesbury Site in 2021, when the A41 was blocked for most of the 24 hour period, making the road impassable to all. Moreover, the road outside the Sites give immediate access to major roads, or are in close proximity to them, so the obstructions affect the public at large. The other obvious impact of successful action is that this could restrict the amount of milk on supermarket shelves for a period.
- (f) The views giving rise to the protest do relate to important issues, namely climate change and animal welfare, both of which are prominent features of current public and political debate.
- (g) The protestors plainly believe in their cause and are prepared to risk arrest to take such action.

(3) I also take into account the fact that the past actions, and likely future acts, go beyond attempts to persuade Arla of the correctness of Animal Rising's aims, into seeking to disrupt their business in a way that will assist in bringing about change in the dairy industry. Therefore, the action intends harm to Arla as a necessary

feature of its intended ends, and correspondingly an injunction leaves it open to carry out peaceful protest through acts like standing on the pavement with a placard, making noise or shouting their message loudly through a loud hailer. Rather the order prevents only real and significant harm caused by unlawful acts.

- (4) Taken together, I consider that the factors in (2)(a), (c), (d) and (e) and (3) above mean that the past action and similar future action would constitute a public nuisance, and that this is consistent with the 40th Defendant's Article 10 and 11 rights. This was and would in the future be action intended to significantly disrupt Arla's business and the injunction is tailored to prevent that end while allowing future protests within those parameters.
108. I consider that the past actions and the anticipated future actions would also violate the Claimants' rights as adjoining landowners to access the highway. The Claimants were blocked from accessing the highway for a significant period and this would likely be the intended aim of future action. For the reasons set out in relation to public nuisance, in my judgment the Claimants' actions do not constitute a reasonable use of the highway so as to legitimately qualify on the facts the Claimants' rights to access the highway, and this is consistent with the 40th Defendant's Article 10 and 11 rights.
109. Turning to whether it is just and convenient to grant an injunction, I have taken into account the reasons set out in paragraph 107(4) above.
110. Further, future action would cause financial harm to Arla that it would be difficult to redress, given the difficulty in seeking and enforcing effective recompense from the protestors individually. Moreover, climbing onto structures and lorries or entering the highway to stop lorries poses a risk of physical harm to staff or the protestors. The Claimants have taken a number of steps to seek to mitigate the harm, such as investing in future security, but the serious risk of significant future financial loss and the above risk of physical harm remains.
111. Therefore, it would be difficult for the Claimants to undo after the fact harm suffered through future pieces of direct action.
112. For these reasons taken collectively, I consider it just and convenient to grant an injunction in the terms sought.
113. I have considered whether anything in section 12(2) or (3) of the HRA should cause me not to order an injunction. The Claimants properly put this point before me. Section 12 is engaged where the Court is considering whether to grant any relief which might affect the exercise of the ECHR right to freedom of expression. Section 12(2) provides that if the respondent is not present or represented, no such relief should be granted unless the Court is satisfied that the applicant has taken all practicable steps to notify the respondent, or that there are compelling reasons why the respondent should not be notified. Section 12(3) provides that no such relief is to be granted to restrain publication before trial unless the Court is satisfied that the applicant is likely to establish that publication should not be allowed. Taking section 12(2) first, I am satisfied that the applicant has done all practicable to notify the respondent, through trying to ascertain her identity and through the alternative service routes.

114. As for section 12(3), the order does not restrain the 40th Defendant *publishing* her views. Rather restricts *where* she may express her views. Therefore, as in *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (QB), where Johnson J considered the limits of the concept of ‘publication’ in some detail at [66]-[76], it does not appear to me that section 12(3) is engaged. Further and in any case, (a) this is a final order against the 40th Defendant, so section 12(3) has no application for that reason too, and (b) in any case, in my judgment any interference with “publication” is proportionate and justified for the reasons set out in paragraph 107(4) above.
115. The order sought against the named Defendants is final, so in my judgment no further cross-undertaking in damages should be required.

Injunction against newcomers

116. I have considered carefully and applied the requirements in [167] of *Wolverhampton*, as expanded upon later in the judgment in the way summarised by Sir Anthony Mann in *Jockey Club*. The relevant newcomers in this case are those persons unknown within the classes set out in the description of the first to sixth defendants.

Compelling justification for the remedy

117. I have set out above the strong probability of the future disruption to their business absent an injunction, coupled with the effects on others set out above, from future unlawful acts of trespass, public nuisance and interference with the Claimants’ right of access to the highway. As Sir Anthony Mann explained in *Jockey Club* at [18], the threat must be real and imminent, and imminent means in this context “*not premature*” rather than immediate. This chimes with the approach of Julian Knowles J in his *HS2* decision at [176]-[177]. As he explained at [176], “[a]s the authorities make clear, the terms ‘real’ and ‘imminent’ are to be judged in context and the court’s overall task is to do justice between the parties and to guard against prematurity”. I am satisfied for the reasons set out above that there is a real and imminent risk if I do not grant an injunction of further direct action occurring.
118. There are a number of reasons why the Claimants have sought an order against persons unknown rather than limit the order to named or otherwise specifically identified defendants, and in my judgment they are compelling ones:
- (1) It has not been possible to identify all protestors who might undertake future action.
 - (2) The evidence before me is that the Animal Rising site continues to recruit new members.
 - (3) It is an organisation whose membership fluctuates.
 - (4) While the Claimants known the identity of the group, they do not know the identity of all individuals involved with it.
 - (5) The Claimants do not have confidence that all those who participated in the earlier acts have been arrested.
119. Similarly, given the difficulty in identifying the membership of Animal Rising, its fluctuating membership and the presence of like-minded protest groups, in my

judgment there is also a compelling reason not to limit the definition of persons unknown to those who are members of Animal Rising.

120. As explained above, the Claimants have put in place significant security measures at their Sites, and sought to improve them after the September 2022 incidents. It is not realistic to suppose these will completely prevent future action, and nor would sensible levels of policing or the use of byelaws.
121. The harm that could be caused by future unlawful acts is serious, consistent with the intended purpose of such action being to significantly disrupt the supply of dairy products.
122. Taking these reasons for relief together with the limits of the restrictions imposed by the injunction explained above, in my judgment there is a compelling justification for the remedy.
123. As in relation to the injunction against identified persons, I have considered whether anything in section 12(2) or (3) of the HRA should cause me not to order such an injunction. In my judgment, there are compelling reasons why the persons unknown cannot be notified before the order is made before the alternative service of the previous documents, such as by posting on the Claimants' site or by notices put at the perimeter of the Sites, as their identity is not known. In any event they will be notified insofar as is practicable through the alternative service routes after the order is made. In my judgment, s.12(3) is not violated for similar reasons to those set out in paragraph 111 above. The order does not restrain what can be published, so section 12(3) is not engaged, and even if it is, the acts apprehended are unlawful and interfere significantly with the rights of others, so I am satisfied that the Claimants are likely to obtain the relief sought at a final hearing (if there was one).

Full and frank disclosure

124. The Claimants have complied with this duty, including drawing to my attention a number of points that may be taken against their position. I have dealt above with the update to the Animal Rising website.

Evidence must err on the side of caution

125. Further, the evidence has satisfied this requirement, and as far I can see has been careful not to overstate the position.

Identifying the respondents to the application as precisely as possible

126. In my judgment the order sought does so. The means of identification are in the same form as the orders previously granted by Bacon J and Fancourt J. As summarised at paragraph 40 above, the qualifying conditions for falling into the category of respondents are clear and precise, and focus on carrying out particular acts of interference with the Sites and access to them, such as affixing themselves or any items to any of the relevant roads for the purpose of disrupting vehicle access to the Sites and protesting, to take one example.

Is the injunction clear in its terms and confined to the minimum necessary to achieve its proper purpose?

127. The Claimants seek orders in the same substantive form as granted previously, subject to the temporal limits set out below. Those orders were, and the present order sought is, clearly drafted. The Claimants have not gone further, despite the breaches of the order, and the order sought allows for peaceful protest in the manner set out in paragraph 107(3) above. Rather it focuses on particular acts that would disrupt the Claimants' operations at the Sites. Therefore, I am satisfied that it does not go beyond the minimum necessary to achieve its purpose.

Is there a strict temporal and territorial limit?

128. As in the *Jockey Club* case, I agree that the one year period that the Supreme Court thought prima facie appropriate in Travellers cases is too short to deal with a campaign such as that of the animal rights activists. That can readily be seen from the fact that incidents have already occurred in 2020, 2021 and 2022. However, given those annual events in my judgment an annual review is more appropriate in case the position changes in the interim, as has been sought by the Claimants, and as was ordered in the *Jockey Club* case. The annual review will allow a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate and the five year maximum adds an appropriate end-point. In my judgment, it would not be appropriate to require the Claimants to incur the costs of applying each year for a new or renewed injunction. Rather the review should be of whether the position has developed since the last review.
129. The territorial extent of the order is clearly set out in the maps and plans annexed to it. It is broadly limited to the roads immediately surrounding the sites, and the Claimants have not sought to include the larger roads such as the A41 to which they lead, and some of which were blocked by the earlier actions. Similarly, they have not sought to include their other dairy-related sites beyond the Sites, despite the breaches of the original injunctions order made. Therefore, I am satisfied that there is a strict territorial limit.

Have reasonable steps been taken to bring the application to the attention of those likely affected?

130. In my judgment, it has. The documents in the claim, including notice of this hearing, have been served on the named defendants and persons unknown in accordance with the alternative service orders made. The methods of service have included e-mail, posting on the Claimants' social media pages and notices at the Sites.

Is the proposed notice of the Order likely to be effective?

131. In my judgment it is. There are a number of routes specified in the alternative service provisions of the orders granted to date by Bacon J and Fancourt J, which in my view remain appropriate, including notices at the premises and e-mail.

Have the Claimants provided a generous liberty to apply clause?

132. In my judgment, they have, because the order sought provides for the ability to apply to vary or discharge the Order on 48 hours' notice.

Should a cross-undertaking be required?

133. Given that the order only prohibits acts that are in any event unlawful or highly likely to be unlawful, in my judgment as in *Jockey Club* it is not necessary for the Claimants to provide a cross-undertaking in respect of the injunction against newcomers.

Conclusion

134. I therefore grant the orders sought.



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Cases Nos: QB-2021-003841
QB-2021-004122
KB-2022-003542

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 January 2025

Before :

THE HONOURABLE MR JUSTICE MORRIS

Between :

TRANSPORT FOR LONDON

Claimant

- and -

(1) PERSONS UNKNOWN
(2) MR ALEXANDER RODGER AND 137
OTHERS

Defendants

(The “TfL IB Claims”)

And between :

TRANSPORT FOR LONDON

Claimant

- and -

(1) PERSONS UNKNOWN
(2) MS ALYSON LEE AND 167 OTHERS

Defendants

(The “TfL JSO Claim”)

Andrew Fraser-Urquhart KC and Charles Forrest (instructed by TfL) for the **Claimant**
Stephen Simblet KC (instructed by **Good Law Practice, Solicitors**) for 37 Named Defendants
in the TfL IB Claims and 14 Named Defendants in the TfL JSO Claim

Indigo Rumbelow (Named Defendant 114 in the TfL IB Claims and Named Defendant 50 in the TfL JSO Claim) and **Matthew Parry** (Named Defendant 143 in the TfL JSO Claim) attended and made representations

No attendance or representation for the **other Defendants**

Hearing dates: 13 and 20 May 2024

Further written submissions: 21 and 30 May 2024 and 1 June 2024

Approved Judgment

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

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Mr Justice Morris :

Introduction

1. In this judgment I consider a number of matters arising from two final injunctions made, on 3 May 2023 and on 8 June 2023 respectively (“the Final Injunctions”), in two sets of proceedings brought by Transport for London (“TfL”) against Persons Unknown and certain named defendants. I refer to the two sets of proceedings as the “TfL IB Claims” and the “TfL JSO Claim” (and together as “the Claims”).
2. Each of the final injunctions prevents the blocking, for the purpose of protests, principally under the banners “Insulate Britain” (“IB”) and “Just Stop Oil” (“JSO”), of certain roads or locations of strategic importance in and around London, forming part of the TfL Strategic Network, (referred to as the GLA Roads) and for which TfL is the highway and traffic authority.
3. In the TfL IB Claims (claim nos QB-2021-003841 and QB-2021-004122), following a trial on 29 to 30 March 2023, I granted the final injunction on 3 May 2023 following my judgment of the same date [2023] EWHC 1038 (KB) (“the IB Judgment”). In the TfL JSO Claim (KB-2022-003542), after a trial on 4 May 2023, the final injunction was made by Eyre J on 8 June 2023 following his judgment of 26 May 2023 at [2023] EWHC 1201 (KB) (“the JSO Judgment”).
4. In each case, there was an order for a final injunction (“the Final Injunction Order”). The final injunction was granted against a substantial number of Named Defendants and also against a defined class of persons unknown (“Persons Unknown”); and the final injunction was for a maximum period of 5 years from 3 May 2023. Importantly for present purposes, the Final Injunction Order further provided that there should be, every 12 months and for as long as it was in force, “a hearing to review this Final Injunction Order.”. That review hearing took place in May of last year, with further written submissions in June. This is my judgment pursuant to that review hearing and represents the position as at the end of May. There will be a further review in May 2025. The Final Injunction Order also provided for any defendant, or other person affected, with liberty to apply to vary or discharge it.
5. In addition to the Final Injunction Order, in each case there was a separate judgment order (“the IB Judgment Order” and the “JSO Judgment Order”), which formally allowed the TfL claims, made an award of costs against certain of the Defendants (paragraph 5) and granted permission to discontinue against a small number of Named Defendants. The detailed provisions of paragraph 5 of the JSO Judgment Order are considered in paragraph 72 below.
6. Some of the Named Defendants gave undertakings to the Court (“the Undertakings”) in lieu, and in terms similar to those, of the injunctions. They were not made subject to the final injunctions nor were costs ordered against them. However these Defendants nevertheless remained listed at defendants to the Claim as a whole, in order to enable enforcement of the Undertakings.
7. In the TfL IB Claims, there are 129 Named Defendants subject to the Final Injunction. Three Named Defendants gave an undertaking in lieu. In the TfL JSO Claims, there

are 9 Named Defendants subject to the Final Injunction and a further 157 Named Defendants gave an undertaking in lieu.

The issues in summary

8. In principle the following matters fall for determination.
9. First, in respect of the TfL IB Claims and the TfL JSO Claim, there is the review of the final injunction; in particular this raises the issue of whether there are any grounds for discharging or varying the terms of the Final Injunctions.
10. Secondly, in the TfL IB Claims, there is an application, made by application notice dated 27 July 2023, by Ms Giovanna Lewis, (Named Defendant 128) on behalf of herself and 113 further Named Defendants that, in their cases, the Court should accept undertakings in place of the final injunction and that they should be discharged as Named Defendants to the proceedings (“the Lewis Application”). (The Lewis Applicants are listed in Annex A hereto). The Lewis Application was supported by a witness statement from Ms Lewis herself (“Ms Lewis’s statement”), in which she attached undertakings signed by all of those 114 Named Defendants (“the Lewis Applicants”). In the course of the hearing, this matter became largely resolved.
11. Thirdly, by the Lewis Application, the Lewis Applicants further applied for the order for costs made against them in the TfL IB Claims at paragraph 5 of the IB Judgment Order to be set aside and for there to be no order as to costs. I refer to this as the “Costs Issue”.

The parties before me

12. TfL as the highway and traffic authority has a duty as a landowner, and is entitled to take steps, to prevent trespass and nuisance to the use of, and access, to GLA Roads. In both cases, the Claimant, TfL, appeared by Mr Fraser-Urquhart KC and Mr Forrest of counsel.
13. The defendants are those who have engaged in protests under the banner of IB and JSO. TfL gave notices of this review hearing to all current Named Defendants by post and email between 8 and 10 April 2024; and on 3 May 2024 by sending notice to IB and JSO email addresses and placing a notice on the TfL and GLA websites.
14. In the TfL IB Claims, 37 Named Defendants were represented by Mr Stephen Simblet KC instructed by solicitors Good Law Practice. Some of those Named Defendants attended the court hearing. Ms Lewis is one of those 37 Named Defendants, and the remaining 36 Named Defendants are also party to the Lewis Application. The further 77 Lewis Applicants were not represented by Mr Simblet. However, since their application was made on their behalf by Ms Lewis, I proceeded on the assumption that they supported the case advanced by Mr Simblet, on behalf of his clients, in relation to the Lewis Application. Further it was common ground that Mr Simblet properly advanced arguments on behalf of the Persons Unknown who are subject to the Final Injunction.

15. In the TfL JSO Claims, 14 Named Defendants are represented by Mr Simblet. Moreover Mr Matthew Parry, Named Defendant 143 (who gave an undertaking before Eyre J) appeared before me in person and addressed the Court.
16. Since the hearing and in October, Ms Lewis gave notice that the Good Law Practice are no longer acting for her and for the others it had represented and that they were all now acting in person. (Those Named Defendants who were represented by Good Law Practice until October 2024 are listed at Annex B hereto.)
17. Finally, Indigo Rumbelow, Named Defendant 114 in the TfL IB Claims and Named Defendant 50 in the TfL JSO Claim, appeared before me in person and addressed the Court in relation to both claims. Following the hearing, she provided further written submissions to support her case, including new material.
18. In addition, a number of the Lewis Applicants actually attended the hearing and were represented by Mr Simblet. No other Named Defendant in either the TfL IB Claims or the TfL JSO Claim appeared or made any further representations.

The factual background and the procedural history

19. The factual background and procedural history to the two sets of proceedings are set out in detail in the IB Judgment and the JSO Judgment. I do not repeat this for present purposes. What follows is a summary of the salient features of the cases.
20. The nature of the Insulate Britain and Just Stop Oil movements (and the overlap between the two) and the protests at roads are explained at paragraphs 2, 19 to 22, 24 to 27 29 and 42 of the IB Judgment and paragraphs 4 and 5 and 58 to 61 of the JSO Judgment. 65 of the Named Defendants in the TfL IB Claims are also Named Defendants in the TfL JSO Claim. In respect of Named Defendants in the JSO Claims who are also subject to the IB Final Injunction, then the JSO Final Injunction only applies to them in respect of 6 additional specific roads and junctions, which are not covered by the IB Final Injunction. (A number of the Lewis Applicants are subject to the JSO Final Injunction and have not, to date, given an undertaking in respect of those 6 additional roads).
21. In both sets of proceedings, TfL obtained interim injunctions, initially made urgently without notice, in October and November 2021, and in October 2022 (in terms similar to the Final Injunctions). Thereafter there were numerous on-notice hearings at which the interim injunctions were extended: see, for example, IB Judgment paragraphs 6 and 28 (and *TfL v Lee* [2022] EWHC 3102 (KB) per Freedman J and *TfL v Lee* [2023] EWHC 402 (KB) per Cavanagh J.)
22. As regards IB, whilst protests under its banner continued to October 2022, in January 2023 IB made a public statement that it would continue with its protests. IB had repeatedly made un-retracted statements that its protests would continue: see IB Judgment paragraphs 20, 24 and 25. (Ms Rumbelow's submission that IB had given up, certainly by December 2022 is not borne out by the evidence).
23. JSO protests started in March or April 2022 and continued: IB Judgment paragraph 27. At paragraphs 5, 6, 16 and 53 v) of the JSO Judgment, Eyre J explained the more recently developed practice of "slow marches", the height of activity ending around

December 2022 and that there had been no renunciation of previous forms of disruption. Both Final Injunction Orders expressly exclude such “slow marches” from the prohibited activity. During 2023 slow marching was the principal tactic.

24. As regards service of the proceedings on the Named Defendants in both Claims, I address this in detail under Issue 3 at paragraphs 77 to 83 below. I set out relevant events since the grant of the Final Injunctions in paragraphs 33 to 41 below.

Other proceedings: National Highways Limited (“NHL”) and others

25. Since September 2021, the IB, JSO and Extinction Rebellion protests have given rise to a substantial amount of litigation, both in criminal and in civil courts. There have been multiple prosecutions for various criminal offences and at least 15 civil claims for injunctions brought not only by TfL, but also by National Highways Limited (“NHL”), HS2 Limited, the Secretary of State for Transport, energy companies, and local authorities. In particular the NHL claims (relating to the M25) are explained in paragraph 30 of the IB Judgment and in paragraphs 3 and 18(a) of the JSO Judgment. There have been committal proceedings arising out of breach of injunctions and appeals. The TfL claims and the NHL claims are factually and legally closely aligned and include many of the same individuals as named defendants: see paragraphs 4 and 30 of the IB Judgment and the judgment of Cotter J (on first review) dated 5 May 2023 in *NHL v Persons Unknown* [2023] EWHC 1073 at paragraphs 7 to 59. (Solely for ease of reference in this judgment, I refer to this judgment of Cotter J as “the *NHL Judgment*”). Unlike the position of the Final Injunctions, the NHL injunction was for a limited period of one year and has been subsequently renewed, first, by the *NHL Judgment*, and then, more recently, by Collins Rice J on 26 April 2024.

The basis for the making of the Final Injunctions

26. The underlying basis for the making of the Final Injunctions is set out in the IB Judgment and in the JSO Judgment respectively.

The IB Judgment

27. In relation to the IB Final Injunction, as against Named Defendants, the legal principles are set out at paragraphs 32 to 38 of the IB Judgment and their application to the facts of the case at paragraphs 40 to 46. In particular the issue of proportionality arising under Articles 10 and 11 ECHR (“question (5)”) is addressed at paragraph 45. At paragraph 45(3) (set out in full in paragraph 60 below) I found that there were “no less restrictive or alternative means to achieve [the] aims” of protecting the rights of others, including lawful highway users and preventing disorder on the IB Roads.
28. As regards Persons Unknown, the legal principles relating to the grant of a final injunction based on the Court of Appeal decision in *Barking and Dagenham LBC v Persons Unknown* [2022] EWCA Civ 12 are set out at paragraphs 48 and 49 (in particular, at paragraph 49(7), the need for a fixed end point for review and for a period review). The guidelines in the earlier case of *Canada Goose* were applied to the facts at paragraph 50, leading to the conclusion that the final injunction against Persons Unknown should be granted (paragraph 51).

29. At paragraph 52, I explained the underlying basis for the 5 year time limit for the Final Injunction and the need for a yearly review, not least because of the potential implications of the then pending Supreme Court judgment in *Barking and Dagenham*. Reference was also made to the liberty to apply for any Defendant to vary or discharge *the injunction* (incorporated at paragraph 12 of the Final Injunction Order). At paragraph 56, in the context of issues as to alternative service, I referred to the observation of Cavanagh J that by that stage (i.e. the date of his order) it was “vanishingly unlikely” that anyone minded to take part in a protest was unaware that injunctions had been granted by the courts.

The JSO Judgment

30. In relation to the JSO Final Injunction, the legal principles were set out at paragraphs 19 to 25 of the JSO Judgment and paragraph 26 addressed the specific position of Persons Unknown. As regards their application to the facts of the case, Eyre J addressed the likelihood of the Named Defendants and Persons Unknown acting in breach of TfL’s rights and whether that breach would cause grave and irreparable harm (paragraphs 29 to 41). In particular, as at that time, Eyre J considered that there was a strong probability that, in the absence of an injunction, some at least would resume the blocking of roads. In his view, it was highly likely that there would be resumption of blocking of roads (paragraph 30). There had been no assertion that blocking of roads would not resume and JSO was committed to a campaign of civil disobedience; there was also the increase in slow march protests (paragraph 31). None of those individuals making representations to the Court had disavowed the objectives and tactics of the JSO campaign nor said that the objectives had been achieved such that protest action was no longer needed. (paragraph 32).
31. Eyre J then addressed the position under Articles 10 and 11 ECHR at paragraphs 42 to 52. At paragraph 50, he concluded that there was no less restrictive or intrusive way in which to protect the rights of TfL and others using the roads, expressly citing paragraph 45(3) of the IB Judgment. At paragraphs 52 to 54 he addressed the balance between the Defendants’ Convention rights and the rights of others, listing the factors against, and for, the granting of the injunction. At paragraph 53 v) he observed that the injunction does not prohibit all protest - protest at other locations and slow marching even at the specified location are not prohibited. Further, it was just and convenient to grant the final injunction against Persons Unknown (paragraph 56, referring to paragraphs 47 to 51 of the IB Judgment).
32. Finally, as regards undertakings, in the IB Judgment the Court accepted undertakings in lieu of an injunction in the case of three Named Defendants: see paragraph 14. In the JSO Judgment, the vast majority of Named Defendants gave undertakings in lieu. The circumstances in which these came to be offered, and accepted, are set out at paragraphs 10 to 13, 27, 32, 34 and 62 of the JSO Judgment.

Events since the Final Injunctions in May and June 2023

Further protests

33. In his detailed witness statement for the review hearing, Carl Eddleston, director of Network Management and Resilience at TfL, gave evidence relating to matters since the granting of the Final Injunctions. This included both statements by IB and

particularly by JSO and those acting under their banner, indicating an intention to continue taking disruptive protest action of civil resistance and the actual protests that have taken place since then. Since the Final Injunctions in May and June 2023 (and since the coming into force of section 7 Public Order Act 2023 (“the 2023 Act”)), there have been a substantial number of JSO protests, largely in the form of slow marches. Two of those protests involved blocking and sitting down in a road. There have also been other types of protest, including spraying orange paint and at high profile sporting events. Mr Eddleston identified over 100 such protests between the beginning of May and December 2023. According to JSO, 670 of its supporters had been arrested for protests since 30 October 2023, mostly under section 7 of the 2023 Act, for slow marching.

Legal developments

The Supreme Court decision in the Wolverhampton case

34. There have been two principal developments in the law. First, and importantly, since the Final Injunctions, on 29 November 2023 the Supreme Court handed down judgment in *Wolverhampton CC v London Gypsies and Travellers & Ors* [2023] UKSC 47; [2024] 2 WLR 45 (on appeal from the *Barking and Dagenham case*) (as referred to at paragraphs 49 and 52 IB Judgment). (Indeed this was one of the reasons for setting the annual review hearing in the TfL IB Claims: see paragraph 52 IB Judgment).
35. In summary, the Supreme Court reviewed the law in relation to injunctions against “newcomer” persons unknown, in the specific context of local authority proceedings concerning unlawful traveller activity. The Supreme Court held that in principle there is no obstacle to granting such injunctions on a without notice basis, regardless of whether in form interim or final, but that they are only likely to be justified if certain conditions are met: see §167. The first of those conditions is that “there is a compelling need for the protection of civil rights. which is not adequately met by any other measures available to the applicant local authorities (including the making of bylaws)”: §167(i). Secondly, there is to be procedural protection for the rights, including Convention rights, of the affected newcomers sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction. That would include an obligation to take all reasonable steps to draw the application, and any order made, to the attention of all those likely to be affected by it; and for generous provision for liberty to apply to vary or set aside. Thirdly, claimants must be seen and trusted to comply with the most stringent form of disclosure duty on making an application and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief. Fourthly, the injunctions must be constrained by both territorial and temporal limitations. Fifthly on the particular facts it must be just and convenient that such an injunction be granted. Two further particular points emerge from the *Wolverhampton* case at §221 and §225. I address these at paragraphs 52 and 54 below, respectively.

The Criminal Law

36. Secondly, there have been legislative changes in relation to relevant criminal law.

37. First, as a result of the Police Crime Sentencing and Courts Act 2022 (“the 2022 Act”) there were modifications to the law relating to the criminal offences of public nuisance and of wilful obstruction of the highway. In the case of *public nuisance*, the 2022 Act replaced the previous common law offence with a statutory offence; the main effect of that change being that, where tried on indictment, the previous maximum sentence of an unlimited term of imprisonment was reduced to a maximum term of 10 years. That change came into force on 28 June 2022. (Between June 2022 and February 2023, the maximum term of imprisonment, on summary conviction, was 12 months rather than 6 months). In the case of *obstruction of the highway*, a summary only offence, as a result of the 2022 Act the sentencing powers were increased to include, for the first time, a sentence of imprisonment up to 6 months, as well as an unlimited fine (rather than a limited fine). This change came into force on 12 May 2022.
38. Secondly, the Public Order Act 2023 (the 2023 Act) enacted, inter alia, two new offences; section 1 introduced the summary only offence of “locking on”, punishable with imprisonment up to 6 months and/or an unlimited fine. Section 7 introduced the offence, triable either way, of interference with use or operation of key national infrastructure, punishable on summary conviction as in the case of section 1, and, on conviction on indictment, with imprisonment up to 12 months and/or an unlimited fine. It is common ground that protests on the GLA roads prohibited by the Final Injunctions would constitute the commission of the section 7 offence. These offences came into force on 3 and 2 May 2023, respectively. Sections 18 and 19 of the 2023 Act (not yet in force) make provision for the Secretary of State to bring civil proceedings, including for an injunction, if he/she reasonably believes that someone is carrying out, or is likely to carry out, activities related to protest, and those activities are causing/likely to cause, inter alia, serious disruption to key national infrastructure or a serious adverse effect on public safety. Moreover, section 18(6) provides that this does not prejudice the right of anyone else (e.g. TfL or NHL) to bring civil proceedings in relation to the same activities, and prior to bringing proceedings the Secretary of State must consult any persons he/she thinks appropriate, having regard to anyone else who could bring proceedings in relation to the same activities. This preserves the ability of TfL and NHL to bring proceedings for injunctions of the kind granted in the present cases. Thus, the 2023 Act itself contemplates that, notwithstanding the existence of the new criminal offences, the Secretary of State and other private parties may still need to seek the assistance of the courts through civil injunctions of the kind in the present case.

Further injunction cases

39. As regards other cases where injunctions have been granted, in May 2023 the High Court extended an interim injunction granted to Shell against JSO protestors. In July 2023, the Court extended an interim injunction granted to North Warwickshire, against, amongst others, JSO protestors. On 31 August 2023 Julian Knowles J granted a final injunction to Esso Petroleum prohibiting unlawful JSO protests intended to impede an oil pipeline construction project. On 26 January 2024, Ritchie J granted an injunction to Valero Energy for five years against named defendants and persons unknown to prevent trespass on oil refinery and terminal sites, in relation to protests by JSO, IB and Extinction Rebellion and others: *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB).

40. Moreover following the hearing in this case, there have been three further relevant judgments. First, on 24 May 2024 Ritchie J handed down judgment in *High Speed Two (HS2) Limited and others v Persons Unknown* [2024] EWHC 1277 (KB) concerning the renewal of the interim injunction, made against both named defendants and persons unknown, previously granted to prohibit unlawful interference with the construction of the HS2 railway. Ritchie J renewed the injunction in respect of part of the route, but did not renew in respect of phase 2 of the route, given that phase 2 had since been cancelled. He considered arguments of change of circumstances and non-disclosure. In doing so, he took into account the new 2023 Act offences. Whilst he appeared at points in this judgment to rely on these new offences as a material change of circumstances (§§39, 44, 55), it is clear that the effective reason for non-renewal in relation to phase 2 only was the fact that phase 2 had been cancelled (whilst phase 1 remained in place): see judgment §§ 39, 44-46, 51 and 55. Further and in any event, in the judgment there was no analysis of how the new offences might deter protests of the kind that were in issue in that case and no reference to the approach to criminal offences in paragraph 45(3) IB Judgment and paragraph 50 JSO Judgment. On analysis and as a matter of logic, the deterrent effect of the existence of new criminal offences cannot have been considered a reason to discharge the injunctions to the extent that he did; first because he renewed the injunction in respect of the phase 1 route (despite the equal application of those offences to future protests on that part of the route) and secondly because the major transport works/key national infrastructure which would notionally be protected by section 7 of the 2023 Act, did not, and would not, exist and had been cancelled. By definition there could be no such protests at such locations.
41. On 25 July 2024 Ritchie J gave judgment in *Drax Power Limited v Persons Unknown* [2024] EWHC 2224 (KB) and on 6 September 2024 HH Judge Emma Kelly (sitting as a High Court Judge) gave judgment in *North Warwickshire Borough Council v Barber and others* [2024] EWHC (KB) for a final injunction in respect of disruption by JSO protesters at an oil terminal. In both cases the court addressed the recent amendments to the law including those to the 2022 Act and the 2023 Act. In the *Drax* case, Ritchie J considered (at §28) that section 7 of the 2023 Act does not provide the prospective protection that the injunctions had provided. In the *North Warwickshire* case HH Judge Kelly considered (at §§86 to 88), in the context of “less restrictive means” the increase in range and seriousness of criminal offences since May 2022. She concluded that the existence of relevant criminal offences does not of itself mean it is inappropriate to grant an injunction. The criminal justice system did not achieve the claimant’s aims in as comprehensive a manner as injunctive relief could. At §88 she gave four detailed reasons for that conclusion. First, the new criminal offences and increased sentencing powers did not have the same deterrent effect. Secondly, the mechanism by which a protest is brought before civil courts following arrest is expeditious and therefore provides a significant deterrent. Thirdly, an injunction hands control of the pursuit of contempt proceedings against protesters to the claimant authority (rather than to the discretion of a criminal prosecution authority). Fourthly, an injunction is designed to be preventative in nature as opposed to the criminal law which reacts to events that have already occurred.

The issues in summary

42. As indicated above, there were initially three issues as follows:

(1) Review of injunctions

On review of the Final Injunctions, should the Court maintain the Final Injunctions in their present form, or should the Court discharge them or vary their terms?

(2) Undertakings in lieu

Should the Court accept from a number of Named Defendants in the TfL IB Claims an undertaking and if so, on what terms, and thereby release them from the Final Injunction?

(3) Costs

If and in so far as the Court accepts an undertaking from a Named Defendant in the TfL IB Claims, should the order for costs made against that Defendant by paragraph 5 of the IB Judgment Order be discharged/set aside?

As regards issue (2), the undertakings offered by the Lewis Applicants are acceptable to TfL and to the Court. Accordingly, in the case of these Named Defendants those undertakings are given to the Court and the Final Injunction as against them will be discharged. However, contrary to their application, and as in the case of others who earlier gave undertakings, these Named Defendants will remain as defendants to the IB Claim: see IB Judgment, paragraph 14. This is appropriate in the event that TfL considers it necessary to seek to enforce the undertakings.

Issue (1): The review of the Final Injunctions**The Parties' submissions*****TfL's submissions***

43. TfL submitted that, on review, the question is whether there is any good reason to go back on the carefully considered judgments of the court that five years was an appropriate period for the specific type of protest on specific roads. The question is not whether the Final Injunctions were rightly made at the time that they were made. This is not an appeal and the Final Injunctions were made on the basis that they are justified for 5 years. The answer to that question is No. There is no reason why the Final Injunctions should not be maintained in the same terms. Rather, the case for the injunctions is even stronger.
44. The test on review is to be found in the *Wolverhampton* case at §225. There were three reasons why the Final Injunctions should be maintained. First, they had been effective in deterring this particular type of protest on these particular strategic roads. Secondly, there had been no material changes in the circumstances in fact or in law since the final injunctions. Thirdly, if the Final Injunctions were removed there was a very real risk that the protesters would continue, by way of sitting down on roads.

Mr Simblet's submissions

45. Mr Simblet made two overriding submissions, which he said informed both Issue (1) and Issue (3).
46. First, he submitted that TfL's real aim in bringing these proceedings was to obtain an injunction against Persons Unknown (i.e "contra mundum"). Persons Unknown are identified as the first defendant. The inclusion of Named Defendants was thought, at the time, to be necessary because of the then state of the case law and in fact added nothing to the proceedings or their effectiveness. TfL sought an injunction not just against Named Defendants but also obtained a final injunction against Persons Unknown. The presence or absence of the Named Defendants made, and makes, no difference to the TfL's desire to litigate these proceedings and obtain the order they obtained. There had been no need for an injunction against them. Costs would still have been incurred in the proceedings brought against Persons Unknown and the presence of Named Defendants did not add to the costs. In that context the fact that those he represented did not acknowledge service or file defence had in fact made little or no difference to TfL's desire to pursue these proceedings through the courts and obtain the order which it had obtained.
47. Secondly, objection was taken to the way in which the Named Defendants were selected. Many of them had not been to London to protest (nor, in some cases, ever set foot in London). A substantial number of the Named Defendants had not obstructed any London road but were names which had been passed to TfL from other injunction proceedings (mainly NHL proceedings). There is no evidence that these Named Defendants had protested at London roads or, in some cases, on any roads. Ms Lewis in her witness statement made the same point. Many of the Named Defendants had been included merely because their names had been provided to TfL by NHL.
48. As regards Issue (1) specifically, Mr Simblet submitted that the question, on review, is whether the Final Injunction is still and/or remains necessary and that, in the light of current circumstances, there was no longer any need for the Final Injunctions (and those who have given or offered undertakings should be released). First, there had been a material non-disclosure at the time of the Final Injunctions, in that the Courts were not aware of the increase in the penalty for the criminal offence of wilfully obstructing the highway brought about by the 2022 Act and believed that committing that offence was likely to result only in a small fine. Secondly, there had been a material change in the law since May 2023, namely the enactment of offences under sections 1 and 7 of the 2023 Act, pursuant to which the conduct prohibited by the Final Injunctions now amounts to criminal offences and those offences were a sufficient deterrent to road blocking protests. They are a much speedier and immediate method of enforcement than committal proceedings for breach of a civil injunction. These offences are alternative means as contemplated by the Supreme Court in §167(i) of the *Wolverhampton* case. There was no longer a compelling need for the protection of civil rights. He referred to two recent cases of protestors who had engaged in slow marches being prosecuted under section 7. Section 18 of the 2023 Act had not been brought into force and, in any event, did not answer the question whether a civil injunction was necessary.

Mr Parry's submissions

49. Mr Parry supported Mr Simblet's submission as to how the Named Defendants came to be selected. He submitted that by a defendant's name featuring in one set of proceedings that defendant becomes a target for other proceedings. It was unreasonable for TfL and the Court to assume that if you protest at one road junction, that you will protest at another. He further submitted that the Final Injunction in the TfL JSO Claim should be discharged and that, as result, he (and others) should be released from the undertaking which each gave. The injunctions had been successful and the cumulative effect of injunctions in many cases and general threat of injunctions in many cases was stifling the wider right to protest. The injunction encouraged business as usual and there was no time to lose in the fight against climate change.

Ms Rumbelow's submissions

50. Ms Rumbelow submitted, first, that IB had stated back in December 2022 that they would no longer carry on with their protests. Secondly, given the existence of criminal offences, injunctions are an unjust double punishment. Injunctions are anti-democratic. The courts should rely on the criminal law. She suggested that in 2021 the Secretary of State had said, in a Government website, that measures under the 2023 Act would be a better solution than an NHL injunction over the entire strategic road network. Since May 2022 the penalty for obstructing the highway had been increased to include the possibility of a prison sentence and increased fine. She referred to section 7 of the 2023 Act and the fact that certain protestors engaging in slow marches had been prosecuted under this section. The situation had now changed immeasurably. There was no longer any need to rely on a civil injunction. The Court should be slow to rely on the continued occurrence of slow marches as evidence of the lack of deterrence provided by section 7. The police were initially using section 12 of the 2023 Act and this was not a deterrent. The maximum penalty under section 7 is 6 months' imprisonment. They started using section 7 offence only later. In any event, in the light of the recent decision in *R (NCCL) v Secretary of State for the Home Department* [2024] EWHC 1181 (Admin), the legality of the law banning slow marching (section 7) is now open to question.

Discussion

51. In the following paragraphs, I address these various points.

(1) The "contra mundum" argument

52. I do not accept Mr Simblet's submission that there was no need for TfL to sue the Named Defendants or any of them and that the only purpose of the proceedings was to obtain an injunction against Persons Unknown. Suing the Named Defendants was not a matter of choice, as is clear from §221 of *Wolverhampton*, where the Supreme Court emphasised the obligation to identify, by name, persons to whom the order is directed.

"The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and

who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in Cameron [2019] 1 WLR 1471, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible.” (emphasis added)

The addition of Persons Unknown to the order required, and requires, additional justification – as §221 states: see the IB Judgment, paragraphs 58 and 59; JSO Judgment, paragraph 56; and *Wolverhampton* §167.

(2) Why each Named Defendant is a party

53. In so far as it was contended that there was, and is, no adequate justification for including a particular Named Defendant in the proceedings and in the Final Injunctions, at the time of the making of the Final Injunctions, the Court was satisfied that they were properly made in respect of those Named Defendants and there was no evidence of any change of circumstances since the Final Injunctions were made. In the course of the hearing, Mr Fraser-Urquhart explained, in respect of each of the Claims, how the Named Defendants came to be joined as a party. In summary, each Named Defendant in the TfL IB Claims was so named *only* where there was evidence that that Named Defendant had not only previously participated in a road or similar protest, but where he or she had also previously been arrested by the police on a previous protest. In the TfL JSO Claim, there were three stages of identifying the Named Defendants. First, there were those individuals who were a Named Defendant in the TfL IB Claims and had also self-identified on the JSO website as having been protesting. Secondly, there were those who were a Named Defendant in the TfL IB Claims and who had been named in relation to an injunction in respect of earlier JSO protests at Thurrock oil terminal; and thirdly, there were those individuals whom the Metropolitan Police had disclosed as having been arrested at JSO protests and who were subsequently added as a Named Defendant. It was on this basis that the Court accepted that the necessary degree of risk of the Named Defendants taking part in IB and JSO protests on GLA roads was established. The fact that someone had been previously arrested was evidence that that person was to be considered a person who may present a real risk of engaging in road block protests. It is not the case that a Named Defendant had been included simply because he or she had been named in previous unrelated protest proceedings. In my judgment, the complaints now made about not taking part in road protest, or not living, in London do not provide any reason for the Final Injunctions not to continue in their present form. Whilst it may well be that merely being subject to prior injunctions relating to a different location is

not enough to establish a risk of unlawful protest at the location in question, the added factor of having been previous arrested for protest at sites covered by those injunctions makes it *prima facie* appear that there is a sufficient risk of engaging in unlawful protest at the present location (see JSO Judgment paragraph 37).

(3) Review

54. At §225 of the *Wolverhampton* case, the Supreme Court stated the approach on review, namely that such review:

“will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.”

The obligation to make full disclosure applies to all parties. In the present case, whilst I have heard oral submissions, no Named Defendant has put forward any evidence to support their case (other than Ms Lewis’s statement). I must consider whether any reasons or grounds for discharge of the Final Injunctions emerged and whether there was a proper justification for the continuance of the Final Injunctions.

55. In the present cases, TfL has already provided detailed evidence at a full trial and the Court has, on two occasions, already made a full determination of the issue of risk and the balance of interests. In my judgment, in those circumstances there needed to be some material change in order to justify a conclusion that the Final Injunctions should not continue. (For example, as in the *HS2* case where Phase 2 of the HS project had subsequently been abandoned: see paragraph 40 above).
56. I accept Mr Fraser-Urquhart’s submissions (at paragraph 44 above). The Final Injunctions have been effective in deterring the particular type of protest. They do not, and are not intended to, prevent all protest. They remain the only lawful way of preventing the detrimental effects of such conduct, for the reasons given in the IB Judgment at paragraphs 26, 43, 45(1) and (3) and the JSO Judgment at paragraphs 40 to 41, 50, 52 iv) and 53. A number of protestors have accepted that similar injunctions have changed their behaviour: see, e.g, the *NHL Judgment* §§70, 89 to 95, 101. Secondly, the JSO continued to express its desire and willingness to continue to protest by whatever means (lawful or unlawful). Further neither the *Wolverhampton* case nor the 2023 Act constituted a relevant change in circumstances (see further paragraphs 59 to 67 below). Each of the requirements in respect of an injunction against Persons Unknown now set out at *Wolverhampton* §167 are met.
57. Thirdly, there remained a real risk that, absent the Final Injunctions, protest in the form of blocking the roads would promptly resume (in place of, or alongside, the permitted “slow marches”). The fact that the JSO protests since May 2023 had taken the form of slow marching did not obviate the risk of road blocking protests resuming, if the Final Injunctions were to be discharged. As at 26 May 2023, Eyre J was satisfied that there was a real and imminent risk that, in the absence of an injunction, there would be protest taking the form of blocking roads at the identified locations (for reasons set out at paragraphs 30 to 32 the JSO Judgment). In my judgment, the

position remained the same as at the end of May last year. Since the Final Injunctions, slow march protests, which are not caught by their terms, continued and increased. By contrast, there were no instances of road blocking. There had been no committals arising from the Final Injunctions, because, by and large, there had been no protests of this sort. The clear inference is that this was because the Final Injunctions have been effective. It appears that the primary focus of the protesters still remained “obstruction of roads”, which was at that time effected by slow marching. The fact that sitting down is prohibited led to the adoption of the slow marching technique as the primary means of protest. In these circumstances, there was a real risk that, if the Final Injunctions were discharged, sitting down protests on the roads would resume.

(4) The position under the criminal law and material non-disclosure

58. The factual position relating to relevant offences under the 2022 Act and the 2023 Act is set out in paragraphs 37 and 38 above.
59. First, Mr Simblet had submitted that, at the time of the grant of the Final Injunctions, there had been a material non-disclosure of the changes to the law relating to the offence of obstructing the highway brought about by the 2022 Act. The basis of this submission was as follows.
60. At paragraph 45(3) of the IB Judgment I said:

“There are no less restrictive or alternative means to achieve these aims than a final injunction in the form sought. Damages would not prevent any further protests, for the reasons given in paragraph 43 above. Prosecutions for offences involved in protests can only be brought after the event and in any case are not a sufficient deterrent because IB (and JSO) protesters have said they protest in full knowledge of and regardless of this risk and many have returned to the roads multiple times having been arrested, bailed, prosecuted, and convicted. Other traditional security methods such as guarding or fencing of IB Roads are wholly impractical for resource and logistical reasons. Recent changes to the law in the form of the Policing, Crime, Sentencing and Courts Act 2022, which came into force in May and June 2022, have not changed the approach of protesters.” (emphasis added)

(This analysis was adopted by Mr Justice Eyre at paragraph 50 of the JSO Judgment.)

61. It is common ground that the last sentence of paragraph 45(3) in turn was based on TfL’s skeleton argument for the final hearing in the IB Claim. Mr Simblet submitted that, in the light, in particular, of observations made during the hearing before me, that the “recent changes in the law” brought about by the 2022 Act referred to in TfL’s skeleton argument and, thus in paragraph 45(3) of the IB Judgment, can only have been a reference to the change to the law relating to *public nuisance*, and therefore, the increase in the sentences for offence of *obstruction of the highway* (in force from May 2022) had not been disclosed to the Court at the final hearing. This, he

submitted, was a material non-disclosure, which justified the discharge of the Final Injunctions.

62. However, paragraph 45(3) of the IB Judgment refers to changes in the law which came into force in *May 2022 and* in June 2022. Upon being pointed to this, Mr Simblet conceded that, given the differing dates of coming into force of the changes in respect of the two offences, it must have been the case that the Court *had been* referred to the change in the law relating to obstruction of the highway, as well as to that relating to public nuisance. On this basis, I am satisfied that there was no relevant non-disclosure at the time that the Final Injunctions were made, and the changes brought about by the 2022 Act do not amount to a material change of circumstances, for the purposes of this review.
63. As regards the 2023 Act, the two offences introduced by sections 1 and 7 respectively are new since the Final Injunctions were made. However in my judgment they do not represent a material change of circumstances which rendered the continuation of the Final Injunctions as no longer necessary.
64. First, the existence of criminal offences is a matter quite separate from a private law party, such as TfL, seeking to vindicate its civil rights. (For example, the fact that assault is a criminal offence does not mean that a victim does not have the civil law right to sue in tort). The rights and duties in civil law protect a different interest. There are no alternative remedies “available to the applicant” (i.e. in the present case, TfL): see *Wolverhampton* §167(i). Recourse to the *criminal* law is not available to TfL or, to any applicant in civil proceedings. TfL is seeking by these proceedings to enforce its civil rights in civil proceedings; criminal measures are not available to it.
65. Secondly, there is no reason to believe that section 7 of itself will stop or deter protests blocking roads. Strong evidence to support this was provided by the position in relation to slow marches. Both slow marches and road blocking protests are caught by the section 7 offence; but the former are not, and the latter are, covered by the Final Injunctions. Since the Final Injunctions, road blocking protests had ceased, but slow marches had continued and indeed increased, after section 7 came into force. Thus, it appears that section 7 had not deterred protest by slow marches. Slow marches are covered only by the criminal law and were happening. Road blocking protests are covered by the criminal law and by the Final Injunctions and were not happening.
66. In *Valero* (at §§51 and 66), Ritchie J was aware of the 2023 Act and the new offences, but did not conclude that there was no need for an injunction on the grounds that the new criminal law powers were sufficient. This conclusion is supported by *Drax Power* and, in particular, by the careful and detailed analysis of HH Judge Kelly in the *North Warwickshire* case at §§86 to 88. See paragraphs 39 and 41 above. Moreover the existence of sections 18 and 19 suggests that if Parliament thought that the new criminal offences were sufficient, it would not have provided for the express reservation of the civil rights of others to apply for an injunction.
67. Finally, in response to Ms Rumbelow’s suggestion in her post-hearing submissions, the lawfulness of section 7 of the 2023 Act is not called into question by the recent decision in *R (NCCL) v SSHD*. That case dealt with different offences under different legislation (Public Order Act 1986) and the court’s decision was based on lack of

consultation on the facts, and questions and principles of statutory construction arising from delegated legislation. That has no application to section 7.

Conclusion on Issue (1)

68. For these reasons I am satisfied that, on review and in principle, the Final Injunctions had been effective, that there had been no material change of circumstances and no other grounds for their discharge and there remained proper justification for them to continue.

Issues (2) and (3) IB case: the Lewis Application: substitution of undertakings and costs

Issue (2): substitution of undertakings

69. As explained in paragraph 42 above, Issue (2) was resolved in the course of the hearing. Issue (3) was disputed. Nevertheless, by way of background to Issue (3), I set out first the basis of the Lewis Application.
70. *Ms Lewis* in her witness statement dated 27 July 2023, made on behalf of all the Lewis Applicants, stated that they had not engaged in the case before 29 March 2023 because challenging an order would be very costly and almost certainly unsuccessful and they had been led to believe that if they did nothing to break the injunction there would be no repercussions. She stated that they had only recently learned, and too late for the March hearing, that an unrepresented person could attend the court hearing and speak for themselves. She further asserted that it is customary for a claimant to offer to a defendant the possibility of an undertaking not to breach the terms of the injunction. She complained that in the present case TfL had not offered such a course. Had they been so offered and been aware of the mounting potential costs claims against them, they would have considered giving such an undertaking. On 15 May 2023 when the IB Final Injunction Order was put on the TfL website, they noted that three defendants had given undertakings and no order for costs had been made against them. Moreover at the 4/5 May 2023 hearing in the TfL JSO Claim, TfL agreed to extend the offer of undertakings to all Named Defendants in that case. On that basis she asked that all the Named Defendants in the TfL IB Claims should be given the same opportunity to give an undertaking and “to be removed from the injunction and all its associated costs”. She pointed out that the Named Defendants had already incurred significant penalties through the criminal courts, including fines, orders for costs and custodial sentences.
71. In response, *TfL* took a neutral position as to whether the Court should accept undertakings. Nevertheless the lack of opportunity to give an undertaking earlier was due to the historic lack of engagement with the Court processes on the part of the Named Defendants. Moreover, undertakings were not in the gift of TfL, and if it had made an offer, it would likely have been mistrusted or ignored by Named Defendants. TfL accepted that the undertakings now offered by each of the Lewis Applicants were satisfactory and all had been signed.

Issue (3): IB case: the Lewis Application: discharge of costs order

72. This concerns specifically the Lewis Application to discharge or set aside the order for costs made in paragraph 5 of the IB Judgment Order. Paragraph 5 provided that

“the Defendants” must pay the Claimant’s costs, to be subject to detailed assessment “with the total amount to be divided equally amongst those Defendants to whom this paragraph applies”. As a result of the definitions in the IB Judgment Order, “the Defendants” comprised the Named Defendants (with certain exclusions) *and* Persons Unknown. The Named Defendants excluded from the order for costs were the three who had given undertakings and those against whom proceedings had been discontinued (see IB Judgment, paragraphs 14 and 16). By contrast, in the JSO Judgment Order those excluded from the order for costs were Named Defendants who had given undertakings, Named Defendants against whom proceedings were discontinued *and* Persons Unknown. However in the IB Judgment Order, for whatever reason, Persons Unknown were not excluded and, in terms, were made subject to the order for costs.

The parties’ submissions

73. *Mr Simblet submitted as follows:*

- (1) As a matter of justice, the costs order made against the Named Defendants who had now given undertakings in lieu should be set aside. The Named Defendants were not made sufficiently aware of their potential liability to costs. There was no letter before action, no justification for obtaining the initial interim injunction on a without notice basis, and no sufficient notice was given (in the pleadings) of the fact that TfL were seeking final costs orders. Each Named Defendant might have been led to believe that they did not need to do anything further, once the “prospective only” interim injunctions had been obtained on the assumption that they had decided not, thereafter, to do any of the things prohibited. Further, as part of its duty to assist the Court, TfL should have offered the Named Defendants, unrepresented as they were, the option of giving an undertaking in lieu of an injunction; and there was no reason to think that the Named Defendants would not give such an undertaking; and finally there was no justification for the Court making the final costs order and no reasons were given for that order. Moreover, the Named Defendants did not “cause” TfL’s costs, since the main purpose of the proceedings was to obtain a final injunction against Persons Unknown (see paragraph 46 above). No Named Defendant chose to oppose the claim and the Court should not have made a costs order against unrepresented defendants who did nothing.
- (2) As a matter of jurisdiction, the Court can now set aside the order for costs. The liberty to apply in paragraph 12 of the IB Final Injunction Order is to be read as applying also to the IB Judgment Order. There was no reason for two separate orders. It does not appear that TfL provided the draft orders to the Named Defendants in advance of the hearing in May 2023. Alternatively the Final Injunction Order should be amended under the slip rule in CPR Part 40.12.
- (3) Even if the Court cannot now set aside the order for costs, TfL should exercise its discretion not to enforce the order and the Court can direct that the order for costs should not be enforced. TfL has taken no steps at all to enforce the order; it has not applied for detailed assessment of its costs, in breach of the time limit prescribed by CPR Part 47.7. Its reasons for not having done so do

not bear scrutiny. It was not right that an order for costs should just “hang around” without being pursued. Moreover the costs order is unenforceable because it is made against “the Defendants” which term includes not only the Named Defendants, but also Persons Unknown. For this further reason, the Court had power to, and should, direct that TfL is not permitted to bring such enforcement proceedings against any of the Named Defendants.

74. *Ms Rumbelow submitted* that the process was opaque and that Named Defendants were not aware of the risks of not engaging with the process. It was not true that she had not engaged. She had tried to raise funds. She felt that she had no route to justice. She asserted that legal aid had been refused. She had received papers, but they were too difficult to understand, even though she has a degree. Members of the public could not understand the details of where they can, and cannot, protest. The warnings on the interim injunctions related to the consequences of breach and carried the inference that if a Named Defendant obeyed the interim injunctions then they would avoid having to pay costs.
75. *TfL submitted* as follows:
- (1) The matter of costs was settled and determined by the Court in the two Judgment Orders. The costs order in paragraph 5 of the IB Judgment Order is a final order. The Court had no jurisdiction to set aside it or vary it. The liberty to apply in the Final Injunction Order did not apply to the Judgment Order nor to the costs order within it. The costs order was only capable of change by way of appeal to the Court of Appeal. The review related to the Final Injunctions and not to the costs orders in the Judgment Orders.
 - (2) Even if the Court had power to vary or set aside paragraph 5, there was no reason to do so. It was reasonable for costs to be awarded against those Named Defendants. First, costs follow the event. The costs award was the result of the conscious non-engagement with the proceedings on the part of the Named Defendants and as a result TfL had not offered the option of an undertaking. (Had they engaged, then there would have been the opportunity to give undertakings in lieu at the time and to be excepted from the order for costs). All Named Defendants had had sufficient notice at all stages, both of the proceedings as a whole and of TfL’s intention to seek an order for costs against them. Throughout the proceedings, TfL had gone to extraordinary and extreme efforts to ensure that all Named Defendants had been served with all relevant court documents; there was no evidence from any Named Defendant (either generally or before the Court) that he or she had not received or understood the material. Despite these extraordinary lengths, there had been no acknowledgements of service (which included the option of accepting the claim) and no defences. TfL relied on the analysis of Cotter J in the *NHL Judgment*. As regards the initial “without notice” injunctions, this was an appropriate course of action at the time. Protests were happening on a daily basis. The judges at the time were satisfied that proceeding without notice was appropriate; and there was thereafter opportunity to set aside the interim injunctions or at least to engage with the process.
 - (3) It was accepted that, on the strict construction of the wording of the Judgment Order, not only are Named Defendants liable to pay costs, but so are “Persons

Unknown”. However the intention was always to divide the total assessed costs between the Named Defendants only, with each being liable for an equal share of the total. In his witness statement of 15 May 2024, Mr Ameen explained that TfL had not as at that time proceeded to the detailed assessment of the costs and that the reason for that was that it was awaiting the resolution of the Lewis Application in relation to undertakings and in particular the costs aspects thereof. Nevertheless, Mr Fraser-Urquhart accepted in argument that TfL did not need to know how many Named Defendants would be liable for costs before proceeding to a detailed assessment of TfL’s total costs.

Discussion and Analysis on Issue 3

76. Before addressing these submissions, I set out the position in relation to service of documents, the history relating to the giving of undertakings by certain defendants and the decision of Cotter J in the *NHL Judgment*.

The facts relating to service of court documents

77. In advance of the trial hearings in March and May 2023 Mr Ameen provided witness statements explaining all steps taken to serve the Named Defendants with all relevant court documentation and to notify them of hearings, including the trial hearings. At paragraph 12 of the IB Judgment I referred to this evidence, recording in particular that the evidence, draft final orders and skeleton argument had been sent to the Named Defendants between 28 February 2023 and 16 March 2023. At paragraph 13 I recorded that no defendant had acknowledged service or filed a defence, and that apart from four particular Named Defendants, no one had attended any hearing, or served any evidence or skeleton argument for the trial. At paragraph 17 I concluded that it was appropriate to hear the trial in the absence of the remaining 131 Named Defendants.
78. At paragraph 14 of the JSO Judgment, in respect of those Named Defendants who had not appeared or made representations, Eyre J reached the same conclusion. He was satisfied that TfL had complied with directions for service made earlier. At paragraphs 27 and 34, Eyre J commented on the significance of deliberate non-participation of those Named Defendants who had not chosen to engage with the Court or with TfL, which was to be taken as a choice not to challenge the case made against them.
79. In addition to the evidence referred to in paragraph 12 of the IB Judgment, in the course of this review hearing, Mr Ameen provided his further witness statement dated 15 May 2024 in which he explained and summarised what was served, on whom, when and by what means in the course of both Claims. In particular he addressed the issue of the extent to which the Named Defendants were notified of TfL’s intention to seek an order for the costs of the Claims against each Defendant. The position is as follows.
80. Throughout the course, and at all the various stages of, both Claims, starting in October 2021 (following the first interim injunction of May J in the TfL IB Claims) and up to the period immediately leading up to the hearing before Eyre J in the TfL JSO Claim on 4 May 2023, relevant court documents were served on each Named Defendant by process servers physically handing over the documents or posting them

through the letterbox or affixing a package to the front door. Documents were also served to the email addresses of IB and JSO. In some cases, where a Named Defendant had positively indicated that he or she would accept electronic service, documents were emailed to that Defendant. In the TfL IB Claims, there were thirteen “rounds” of service. In the TfL JSO Claim, there were eight “rounds” of service. Amongst the documents so served on each Named Defendant were the claim form, response pack, particulars of claim, relevant application notices, witness statements, draft orders sought and court orders made from time to time. Details of service had already been provided in the earlier witness statements from Mr Ameen.

81. Amongst the documents served in each of the Claims, the following documents referred expressly to TfL’s intention to seek an order for costs: first, the particulars of claim, and secondly, the draft judgment order and the TfL skeleton argument, for the final trial. (It is the case that the claim form itself did not quantify a claim for costs; at the end of the standard form claim form, the box for an amount for “legal representative’s costs” was left blank.)
82. The particulars of claim in the TfL IB Claims were served in this way on all Named Defendants on dates between 25 October and 22 December 2021 (depending on when each Named Defendant became party to the claims). The particulars of claim in the TfL JSO Claim were served on all Named Defendants between 8 and 13 November 2022.
83. In the TfL IB Claims, the draft judgment order and the TfL skeleton for the final trial due to commence on 28 March 2023, were served on the Named Defendants either by 1st class post or by email on 15 and 16 March 2023. In the TfL JSO Claim, the TfL skeleton for the final trial due to commence on 4 May 2023, was served on the Named Defendants by email on 20 April 2023 and by 1st class post on 21 April 2023, together with a covering letter explaining how the Defendant could access an electronic version of the trial bundle. The draft judgment order was contained within that trial bundle. In the TfL JSO Claim at the trial written or oral submissions were made by or on behalf of about 57 Named Defendants: see JSO Judgment paragraph 10 to 13.

Undertakings

84. In his further witness statement, Mr Ameen also explained how it came about that undertakings were given and accepted in the case of certain Named Defendants. It appears that the possibility of giving an undertaking in lieu of a court injunction was first raised by three of the Named Defendants in the TfL IB Claims in the lead up to the trial on 29 March 2023. This led to these three individuals giving undertakings acceptable to TfL and the Court at or shortly following that trial. At no point prior to that had TfL itself raised the issue of undertakings with any Named Defendant. Following the giving of these three undertakings in the TfL IB Claims, the majority of the Named Defendants in the TfL JSO Claims ultimately offered undertakings which were acceptable to the Court; and so final injunctions were not made in their cases: see JSO Judgment paragraphs 10 to 13.

The NHL Judgment

85. On 24 April 2023 Cotter J heard the application of NHL to extend the final injunction relating to JSO protests on the M25, which had been granted, limited to a period of one year, on 9 May 2022. Ms Lewis and 6 others who are also Lewis Applicants, made written and/or oral submissions prior to, and at, that hearing. In advance of that hearing, on 15 March 2023 the claimant, NHL, had made an offer to the named defendants to accept an undertaking in lieu of an injunction. On 1 May 2023, following the hearing, Ms Lewis on behalf of herself and a further 104 Named Defendants (of whom 83 are Lewis Applicants) offered undertakings subject to being released from previous costs liabilities. At §114 of his judgment, Cotter J observed that if the Court were to accept an undertaking, “that would not affect the existing rights/liabilities of the parties given the history to date e.g any liability for costs”. Cotter J was prepared to accept the undertakings and that costs liability “going forward” would cease. At §119 he addressed the complaint by several defendants that they had not been offered the opportunity to give an undertaking at an earlier stage and, by most defendants, that a costs order would be unjust. He continued:

“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)”

After setting out the Court’s duties concerning the overriding objective in CPR 1, he continued:

“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. (emphasis added – [] error in original)”

In the event, such undertakings were given by a number of named defendants.

86. At §§141 to 152, Cotter J went on to deal with costs substantively. Whilst the position there was complicated by the fact that the Court of Appeal had varied the original substantive decision of Bennathan J, in essence Cotter J refused to vary the

original costs order made by Bennathan J against certain defendants. He was not an appeal court and thus had no jurisdiction to vary the earlier determination, and commented that it was regrettable that defendants did not engage with the claimant or the Court (§150). For similar reasons he made an order in respect of past costs against the remaining defendants (§152). The fact that he had now accepted undertakings from these defendants was not a reason not to confirm (or make) orders for costs in respect of the past.

Analysis

87. First, regardless of whether TfL should have offered undertakings, I conclude that in any event on this review of the Final Injunctions, the Court had no jurisdiction to vary or discharge the costs order. The order for costs in the IB Judgment Order was a final order. The usual position in relation to the final order of a court is that the matter is *res judicata* and can only be revisited on appeal. That is the position in relation to the order for costs. By contrast, the position relating to the final injunction of the kind made in the present case is, rather unusually, somewhat different. It is not a final order in the traditional sense. Rather in the present case, the final injunction is an exceptional form of order, in proceedings which are not at an end until the injunction is discharged. It provides, and is required to provide, unusually, for a process of review - so it is hybrid. In substance it is neither an interim nor a final order, and to that end, consistently, each Final Injunction Order provides for liberty to apply. See *Wolverhampton* at §§137, 139, 142, 151, 167, 178, 232 and 234. However, the costs order is final and the remedy in relation to it was for the Named Defendants to appeal.
88. Secondly, even if the court had jurisdiction and/or the liberty to apply could be said to apply, additionally, to the Judgment Order, it was open to the Named Defendants to raise the issue of undertakings as an option. Many of the Named Defendants in the IB Claim had also been defendants in the NHL proceedings and as a result had been on notice about the possibility of undertakings, (as were the three Named Defendants who did give undertakings as explained in paragraph 14 of the IB Judgment). (At least two of them had been made subject to injunction in NHL proceedings). In fact of the 114 Lewis Applicants, it appears that 83 (including Ms Lewis herself) were also named defendants in the NHL proceedings, who, in those proceedings, were offered the opportunity to give an undertaking by letter dated 15 March 2023: see *NHL Judgment* §115.) I do not accept (as suggested by Ms Lewis in her witness statement) that it was not until shortly before 27 July 2023, or even not until 15 May 2023, that the Lewis Applicants were aware of the possibility of giving an undertaking in lieu. They, or many of them, will have received the offer of such an undertaking made by NHL on 15 March 2023, two weeks before the hearing of the IB Claim on 29 March 2023. They, or many of them, were certainly aware of the option of an undertaking by the date of the hearing before Cotter J on 24 April 2023 (i.e. after the 29 March 2023 hearing of the IB claim, but before the IB Judgment was handed down on 3 May 2023.)
89. Thirdly, none of the Lewis Applicants had engaged with the process of the litigation over several years. Despite assertions made by Mr Simblet on their behalf and by Ms Rumbelow, there was no witness statement evidence to suggest that any one or more Named Defendant did not know what was happening in the proceedings or did not understand the nature of the documents that they had received or had not received any or all of the relevant court documents. Ms Rumbelow said that “the legal papers may

as well have been in Greek and Latin”, but she had had the opportunity to seek advice. There is no reason why the points now put forward in her submissions at, and following, the review hearing could not have been put forward at an earlier stage in the litigation. As explained in the *Wolverhampton* case at §221, at a review hearing, the duty to disclose by way of appropriate evidence applies to all parties, including the Named Defendants. I make full allowance for the fact that the Named Defendants are individuals who may not have an immediate understanding of the legal process nor ready access to legal advice. Nevertheless, a substantial number of the Named Defendants had, from 9 May 2024 at the latest, the benefit of legal representation by Good Law Practice and Mr Simblet. In such circumstances the absence of any such evidence is, in my judgment, significant.

90. On the other hand, there is the very substantial and detailed evidence from TfL witnesses as to the steps that they have taken throughout the proceedings to ensure that all Named Defendants have been served with all relevant documents.
91. In my judgment, the inability of the Named Defendants to offer undertakings at an earlier stage and thereby avoid an order for costs was brought about by their own conduct in not engaging. Had they engaged in advance of the hearing on 29 March 2023, there is every prospect that, like the others, the issue of an undertaking would have arisen and they would have had the opportunity to avoid an order for costs. Even if TfL could and should have done more early on, generally or in relation to the possibility of undertakings, by the time of the hearing on 29 March 2023, the Named Defendants had had plenty of notice of the proceedings, the trial date, and their potential liability to costs and thus could have found out about the option of giving an undertaking.
92. Moreover, the slip rule has no application. The order for costs was not made as a result of an accidental slip, omission or mistake. Despite Mr Simblet’s complaints as to the process, the costs order in the IB Judgment Order was properly made; first, on the basis that the usual rule of costs following the event applies; and, secondly, in view of the lack of engagement by any of the Named Defendants, and in particular the Lewis Applicants, over a substantial period of time.
93. Fourthly, as regards enforcement of the costs order, TfL’s initial explanation for not having proceeded to detailed assessment of those costs was, as accepted by Mr Fraser-Urquhart, not a satisfactory reason. It appears that TfL could have progressed matters. Nevertheless whether that delay should lead to non-enforcement is not a matter to be dealt with in this judgment. It might be relevant to the assessment process and thereafter enforcement. CPR 47.7 (and the sanction for delay in CPR 47.8) are not matters for this judgment.
94. Finally, as regards the fact that the order for costs is made against Persons Unknown as well as the Named Defendants, Mr Fraser-Urquhart accepted that this is the effect of the terms of the order as it is made. (There has been no application under the slip rule). This may prove to be a practical and technical difficulty, if and when TfL comes to seek to enforce any order for costs, following assessment. Whether it might impact upon TfL’s decisions on enforcement is a matter for TfL. However, I did not hear full argument about the consequences of an order in this form. If and when there is a detailed assessment of the costs, TfL should, in the first place, explain to all

Named Defendants its position on the effect of the order having been made also against Persons Unknown.

95. For these reasons, in so far as it sought the discharge of paragraph 5 of the IB Judgment Order, the Lewis Application is dismissed.

Costs of this hearing and the Lewis Application

96. Finally, TfL sought an order for costs of the review hearing as against those Named Defendants who attended the review hearing and who either (1) sought to set aside the costs liability under the IB Judgment Order or (2) refused to offer an undertaking or offered one for the first time at or after the review hearing. I decline to make such an order. TfL was required, by the Final Injunction Orders, to attend the Court for a review hearing, and to that end, update the Court with all relevant developments since the Orders were made and to satisfy the Court that those Orders should continue. Further it is right that the Named Defendants should have been heard on such a review hearing. Many more defendants have now, albeit belatedly, engaged and it is only right that their position should have been heard by the Court. Whilst TfL relied on the fact that in the *NHL Judgment* (§§156 to 158) Cotter J made an order in favour of the claimant, in that case, Cotter J did not make an order for costs against those named defendants who had offered an undertaking even where they had opposed liability for past costs. For these reasons, there will no order for the costs of the review hearing, nor of the Lewis Application.

Conclusions

97. In the light of my conclusions at paragraphs 42, 68, 95 and 96 above, the position in summary is as follows. First, in respect of those Named Defendants who have not offered an undertaking and in respect of Persons Unknown, the Final Injunctions as made will continue in force for the remainder of the 5 year period, subject to yearly review. The next review will come up for consideration in May 2025. Secondly, in respect of those Named Defendants who have offered an undertaking in the terms agreed and accepted by TfL, the IB Final Injunction Order will be discharged. Those Named Defendants will remain parties to the TfL IB Claims. The fact and terms of the undertaking will be recorded in the orders of the Court to be made. Thirdly, the Lewis Application will be dismissed to the extent that it sought paragraph 5 of the IB Judgment Order to be set aside. Fourthly, there will be no order as to costs in respect of the review hearing and the Lewis Application.
98. Finally, I will hear from TfL and any Named Defendant as to the final form of the relevant orders, namely the orders in respect of the review hearing and revised forms of the IB Final Injunction Order.

Annex A
“The Lewis Applicants”
Named Defendants party to the application by Giovanna Lewis by application notice
dated 27 July 2023 in the TfL IB Claims

Defendant No	Name
1	Alexander Rodger
2	Alyson Lee
3	Amy Pritchard
4	Ana Heyatawin
5	Andrew Worsley
6	Anne Taylor
7	Anthony Whitehouse
10	Ben Taylor
11	Benjamin Buse
12	Biff Whipster
13	Cameron Ford
14	Catherine Rennie-Nash
15	Catherine Eastburn
16	Christian Murray-Leslie
17	Christian Rowe
18	Cordelia Rowlatt
19	Daniel Sargison
20	Daniel Shaw
21	David Crawford
22	David Jones
23	David Nixon
24	David Squire
25	Diana Bligh
26	Diana Hekt
27	Diana Lewen Warner
28	Donald Bell
29	Edward Herbert
30	Elizabeth Rosser
31	Emily Brocklebank
32	Emma Joanne Smart
35	Gwen Harrison
36	Harry Barlow
37	Ian Bates
38	Iain Duncan Webb
39	James Bradbury
40	James Sarginson
41	James Thomas
42	Janet Brown
43	Janine Eagling
44	Jerrard Mark Latimer
45	Jessica Causby
46	Jonathan Coleman
47	Joseph Shepherd
48	Joshua Smith
49	Judith Bruce

50	Julia Mercer
52	Karen Matthews
57	Lucy Crawford
58	Mair Bain
59	Margaret Malowska
60	Marguerite Doubleday
61	Maria Lee
62	Martin Newell
63	Mary Adams
64	Matthew Lunnon
66	Meredith Williams
67	Michael Brown
68	Michael Wiley
69	Michelle Charlsworth
70	Natalie Morley
71	Nathaniel Squire
72	Nicholas Cooper
73	Nicholas Onley
74	Nicholas Till
76	Paul Cooper
78	Peter Blencowe
79	Peter Morgan
80	Phillipa Clarke
81	Priyadaka Conway
82	Richard Ramsden
83	Rob Stuart
84	Robin Collett
85	Roman Paluch-Machnik
86	Rosemary Webster
87	Rowan Tilly
88	Ruth Cook
89	Ruth Jarman
90	Sarah Hirons
93	Stefania Morosi
96	Stephen Pritchard
97	Sue Chambers
98	Sue Parfitt
99	Sue Spencer-Longhurst
100	Susan Hagley
101	Suzie Webb
105	Tim Speers
106	Tim William Hewes
109	Valerie Saunders
110	Venetia Carter
111	Victoria Anne Lindsell
113	Bethany Mogie
115	Adrian Temple-Brown
116	Ben Newman
117	Christopher Parish
118	Elizabeth Smail
119	Julian Maynard Smith
120	Rebecca Lockyer
121	Simon Milner-Edwards

122	Stephen Brett
123	Virginia Morris
124	Jan Goodey
125	Alex Gough
126	Gareth Richard Harper
127	Samuel Johnson
128	Giovanna Lewis
129	Susan Lyle
130	Darcy Mitchell
131	Morien Morgan
132	Lucia Whittaker De Abreu
133	Pam Williams
134	Molly Berry
136	Ellie Litten
137	George Burrow
138	Jonathan Herbert

Annex B
Named Defendants represented by Good Law Practice

(1) The TfL IB Claims

Named Defendant No	Name
2	Alyson Lee
7	Anthony Whitehouse
20	Daniel Shaw
21	David Crawford
22	David Jones
24	David Squire
26	Diana Hekt
27	Diana Warner
28	Donald Bell
39	James Bradbury
43	Janine Eagling
47	Joseph Shepherd
49	Judith Bruce
50	Julia Mercer
58	Mair Bain
61	Maria Lee
62	Martin Newell
64	Matthew Lunn
66	Meredith Williams
69	Michelle Charlesworth
82	Richard Ramsden
86	Rosemary Webster
72	Nicholas Cooper
76	Paul Cooper
78	Peter Blencowe
99	Sue Spencer-Longhurst
100	Susan Hagley
113	Bethany Mogie
115	Adrian Temple-Brown
117	Christopher Parish
120	Rebecca Lockyer
121	Simon Milner-Edwards
123	Virginia Morris
125	Alex Gough
128	Giovanna Lewis
129	Susan Lyle
134	Molly Berry

(2) The TfL JSO Claim

Defendant No	Name
2	Alyson Lee
4	Anthony Whitehouse
14	Daniel Shaw
15	David Crawford

17	David Squire
18	Diana Hekt
23	Janine Eagling
27	Julia Mercer
33	Meredith Williams
34	Michelle Charlesworth
50	Bethany Mogie
53	Rebecca Lockyer
54	Simon Milner-Edwards
62	Molly Berry



Neutral Citation Number: [2025] EWHC 207 (KB)

Case No: QB-2022-000904

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/02/2025

Before :

MRS JUSTICE HILL DBE

Between :

- (1) VALERO ENERGY LTD
(2) VALERO LOGISTICS UK LTD
(3) VALERO PEMBROKESHIRE OIL
TERMINAL LTD

Claimant

- and -

Defendant

(1) PERSONS UNKNOWN WHO, IN
CONNECTION WITH ENVIRONMENTAL
PROTESTS BY THE 'JUST STOP OIL' OR
'EXTINCTION REBELLION' OR 'INSULATE
BRITAIN' OR 'YOUTH CLIMATE SWARM'
(ALSO KNOWN AS YOUTH SWARM)
MOVEMENTS ENTER OR REMAIN WITHOUT
THE CONSENT OF THE FIRST CLAIMANT
UPON ANY OF THE 8 SITES

(2) PERSONS UNKNOWN WHO, IN
CONNECTION WITH ENVIRONMENTAL
PROTESTS BY THE 'JUST STOP OIL' OR
'EXTINCTION REBELLION' OR 'INSULATE
BRITAIN' OR 'YOUTH CLIMATE SWARM'
(ALSO KNOWN AS YOUTH SWARM)
MOVEMENTS CAUSE BLOCKADES,
OBSTRUCTIONS OF TRAFFIC AND
INTERFERE WITH THE PASSAGE BY THE
CLAIMANTS AND THEIR AGENTS, SERVANTS,
EMPLOYEES, LICENSEES, INVITEES WITH OR
WITHOUT VEHICLES AND EQUIPMENT TO,
FROM,

**OVER AND ACROSS THE ROADS IN THE
VICINITY OF THE 8 SITES**

(3) MRS ALICE BRENCHER AND 16 OTHERS

Katharine Holland KC and Yaaser Vanderman (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Claimant**

The **Defendants** did not attend and were not represented

Hearing date: 24 January 2025

Approved Judgment

This judgment was handed down remotely at 12:00pm on 3rd February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill DBE:

Introduction

1. The Claimants are three companies who are part of a large petrochemical group called the Valero Group. They own or have a right to possession of a series of sites in England and Wales which include oil refineries and terminals, defined for the purposes of this litigation as the “8 Sites”.
2. The Defendants are Persons Unknown connected with Just Stop Oil, Extinction Rebellion, Insulate Britain and Youth Climate Swarm (defined as the “4 Organisations”) who (i) trespass or stay on the 8 Sites; (ii) block access to the 8 Sites or otherwise interfere with the access to the sites by the Claimants, their servants, agents, licensees or invitees; and (iii) who have been involved in suspected tortious behaviour or whom the Claimants fear will be involved in tortious behaviour at the 8 Sites and the relevant access roads.
3. On 26 January 2024, Ritchie J granted the Claimants a final injunction against the Defendants to last 5 years, for the detailed reasons he gave in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134.
4. Ritchie J’s order, amended under the slip rule on 5 February 2024, made provision for the injunction to be reviewed once a year, no later than the anniversary of the 26 January 2024 order, or as close to that date as was convenient to the court.
5. By an application notice dated 21 November 2024, the Claimants sought a review hearing. The application was argued by the Claimants’ counsel at a hearing before me on 24 January 2025. None of the Defendants attended or were represented at the hearing.

The factual background

6. Ritchie J set out the factual background in detail in his judgment at [1]-[45].
7. In summary, between 1 and 7 April 2022 a number of environmental activists undertook direct action at the Kingsbury Terminal (one of the 8 Sites: see Ritchie J’s judgment at [4]) and on the adjoining access roads. This led to approximately 48 individuals being arrested by the Warwickshire Police at and around that site. Further protest activity took place at and around the Kingsbury Terminal between 9 and 15 April 2022, leading to around 38 arrests.
8. This conduct was part of a nationwide campaign. Similar direct action occurred at a number of other oil terminals and refineries as well as associated sites. These actions were combined with statements demonstrating a commitment to disrupt indefinitely the oil industry until the Defendants’ demands were met.
9. As a result, injunctions were granted to a number of other entities involved in the energy industry. Since these injunctions have been granted, the direct action has largely ceased. Instead, environmental activists have turned their attention to other related targets which are not protected by injunctions.

10. The Claimants brought this claim to avoid the potentially very serious health and safety and environmental consequences of the Defendants' actions, as well as other serious consequences for the public. They relied on witness statements from, among others, David Blackhouse (European regional security manager for Valero International Security), David McLoughlin (a director employed by the Valero Group responsible for directing operations and logistics across all of the 8 Sites) and Emma Pinkerton (one of their solicitors). Ritchie J accepted all the evidence provided by the Claimants: see his judgment at [22], [25]-[44] and [46]-[37].

Service issues

11. The third witness statement of Jessica Hurle dated 29 February 2024 explained how Ritchie J's order had been served.
12. In respect of the First and Second Defendants and those named Defendants for whom the Claimants did not have a postal address, the order was served by the Claimants using the alternative methods set out in the order. In respect of those named Defendants for whom the Claimants did have a postal address, the order was served pursuant to the usual methods set out in CPR Part 6.
13. The First and Second Defendants were deemed served on 15 February 2024. Those named Defendants in respect of whom the Claimants did not have a postal address were deemed served on 9 February 2024. Those named Defendants in respect of whom the Claimants did have a postal address were served between 10 and 14 February 2024.
14. The sixth witness statement of Anthea Adair dated 15 January 2025 described how the documents relating to the review application (namely the application notice and supporting evidence and the hearing notice, together with a cover letter confirming where various documents could be found) were served.
15. In respect of the First and Second Defendants and those named Defendants for whom the Claimants did not have a postal address, these documents were served by the Claimants using the alternative methods set out in the order of Master Cook dated 7 June 2023. In respect of those named Defendants for whom the Claimants did have a postal address, they were served pursuant to the usual methods set out in CPR Part 6.
16. The First and Second Defendants were deemed served on 9 January 2025. Those named Defendants in respect of whom the Claimants did not have a postal address were deemed served on 7 January 2025. Those named Defendants in respect of whom the Claimants did have a postal address were served between 3 and 9 January 2025.
17. Ritchie J ordered that the hearing bundle for a review hearing must be served not less than 7 days before the review hearing. The order of Master Eastman sealed on 1 December 2023 provided alternative methods for serving the hearing bundles.
18. The hearing bundle for this review hearing was served and filed on 16 January 2025. There was a question mark over whether it had, in fact, been filed 2 minutes late. Out of an abundance of caution the Claimants filed an application for relief from sanctions dated 22 January 2025. This was supported by the seventh witness statement of Anthea Adair of the same date.

19. For the reasons given in an *ex tempore* judgment at the start of the hearing, to the extent that the Claimants required relief from sanctions I granted it. I did so, in summary, because, applying the well-known test in *Denton and ors v TH White Ltd and ors* [2014] EWCA Civ 906, [2014] WLR 3926 at [40], this was neither a serious nor significant failure; it occurred due to some technical issues with the uploading process due to the size of the bundle; and it had not caused any prejudice to the Defendants or impacted on the litigation.

The legal framework

20. In *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2024] 2 WLR 45 at [225] the Supreme Court observed that review hearings of this kind:

“...will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been: whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for continuance; and whether and on what a basis a further order ought to be made.”

21. In *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), Ritchie J considered how the Court should approach its task at such a hearing:

“32. Drawing these authorities together, on a review of an interim injunction against PUs [Persons Unknown] and named Defendants, this Court is not starting *de novo*. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the *quia timet*, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.

33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply.”

22. In *Arla Foods v Persons Unknown* [2024] EWHC 1952 at [128], Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) described the annual review process as:

“...allow[ing] a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate.”

23. Earlier this year, in *Transport for London v Persons Unknown and Others* [2025] EWHC 55 (KB) (“*TfL*”) at [54]-[57], Morris J took a similar approach. At [55], he observed that:

“TfL has already provided detailed evidence at a full trial and the Court has, on two occasions, already made a full determination of the issue of risk and the balance of interests. In my judgment, in those circumstances there needed to be some material change in order to justify a conclusion that the Final Injunctions should not continue.”

The evidence, submissions and decision

24. In support of the application the Claimants relied on the evidence filed to date, set out in some detail in Ritchie J’s judgment, as well as updating evidence in the form of the sixth witness statement of Mr Blackhouse dated 20 November 2024 (“DB6”) and the sixth witness statement of Ms Pinkerton dated 19 November 2024 (“EP6”).
25. Ritchie J made the following finding as to the level of risk on the basis of the evidence available to him on 26 January 2024:

“64. In my judgment the evidence shows that the Claimants have a good cause of action and fully justified fears that they face a high risk and an imminent threat that the remaining 17 named Defendants (who would not give undertakings) and/or that UPs [Unknown Persons] will commit the pleaded torts of trespass and nuisance at the 8 Sites in connection with the 4 Organisations”.

26. He went on to find that the Defendants did not have a realistic defence to the claim; that the balance of convenience and justice weighed in favour of granting the final injunction to the Claimants; and that damages would not be an adequate remedy for the Claimants: [65]-[70].
27. He was also satisfied that the various procedural requirements set out in the case law were satisfied by the injunction proposed: [71]-[78].
28. I take these findings as my starting point, in accordance with the legal framework summarised above.
29. The updating evidence served in support of the review application, which I accept, makes clear that there exists a continued threat of trespass and nuisance at the 8 Sites.
30. Mr Blackhouse provided further evidence of the continuing threat, vulnerability and risks, in particular at paragraphs 4.1-5.4 of DB6. For example, he referred to the fact that from his regular meetings with the police and local resilience forums in the areas where the Claimants have assets, his understanding is that the threat remains the same.

He also referred to information received from the National Police Coordination Centre to the effect that the threat level remains the same.

31. As Ms Pinkerton explained in paragraphs 5.1-5.7 of EP6, none of the Defendants have contacted the Claimants to say that they no longer intend to carry out direct action at the Sites. There have also been many instances of direct action by environmental activists, notably Just Stop Oil and Extinction Rebellion, across the country in relation to the energy industry. This included a nationwide campaign planned and orchestrated by Just Stop Oil to carry out direct action at airports in the summer of 2024. Statements have continued to be made about the need for direct action and related conduct in respect of fossil fuel extraction and production.
32. Ms Pinkerton highlighted that courts have continued to grant or renew injunctions on the basis of the same continuing threat: see, for example, *Shell v Persons Unknown* [2024] EWHC 3130 (KB) at [101]-[113], where on 5 December 2024 Dexter Dias J held that that there remained a real and imminent risk of direct action by the named Defendants and Persons Unknown in relation to Shell's Haven oil refinery and other sites.
33. In light of this evidence, I accept the Claimants' submission that nothing material has changed in the evidence since Ritchie J made his order. In particular, as explained above, there remains a continued threat of direct action at the 8 Sites. This is supported by the fact that, as far as the Claimants are aware, no injunction originally granted to an energy company as a result of the direct action in April 2022 has been discharged on the basis of a finding that the level of threat has diminished.
34. The evidence suggests that direct action at the 8 Sites has diminished. However the courts have repeatedly held in this context that evidence of this kind is not evidence that the threat has dissipated; rather, it is evidence that the injunctions have had their intended effect: see, for example, Ritchie J's judgment in this case at [64] and *Shell* at [111]-[112].
35. There has been no material change in the case law since Ritchie J's judgment.
36. As to new legislation, Ritchie J considered the new offences in the Public Order Act 2023 before making the order: see his judgment at [66]. In any event, courts have repeatedly accepted that these offences do not materially alter the position or serve to diminish the threat of continued action: see, for example, *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (KB), at [24] and [28] (Ritchie J); *North Warwickshire Borough Council v Persons Unknown* [2024] EWHC 2254 (KB) at [88] (HHJ Emma Kelly, sitting as a Judge of the High Court); and *TfL* at [37]-[38] and [58]-[67] (Morris J).
37. In accordance with her duty of disclosure Ms Holland KC drew my attention to the fact that in *Shell*, Dexter Dias J observed that the new legislation is a "material change". However, he went on to hold that it remains "evidentially unclear what material impact it has on deterring future protest and to what extent it operates on the minds of those who would protest against Shell"; and that the mere existence of the new offences in and of themselves could not affect the analysis on risk of continued threat: [132] and [140].

Conclusion

38. I have reviewed and used as my starting point the findings Ritchie J made and the evidence that was before him, as he made “a full determination of the issue of risk and the balance of interests” (*TfL* at [55]).
39. Having considered the updating evidence and more recent legal developments, I am satisfied that nothing material has changed. The risk still exists as before and the Claimants remain rightly and justifiably fearful of unlawful attacks. Procedural and legal rigour has been “observed and fulfilled” (*HS2* at [32]).
40. For all these reasons, I approve the draft order sought by the Claimants. Ritchie J’s order will remain in effect, to be reviewed again in one year.



Neutral Citation Number: [2025] EWHC 331 (KB)

Case No: QB-2021-003094

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 February 2025

Before:

THE HONOURABLE MR JUSTICE NICKLIN

Between:

(1) MBR ACRES LIMITED

(2) DEMETRIS MARKOU

(for and on behalf of the officers and employees of
MBR Acres Ltd, and the officers and employees of third
party suppliers and service providers to MBR Acres Ltd
pursuant to CPR 19.8)

(3) B & K UNIVERSAL LIMITED

(4) SUSAN PRESSICK

(for and on behalf of the officers and employees of
B & K Universal Ltd, and the officers and employees of
third party suppliers and service providers to B & K
Universal Ltd pursuant to CPR 19.8)

Claimants

- and -

JOHN CURTIN

Defendant

**And in the matter of an application by the
Claimants for a *contra mundum* injunction to
restrain certain activities at the Wyton Site**

Caroline Bolton and Natalie Pratt (instructed by **Mills & Reeve LLP**) for the **Claimants**

John Curtin appeared in person, save for the hearing on 23 June 2023 when he was
represented by **Jake Taylor** (instructed by **Birds Solicitors**)

“Persons Unknown” did not attend and were not represented

Jude Bunting KC and Yaaser Vanderman filed written submissions on behalf of **Liberty**

Hearing dates: 24-28 April, 2-5, 9, 11, 12, 15, 17-19, 22-23 May 2023, 23 June 2024, 26 March
2024 and 7 May 2024

Approved Judgment

The Honourable Mr Justice Nicklin :

1. This judgment is divided into the following sections:

Section		Paragraphs
A.	Introduction	[2]–[11]
B.	Background and parties	[12]–[31]
(1)	The Claimants	[13]–[16]
(2)	The Wyton Site	[17]
(3)	The Defendants	[24]–[26]
(4)	The protest activities	[27]–[31]
C.	The Interim Injunction	[32]–[41]
(1)	The interim injunction granted on 10 November 2021	[32]–[36]
(2)	Modifications to the Interim Injunction	[37]–[41]
D.	Alleged breaches of the Interim Injunction	[42]–[53]
(1)	The First Contempt Applications	[43]–[45]
(2)	The Second Contempt Application	[46]–[49]
(3)	The Third Contempt Application	[52]–[53]
E.	Alternative service orders in respect of “Persons Unknown”	[54]–[56]
F.	The claims advanced by the Claimants	[57]–[107]
(1)	Trespass	[58]–[73]
	(a) Physical encroachment onto the Wyton Site	[58]–[61]
	(b) Trespass to the airspace above the Wyton Site	[62]–[73]
(2)	Interference with the right of access to the highway	[74]–[80]
(3)	Public nuisance	[81]–[98]
	(a) Obstruction of the highway: s.137 Highways Act 1980	[81]–[89]
	(b) Public nuisance by obstructing the highway	[90]–[98]
(4)	Harassment	[99]–[107]
G.	The Third Contempt Application	[109]–[120]
(1)	Allegations of breach of the Interim Injunction	[110]
(2)	Evidence relied upon	[111]–[120]
H.	The parameters of the Claimants’ claims	[121]–[126]
(1)	The case against Mr Curtin	[121]–[125]
(2)	The case against “Persons Unknown”	[126]
I.	The evidence at trial: generally	[127]–[143]
J.	The evidence at trial against Mr Curtin	[144]–[308]
(1)	The pleaded allegations against Mr Curtin	[147]–[279]
(2)	Unpleaded allegations against Mr Curtin	[280]–[297]
(3)	Conclusion on the claim of harassment against Mr Curtin	[298]–[308]
K.	The evidence at trial against “Persons Unknown”	[309]–[329]
(1)	Trespass on the Wyton Site	[309]–[312]
(2)	Trespass by drone flying over the Wyton Site	[313]–[319]
(3)	Threatened trespass at the B&K Site	[321]–[322]
(4)	Interference with the right to access to the highway	[323]–[324]
(5)	Public nuisance by obstruction of the highway	[325]–[329]
L.	Evidence from the police regarding the protests	[330]–[332]
M.	<i>Wolverhampton</i> and its impact on this case	[333]–[374]
(1)	Background	[333]–[335]

(2)	The Court of Appeal decision	[336]
(3)	The Supreme Court decision	[337]–[352]
	(a) The <i>Gammell</i> principle disapproved as the basis for ‘newcomer’ injunctions	[339]–[340]
	(b) The key features of, and justification for, a <i>contra mundum</i> ‘newcomer’ injunction	[341]–[344]
	(c) Protest cases	[345]–[351]
	(d) The need to identify the prohibited acts clearly in the terms of any injunction	[352]
(4)	Other consequences of <i>contra mundum</i> litigation	[353]–[362]
(5)	<i>Contra mundum</i> orders as a form of legislation?	[363]–[374]
N.	The relief sought by the Claimants	[375]–[377]
(1)	Against Mr Curtin	[375]–[376]
(2)	<i>Contra mundum</i>	[377]
O.	Decision	[378]–[407]
(1)	The claim against Mr Curtin	[379]–[385]
(2)	The <i>contra mundum</i> claim	[386]–[399]
(3)	Mr Curtin’s penalty in the Third Contempt Application	[400]–[407]
Annex 1	Full list of the Defendants to the claim	
Annex 2	The relief sought by the Claimants against Mr Curtin	
Annex 3	The relief sought by the Claimants <i>contra mundum</i> against “Persons Unknown”	

A: Introduction

2. This is the final judgment in this civil claim brought by the Claimants against both known and unknown individuals. The common link between the Defendants is that, at one time or another, they have engaged in some form of protest against the activities of the First Defendant at its site at Wyton, Cambridgeshire.
3. Whilst the claim has been pending before the Courts, the law – as it applies to “Persons Unknown” – has been in a state of flux. The decision of the Supreme Court in *Wolverhampton City Council & others -v- London Gypsies and Travellers & others* [2024] AC 983 (heard on 8-9 February 2023 with judgment handed down on 29 November 2023) clarified but also significantly changed the law as it concerns the grant of injunctions against “Persons Unknown” where that target class is protean and the injunction applies to what has been termed ‘newcomers’.
4. Whilst the evidence relating to this claim was heard at a trial between 24 April 2023 to 23 May 2023, the trial was adjourned to await the Supreme Court decision in *Wolverhampton*. Further hearings were fixed on 26 March 2024 and 7 May 2024 for the Court to consider whether, in light of the Supreme Court’s decision, the Claimants should be given an opportunity to file any further evidence and to consider final submissions of law consequent upon the *Wolverhampton* decision.
5. At the hearing on 26 March 2024, I directed that the final hearing in the claim should be fixed for 7 May 2024. I directed that the Claimants must file their final submissions by 30 April 2024 and that, in addition to publicising the date of the final hearing on notices at the Wyton Site, and online, the written submissions must be served on Liberty and Friends of the Earth, who had intervened in the *Wolverhampton* case

(“the Interested Parties”). I gave the Interested Parties an opportunity to file written submissions for the final hearing.

6. I received written submissions from Counsel instructed by Liberty, dated 3 May 2024.
7. I also received a letter, dated 30 April 2024 from Friends of the Earth (“FoE”). FoE expressed concern, due to their limited resources, of the risk that an adverse costs order might be made against them. In their letter, FoE stated that it had made an application for a Protective Costs Order in a civil claim brought in 2019 against “Persons Unknown” in a fracking protest case. The application was rejected, and FoE were ordered to pay £4,500 in costs. Because of these funding concerns, and also because FoE’s campaigning objectives do not embrace the protest at the Wyton Site, FoE did not file written submissions. They did, however, send a copy of the written submissions, and a witness statement of David Timms, FoE’s Head of Political Affairs, dated 25 November 2022, which had been filed with the Supreme Court in the **Wolverhampton** case. In their covering letter, FoE said:

“In **Wolverhampton**, the Supreme Court rejected our submissions as to the availability of persons unknown injunctions as a matter of principle, but our submissions may include relevant considerations for the Court in terms of criteria and the procedural safeguards for persons unknown injunctions in the protest context. In particular, the evidence of Mr Timms refers to our own experience of the serious chilling effect of these injunctions, in terms of their deterrence of lawful protest including lawful, peaceful, direct action protest. We would stress that the latter is a recognised and legitimate part of freedom of speech and assembly protected by the common law and Articles 10/11 ECHR.”
8. I am very grateful to both Liberty and Friends of the Earth for their submissions, which I have considered in writing this judgment.
9. I consider the **Wolverhampton** decision in Section M of this judgment ([333]-[362] below). In brief summary, prior to **Wolverhampton**, the previous method of attempting to restrain the activities of ‘newcomers’ depended upon the ‘newcomer’ becoming a party to existing litigation by doing some act that brought him/her within one or more categories of defendant who were party to the litigation and upon whom the Claim Form had been deemed to be served by some method of alternative service authorised by the Court. The Supreme Court swept this away and instead sanctioned the use of *contra mundum* injunctions in limited circumstances.
10. Following the **Wolverhampton** decision, at the hearing on 7 May 2024, the Claimants sought an injunction against various categories of “Persons Unknown” or, alternatively, a *contra mundum* injunction, to restrain certain acts. In some respects, the **Wolverhampton** decision allows the Court to adopt a more straightforward approach and an opportunity to make any injunction the Court grants much clearer and easier to comprehend (see [353]-[362] below).
11. Finally, this judgment also resolves a contempt application brought by the Claimants against the only remaining individual defendant, John Curtin, which was heard on 23 June 2023 (see Sections D(3), G and O(3); [52]-[53], [109]-[120], [247]-[253] and [400]-[407] below).

B: Background and parties

12. There have been several previous interim judgments in the claim:

- (1) [2021] EWHC 2996 (QB) (10 November 2021) (“the Interim Injunction Judgment”);
- (2) [2022] EWHC 1677 (QB) (31 March 2022) (“the Conspiracy Amendment Judgment”);
- (3) [2023] QB 186 (16 May 2022) (“the First Contempt Judgment”);
- (4) [2022] EWHC 1715 (QB) (20 June 2022) (“the First Injunction Variation Judgment”);
- (5) [2022] EWHC 2072 (QB) (2 August 2022) (“the Second Contempt Judgment”); and
- (6) [2022] EWHC 3338 (KB) (22 December 2022) (“the Second Injunction Variation Judgment”).

The background to this case – and the key procedural steps – are set out in these judgments, but as this is the final judgment in the claim, and for ease of reference, I will set out again some of the key facts.

(1) The Claimants

13. The First and Third Claimants are subsidiaries of the Marshall Farm Group Ltd, incorporated in the US and trading as Marshall Bioresources. The First and Third Claimants breed animals for medical and clinical research at sites in Cambridgeshire and Hull.
14. The First Claimant is licensed by the Secretary of State, under ss.2B-2C Animals (Scientific Procedures) Act 1986, to breed animals for supply to licensed entities authorised to conduct animal testing and research. It is presently a legal requirement, in the United Kingdom, that all potential new medicines intended for human use are tested on two species of mammal before they are tested on human volunteers in clinical trials.
15. The Second Claimant is an employee of the First Claimant acting in these proceedings to represent the officers and employees of the First Claimant, third-party suppliers, and service providers to the First Claimant pursuant to (what is now) CPR 19.8.
16. The Fourth Claimant is an employee of the Third Claimant and is its Site Manager & UK Administration & European Quality Manager. The Fourth Claimant represents the officers and employees of the Third Claimant, third-party suppliers, and service providers to the Third Claimant pursuant to CPR 19.8.

(2) The Wyton Site

17. The Wyton Site is in countryside, about 2 miles to the northeast of Huntingdon, very close to RAF Wyton. The only entrance to the Wyton Site is situated on a straight

section of the B1090. The road is a single carriageway with verges on either side. Vehicles arriving or leaving from the Wyton Site pass through outer and inner mechanical gates. This facilitates what has been termed an ‘airlock’ between the two gates enabling the First Claimant’s security personnel to control access to the Wyton Site. The outer gate is set back about 1 metre from the boundary of the First Claimant’s registered freehold title. This means that anyone standing immediately in front of the outer gate is on the First Claimant’s land. The perimeter of the Wyton Site is protected by high outer and inner wire fences. As well as the First Claimant, another biotechnology company is situated within the Wyton Site.

18. A grass verge separates the gated entrance to the Wyton Site from the main carriageway of the Highway. A short tarmacked single lane road, of approximately 8.7 metres length, runs perpendicular to the B1090 over the grass verge and to the gated access at the Wyton Site to enable access to the Highway from the Wyton Site, and vice-versa. This road has been referred to as the “Access Road” in the proceedings. All movements into and out of the Wyton Site (whether vehicular or on foot) must pass along the Access Road. Some, but it transpired during the proceedings, not all, of the Access Road falls within the extent of the adopted Highway.
19. In or around March 2019, the First Claimant installed a new gate, because lorries kept on hitting a post that was part of the old gate was. The new gate was installed about a metre or so back into Wyton Site. Therefore, the area measuring approximately 1 metre in front of the Gate is within the boundary of the Wyton Site and the freehold ownership of the First Claimant. That area has been referred to as the “Driveway” in these proceedings.
20. The boundary of that area, and therefore the Wyton Site as defined, is marked on the ground by a metal strip that runs the full width of the Access Road. That metal strip was left behind when the old gate was removed, and the new Gate was installed.
21. The Claimants originally believed that the full extent of the Access Road had been adopted by the local Highways Authority. During the proceedings, it was discovered that the adopted highway did not extend to the full area.
22. On 4 August 2022, apparently without prior warning to, or consultation with, the First Claimant, a representative of the Local Highway Authority attended the Wyton Site and painted a yellow line halfway up the Access Road. The yellow line ran along the lip of the ditch closest to the Highway over which the Access Road ran. The distance between the yellow line and the metal strip that marks the edge of the Driveway is 2.85 metres. In a letter dated 16 November 2022, the Local Highway Authority confirmed to the First Claimant that the yellow line marked where it considered the extent of the adopted highway to end. The letter explained the basis on which the Local Highways Authority had reached this conclusion.
23. Having taken separate advice, the First Claimant’s position is that it agrees with the decision of the Local Highways Authority as to the extent of the adopted highway. The effect of this, which has not been challenged in these proceedings, is that the land between the metal strip and the yellow line, that is not adopted highway, is land owned by the First Claimant. This has been referred to as the “Access Land”.

(3) The Defendants

24. When originally issued, the Claimants brought claims against the first two Defendants as “*unincorporated associations*”: “*Free the MBR Beagles*” and “*Camp Beagle*”. The Third and Fifth Defendants were sued as representatives of these two “*unincorporated associations*”. In the Interim Injunction Judgment ([52]-[67]), I refused to allow claims to be brought against the First and Second Defendants on a representative basis, and I stayed the claim against these two Defendants. The Claimants have made no application to lift that stay.
25. As the proceedings have progressed, the Claimants have sought, and generally been granted, permission to add further Defendants. A full list of the Defendants to the claim is set out in Annex 1 to this judgment. Apart from Mr Curtin, the claims against named individuals have all been settled. The one against the Twentieth Defendant, Lisa Jaffray, was settled early in the trial. In most instances, the relevant individual has given undertakings as to his/her future activities regarding the Claimants and the Wyton Site.
26. By the end of the trial, the claim was proceeding only against Mr Curtin, as a named Defendant, and various categories of Person(s) Unknown Defendants identified in Annex 1.

(4) The protest activities

27. It will be necessary to go into the detail of specific incidents later in the judgment, but the following summary will suffice by way of introduction.
28. This litigation concerns protest and its lawful limits. Since around June 2021, a fluctuating number of individuals have been protesting outside the Wyton Site. There is a small semi-permanent camp of protestors on the edge of the carriageway about 20-30 metres from the entrance to the Wyton Site. Mr Curtin, who has been protesting since the outset, is a semi-permanent resident of this camp. There have been isolated other incidents away from the Wyton Site, for example, in August 2021, there were some limited protests outside the B&K Site, but the main focus of the protest activity – and most of the Claimants’ evidence – concerns protest activities at the Wyton Site.
29. The Claimants do not challenge that Mr Curtin, and the other protestors, have a sincerely and firmly held belief that animal testing is wrong. In terms of overall objective, the protestors probably share a common aim that animal testing should be prohibited. By extension, most protestors at the Wyton Site would like to see the First (and Third) Claimants put out of business. These objectives are not unlawful, and, subject to acting lawfully, Mr Curtin and others, may campaign and protest in their efforts to attempt to achieve a change in the law that would see their objective achieved.
30. The main complaints raised by the Claimants in this litigation are (1) incidents of trespass onto the Wyton Site, including the flying of a video-equipped drone around and above the Wyton Site, which is said to amount to trespass on the First Claimant’s land; (2) repeated incidents of obstruction of the highway outside the Wyton Site, said to constitute a public nuisance, and specifically obstruction of people and vehicles entering and leaving the Wyton Site; and (3) specific incidents involving confrontation with individual employees when they arrive at or leave the Wyton Site, which are said to amount to harassment.

31. Although it is more complicated than this, the issue at the heart of the litigation is broadly whether the method of protest that the Defendants use (or threaten to use) is lawful. Ultimately this is an issue of striking the proper balance between the protestors' rights of freedom of expression and demonstration against the Claimants' rights to go about their lawful business. The law does not require a person exercising the right to demonstrate or to protest to demonstrate that s/he is "right" (whatever that would mean), and Mr Curtin is not required to persuade the Court that he is "right" to oppose animal testing.

C: The Interim Injunction

(1) The interim injunction granted on 10 November 2021

32. The Claimants were granted an urgent interim injunction on 20 August 2021 by Stacey J ("the Interim Injunction"). The return date was fixed for 4 October 2021. I handed down judgment on 10 November 2021. The Interim Injunction Judgment set out my reasons for modifying the terms of the injunction that had previously been granted. The protest activities that had led to the grant of the Interim Injunction are set out in [13]-[23]. In [18], I summarised the evidence as follows:

"A clear picture emerges from the evidence, that the central complaint of the Claimants is the protestors' activities when people (particularly employees of the First Claimant) enter or leave the Wyton Site. At these times, protestors, including the named Defendants, have surrounded and/or obstructed the vehicles. Their ability to drive off is not only impaired by the physical obstruction of the protestors, but also because placards have been used, on occasions, to obstruct the view that the driver of the vehicle has of the road and whether it is safe to pull out. These incidents have frequently led to confrontation between the protestors and those inside the vehicles, allegedly leaving them feeling harassed and intimidated."

33. As a temporary solution, I prohibited trespass on the First Claimant's land and imposed an exclusion zone around the entrance to the Wyton Site ([116]-[119]) ("the Exclusion Zone"). I refused to grant an injunction to prohibit the flying of drones over the Wyton Site, which was alleged to be a trespass ([111]-[115]). The Interim Injunction did not restrain alleged harassment whether by named Defendants or "Persons Unknown" ([118]), and I refused to grant any orders to control the methods of protest adopted by the Defendants ([122]-[128]).
34. So far as concerns trespass and the Exclusion Zone, the material parts of the Interim Injunction, granted on 10 November 2021, were as follows. Paragraph 1 of the Injunction provided:

"The Third to Ninth, Eleventh to Fourteenth, and Fifteenth to Seventeenth Defendants **MUST NOT**:

(1) enter into or remain upon the following land:

- a. the First Claimant's premises known as MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 (the 'Wyton Site'); and

- b. the Third Claimant's premises known as B&K Universal Limited, Field Station, Grimston, Aldborough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 (the 'Hull Site')
- (2) enter into or remain upon the area marked with black hatching on the plans at Annex 1 ... (the 'Exclusion Zone'), save where ... accessing the highway whilst in a vehicle, for the purpose of passing along the highway only and without stopping in the Exclusion Zone, save for when stopped by traffic congestion, or any traffic management arranged by or on behalf of the Highways Authority, or to prevent a collision, or at the direction of a Police Officer.
- (3) park any vehicle, or place or leave any other item (including, but not limited to, banners) anywhere in the Exclusion Zone;
- (4) approach and/or obstruct the path of any vehicle directly entering or exiting the Exclusion Zone (save that for the avoidance of doubt it will not be a breach of this Injunction Order where any obstruction occurs as a result of an emergency)."
35. Definitions, set out in Schedule A to the Interim Injunction, provided:
- "The 'Exclusion Zone' is... for the purpose of the Wyton site, the area with black hatching at Annex 1 of this Order measuring 20 metres in length either side of the midpoint of the gate to the entrance of the Wyton site and extending out to the midpoint of the carriageway..."
36. Annex 1 to the Injunction was a plan of the Wyton Site marked with the Exclusion Zone around the entrance to the First Claimant's premises. Annex 1 included boxes containing annotations. One of those provided:
- "Exclusion Zone in black crosshatched area is 20 metres either side of the centre of the Gate to the Wyton Site marked by posts on the grass verge up to the centre of the carriageway."

(2) Modifications to the Interim Injunction

37. The terms of the Interim Injunction, and the persons it restrains, have been modified during the proceedings.
38. Orders of 18-19 January 2022 and 31 March 2022 added new Defendants to the claim, both named and further categories of "Persons Unknown". Those new Defendants became bound by the Interim Injunction, the material terms of which remained unchanged.
39. By Order of 2 August 2022, Paragraph (4) of the Interim Injunction (see [34] above) was replaced with the following restrictions:
- "(2) The Third to Ninth and Eleventh to the Twenty-Fourth Defendants **MUST NOT** within 1 mile in either direction of the First Claimant's Land, approach, slow down, or obstruct any vehicle which is believed to be travelling to or from the First Claimant's Land at the Wyton Site.

- (3) The Seventeenth Defendant **MUST NOT** within 1 mile in either direction of the First Claimant's Land, approach, slow down, or obstruct any vehicle:
- (a) for the purpose of protesting and/or campaigning against the activities of the First and/or Third Claimant; and
- (b) where the vehicle is, or is believed to be, travelling to or from the First Claimant's Land at the Wyton Site.
- (4) The Third, Twelfth, Fifteenth, Twentieth and Twenty-Second Defendants **MUST NOT** cut, push, shake, kick, lift, climb up or upon or over, damage or remove, or attempt to remove any part of the perimeter fence to the Wyton Site, as marked in red on the attached plan at Annex 1."
40. In the Second Injunction Variation Judgment, I explained why I had amended the Interim Injunction in these terms:

[10] In respect of obstruction of vehicles (the subject of the new sub-paragraphs (2) and (3)), evidence of events following the grant of the injunction, particularly that which had been filed by the Claimants in relation to the contempt applications against the Twelfth and Thirteenth Defendants (see [2023] QB 186), showed that some protestors had adopted tactics of surrounding and/or obstructing vehicles that were travelling to or from the Wyton Site further along the carriageway of the B1090. It had also become apparent that the earlier formulation – prohibiting approaching/obstruction of any vehicle “directly” entering or exiting the exclusion zone – had the potential to catch behaviour that the injunction was not designed to prevent. A particular example was an occasion in which a police vehicle was about to exit the exclusion zone when it was obstructed by protestors who wanted to ascertain what was happening to a person who had been arrested. The exclusion zone has always been recognised to be an expedient, justified because it is the best way of avoiding the flashpoints that have occurred between the protestors and those coming and going to/from the Wyton Site. However, the Court will keep the terms of the any interim injunction under review – and in appropriate cases will make changes to the terms of the order – to ensure that they are not having an unintended effect. The revised restrictions now more directly focus on the obstruction of vehicles travelling to/from the Wyton Site where that obstruction is for the purpose of protesting.

[11] Sub-paragraph (4) contained a new prohibition upon interfering with and/or damaging the perimeter fence of the Wyton Site. I was satisfied on the Claimants' evidence that the relevant Defendants had been damaging or interfering with the fence. Such actions are tortious, are not an exercise of a right to protest and the balance of convenience clearly favoured an interim prohibition. The Claimants had asked for a 1 metre exclusion zone to be imposed around the entire perimeter of the Wyton Site. I refused to make such an order. The correct way of targeting this particular wrongdoing is by making a direct order that prohibits that behaviour, not an indirect order that would also restrict lawful activities. The Claimants do not own the land over which they were seeking the imposition of this further exclusion zone, so I was not persuaded that there was an adequate legal basis upon which to impose the wider restriction that they had sought.

(The reference to obstruction of a police vehicle in [10] is to an incident on 12 May 2022, which featured as an allegation of breach of the Interim Injunction made in the Contempt Application against Mr Curtin – see [248]-[254] below.)

41. I refused to grant other amendments to the Interim Injunction sought by the Claimants: see Section E of the Second Injunction Variation Judgment ([58]-[80]). The Claimants had originally sought to revisit the question of whether the Interim Injunction should prohibit the flying of drones, but they abandoned that part of the application (see [16]).

D: Alleged breaches of the Interim Injunction

42. The Claimants have pursued several contempt applications, against both named Defendants and against a person alleged to fall within a category of “Persons Unknown”, alleging breaches of the Interim Injunction.

(1) The First Contempt Applications

43. Contempt applications were issued against the Twelfth and Thirteenth Defendants (“The First Contempt Applications”). Both Defendants were alleged to have breached the Interim Injunction in the contempt application issued on 17 December 2021. A second contempt application, alleging further breaches of the Interim Injunction, was issued against the Thirteenth Defendant on 16 February 2022. They were heard on 6-7 April 2022. In the First Contempt Judgment, handed down on 16 May 2022, I dismissed the 17 December 2021 contempt application brought against the Thirteenth Defendant. Both Defendants were found guilty of contempt of court in respect of admitted breaches of the Interim Injunction.
44. On 17 June 2022, a further contempt application was made against the Twenty-Third Defendant.
45. On 2 August 2022, I imposed penalties for contempt of court on the Defendants. The Twelfth Defendant was given a sentence of imprisonment of 3 months and the Thirteenth Defendant was given a sentence of imprisonment of 28 days. Both periods of imprisonment were suspended for 18 months. The periods of suspension have now ended. I imposed no sanction on the Twenty-Third Defendant, who had admitted a breach of the Interim Injunction, although she was ordered to pay a sum in costs. None of these Defendants has been alleged to be guilty of a further breach of the Interim Injunction.

(2) The Second Contempt Application

46. On 4 July 2022, the Claimants issued a further contempt application against Gillian Frances McGivern, a solicitor (“the Second Contempt Application”). Ms McGivern was alleged to have breached the Interim Injunction, as a “Person Unknown”, on 4 May 2022 by, variously, parking her car in the Exclusion Zone, entering the Exclusion Zone, trespassing on the First Claimant’s land (by approaching the entry gate) and approaching and/or obstructing vehicles directly exiting and/or entering the Exclusion Zone.
47. The Second Contempt Application was heard on 21-22 July 2022. In the Second Contempt Judgment, handed down on 2 August 2022, I dismissed the contempt

application and declared it to be totally without merit. It is necessary, for the purposes of this judgment to recall some of the paragraphs of the Second Contempt Judgment.

[94] I have found it very difficult to understand the motive(s) behind the Claimants' tenacious pursuit of Ms McGivern and the way that the contempt application has been pursued. First there is the delay in commencing the proceedings. Then there is the failure to send any form of letter before action to Ms McGivern giving her the opportunity to give her response. Next, the Claimants' response to the evidence of Ms McGivern, provided first in a position statement and then in a witness statement, both verified by a statement of truth. The contempt application was pursued in the face of this evidence. The Claimants did so on a somewhat speculative basis relying upon the evidence of PC Shailes (inaccurately trailed first in the email from Mills & Reeve to the Court on 15 July 2022 – see [39] above) and which was only obtained after serving a witness summons, on the eve of the Contempt Application. Finally, the Claimants persisted in a cross-examination of Ms McGivern in which allegations of the utmost seriousness were made suggesting, not only that had she, a solicitor, had deliberately breached a court injunction, but that she had brazenly and repeatedly lied for over a day in the witness box. The evidential support for this line of cross-examination was tissue thin.

[95] In his skeleton argument, Mr Underwood QC submitted that the contempt application was an abuse of process. Certainly, allegations were made by some of the unrepresented Defendants that action had been taken against Ms McGivern because she was a lawyer helping some of the protestors. That would be the form of abuse of process by using proceedings for a collateral purpose. I can understand why they might suspect this, but Mr Underwood QC did not put any such suggestion to Ms Pressick when she gave evidence. I am unable to reach a conclusion as to the Claimants' motives for pursuing Ms McGivern. All I can say is I find them very difficult to understand.

[96] In my judgment this contempt application has been wholly frivolous, and it borders on vexatious. The breaches alleged were trivial or wholly technical. Apart from a technical trespass, it is difficult to identify any civil wrong that was committed by Ms McGivern. At worst, obstructing the vehicles for a short period might be regarded as provocative, but there were no aggravating features. As the Claimants must have appreciated, this was not the sort of conduct that the Injunction was ever intended to catch. The Court does not grant injunctions to parties to litigation to be used as a weapon against those perceived to be opponents. At its commencement, this contempt application was based almost entirely upon deemed notice of the terms of the Injunction by operation of the alternative service order. Once Ms McGivern had provided evidence confirmed by a statement of truth that she had no knowledge of the Injunction, the Claimants should have taken stock as to the prospect of success of the contempt application and, particularly, whether there was a real prospect of the Court imposing any sanction for the alleged breaches. Instead of doing so, the Claimants embarked on what proved to be a hopeless attempt to impeach Ms McGivern's transparently honest evidence by witness summoning a police officer. This was not a proportionate or even rational way to approach litigation of this seriousness.

[97] Ms Bolton's final submission was that the Claimants were "*entitled*" to bring the contempt application against Ms McGivern; "*entitled*" to spend two days of Court time and resources pursuing an application that, on an objective assessment of the evidence, was only ever likely to end with the imposition of no penalty; and "*entitled*" to put a solicitor through the ordeal of a potentially career-ending contempt application and all the disruption that it has caused to Ms McGivern's work and the impact it has had on this litigation. There is no such "*entitlement*". The contempt application against Ms McGivern will be dismissed and will be certified as being totally without merit.

48. I was satisfied that, in the circumstances of this litigation, and particularly given the risk of abuse of "Persons Unknown" injunctions, it was necessary to impose a requirement that the Claimants must obtain the permission of the Court before instituting any contempt application against someone alleged to have breached the Interim Injunction as a "Person Unknown". I explained my reasons for doing so:

[101] For the reasons I have explained in this judgment, depending upon its terms, a "Persons Unknown" injunction can have the potential to catch in its net people that were never intended by the Court to be caught. Ms McGivern is an example, but others were discussed at the hearing, including the passing motorist who stops temporarily in outside the gates of the Wyton Site and who inadvertently obstructs a vehicle that is leaving the premises. By dint of the operation of the definition of "Persons Unknown" and the deemed notice of the terms of the Injunction under the alternative service order, that motorist, like Ms McGivern, ends up potentially having to face a contempt application. In ordinary cases, the Court might usually expect that a litigant who had obtained such an injunction would consider carefully whether it was proportionate and/or a sensible use of the Court's and the parties' resources for contempt proceedings to be brought against someone who had inadvertently contravened the terms of the injunction. The Claimants have demonstrated that, even with the benefit of professional advice and representation, the Court cannot rely upon them to perform that task appropriately.

[102] I am satisfied that the Court does have the power, ultimately as part of its case management powers to protect its processes from being abused and its resources being wasted, to impose a permission requirement. I reject the submission that the Court is powerless and must simply adjudicate upon such contempt applications that the Claimants seek to bring. "Persons Unknown" injunctions are recognised to be exceptional specifically because they have the potential to catch newcomers. I do not consider that it is an undue hardship that these Claimants should be required to satisfy the Court that a contempt application they wish to bring (a) is one that has a real prospect of success; (b) is not one that relies upon wholly technical or insubstantial breaches; and (c) is supported by evidence that the respondent had actual knowledge of the terms of the injunction before being alleged to have breached it.

[103] Although the conditions for the making of a limited civil restraint order are not met, the imposition of a requirement that the Claimants must obtain the permission of the Court before bringing any further contempt applications

against “Persons Unknown” is not a limited civil restraint order, it restricts only this specific form of application. The Claimants will remain free to issue and pursue applications in the underlying proceedings. I am satisfied that the imposition of a targeted restriction on the Claimants’ ability to bring such contempt applications is a necessary and proportionate step to protect the Court (and the respondents to any future contempt applications) from proceedings that have no real prospect of success and/or serve no legitimate purpose.

[104] I will therefore make an order requiring the Claimants to obtain the permission of the Court before they bring any further contempt application against anyone alleged to be in the category of “Persons Unknown” and to have breached the Injunction.

49. The order, on 2 August 2022, dismissing the Second Contempt Application therefore included the following provisions (“the Contempt Application Permission Requirement”):

- “3. Any further contempt application against any person, not being a named Defendant in the proceedings, may only be brought by the Claimants with the permission of the Court.
4. An application for permission under Paragraph 3 above, must be made by Application Notice attaching the proposed contempt application and evidence in support. The Court will normally expect the Claimants to have notified the proposed Respondent in writing of the allegation(s) that s/he has breached the injunction order. Any response by the Respondent should be provided to the Court with the application to bring a contempt application. Unless the Court otherwise directs, any such application will be dealt with by the Court on the papers.”

50. I refused an application by the Claimants for permission to appeal against the imposition of the Contempt Application Permission Requirement. The Claimants did not renew their application for permission to appeal to the Court of Appeal.

51. I returned to the issue of potential abuse of “Persons Unknown” injunctions in the Second Injunction Variation Judgment, where I said this ([12]):

“The operation of the interim injunction over the last 12 months has given cause for concern about whether the order is being used by the Claimants as a ‘weapon’ against the protestors or their supporters. The contempt application against Ms McGivern was dismissed. I found that the breaches alleged against Ms McGivern were trivial: see [the Second Contempt Judgment] [96]. The Claimants well know, and fully understand, the basis on which the exclusion zone has been imposed. It is not to be used by the Claimants as an opportunity to take action against protestors for trivial infringements that have none of the elements that led to the grant of the interim injunction and are not otherwise unlawful acts. Ultimately, if there were to be any repetition of contempt applications being brought for trivial infringements, then the Court might have to reconsider the terms of the interim injunction order that should remain in place pending trial”.

(3) The Third Contempt Application

52. On 17 June 2022, the Claimants issued a contempt application against Mr Curtin (“the Third Contempt Application”). Some of the breaches of the Interim Injunction alleged against Mr Curtin were also relied upon as causes of action in the claim against him. As a result, the Claimants’ evidence against Mr Curtin, both in relation to the claim against him and the Third Contempt Application was heard at a further hearing, on 23 June 2024, at which Mr Curtin was represented for the purposes of the Contempt Application.
53. I deal with the Third Contempt Application in Sections G and O(3) of this judgment (see [109]-[120], [247]-[253] and [400]-[407] below).

E: Alternative service orders in respect of “Persons Unknown”

54. Prior to the decision of the Supreme Court in *Wolverhampton*, on 12 August 2021, the Court granted permission for alternative service of the Claim Form on the “Persons Unknown” Defendants. The order provided:

“Pursuant to CPR Part 6.14, 6.15, 6.26 and 6.27 the Claimants have permission to serve the Tenth Defendant, Persons Unknown, by the following alternative forms of service:

- (1) Affixing copies (as opposed to originals) of the Claim Form, the Injunction Application Notice, draft Injunction Order and this Order permitting alternative service, in a transparent envelope on the gates of the First and Third Claimants’ Land and in a prominent position on the grass verge at the front of the First and Third Claimant’s Land.
- (2) The documents shall be accompanied by a cover letter in the form set out in Annexure 2 explaining to Persons Unknown that they can access copies of
 - (a) the Response Pack;
 - (b) evidence in support of the Alternative Service and Injunction Applications; and
 - (c) the skeleton argument and note of the hearing of the Alternative Service Application

at the dedicated share file website at: [Dropbox link provided]”

- (3) The deemed date of service for the documents referred to in (1) to (3) above shall be two working days after service is completed in accordance with paragraphs (1) to (3) above.
55. The Defendants (including those in the category of “Persons Unknown”) were required to file an Acknowledgement of Service 14 days after the deemed date of service. No Acknowledgement of Service has been filed by any person in any of the categories of “Persons Unknown”.
56. Similar orders have been made for service of the Claim Form by an alternative method on the additional categories of “Persons Unknown” Defendants as they have been added

to the claim. Following the imposition of the Exclusion Zone in the Interim Injunction granted 10 November 2021, the location at which the relevant documents were to be displayed was moved to a noticeboard opposite the entrance of the Wyton Site.

F: The claims advanced by the Claimants

57. As a result of some narrowing down of the Claimants' focus during the trial, the claims finally advanced by the Claimants against Mr Curtin and the "Persons Unknown" Defendants at the conclusion of the trial were: (1) trespass (including alleged trespass as a result of the flying of drones over the Wyton Site); (2) public nuisance on the highway; and (3) interference with the First Claimant's common law right of access to the highway from the Wyton Site. Although the Claimants had included a claim for harassment against both Mr Curtin and Persons Unknown, that claim was only pursued against Mr Curtin at the end of the trial. It was not pursued as a basis for the grant of relief against Persons Unknown. It is appropriate here to analyse the causes of action relied upon by the Claimants.

(1) Trespass

(a) Physical encroachment onto the Wyton Site

58. This claim is straightforward.
59. Trespass to land is the interference with possession or the right to possession of land. It includes instances in which a person intrudes upon the land of another without legal justification. The key features of trespass are:
- (1) it is a strict liability tort: a defendant need not know that s/he is committing a trespass to be liable;
 - (2) the tort is actionable without proof of damage; and
 - (3) the extent of the trespass is irrelevant to liability: *Ellis -v- Loftus Iron Company (1874-75) LR 10 CP 10, 12*: "... if the defendant place a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it."
60. A person does not commit a trespass where s/he enters upon, or remains on the land, if s/he has permission (or licence). That permission (or licence) can be express or implied.
61. However, a person who enters land pursuant to a licence, but who proceeds to act in such a way that in exceeds the scope of that licence, or who remains on the land after the expiration of the licence, commits a trespass: *Hillen -v- ICI (Alkali) Ltd [1936] AC 65, 69*; *Jockey Club Racecourse Limited -v- Persons Unknown [2019] EWHC 1026 (Ch)* [15].

(b) Trespass to the airspace above the Wyton Site

62. This claim is not straightforward.

63. The First Claimant claims that the act of flying a drone directly over the Wyton Site is a trespass. In the early phase of this litigation, I refused to grant an interim injunction to restrain drone flying (see Interim Injunction Judgment [111]-[115]).
64. The only authority cited by the Claimants in support of the claim that flying a drone over land amounts to trespass is the first-instance decision of ***Bernstein -v- Skyviews & General Ltd* [1978] QB 479**. The case concerned an aircraft that the defendant flew over the claimant's land for the purpose of taking a photograph of the claimant's country house which was then offered for sale to him. The claimant alleged that, by entering the airspace above his property to take aerial photographs, the defendant was guilty of trespass (alternatively that the defendant was guilty of an actionable invasion of his right to privacy by taking the photograph without his consent or authorisation). The claim failed. The Judge held that an owner's rights in the airspace above his/her land were restricted to such height as was necessary for the ordinary use and enjoyment of the land and structures upon it, and above that height s/he had no greater rights than any other member of the public. Accordingly, the defendant's aircraft did not infringe any rights in the claimant's airspace and thus did not commit any trespass by flying over land for the purpose of taking a photograph.
65. Griffiths J considered the authority of ***Kelsen -v- Imperial Tobacco Co.* [1957] 2 QB 334**, which concerned a sign that was overhanging the claimant's land by about 8 inches. He quoted part of the judgment of McNair J which held that the overhanging sign was a trespass to the claimant's airspace above his land, and held (at **486E-487A**):
- “I very much doubt if in that passage McNair J was intending to hold that the plaintiff's rights in the air space continued to an unlimited height or ‘ad coelum’ as [the plaintiff] submits. The point that the judge was considering was whether the sign was a trespass or a nuisance at the very low level at which it projected. This to my mind is clearly indicated by his reference to *Winfield on Tort*, 6th ed. (1954) in which the text reads, at p. 380: ‘it is submitted that trespass will be committed by [aircraft] to the air space if they fly so low as to come within the area of ordinary user.’ The author in that passage is careful to limit the trespass to the height at which it is contemplated an owner might be expected to make use of the air space as a natural incident of the user of his land. If, however, the judge was by his reference to the Civil Aviation Act 1949 and his disapproval of the views of Lord Ellenborough in ***Pickering -v- Rudd* (1815) 4 Camp 219**, indicating the opinion that the flight of an aircraft at whatever height constituted a trespass at common law, I must respectfully disagree.
- I do not wish to cast any doubts upon the correctness of the decision upon its own particular facts. It may be a sound and practical rule to regard any incursion into the air space at a height which may interfere with the ordinary user of the land as a trespass rather than a nuisance. Adjoining owners then know where they stand; they have no right to erect structures overhanging or passing over their neighbours' land and there is no room for argument whether they are thereby causing damage or annoyance to their neighbours about which there may be much room for argument and uncertainty. But wholly different considerations arise when considering the passage of aircraft at a height which in no way affects the user of the land.”
66. Griffiths J then noted that, in both ***Pickering -v- Rudd*** and ***Saunders -v- Smith* (1838) 2 Jur 491**, the Court had rejected a submission that sailing a hot air balloon over

someone's land could amount to trespass. The Judge also quoted from Lord Wilberforce's speech in ***Commissioner for Railways -v- Valuer-General* [1974] AC 328, 351** in which he noted that: "*In none of these cases is there an authoritative pronouncement that 'land' means the whole of the space from the centre of the earth to the heavens: so sweeping, unscientific and unpractical doctrine is unlikely to appeal to the common law mind.*"

67. Griffiths J could find no support in the case law for the contention that a landowner's rights in the air space above his property extend to an unlimited height (**487G-H**):

"In ***Wandsworth Board of Works -v- United Telephone Co. Ltd.* (1884) 13 QBD 904** Bowen LJ described the maxim, *usque ad coelum*, as a fanciful phrase, to which I would add that if applied literally it is a fanciful notion leading to the absurdity of a trespass at common law being committed by a satellite every time it passes over a suburban garden. The academic writers speak with one voice in rejecting the uncritical and literal application of the maxim... I accept their collective approach as correct. The problem is to balance the rights of an owner to enjoy the use of his land against the rights of the general public to take advantage of all that science now offers in the use of air space. This balance is in my judgment best struck in our present society by restricting the rights of an owner in the air space above his land to such height as is necessary for the ordinary use and enjoyment of his land and the structures upon it, and declaring that above that height he has no greater rights in the air space than any other member of the public."

68. On the facts, there had been a "*fierce dispute*" between the parties as to the height at which the plane had flown to take the photograph, and the Judge found only that it had flown "*many hundreds of feet above the ground*" (**488C**). He added:

"... it is not suggested that by its mere presence in the air space it caused any interference with any use to which the plaintiff put or might wish to put his land. The plaintiff's complaint is not that the aircraft interfered with the use of his land but that a photograph was taken from it. There is, however, no law against taking a photograph, and the mere taking of a photograph cannot turn an act which is not a trespass into the plaintiff's air space into one that is a trespass."

69. In a passage that perhaps echoes some of Ms Bolton's submissions in this case, Griffiths J noted, but rejected, the argument that photographs of the claimant's property obtained from the air could be used for nefarious purposes (**488E-F**):

"... [Counsel for the plaintiff], however, conceded that he was unable to cite any principle of law or authority that would entitle Lord Bernstein to prevent someone taking a photograph of his property for an innocent purpose, provided they did not commit some other tort such as trespass or nuisance in doing so. It is therefore interesting to reflect what a sterile remedy Lord Bernstein would obtain if he was able to establish that mere infringement of the air space over his land was a trespass. He could prevent the defendants flying over his land to take another photograph, but he could not prevent the defendants taking the virtually identical photograph from the adjoining land provided they took care not to cross his boundary, and were taking it for an innocent as opposed to a criminal purpose."

70. For my part, I would respectfully disagree that proof that photographs of a property, captured from adjoining land, were taken for a “*criminal purpose*” would render photographer liable for trespass upon the land of the property-owner. If there is to be a remedy against taking such photographs, it is to some other area of the law that the aggrieved property-owner would have to turn.
71. Griffiths J therefore dismissed the claimant’s claim for trespass, but he concluded his judgment with this observation (**489F-H**):
- “... I [would not] wish this judgment to be understood as deciding that in no circumstances could a successful action be brought against an aerial photographer to restrain his activities. The present action is not founded in nuisance for no court would regard the taking of a single photograph as an actionable nuisance. But if the circumstances were such that a plaintiff was subjected to the harassment of constant surveillance of his house from the air, accompanied by the photographing of his every activity, I am far from saying that the court would not regard such a monstrous invasion of his privacy as an actionable nuisance for which they would give relief. However, that question does not fall for decision in this case and will be decided if and when it arises.”
72. The decision does not appear to deal expressly with the claim for breach of privacy. Perhaps that reflects the reality that, in 1977, there was no recognised right of privacy, so-called (a submission the defendant made – see p.481 in the report). Griffiths J’s observations about whether repeated photographing of a person’s property, amounting effectively to surveillance, might ground a cause of action were very much rooted in the notion that such behaviour might be found to be an actionable nuisance (cf. ***Fearn -v- Board of Trustees of the Tate Gallery* [2024] AC 1** [188]).
73. The law has developed significantly since 1977. A claimant who is subjected to the sort of surveillance that Griffiths J described might well now consider, in addition to a claim for nuisance, claims for misuse of private information, potential breaches of data protection legislation and harassment. For the purposes of this judgment, it is important to note that, as against “Persons Unknown”, the Claimants have not advanced their claim for injunctive relief to restrain further drone usage on any of these bases; the claim is advanced solely as an alleged trespass. I can well see that pursuing claims for these additional torts might not be straightforward (and the omission to advance such claims may reflect an appreciation of those difficulties by the Claimants). For present purposes, it is sufficient to note that not only have the Claimants have not pursued such claims, but they have also not provided the evidence necessary to demonstrate that the historic drone usage (and apprehended future use) would amount to any of these further torts. For the purposes of the Claim against “Persons Unknown” I will therefore consider, only, whether the Claimants’ evidence of drone usage amounts to trespass. For the claim against Mr Curtin, personally, I must additionally consider whether his use of a drone on 21 June 2022 was part of a course of conduct involving harassment of the First Claimant’s employees (and others in the Second Claimant class) – see [255]-[274] below.

(2) Interference with the right of access to the highway

74. The common law right of access to the highway was described by Lord Atkin, in ***Marshall -v- Blackpool Corporation* [1935] AC 16, 22** as follows:

“... The owner of land adjoining a highway has a right of access to the highway from any part of his premises. This is so whether he or his predecessors originally dedicated the highway or part of it and whether he is entitled to the whole or some interest in the ground subjacent to the highway or not. The rights of the public to pass along the highway are subject to this right of access: just as the right of access is subject to the rights of the public, and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway.”

75. An interference with this right is actionable *per se*: ***Walsh -v- Ervin* [1952] VLR 361**. The right is separate from the land-owner’s right, as a member of the public, to utilise the highway itself: ***Ineos Upstream Ltd -v- Persons Unknown* [2017] EWHC 2945 (Ch)** [42]. This private right ceases as soon as the highway is reached and any subsequent interference with access to the highway is actionable, if at all, only if it amounts to a public nuisance. In ***Chaplin -v- Westminster Corporation* [1901] 2 Ch 329, 333-334**, Buckley J explained:

“The right which [the claimants] here seek to exercise is a right which they enjoy in common with all other members of the public to use this highway. They have an individual interest which enables them to sue without joining the Attorney-General, in that they are persons who by reason of the neighbourhood of their own premises use this portion of the highway more than others. They have a special and individual interest in the public right to this portion of the highway, and they are entitled to sue without joining the Attorney-General because they sue in respect of that individual interest; but the right which they seek to exercise is not a private right, but a public right. A person who owns premises abutting on a highway enjoys as a private right the right of stepping from his own premises on to the highway, and if any obstruction be placed in his doorway, or gateway, or, if it be a river, at the edge of his wharf, so as to prevent him from obtaining access from his own premises to the highway, that obstruction would be an interference with a private right. But immediately that he has stepped on to the highway, and is using the highway, what he is using is not a private right, but a public right.”

76. The reference to the Attorney-General is to the important principle that an individual cannot, without the consent of the Attorney-General, seek to enforce the criminal law in civil proceedings: ***Gouriet -v- Union of Post Office Workers* [1978] AC 435, 477E-F**. Obstruction of the highway is a criminal offence. It does not create a civil cause of action unless the obstruction of the highway amounts to a public nuisance.
77. Ms Bolton submits that the First Claimant, as the owner of the Wyton Site, has an immediate right to access the highway from the Wyton Site to the B1090. Obstruction of this right of access gives rise to a private law claim.
78. I can readily accept that acts of the protestors which deliberately blockade the Wyton Site, preventing vehicles gaining access to or from the highway, would be an infringement of this private right.
79. However, Ms Bolton goes further. She argues that there is no protest right that can justify any interference with the access to the highway. She contends that there is no right to obstruct, slow down or hinder the passage of vehicles exiting the Wyton Site.
80. Put in those absolute terms, I reject this part of Ms Bolton’s submission. As is clear from the passage I have quoted from ***Marshall*** (see [74] above), such private law right

of access to the highway that the First Claimant has is “*subject to the rights of the public*”. At its most prosaic, the right of access to the highway cannot be absolute because people leaving the Wyton Site would have to give way to traffic on the B1090. In heavy traffic, or if there was significant congestion or a traffic jam, a person exiting the Wyton Site might have to wait for some time before s/he could access the highway. Another example, directly linked to the protest activities, would be if the protestors organised a march or procession along the B1090 (with due notification being given to the police under s.11 Public Order Act 1986). For the time it took for the procession to pass the entrance of the Wyton Site, it would interfere with the First Claimant’s right of access to the highway. The First Claimant has no right to ask the Court to prohibit lawful use of the highway by the protestors on the grounds that it would interfere – for a short period – with the First Claimant’s right of access to the highway. Under s.12 Public Order Act 1986, if certain requirements are met, the police can impose conditions on processions. In that way a proper balance can be struck between the protestors’ right to demonstrate, and the First Claimant’s right of access to the highway.

(3) Public nuisance

81. When these proceedings were commenced, it was an offence at common law to cause a public nuisance. From 28 June 2022, the offence of public nuisance has been put on a statutory footing in s.78 Police, Crime, Sentencing and Courts Act 2022, and the old common law offence has been abolished. The new s.78 provides:

- “(1) A person commits an offence if—
- (a) the person—
 - (i) does an act, or
 - (ii) omits to do an act that they are required to do by any enactment or rule of law,
 - (b) the person’s act or omission—
 - (i) creates a risk of, or causes, serious harm to the public or a section of the public, or
 - (ii) obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and
 - (c) the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence.
- (2) In subsection (1)(b)(i) ”serious harm” means—
- (a) death, personal injury or disease,
 - (b) loss of, or damage to, property, or
 - (c) serious distress, serious annoyance, serious inconvenience or serious loss of amenity.

- (3) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for the act or omission mentioned in paragraph (a) of that subsection.
- (4) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court, to a fine or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both.
- ...
- (6) The common law offence of public nuisance is abolished.
- (7) Subsections (1) to (6) do not apply in relation to—
 - (a) any act or omission which occurred before the coming into force of those subsections, or
 - (b) any act or omission which began before the coming into force of those subsections and continues after their coming into force.
- (8) This section does not affect—
 - (a) the liability of any person for an offence other than the common law offence of public nuisance,
 - (b) the civil liability of any person for the tort of public nuisance, or
 - (c) the ability to take any action under any enactment against a person for any act or omission within subsection (1).
- (9) In this section “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.”

- 82. The Act retains civil liability for the tort of public nuisance: s.78(8)(b). That reflects the position that used to apply under the common law and the authors of *Clerk & Lindsell on Tort* (§19-179, 24th edition, Sweet & Maxwell, 2023) consequently suggest: “*it is clear that the previous common law decisions on liability for public nuisance continue to provide guidance on the scope of civil liability in highway cases*”.
- 83. Consideration of the law relating public nuisance arising from an obstruction of the highway must start with the following basic propositions:
 - (1) simple obstruction of the highway is a criminal offence under s.137 Highways Act 1980;
 - (2) a threatened or actual offence under s.137 *cannot* ground a civil claim (without the consent of the Attorney-General): **Gouriet** – see [76] above);

- (3) if the conditions of s.78 Police, Crime, Sentencing and Courts Act 2022 (or, prior to enactment, the common law offence of public nuisance) are met, obstruction of the highway *may* amount to public nuisance; and
- (4) a threatened or actual public nuisance *can* ground a civil claim upon proof of special damage.

(a) Obstruction of the highway: s.137 Highways Act 1980

84. So far as material, s.137 Highways Act 1980 provides:

“(1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to imprisonment for a term not exceeding 51 weeks or a fine or both...”

85. Any occupation of part of a highway which interferes with people having the use of the whole of the highway is an obstruction; and unless the obstruction is so small that it is *de minimis*, any stopping on the highway is *prima facie* an obstruction. However, the prosecution must also prove that the person responsible for the obstruction was acting unreasonably. Resolving that issue depends on all the circumstances, including the length of time of the obstruction, the place where it occurs, the purpose for which it is done, and whether it does in fact cause an actual obstruction as opposed to a potential obstruction: *Nagy -v- Weston* [1965] 1 WLR 280; *Hirst -v- Chief Constable of West Yorkshire* (1987) 85 Cr App R 143, 151 .
86. These principles were approved by the Divisional Court in *DPP -v- Ziegler* [2020] QB 253 (and not subject to adverse comment in the Supreme Court [2022] AC 408).
87. The law resolves the tension between the criminal offence of obstruction of the highway, under s.137, and the right to protest (protected by Articles 10 and 11 of the ECHR) by recognising that some protest activities, that create an obstruction on a highway, can be defended on the basis that the right to protest provides a lawful excuse for the obstruction. That was the effect of *Ziegler* and Lord Reed gave the following summary in *Reference by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] AC 505 (“*Northern Ireland Abortion Services*”):

[22] Section 137 and the equivalent predecessor provisions have a long and specific history, and have been the subject of a great deal of judicial consideration. The approach adopted to section 137 and its predecessors for over a century prior to *Ziegler* was rooted in authorities which treated the question to be decided under the statute as similar to the question to be decided in civil nuisance cases of an analogous kind. On that basis, it was held that it was necessary for the court to consider whether the activity being carried on in the highway by the defendant was reasonable or not: see, for example, *Lowdens -v- Keaveney* [1903] 2 IR 82, 87 and 89. That question was treated as one of fact, depending on all the circumstances of the case: *Nagy -v- Weston* [1965] 1 WLR 280, 284; *Cooper -v- Metropolitan Police Commissioner* (1985) 82 Cr App R 238, 242 and 244. That approach accorded with the general treatment in the criminal law of assessments of reasonableness as questions of fact. In cases where the activity in question

took the form of a protest or demonstration, common law rights of freedom of speech and freedom of assembly were treated as an important factor in the assessment of reasonable user: see, for example, ***Hirst -v- Chief Constable of West Yorkshire* (1986) 85 Cr App R 143**. That approach was approved, *obiter*, by members of the House of Lords in ***Director of Public Prosecutions -v- Jones* [1999] 2 AC 240, 258-259 and 290**. Lord Irvine of Lairg LC summarised the position at p 255: ‘the public have the right to use the public highway for such reasonable and usual activities as are consistent with the general public’s primary right to use the highway for purposes of passage and repassage’. The same approach continued to be followed after the Human Rights Act entered into force: see, for example, ***Buchanan -v- Crown Prosecution Service* [2018] EWHC 1773 (Admin); [2018] LLR 668**.

88. Lord Reed did criticise some aspects of the approach adopted by the Divisional Court in ***Ziegler*** ([23]-[25]), but recognised that the Supreme Court’s decision in ***Ziegler*** governed the proper approach to the interpretation of s.137 in protest cases:

[26] ... it was agreed between the parties, and this court accepted [in ***Ziegler***], that section 137 has to be read and given effect, in accordance with section 3 of the Human Rights Act, on the basis that the availability of the defence of lawful excuse, in a case raising issues under articles 10 or 11, depends on a proportionality assessment carried out in accordance with the approach set out by the Divisional Court: see [10]-[12] and [16]. As that question is not in issue in the present case, we make no comment upon it.

[27] One of the issues in dispute in the appeal was whether there can be a lawful excuse for the purposes of section 137 in respect of deliberate physically obstructive conduct by protesters, where the obstruction prevented, or was capable of preventing, other highway users from passing along the highway. Lord Hamblen and Lord Stephens concluded that there could be (***Jones*** was neither cited nor referred to). Lady Arden and Lord Sales expressed agreement in general terms with what they said on this issue.

[28] In the course of their discussion of this issue, Lord Hamblen and Lord Stephens stated at [59]:

“Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case”.

One might expect that to be the usual position at the trial of offences charged under section 137 in circumstances where articles 9, 10 or 11 are engaged, if the section is interpreted as it was in ***Ziegler***; and that was the only situation with which Lord Hamblen and Lord Stephens were concerned...

89. Lord Reed’s quarrel with ***Ziegler*** was with the suggestion – in [59] – that the Supreme Court had been stating a principle of universal application relevant to all contexts in which protest rights were engaged. It was this submission that Lord Reed rejected: [29]ff.

(b) Public nuisance by obstructing the highway

90. Assuming that a claimant can demonstrate commission of a public nuisance by the defendant(s), then s/he can bring a civil claim if s/he can prove (1) that s/he has sustained particular damage beyond the general inconvenience and injury suffered by the public as a result of the public nuisance; (2) that the particular damage which he has sustained is direct, not consequential; and (3) that the damage is substantial, “*not fleeting or evanescent*”: ***Jan De Nul (UK) Ltd -v- N.V. Royale Belge* [2000] 2 Lloyd’s Rep 700** (“*N.V. Royale Belge*”) [42] relying upon ***Benjamin -v- Storr* (1874) LR 9 CP 400**.
91. Relying upon ***East Hertfordshire DC -v- Isobel Hospice Trading Ltd* [2001] JPL 597**, Ms Bolton submitted that “*it is well-established law that it is a public nuisance to obstruct or hinder the free passage of the public along the highway*”. That is not an accurate statement of the law and the decision upon which she relied is not authority for that proposition. The case was a judicial review of the dismissal (by a Magistrates’ Court, and then on appeal) of a local authority’s complaint under s.149 Highways Act 1980 after several large wheelie bins had been placed on a highway. The Council had served a notice on the defendant to remove the wheelie bin that it had placed on the highway. The defendant did not comply with the notice and proceedings were then brought in the Magistrates’ Court. The Magistrates dismissed the complaint, and the Council appealed. The Crown Court dismissed the appeal. The Crown Court was satisfied that the wheelie bin was situated on the highway, but that it could not be said to be a nuisance or, if it was, “*it was a nuisance of such a piffling nature that it did not warrant the intervention of any court*”.
92. The High Court quashed the decision of the Crown Court. The Judge found that the wheelie bin was an obstruction of the highway that was not temporary. It was not relevant that people could navigate around it. The Judge concluded that the Crown Court had been wrong to hold that the positioning of the wheelie bin on the highway did not in law amount to a nuisance under s.149 ([32]), and remitted the case for redetermination: [38]. The case is not authority for what obstructions of the highway amount to a public nuisance; it is not a case about public nuisance at all.
93. The leading case concerning the common law offence of public nuisance is ***R -v- Rimmington* [2006] 1 AC 459**. In it, Lord Bingham identified ***Attorney General -v- PYA Quarries Ltd* [1957] 2 QB 169** as the modern authority on what amounts to a public nuisance [18]:

“This was a civil action brought by the Attorney General on the relation of the Glamorgan County Council and the Pontardawe Rural District Council to restrain a nuisance by quarrying activities which were said to project stones and splinters into the neighbourhood, and cause dust and vibrations. It was argued for the company on appeal that there might have been a private nuisance affecting some of the residents, but not a public nuisance affecting all Her Majesty’s liege subjects living in the area. In his judgment Romer LJ reviewed the authorities in detail and concluded, at p.184:

‘I do not propose to attempt a more precise definition of a public nuisance than those which emerge from the textbooks and authorities to which I have referred. It is, however, clear, in my opinion, that any nuisance is “public” which materially affects the reasonable comfort and convenience of life of

a class of Her Majesty's subjects. The sphere of the nuisance may be described generally as "the neighbourhood"; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected for an injunction to issue.'

Denning LJ agreed. He differentiated between public and private nuisance at p.190 on conventional grounds: '*The classic statement of the difference is that a public nuisance affects Her Majesty's subjects generally, whereas a private nuisance only affects particular individuals.*' He went on to say, at p.191:

'that a public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large.'

94. Ms Bolton's submissions on behalf of the Claimants have very much proceeded on the assumption that *every* threatened or actual obstruction of the highway is amounts to an actionable public nuisance. That is not correct. Whether a public nuisance is caused by an obstruction of the highway is a question of fact and degree: see e.g. ***N.V. Royale Belge*** [40].
95. The criminal offence of obstruction of the highway can embrace behaviour ranging from the obstruction of a single vehicle on a minor 'B' road at 3 o'clock in the morning, to a massive blockage of the M25 motorway during rush hour. The former, even if it amounts to a criminal offence under s.137 Highways Act 1980, would not remotely constitute a public nuisance, whereas the latter probably would.
96. In her submissions, Ms Bolton referred to and relied upon ***DPP -v- Jones*** [1999] 2 AC 240, ***Ziegler*** and ***Northern Ireland Abortion Services***. Whilst these authorities do contain important statements of principle, they have limited direct application to the issues that I must resolve. Each of those cases was concerned with the way in which the criminal law accommodates protest rights. None of the cases concerned the torts relied upon by the Claimants. ***DPP -v- Jones*** was a case about trespassory assembly, contrary to s.14A Public Order Act 1986; ***Ziegler*** concerned the offence of obstructing the highway, contrary to s.137 Highways Act 1980; and ***Northern Ireland Abortion Services*** concerned the legislative competence of the Northern Ireland Assembly to enact provisions that would prohibit certain activities within "*safe access zones*" adjacent to the premises where abortion services were provided.
97. Several of Ms Bolton's submissions, based upon ***Northern Ireland Abortion Services***, I consider to be wrong. For example, she argued that the case was authority for the proposition that ***Ziegler*** is not to be applied universally to cases concerning obstruction of the highway, "*and the approach is that set out by Lord Irvine in Jones, namely 'the public have the right to use the public highway for such reasonable and usual activities as are consistent with the general public's primary right to use the highway for purposes of passage and repassage'*". I reject that submission. ***Northern Ireland Abortion Services*** could not, and did not, overrule the authority of ***Ziegler*** on the proper interpretation of s.137. Lord Reed did not doubt the correctness of the Supreme Court's decision in ***Ziegler*** as it applied to the offence of obstructing the highway, indeed he

noted that it represented the position that was both well-established by earlier authorities and necessary given the parameters of the offence (see [87] above). He rejected the submission that the principle from *Ziegler* applied to all cases involving protest rights. He held that the answer to whether determination of the proportionality of an interference with Convention-protected protest rights required a fact-specific evaluation of the circumstances in the individual case depended upon the nature and context of the particular statutory provision. Even in relation to other offences that provide for a defence of lawful or reasonable excuse, it did not necessarily mean that the Court is required to carry out an individual proportionality assessment, “*the position is more nuanced than that*”: [53] (and see [58]).

98. It is not necessary to consider the other arguments that Ms Bolton advanced based on *Northern Ireland Abortion Services* because the case has only tangential relevance to the Claimants’ case against the Defendants in this claim. This case is not about, for example, whether it would be lawful for Cambridgeshire County Council to impose a Public Spaces Protection Order to prohibit certain protest activities in a designated zone around the Wyton Site (c.f. *Dulgheriu -v- London Borough of Ealing* [2020] 1 WLR 609). Nor is this case concerned with alleged offences of obstructing the highway. Even if the Claimants could establish that such an offence had been committed on one or more occasions, that could not be used as the basis for a civil claim against these Defendants. At the stage of liability, the case is about whether the Claimants can demonstrate: (1) that Mr Curtin (and others) have (a) trespassed on the Wyton Site; (b) obstructed access between the Wyton Site and the public highway; and/or (c) obstructed the carriageway in such a way as to cause a public nuisance; (d) (against Mr Curtin alone) that he has pursued a course of conduct involving the harassment; and/or (2) threaten to do one or more of these acts unless restrained by injunction.

(4) Harassment

99. The Protection from Harassment Act (“the PfHA”), s.1 provides, so far as material:

“(1) A person must not pursue a course of conduct —

- (a) which amounts to harassment of another, and
- (b) which he knows or ought to know amounts to harassment of the other.

(1A) A person must not pursue a course of conduct —

- (a) which involves harassment of two or more persons, and
- (b) which he knows or ought to know involves harassment of those persons, and
- (c) by which he intends to persuade any person (whether or not one of those mentioned above)—
 - (i) not to do something that he is entitled or required to do, or
 - (ii) to do something that he is not under any obligation to do.

- (2) For the purposes of this section ..., the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
 - (3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows -
 - (a) that it was pursued for the purpose of preventing or detecting crime,
 - (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
 - (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.”
100. A breach of ss.1(1) and/or (1A) is a criminal offence: s.2. Sections 3 and 3A PfHA provide that any actual or apprehended breach of ss.1(1) and (1A) may be the subject of a civil claim by anyone who is or may be the victim of the course of conduct.
101. A corporate entity is not a “person” capable of being harassed under s.1(1): s.7(5) and *Daiichi UK Ltd -v- Stop Huntingdon Animal Cruelty* [2004] 1 WLR 1503. However, a company may sue in a representative capacity on behalf of employees of the company if that is the most convenient and expeditious way of enabling the court to protect their interests: *Emerson Developments Ltd -v- Avery* [2004] EWHC 194 (QB) [2]. Alternatively, claims for an injunction under s.3A may be brought by a company in its own right: *Harlan Laboratories UK Ltd -v- Stop Huntingdon Animal Cruelty* [2012] EWHC 3408 (QB) [5]-[9]; *Astellas Pharma -v- Stop Huntingdon Animal Cruelty* [2011] EWCA Civ 752 [7].
102. Section 7 provides, so far as material:
- “(2) References to harassing a person include alarming the person or causing the person distress.
 - (3) A ‘course of conduct’ must involve—
 - (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
 - (b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.
 - (3A) A person’s conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—
 - (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and
 - (b) to be conduct in relation to which the other’s knowledge and purpose, and what he ought to have known, are the same as they were in relation

to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

- (4) 'Conduct' includes speech.
- (5) References to a person, in the context of the harassment of a person, are references to a person who is an individual."

103. A defendant has a defence if s/he shows: (i) that the course of conduct was pursued for the purpose of preventing or detecting crime; and/or (ii) that in the particular circumstances the pursuit of the course of conduct was reasonable (s.1(3)).

104. Assessing whether conduct amounts to or involves harassment, and whether any defendant has a defence under s.1(3), can be difficult and is always highly fact specific. In ***Hayden -v- Dickenson* [2020] EWHC 3291 (QB)** [44], I reviewed the relevant authorities and identified the following principles (with citations mostly omitted):

- "(i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; *'a persistent and deliberate course of targeted oppression'*...
- (ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2... A course of conduct must be grave before the offence or tort of harassment is proved...
- (iii) The provision, in s.7(2) PfHA, that *'references to harassing a person include alarming the person or causing the person distress'* is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it... It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment; that would be illogical and produce perverse results...
- (iv) s.1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective... *'The Court's assessment of the harmful tendency of the statements complained of must always be objective, and not swayed by the subjective feelings of the claimant'*...
- (v) Those who are *'targeted'* by the alleged harassment can include others *'who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it'*...

- (vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court's duties under ss.2, 3, 6 and 12 of the Human Rights Act 1998. The PfHA must be interpreted and applied compatibly with the right to freedom of expression. It would be a serious interference with this right if those wishing to express their own views could be silenced by, or threatened with, proceedings for harassment based on subjective claims by individuals that they felt offended or insulted...
- (vii) In most cases of alleged harassment by speech there is a fundamental tension. s.7(2) PfHA provides that harassment includes '*alarming the person or causing the person distress*'. However, Article 10 expressly protects speech that offends, shocks and disturbs. '*Freedom only to speak inoffensively is not worth having*'...
- (viii) Consequently, where Article 10 is engaged, the Court's assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant's Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality... The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the '*ultimate balancing test*' identified in *In re S* [17] ...
- (ix) The context and manner in which the information is published are all-important... The harassing element of oppression is likely to come more from the manner in which the words are published than their content...
- (x) The fact that the information is in the public domain does not mean that a person loses the right not to be harassed by the use of that information. There is no principle of law that publishing publicly available information about somebody is incapable of amount to harassment...
- (xi) Neither is it determinative that the published information is, or is alleged to be, true... '*No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do*'... That is not to say that truth or falsity of the information is irrelevant... The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under s.1(3)), particularly when considering any application interim injunction... On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger... The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment.
- (xii) Finally, where the alleged harassment is by publication of journalistic material, nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment. Such cases will be rare and exceptional..."

105. That summary of the law was approved by the Divisional Court in *Scottow -v- CPS* [2021] 1 WLR 1828 [24], to which Warby J added [25(1)]:

“A person alleging harassment must prove a ‘course of conduct’ of a harassing nature. Section 7(3)(a) of the PfHA provides that, in the case of conduct relating to a single person, this ‘must involve ... conduct on at least two occasions in relation to that person’. But this is not of itself enough: a person alleging that conduct on two occasions amounts to a ‘course of conduct’ must show ‘a link between the two to reflect the meaning of the word “course”’: *Hipgrave -v- Jones* [2004] EWHC 2901 (QB) [62] (Tugendhat J). Accordingly, two isolated incidents separated in time by a period of months cannot amount to harassment: *R -v- Hills (Gavin Spencer)* [2001] 1 FLR 580 [25]. In the harassment by publication case of *Sube -v- News Group Newspapers Ltd* [2020] EMLR 25 I adopted and applied this interpretative approach, to distinguish between sets of newspaper articles which were ‘quite separate and distinct’. One set of articles followed the other ‘weeks later, prompted, on their face, by new events and new information, and they had different content’: [76(1)], [99] (and see also [113(1)]).”

106. Factors (vi) to (ix) from *Hayden* are likely to have equivalent resonance in protest cases, which similarly engage Article 10 (and Article 11). It is relevant to consider the speech that is alleged to amount to or involve harassment. Any attempt to interfere with political speech requires the most convincing justification, and the most anxious scrutiny from the Court: *Hourani -v- Thomson* [2017] EWHC 432 (QB) [212]; *Hibbert -v- Hall* [2024] EWHC 2677 (KB) [154]. The objective nature of the assessment of whether the conduct amounts to or involves harassment (*Hayden* factor (vi)) is critical to ensuring proper respect for Article 10.
107. The course of conduct, viewed as a whole, must be assessed objectively. It is not necessary for each individual act that comprises the course of conduct to be oppressive and unacceptable. Individual acts which, viewed in isolation, appear fairly innocuous, may take on a different complexion when viewed as part of a bigger picture: *Hibbert -v- Hall* [152].
108. Finally, the claim of harassment pursued against Mr Curtin, at trial, does not allege that Mr Curtin has breached s.1(1) of the PfHA. It is not alleged that he has targeted any individual. The claim alleges a breach of s.1(1A). As such, the Claimants must also demonstrate, not only that Mr Curtin pursued a course of conduct, which involved harassment of two or more persons, which he knew or ought to have known involved harassment of those persons, but also, under s.1(1A)(c) that he intended, by that harassment, to persuade any person (which could include either those who were harassed or the First Claimant) not to do something that s/he/it was entitled or required to do, or to do something that s/he/it was under no obligation to do.

G: The Third Contempt Application

109. As already noted (see [52] above), the Third Contempt Application, against Mr Curtin, was issued by the Claimants on 17 June 2022. It was supported by the Sixth Affidavit of Ms Pressick and the Second Affidavit of Mr Manning. The evidence was heard

during the trial, with a further hearing, after the trial, on 23 June 2023. Mr Curtin was represented at this hearing, and he gave evidence.

(1) Allegations of breach of the Interim Injunction

110. The contempt application alleged that Mr Curtin had breached the Interim Injunction, in the terms imposed on 31 March 2022, as follows (“the Grounds”):
- (1) On 26 April 2022, at 03.08, Mr Curtin entered the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.
 - (2) On 26 April 2022, at 03.55 and in the period immediately thereafter, Mr Curtin twice approached and/or obstructed the path of a white van that was directly exiting the Exclusion Zone, in breach of Paragraph 1(4) of the 31 March 2022 order.
 - (3) On 12 May 2022, at 10.57, Mr Curtin entered the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.
 - (4) On 12 May 2022, at 11.56, Mr Curtin instructed and/or encouraged an unknown and unidentifiable person to enter the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.
 - (5) On 12 May 2022, at 15.13, Mr Curtin entered the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.
 - (6) On 12 May 2022, between 15.24 and 15.27, Mr Curtin approached and/or obstructed the path of a Police van, such that the van was unable to exit the Exclusion Zone, in breach of Paragraph 1(4) of the 31 March 2022 order.

(2) Evidence relied upon

111. Principally, the evidence upon which the Claimants relied to prove the alleged breaches is video footage. The affidavits of Ms Pressick and Mr Manning do little more than produce this video evidence and then comment upon what it shows.
112. Grounds 1 and 2 relate to an incident, on 26 April 2022, when a white van left the Wyton Site at just after 3am. Police were in attendance. The protestors clearly believed that dogs were being transported from the Wyton Site in the vehicle.
113. Grounds 3 to 6 concern various separate incidents on 12 May 2022.

(a) Ground 1

114. The video footage relied upon shows that a person, alleged to be Mr Curtin, stands and walks through an area which is alleged to be within the Exclusion Zone. The person is alleged to be in the Exclusion Zone for no more than 9 seconds.

(b) Ground 2

115. The video footage relied upon shows, from several different viewpoints, that a person, alleged to be Mr Curtin, approached and/or obstructed the path of a white van that was

directly exiting the Exclusion Zone. Specifically, it is alleged that Mr Curtin approached the white van when it was inside, attempting to exit, and immediately upon its exit from, the Exclusion Zone. Essentially, the white van left the Wyton Site by the main gate and attempted to turn right. As it did so, several protestors, including Mr Curtin, stood in front of and around the vehicle. Albeit temporarily, the vehicle was obstructed by Mr Curtin (and others) as it attempted to leave the Exclusion Zone.

(c) Ground 3

116. The video evidence shows that, at around 10.57 on 12 May 2022, a protestor throws a plastic box into the carriageway which is within the Exclusion Zone. Mr Curtin crosses the central line of the carriageway and kicks the plastic box away from the road. In doing so, Mr Curtin is within the Exclusion Zone for possibly 2 seconds.

(d) Ground 4

117. At 11.53 on 2 May 2022, an unidentified person, dressed as a dinosaur described by Mr Manning as a “*tyrannosaurus-rex costume*”, enters the Exclusion Zone. The dinosaur ambles around the verge of the carriageway to the left of entrance to the Wyton Site. Another protestor appears to film the dinosaur without entering the Exclusion Zone. At 11.56, the dinosaur approaches Mr Curtin, who appears to have been filming him/her, and engages in conversation. Mr Curtin remains outside the Exclusion Zone. Mr Curtin then can be seen to take off and give his footwear to the dinosaur. Thereafter, Mr Manning says that the dinosaur “*seems to be doing little more than messing around on the driveway area... showing off for the CCTV cameras and the protestors who are cheering*”. Mr Manning speculates that the dinosaur was looking for a lost drone. Mr Manning concludes: “*the CCTV of the t-rex incident clearly shows Mr Curtin assisting the t-rex’s breach of the Exclusion Zone, as he lends his shoes to the person in the costume*”. It is not alleged that, at any point, the itinerant dinosaur trespassed on the First Claimant’s land or committed any other civil wrong.

(e) Ground 5

118. Later, on 12 May 2022, from around 15.08, the video evidence shows a convoy of vehicles leaves the Wyton Site, largely unobstructed. There is a significant police presence. On occasions, protestors can be seen to step over the mid-point of the carriageway into the exclusion zone. Police officers can be seen to gesture at the white lines, which I take to be a reminder of the Exclusion Zone. The protestors then step back.
119. At 15.13 a police van pulls up in front of the gates to the Wyton Site. It stops in the Exclusion Zone. A man, dressed in black, appears to have been arrested. Mr Curtin and another protestor approach the police vehicle, and in doing so enter the Exclusion Zone for a couple of seconds. Following a search, at 15.16, the detained man is placed into the van.

(f) Ground 6

120. This incident follows closely on from the Ground 5. A second police van can be seen to be stationary on the carriageway to the left of the Wyton Site. Police officers get into the van at around 15.18 and appear to be about to leave. However, their route is

obstructed by several protestors. At 15.24, Mr Curtin joins the protestors who are standing in front of the police van. A police officer gets out of the van and speaks to the protestors. The protestors disperse by 15.28 and the van drives off. Mr Manning states that the video evidence shows that Mr Curtin was in front of the van for a little over a minute. Arguably, the actions of the protestors were an obstruction of the highway, but the police did not take any action, perhaps in view of the very short-lived extent of the obstruction.

H: The parameters of the Claimants' claims

(1) The case against Mr Curtin

121. At an earlier stage of the proceedings, I made directions that the Claimant must plead, separately, the allegations that they made against each of the named Defendants in their Particulars of Claim. This was to ensure fairness. It was not fair to expect litigants in person to have to grapple with extensive Particulars of Claim – containing allegations directed at “Persons Unknown” – to attempt to identify what, if anything, was being alleged against them specifically. For the purposes of trial, Defendant-specific bundles were required to be provided by the Claimants. Each bundle contained only the allegations and evidence relevant to that Defendant.
122. By the time we reached the end of the trial, Mr Curtin was the only named Defendant who remained. The parameters of the case against him are set by what is pleaded in his Defendant-specific Particulars of Claim.
123. In their pleaded case, the Claimants allege that Mr Curtin, on various occasions, has been guilty of trespass, public nuisance on the highway, interference with the First Claimant's common law right of access to the highway from the Wyton Site and, finally a course of conduct involving harassment of the First Claimant's employees (and others in the Second Claimant class).
124. As I will come on to consider (see Section J(2) below), the Claimants advanced allegations against Mr Curtin, both in the witness evidence and at trial, that went beyond the case pleaded against him in the Particulars of Claim.
125. The Claimants' pleaded case against Mr Curtin relies upon the incidents I shall identify and address in the next section of the judgment when I deal with the evidence. I shall deal with each incident, chronologically, setting out the evidence and stating my conclusions, including, where necessary, resolving any disputed aspects of that evidence.

(2) The case against “Persons Unknown”

126. Although the pleaded case against the various categories of “Persons Unknown” included other claims, by the end of the evidence and in their closing submissions following the Supreme Court decision in *Wolverhampton*, the Claimants had narrowed the claims advanced against “Persons Unknown” to a claim for an injunction against various categories of “Persons Unknown” or, alternatively, a *contra mundum* injunction, to restrain: (1) trespass (including prohibiting drone flying below 100 metres); (2) public nuisance caused by obstruction of the highway; and (3) interference with the First Claimant's right of access to the public highway. The Claimants did not

pursue a claim for harassment against “Persons Unknown” (or *contra mundum*) at the end of the trial.

I: The evidence at trial: generally

127. Before turning to the evidence relating to specific incidents, I should set out the evidence that was adduced at the trial and deal with some general issues. Some of the most important evidence at the trial were extracts of CCTV footage of various incidents. At the time the evidence for trial was prepared, the Wyton Site had 30 CCTV cameras in various locations. The security team are also equipped with body-worn cameras in certain situations.
128. The following witnesses were called by the Claimants at trial: (1) Susan Pressick; (2) Wendy Jarrett; (3) David Manning; (4) Demetrius Markou; (5) Employee A; (6) Employee AF; (6) Employee B; (7) Employee F; (8) Employee G; (9) Employee H; (10) Employee J; (11) Employee L; (12) Employee V; and (13) the Production Manager.
129. Anonymity orders were made for some of the witnesses. This was to protect the relevant witnesses from the risk of reprisal. The evidence has demonstrated that a small minority of individuals (not Mr Curtin) have sought to target those whom they identify as being employees of the First Claimant. At the trial, the anonymised witnesses gave their evidence via video link, in public, but with their identity protected. That was achieved by the Court, initially, sitting temporarily in private, during which the witness appeared on screen and was sworn. The screen was then deactivated, and the Court went back into open Court for the witness to be questioned on his/her evidence.
130. Some of the witnesses were not anonymised. For some, their names were well known to the protestors so anonymising them would have served no real purpose. Nevertheless, I have decided to adopt a cautious approach to naming them in this judgment. That is because, once handed down, this judgment, will become a public record.
131. The Claimants also relied upon witness statements of four witnesses, as hearsay, who were not called to give evidence: Employee C; Employee I; Employee P; and Jane Read.
132. Finally, Mr Curtin gave evidence at the trial. This largely consisted of his being cross-examined by Ms Bolton over three days.
133. The existence and availability of extensive CCTV recordings of the incidents means that there are no material disputes of fact that require me to decide between accounts given in the oral evidence. When I deal in the next Section of the judgment with the various incidents relied upon by the Claimants, I will refer to the evidence of the Claimants’ witnesses. Before that, I should refer to the key witnesses for the Claimants who gave evidence relevant to the claim as a whole.

(1) Susan Pressick

134. Ms Pressick has provided many witness statements (and several Affidavits) during the litigation. She is employed by the Third Claimant as the Site Manager & UK Administration & European Quality Manager for the UK subsidiaries of Marshall Farm

Group Ltd. Ms Pressick has been closely involved in the litigation on behalf of the Claimants. Although she is based in Hull, Ms Pressick confirmed that she attends the Wyton Site most weeks. Her direct evidence of events is therefore limited, but she has played a significant role in the coordination of the evidence gathering process for the Claimants. Her witness evidence has been used as the primary vehicle for the introduction of the video evidence upon which the Claimants rely in relation to events at the Wyton Site.

135. Ms Pressick confirmed that, on occasions, she had been shouted at by protestors when she has visited the Wyton Site. In cross-examination she accepted that the protestors were not shouting at her, personally, but because she was perceived to be an employee of the First Claimant. One of the things that Ms Pressick recalled being shouted was “*puppy killer*”. Questioned by Mr Curtin, Ms Pressick said that she did not understand why the protestors shouted that at people going to and from the Wyton Site. Mr Curtin put it to her that it was because dogs were euthanised at the site in a process that was termed “*terminal bleeding*”. Ms Pressick accepted that on occasions that happened, but she maintained that being called a “*puppy killer*” was not a pleasant experience. Mr Curtin asked Ms Pressick about the impact of this upon her:

Q: Do you take it personally, or do you take it ‘They’re calling me that because I work here?’ ...

A: You take it personally, because we do everything we can do correctly...

Q: Have you ever been specifically pointed out, ‘That’s the puppy killer’?

A: No, as I described before, it’s all of us, when we’re moving around on and off site.

Q: And in a form of legitimate protest, can you have any understanding... of why that would be a legitimate thing for a protestor to shout outside a very controversial beagle breeding establishment?

A: I can understand the peaceful protest and the need for emotion to explain what the protestors are saying. It’s still difficult to accept being shouted at.

136. In her witness evidence, Ms Pressick dealt with the, very limited, protest activity at the B&K Site in Hull.

137. Following the *Wolverhampton* decision, the Claimants were given the opportunity to file further evidence relevant to their claim for a *contra mundum* ‘newcomer’ injunction. Ms Pressick provided a further witness statement, dated 19 March 2024.

(2) Wendy Jarrett

138. The Claimants filed a witness statement for trial, dated 25 January 2023, from Wendy Jarrett, who attended to give evidence. Ms Jarrett is the Chief Executive of Understanding Animal Research (“UAR”). Ms Jarrett explained that UAR is a not-for-profit organisation that exists to explain to the public and policymakers why animals are used in medical and scientific research. UAR is funded by Marshall BioResources, the parent company of the First and Third Claimants; the Medical

Research Council and other bodies including the Wellcome Trust, the British Heart Foundation and Cancer Research.

139. Whilst Ms Jarrett's evidence was generally helpful in explaining the current UK legislation regarding animal research, I struggled to see the relevance that it had to the issues I must decide. Ms Bolton suggested that it was evidence that would explain the harm to medical research in this country were the First (and Third) Defendant to cease trading, thereby interrupting or curtailing the supply of beagles for clinical trials.
140. It was a feature at the trial that it was necessary, on several occasions, to remind Mr Curtin that he was not required (not was it relevant for him) to prove that the use of animals in medical research was "wrong". I appreciate why he feels the need to do so. That is a product of the adversarial process in which Mr Curtin feels the need to defend his actions. But the Claimants do not dispute that he, and the other protestors, have a sincerely held belief that animal testing – and the First and Third Claimant's role in supplying dogs for animal testing – is wrong (see [29] above). By the same token, it is equally irrelevant for the Claimants to attempt, in these proceedings, to show that animal testing is "*right*" or that Mr Curtin's beliefs are "*wrong*". Most of Ms Jarrett's evidence falls into this category, and is irrelevant to the issues that I must decide.
141. Even on the narrow issue identified by Ms Bolton – the consequences to medical research were the First (and Third) Defendants to be put out of business – I struggle to see its relevance. If the Defendants' protest activities are lawful – yet they lead to the First and Third Defendants going out of business – the harm that that might cause (which is highly speculative in any event) is not a basis on which the Court could curtail or limit otherwise lawful acts of protest. If the Defendants' protest activities are unlawful, then the Court will grant appropriate remedies to provide adequate redress whether or not harm might be caused to medical research in this country.

(3) David Manning

142. Mr Manning is employed by the First Claimant. He is a security guard at the Wyton Site. Although Mr Manning has only been employed by the First Claimant since June 2022, he has been a security guard at the site since 2014, having been previously employed by a contractor that used to provide security services at the Wyton Site. The contractor continues to provide other security guards at the site, but Mr Manning is now employed directly by the First Claimant to supervise the security team. As a result of that history, Mr Manning has had a direct involvement with the activities of the protestors from the start. If there is one employee of the First Claimant who has been in the 'front line', it is Mr Manning.
143. In his evidence, Mr Manning noted that because of the escalation of the protests, there is now a need for him to be supported by a security team of between four and ten guards. Mr Manning carries out a risk assessment on a day-to-day basis to determine how many of his team he will need. He also reviews CCTV footage and uses the cameras to monitor the protestors. In his witness statement, Mr Manning has identified the key incidents relied upon by the Claimants by reference to the CCTV footage that is available.

J: The evidence at trial against Mr Curtin

144. Before turning to the individual incidents alleged against Mr Curtin, it is necessary to set them in their context and the overall questioning of Mr Curtin.
145. The protest activities fall, broadly, into what can be called pre- and post-injunction periods. Before the Interim Injunction was granted, the hallmark of the main protest activities was the obstruction, and usually surrounding, of vehicles entering or leaving the Wyton Site. That was done largely to enable the protestors to confront those accessing the Wyton Site with the protest message they wanted to deliver. Mr Curtin described this as the ‘ritual’. As part of the ‘ritual’, protestors would routinely delay entry or exit from the site. The extent of the delay varied. In the worst, pre-injunction incidents, the workers were prevented from accessing the Wyton Site for several hours, but typically the delay was only some minutes. In the Interim Injunction Judgment, I described this as the “*flashpoint*” in the protest activities.
146. After the Interim Injunction was granted, the phenomenon of protestors surrounding vehicles and delaying their access to/from the Wyton Site was largely brought to an end. This was achieved by the imposition of the Exclusion Zone as a temporary measure. After the Interim Injunction, although there are instances where it is alleged that Mr Curtin and others have obstructed vehicles entering or leaving the Wyton Site, it is nothing on the scale of what had been happening prior to the grant of the Interim Injunction.

(1) The pleaded allegations against Mr Curtin

13 July 2021

147. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles driven by the First Defendant’s employees at the Wyton Site, whilst using a loudhailer to shout at those in the vehicles. Employee F was driving a white Mercedes A Class car, Employee Q was driving a black Volkswagen Polo, Jane Read was driving a green Vauxhall Mokka, and Employee AA was driving a white Seat Ibiza.
148. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant’s common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway.
149. The obstruction of the vehicles and Mr Curtin’s use of the loudhailer is alleged to be part of a course of conduct involving harassment of the employees involved, in particular it is alleged that Mr Curtin shouted at Ms Read: “*leave this place... are you seriously thinking that this time next year you want to be working at this hellhole... it’s your choice*”.
150. Although witness statements had been filed for Employees AA and Q, they did not give evidence at trial.
151. Employee F gave evidence at trial, and in doing so gave his name because he had been identified by some protestors. For the reasons I have explained, I have decided not to use Employee F’s name in this judgment.

152. Employee F had worked at the Wyton Site since around 2015, including for the company that operated the site prior to the First Claimant. In his witness statement, Employee F gave some general evidence about the effect upon him/her of the demonstrations. One of the problems in this case is that the evidence – perhaps naturally – tends to focus upon the actions of “*the protestors*”, as a general group, and without always being careful to identify the acts of specific individuals. An individual protestor does not lose the right to demonstrate because of unlawful acts committed by others in the course of the demonstration if the individual in question behaves lawfully: ***Canada Goose -v- Persons Unknown* [2020] 1 WLR 417 [99(8)]**.

153. In one particular paragraph, Employee F stated:

“During the summer of 2021, the protests outside the Wyton Site became more intense, and it was not possible to enter or exit the Wyton Site safely. In particular, the staff cars trying to enter and exit the Wyton Site were frequently obstructed and surrounded by large groups of protestors. The abuse on particular days and threats and conduct of the Defendants towards me and others working at MBR is referred to in more detail below. It was, however, a terrifying experience entering and exiting the Wyton Site at this time, with protestors standing in front of and surrounding my vehicle on a daily basis, preventing me from freely accessing the Highway from the Wyton Site, or the Wyton Site from the Highway, whilst threatening me and abusing me in an angry and intense manner.”

154. Although the wording used in this paragraph of Employee F’s witness statement is very similar to that used by Mr Manning, and other witnesses who gave evidence – a point that Mr Curtin highlighted in cross-examination of some of the witnesses – I have no difficulty in accepting that it is an accurate description of what was happening at the Wyton Site in the summer of 2021, before the Interim Injunction was granted. During that period, there were occasions when the protestors were effectively dictating the terms on which people could access and leave the Wyton Site. I also accept that the experience of having their vehicles surrounded by protestors who were shouting at the occupants was frightening for Employee F and others. It is important, however, to isolate the allegedly harassing conduct for which Mr Curtin is responsible.

155. Employee F in his/her witness statement said this about the incident on 13 July 2021:

“On 13 July 2021 at 15.56 onwards, [various protestors including John Curtin], stood on the Highway and obstructed my vehicle as I sought to travel along the Access Road to the main carriageway of the Highway, having exited the Wyton Site. [John Curtin and two other protestors] stood to the front and side of my car, which prevented me driving freely along the Access Road as there was no clear pathway for my car through the protestors... Two protestors stood on the Access Road directly in front of my car, so that I had to stop for around 45 seconds. While my car was on the Access Road... John Curtin continually shouted at me through a megaphone... [Another protestor] continually shouted at me, leaning into my passenger side window. [A further protestor] held a placard reading: ‘STOP ANIMAL TESTING’ and took a video recording of my vehicle and those travelling inside. [This protestor] then moved to the front passenger window and continued to take a video recording of those of us travelling inside my car. I have seen the video that [this protestor] was live streaming and, while speaking to those watching his Facebook live video, he can be heard to say ‘Do you recognise these

people? Look.’ I understand this statement and recording to be an attempt to identify myself and those travelling with me in my car...”

156. Employee F then described an incident with another protestor in which the protestor represented that the law required Employee F to ask him/her to move out of the way. That was a misapprehension as to the law, but it was one that a police officer in attendance appeared to adopt. Employee F continued:

“The protestors obstructing my vehicle, filming me and trying to film inside my vehicle and shouting at us made me feel intimidated and anxious and is a huge distraction from concentrating on the road while driving... I felt annoyed that the protestors were delaying me getting home, especially whilst making demands that I gesture to them to move and insisting to the police that they needed to ask me to do that. I also felt stressed prior to leaving the Wyton Site because I knew I would get delayed trying to get out of the Wyton Site, as I usually had to wait for the police to move the protestors out of the way. The protestors were scaring, threatening and intimidating me, and I believe their aim is to stop me coming back to the Wyton Site and to make me get a different job.”

157. Employee F was cross examined by Mr Curtin. Employee F was a careful and impressive witness. S/he generally gave considered answers to the questions s/he was asked. I accept his/her evidence. Both in his/her witness statement, and confirmed in cross-examination, Employee F said that, in respect of the pre-injunction phase, s/he was frustrated by the lack of police action and thought that the police could have done more to help the employees entering and leaving the Wyton Site. Mr Curtin asked Employee F about his/her being terrified by the actions of the protestors. Employee F said: *“there’s always the aspect of terror because, as far as I’m concerned, the behaviour of the protestors is uncertain”*.

158. In cross-examination, Employee F confirmed that, at some point prior to the injunction being granted, anti-terrorism police came to the First Claimant and gave a presentation to the staff. The talk covered issues including car and letter bombs and was designed to support staff and raise awareness. Employee F confirmed that s/he found the information alarming and distressing.

159. In his/her witness statement, Employee F had identified thirteen protestors, including Mr Curtin, by name, whom he was able to identify as having been involved in the protests. S/he said that there were *“other protestors at the Wyton Site who [s/he] recognise by sight, but who are just making their views known, and not doing anything especially ‘wrong’ (for example, they have never surrounded or obstructed [his/her] car”*. Mr Curtin asked Employee F what s/he thought that Mr Curtin had done wrong. Employee F said that there had been times when Mr Curtin had *“verbally abused [him/her] and other colleagues”* by *“name-calling”*. Employee F gave as examples of *“monster”* and *“puppy killer”*. Employee F believed that this was behaviour was *“wrong”*. Mr Curtin asked Employee F whether s/he could appreciate that, in the context of a demonstration, such terms as *“puppy killer”* could be regarded as legitimate. Employee F agreed that *“everyone’s entitled to their own opinion”*. Nevertheless, Employee F maintained that s/he took the comment personally.

160. Mr Curtin established the following matters with Employee F. Employee F was aware that under the terminal bleeding procedures, some dogs did die at the Wyton Site.

Employee F accepted that Mr Curtin was not responsible for publishing Employee F's photograph online and that he was not responsible for sending abusive messages to Employee F.

161. In her witness statement, relied upon as hearsay evidence by the Claimants, Ms Read described the incident on 13 July 2021 as follows:

“On 13 July 2021 at 15:56, protestors stood in the Access Road and obstructed the convoy of staff vehicles as we sought to leave the Wyton Site, as shown in Video 24. I was in my green Vauxhall, which was third in the convoy. [Two protestors] stood directly in front of my car as I sought to exit the Wyton Site, causing me to need to stop on the Driveway for around 50 seconds before I was able to slowly pass them; the incident prevented me having free passage along the Access Road and to the main carriageway of the Highway. [One of these protestors] was yelling ‘shame on you’. I found [this protestor] very intimidating as he was so in my face and so close to my car. I was shaking by the time I got past him. I just did not know what to expect from him given his behaviour, and I feared for my safety. I also found [the other protestor] very intimidating, as he was so worked up, and seemed to be ranting, and kept making reference to whether I was ‘proud’ of my job. He did not appear to be acting rationally, so I was worried about what he would do. John Curtin was also standing to the side of my car, whilst using a loudhailer to shout at me. He can be heard yelling ‘leave this place...are you seriously thinking that this time next year you want to be working at this hellhole...it’s your choice’. I was just trying to ignore him and just drive safely.

In another video of the same incident (Video 22), I can see [another female protestor] standing near the bell mouth of the Access Road and to the side of my car (once I have been able to reach that point) and holding posters to my windows and touching my car. I had to stop the car because of her presence. I was thinking of the traffic ahead, because I was trying to join the main carriageway of the Highway, and that this was a road traffic accident waiting to happen, and I was hoping that [she] would move. I then managed to get away. I remember not being able to see because of all the protestors crowding around my car, and the parked cars at the entrance to the Access Road.

In Video 21, [another protestor] can be seen stepping back and forth in front of my car, looking like he was moving to the side and then stepping back in front of me; his movements made it very difficult to drive past him.

There was also a woman in a baseball cap... standing to the front and side of my car, with a placard.”

162. Although Mr Curtin was not able to cross-examine Ms Read, I readily accept the description she gives of the incident because it is corroborated by the video footage.
163. Mr Curtin was cross-examined about this incident by reference to the video footage. Police officers were present during the incident. Mr Curtin disputed that he was obstructing the vehicles leaving the Wyton Site, but I am quite satisfied that – together with the other protestors involved in the incident – he was. Indeed, an essential part of the ‘ritual’ was delaying and confronting those entering and exiting the Wyton Site with the protestors’ message; that was the hallmark of the pre-injunction period. As Mr Curtin accepted in cross-examination, when the vehicles were slowed down or

stopped for a period when leaving or entering the Wyton Site the occupants became a “*captive audience*” to the protest message. He denied that he was intending to harass any of the employees of the First Claimant. He had not threatened any of them. Mr Curtin accepted that he was using a loudhailer. Ms Bolton put it to him that he was “*directing abuse directly at Employee F’s car*”. Mr Curtin disputed that it was abuse; he stated that he was communicating the protest slogans.

164. Mr Bolton put it to Mr Curtin that he was confronting the employees with his protest message, using a loudhailer, to try and get them to leave their jobs. Mr Curtin answered: “*If they were to leave their job, I’d be pleased for them, but there’s no coercion, there’s no intimidation, absolutely none*”.
165. The video evidence shows that passage out of the Wyton Site was not free. As well as being delayed by those protestors who were standing in front of or near to the vehicles, in turn, each driver, would have had his/her view of the carriageway obstructed by people standing next to his/her vehicle. Mr Curtin accepted in cross-examination that, in this respect, he was inferring with each vehicle’s access to the highway. He made clear that that had not been his intention at the time. This was Mr Curtin’s reflection upon being asked this question in cross-examination. He said:

“I’m there, and because I’m there, if I’m standing there as a protestor and I’m in some way impairing a perfect view if I wasn’t there, then yes. But these thoughts were not in my mind, and they’re more likely – they should have been in the mind of the police officer really... If it had been pointed out to me, I would have been more than happy – because my job that day was to protest and it wasn’t to endanger anyone. I wouldn’t have wanted that.”

And a little later, in answer to Ms Bolton putting to him that he was standing in position which would have obstructed the driver’s view to the right when entering the carriageway, Mr Curtin replied:

“I accept – I don’t want to be funny – I’m accepting I’m not transparent. The driver would have to – might have to move their neck out or their head... they should not move onto a highway if they can’t see. And if that had been relayed to anyone at the time, it would have been part of the police liaison procedure... My aim here is to protest, and only protest, and do it safely and do it legally and do it well.”

166. On closer analysis of the video footage of this incident, it appears that Ms Bolton’s point on obstruction of Employee F’s view along the carriageway is more theoretical than real. I asked her to identify the moment, on the CCTV, at which she alleged that Mr Curtin was blocking Employee F’s view along the carriageway. At the point she identified, a police officer, who was attempting to guide Employee F’s vehicle out of the Wyton Site was standing in front of the vehicle. The reality of this situation is that whilst Mr Curtin might have been obstructing, for a matter of moments, Employee F’s view down the carriageway, the reality is that his/her attention would have been on the police officer in front of his vehicle. The point had not been explored in Employee F’s evidence, so it is difficult to reach any firm conclusions beyond the fact that any obstruction of Employee F’s view along the carriageway could only have been for a matter of moments.

167. Mr Curtin also made the point that it was never suggested by any of the police officers present that there was a problem with the way he was demonstrating. He also stated that he was not wilfully obstructing the drivers' view down the carriageway. He was demonstrating. He accepted that the performance of the 'ritual' meant that the cars were held up leaving the Wyton Site.
168. My findings in relation to the pleaded 13 July 2021 incident are:
- (1) Mr Curtin trespassed, for a short period, on the Claimant's land.
 - (2) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being no longer than a few minutes. It will have caused only minor inconvenience. Insofar as it is relevant, I am not satisfied that Mr Curtin intended to obstruct vehicle access to the highway when he stood to the side of vehicles. He frankly accepted in cross-examination, that his standing in that position on the carriageway, close to the vehicles, may have meant that the driver of the vehicle's view of the carriageway was temporarily impaired, but I am unable to reach a firm conclusion about that. In any event, had this been the sole basis for the alleged interference with access to the highway, I would have rejected it. But this incident must be considered as a whole and, with others, Mr Curtin did directly obstruct the vehicles leaving the Wyton Site that day. It was the usual 'ritual'.
 - (3) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance, particularly having regard to the limited role played by Mr Curtin. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a few private individuals rather than the public generally. The only people affected by the obstruction were the employees of the First Claimant who were leaving the Wyton Site.
 - (4) The issue of whether Mr Curtin has engaged in a course of conduct involving harassment must be assessed by considering the full extent of the acts upon which the Claimants rely (and I do so below), but in this individual incident the protest message delivered by Mr Curtin was not, either in the words used or the manner in which it was delivered, inherently harassing. Ms Read simply tried to ignore him and did not say that she was caused distress or alarm either by what Mr Curtin shouted at her, or that his method of address was itself harassing. Employee F did not appreciate being called names – like "*monster*" and "*puppy killer*" – by Mr Curtin but he did not suggest that this name-calling had caused him/her distress or alarm. The alarming part of the protestors' behaviour, in Employee F's eyes, was the physical actions of surrounding the vehicles and their general unpredictability; in other words, more a fear of what they *might* do, rather than what that had actually done.
169. In cross-examination, Ms Bolton asked Mr Curtin questions about alleged obstruction of vehicles arriving at the Wyton Site in the morning of 13 July 2021. This was not included in the Claimants' pleaded allegations against Mr Curtin.

17 July 2021

170. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and again obstructed vehicles driven by the First Defendant's employees at the Wyton Site, whilst using a loudhailer to shout at those in the vehicles. A former employee was driving a yellow Ford Ka and Employee F was driving a white Mercedes A class.
171. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway. The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin.
172. Whilst there is CCTV footage of the events, Employee F is the only witness who gave evidence about the incidents on 17 July 2021. Mr Curtin did not challenge Employee F on the detail of his/her account. Employee F stated that Mr Curtin was one of several identified protestors who had obstructed Employee F's vehicle (the second of two vehicles) when he was attempting to leave the Wyton Site. The first vehicle was held up for around 2 minutes before it could pass along the Access Road and onto the highway. Once the leading vehicle had left, the protestors, including Mr Curtin, stood in the middle of the Access Road in front of Employee F's vehicle, causing him to have to stop. He was held there for about a minute after which he was able to edge his vehicle forward – surrounded by protestors – and out onto the highway. During the incident, another protestor identified by Employee F, shouted at him/her "*get another job, get another job... problem solved*". Employee F interpreted this as the protestor threatening him/her and suggesting that s/he should leave his/her job so that s/he would not have to deal with the protestors when coming in and out of work. Mr Curtin is not alleged to have said anything threatening or intimidating to Employee F (or the employee driving the other vehicle) during this incident.
173. Mr Curtin was cross-examined based on the CCTV evidence. This was another pre-injunction incident, and it has the same features of the 'ritual' in action. Mr Curtin accepted that he stood in the path of the vehicles, temporarily preventing them from leaving the Wyton Site. In doing so, he also accepted that he trespassed on the Claimant's land for a brief period. It was clear from Mr Curtin's answers in evidence that, at this stage, he did not believe that he was doing anything wrong in temporarily obstructing the exiting vehicles as part of the 'ritual'. It was clear from his evidence that Mr Curtin did believe, however, that although the 'ritual' did delay the departure of vehicles, it ultimately facilitated their leaving. The alternative, in the early days of the protest, would have been that other protestors would either have blockaded them into the Wyton Site, or totally prevented them from gaining access. To have taken that step, Mr Curtin clearly believed, would simply have invited action by the police, so, in his eyes, the 'ritual' represented a compromise between the protestors and those attempting to gain access to/from the Wyton Site.
174. My findings in relation to the pleaded 17 July 2021 incident are:
- (1) Mr Curtin trespassed, for a short period, on the First Claimant's land.
 - (2) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First

Claimant's common law right of access to the highway by being part of a group of protestors who obstructed the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience.

- (3) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance, particularly having regard to the limited role played by Mr Curtin. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a few private individuals rather than the public generally. The only people affected by the obstruction were the employees of the First Claimant who were leaving the Wyton Site.
- (4) The issue of whether Mr Curtin has engaged in a course of conduct involving harassment must be assessed by considering the full extent of the acts upon which the Claimants rely (and I do so below – see [298]-[308]), but in this individual incident the Claimants rely only on the alleged obstruction as involving harassment, not any shouting at any of the employees by Mr Curtin.

20 July 2021

175. The Claimants allege that Mr Curtin trespassed on the Driveway and banged on the Gate and shouted, *"open the fucking gate to get the workers in"*.
176. In cross-examination, Mr Curtin did not dispute that during this incident he did set foot on the First Claimant's land. As such, he has admitted an incident of trespass on the First Claimant's land.

25 July 2021

177. The Claimants allege that Mr Curtin caused a public nuisance on the highway by parking a Vauxhall Corsa on the Access Road, such that the Access Road was impassable for vehicles, including those driven by the First Claimant's staff. The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin and to have interfered with the First Claimant's common law right of access to the highway from the Wyton Site.
178. On this occasion, as is apparent from the CCTV footage, a large number of dog crates can be seen piled up in front of the gates to the Wyton Site causing an obstruction to those entering or leaving. It is right to note that police officers are in attendance, and they did not think that action needed to be taken in respect of the dog crates.
179. Mr Curtin was cross-examined about this incident by reference to the CCTV footage. Mr Curtin accepted that he was driving the Vauxhall Corsa, and that it was parked on the Access Road between 12.01pm and 4.45pm, and then again from 4.57pm to 5.52pm. Mr Curtin denied that his vehicle, and where it was parked, caused an obstruction of the highway. He made the point that, had he obstructed the highway, the police would have intervened. He said that if anyone had asked him to move the vehicle he would have done so.
180. My findings in relation to the pleaded 13 July 2021 incident are:

- (1) By parking his car on the Access Road, Mr Curtin did obstruct the highway. However, this was wholly technical. There is no evidence that anyone was *actually* obstructed by the vehicle. The placing of the dog crates on the Access Road was arguably more of an obstruction in this incident, and I am surprised that the police allowed this to take place. Nevertheless, even the placing of the dog crates represented only a temporary obstruction. The Claimants do not hold Mr Curtin responsible for the alleged obstruction created by the placing of the dog crates on the Access Road.
- (2) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance. The obstruction was temporary and, applying the test of what amounts to “public nuisance” (set out in [93] above), there is no evidence that anyone was actually obstructed still less that the obstruction affected the public generally.
- (3) The incident did not involve any arguable harassment of the First Claimant’s employees.

9 August 2021

181. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles leaving the Wyton Site. A white Nissan Duke, driven by a contractor, was obstructed.
182. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant’s common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway. The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin.
183. Mr Curtin was not cross-examined about this incident. I make no findings about it.

12 August 2021

184. The Claimants allege that Mr Curtin (and others) stood on, and slow walked along, the Access Road and the main carriageway and obstructed vehicles driven by the First Claimant’s staff; a white Vauxhall Astra, driven by Employee V; a black Volkswagen Polo, driven by Employee Q, a white Ford car, driven by Employee P; and a white Mercedes A Class, driven by Employee F.
185. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant’s common law right of access to the highway from the Wyton Site.
186. Employee F gave evidence about this incident. On this occasion, Mr Curtin had what was described as a tambourine-style drum. By reference to the CCTV footage, Employee F gave the following description:

“Each of [the] protestors stood in the Access Road so as to block the convoy of cars in which I was driving the fourth and last car. The protestors then slow walked, and occasionally stopped, along the Access Road and the highway so that the convoy could only pass along the highway at a very slow speed... Once we had

travelled about 30 meters along the highway, we were able to drive past the protestors and travel home). Police officers formed a line either side of the convoy of cars to stop protestors from approaching staff cars from the side and rear, and walked the cars out onto the highway. It felt surreal having a police escort; it was like being in a film. The police escort was out of the ordinary, and not something that would usually happen during the protests, so it made me feel uncomfortable as this clearly was not an ordinary event, but on the other hand, their presence also enhanced the sense that this was not a safe situation to be in. The feeling of danger from the protestors makes me feel anxious and stressed. I just wanted to get out of the situation and go home so I did not have to deal with it anymore.”

187. Mr Curtin put to Employee F that the protestors had mimicked a slow-paced funeral march when the employees left the Wyton Site. Employee F agreed with the description. Mr Curtin asked Employee F whether his/her emotion on this occasion was between terror and frustration. Employee F answered: *“Again, terror is still there in the back of your minds. We were unaware of how they could behave at any point... frustration played a big part in it because we just wanted to go home”*. Employee F said that the number of police present on this occasion did not reduce the level of terror; s/he said it made it more surreal. Mr Curtin asked whether, at the point Employee F was giving evidence, some 20-22 months further on, the level of terror had diminished. Employee F replied: *“Since the injunction has been in place, I would say that my level of terror has dropped, yes, but there is still the thought something could happen...”*
188. Employee F, in his/her evidence, spoke more generally of the impact of the injunction, granted on 10 November 2021, which imposed an exclusion zone around the entrance to the Wyton Site:

“The change in the protestors’ behaviour since the grant of the November 2021 Injunction has been, at times, limited. Although the introduction of an exclusion zone did reduce the quantity of protestors on the Access Road and around the Gate, it also meant that the obstructing of cars just happens outside of the exclusion zone. Often protestors wait on the boundary of the exclusion zone, or slightly further along the main carriageway of the Highway and intercept cars there instead. It feels like protestors believe that, once staff vehicles are out of the exclusion zone, they can do whatever they like. The exclusion zone is a safety zone and once me and the other MBR staff are out of it, we are fending for ourselves...”

189. Ms Bolton cross-examined Mr Curtin about this incident. Ms Bolton suggested to Mr Curtin that his actions, with the other protestors, had delayed the employees leaving the Wyton Site getting out onto the carriageway. Although Mr Curtin stated that this was part of the ‘ritual’ he did not disagree with Ms Bolton. He said: *“I make no apologies for the funeral march... and I think it’s a good thing we did the funeral march. The protest happened and the workers got home safely”*. Again, it became apparent in his cross-examination that Mr Curtin believed that the limited obstruction of the employees leaving the Wyton Site was an accommodation that enabled them, ultimately, to leave the site albeit with some minor delay. In answer to a question from Ms Bolton that he and the other protestors had interfered with the First Claimant’s employees’ free passage along the highway, Mr Curtin answered:

“There is a protest by its nature that interferes with the surrounding area by being there, but it’s – the idea of the funeral march was exactly to have as free passage

as possible, without unruly demonstrators kicking cars or doing something off their own bat. There's a joint enterprise here between the police [and] the protestors... even though it's slower, it's better than driving through a mob".

190. Ms Bolton put to Mr Curtin that the staff could not simply pass by the protest, he (and others) had held them up and they had to endure the protest. Mr Curtin answered: *"For a temporary and relatively tiny amount of time"*.
191. My findings in relation to the pleaded 12 August 2021 incident are:
- (1) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience.
 - (2) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a limited number of private individuals rather than the public generally. The only people affected by the obstruction were the employees of the First Claimant who were delayed leaving the Wyton Site for a few minutes.

15 August 2021

192. The events that took place on 15 August 2021, although significant in relation to the claim against "Persons Unknown", were not relied upon by the Claimants to advance any specific claim against Mr Curtin. Mr Curtin had relied upon this incident as demonstrating his role in attempting to calm the demonstrators and to ensure that they kept their protest within lawful bounds. By the 15 August 2021, Mr Curtin accepted, it was generally known amongst the protestors that the Claimants were intending to apply for an interim injunction.
193. As usual, there is video evidence available to demonstrate what happened on 15 August 2021. It was an event of a different order and scale from the 'rituals', as Mr Curtin called them. A large demonstration had been arranged for 15 August 2021, organised by Free the MBR Beagles (see Interim Injunction Judgment [22(10)]). It lasted most of the day, finishing at between 4-5pm. At its height, it was estimated to have been attended by around 250 demonstrators. There was a suggestion that up to 5 people had been arrested by the police (see Interim Injunction Judgment [17(17)]).
194. The number of people in attendance at this protest meant that, at times, the carriageway outside the Wyton Site was blocked and became impassable; indeed, for some period it may have been closed by the police. The morning arrival of the staff in the usual convoy of vehicles was being managed by the police, who had held back the vehicles some distance from the Wyton Site. Mr Curtin's evidence was that his intention was to facilitate the arrival of the staff at the Wyton Site. In one section of the recordings, Mr Curtin can be heard asking other protestors to show discipline. Ms Bolton put it to him that he was doing so because of the impending injunction application. Mr Curtin disagreed that was the sole reason, but accepted that it was a factor:

“What I am dealing with there is we’ve got loads of volatile people around. It’s going to be a big demo day, let’s get the workers in... [The injunction] is a factor. We’ve got a lot of people coming today, a lot of people who have maybe never been there. I wanted to show ... each other that we’re able to not act as everyone for themselves, an unruly mob. There’s many factors why I said that and the injunction is only one of those factors...”

195. The vehicles of the staff were guided into the Wyton Site by the police. Mr Curtin can be seen to be using a loud hailer trying to clear the way.
196. Ms Bolton then played the footage of the vehicles leaving at the end of the day. In contrast to the arrival of the vehicles, the protestors engaged in a substantial obstruction, and it took significant police intervention and a long time to enable the vehicles to leave. Vehicles were struck and apparently damaged by protestors. Mr Curtin said that, by this stage of the day, he had withdrawn and gone back to his tent. He had become disillusioned with some of the protest activities, and he had also been unable to communicate with the police. He said that he had attempted to speak to two of the usual police liaison officers, but that they had told him that it was out of their hands, and was being handled by a senior officer. Mr Curtin said he was not supportive of what some protestors had done that afternoon.
197. It was not apparent to me, given the absence of any allegation made against Mr Curtin in the Claimants’ case against him, the purpose of the cross-examination of Mr Curtin. I asked Ms Bolton whether she challenged Mr Curtin’s evidence that he was not present in the afternoon when the protestors effectively blockaded the Wyton Site for perhaps up to 2 hours and then used physical violence towards the vehicles when they did exit. Ms Bolton said that she was suggesting that Mr Curtin had failed to take a role in facilitating the staff leaving the Wyton Site in a similar way that he had done for their arrival earlier in the day. I do not find that criticism has any force. Mr Curtin is not responsible for the actions of other protestors. It is unreal to suggest that, on this day, Mr Curtin could have prevented what the police were unable to prevent. He did not join with or encourage the violent actions of a very small minority of the protestors. I accept Mr Curtin’s evidence that he did not support them and that he thought they were counterproductive. As the Claimants do not allege any wrongdoing on the part of Mr Curtin, there is nothing more that I need to add.
198. The relevance of the events on 15 August 2021 is to the claim made in relation to “Persons Unknown” (see [325] below). This was a rare instance where the evidence does show that the scale and duration of the obstruction of the carriageway outside the Wyton Site may arguably have amounted to a public nuisance.

4 September 2021

199. The Claimants allege that Mr Curtin trespassed on the Driveway and approached the open Gate where he is alleged to have shouted abuse at the First Claimant’s security staff.
200. In cross-examination, Mr Curtin accepted that he set foot again on the First Claimant’s land. He disputed that he knew he was trespassing at the time, but as trespass does not require any particular state of mind, no purpose is served by resolving this further issue.

201. My finding in relation to the pleaded 4 September 2021 incident is that Mr Curtin trespassed, for a few moments, on the First Claimant's land.

6 September 2021

202. The Claimants allege the Mr Curtin (and others) repeatedly trespassed on the Access Land and obstructed a white van attempting to enter the Wyton Site.
203. Further, it is alleged that Mr Curtin (and others) caused a public nuisance by obstructing the white van's passage along the carriageway. The obstruction of the vehicle is also alleged to be part of a course of conduct involving harassment of the driver by Mr Curtin.
204. Although this incident was witnessed by Mr Manning, the principal evidence relied upon by the Claimants is the video footage, captured by CCTV.
205. Mr Manning called the police to ask for assistance at 13.38. Mr Manning told the driver of the van that the police had been called. There is no evidence from the driver of the vehicle. There is no suggestion that he was subject to any abuse.
206. The video evidence shows the arrival of the white van at the gates of the Wyton Site. Mr Curtin quickly arrives on the scene. At some point, prior to the grant of the Interim Injunction, the protestors had taken to placing banners (with protest messages) around the entrance to the Wyton Site. On some occasions, and visible in the forage for this incident, a banner was placed across the front of the gates, which would have needed to be removed before any vehicle could gain access to the Wyton Site.
207. Ms Bolton cross-examined Mr Curtin about the incident. Mr Curtin stated that the protestors were always concerned when white vans turned up, as the vehicles used to transport the dogs were often white vans. Mr Curtin said that he would usually want to inquire with the van driver who s/he was and what s/he was doing. He accepted that protestors were standing in front of the van. Mr Curtin said that he would often offer a leaflet to the drivers of vehicles who were not employees of the First Claimant to attempt to spread the message about the protest. Mr Curtin accepted that the length of time that a vehicle might be held up at the gate might depend on the attitude of the driver. He also accepted that, on this occasion, the vehicle had been obstructed from entering the Wyton Site. On the evidence, that was for about 6 minutes. Mr Curtin was, however, frank that he could not prevent vehicles accessing the site. He thought that, if he did that, he would get arrested. He wanted to avoid arrest because that would put him at risk of being subject to bail conditions that might include a prohibition on his attending the Wyton Site, which would have curtailed his ability to protest. The best he said he could achieve was to delay the arrival, to attempt to find out the purpose of the person's visit and to hope to convey information about the protest, either by conversation or by handing over a leaflet. To Mr Curtin's mind, there was no question that the vehicle would end up going into the Wyton Site, but he would attempt to engage the driver in conversation.
208. In answer to some questions from me, Mr Curtin confirmed that the banners were a regular fixture at this stage of the protest, although on occasions the police might ask them to remove some banners if they were obstructing the view down the highway. He said that the banner, "*Gates of Hell*", which was placed across the main gate was

taken down each time a vehicle needed to gain access to/from the Wyton Site. I asked Mr Curtin whether the First Claimant had ever asked the protestors to remove the banner that was placed across the main gate. He answered that it had not. Ms Bolton challenged this. It is not a point I need to resolve.

209. My findings in relation to the pleaded 6 September 2021 incident are:

- (1) Mr Curtin trespassed, for a short period, on the First Claimant's land.
- (2) Mr Curtin (with others) obstructed the white van seeking to enter the Wyton Site. The obstruction was short-lived; lasting about 6 minutes. At worst, it could have caused only minor inconvenience to the driver of the vehicle, but there is no evidence that he was inconvenienced at all.
- (3) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only one individual rather than the public generally.
- (4) The incident is not even arguably capable of amounting to harassment, applying the legal test I have set out above.

8 September 2021

210. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles seeking to enter the Wyton Site. Mr Curtin is alleged to have obstructed a white Volvo XC60, driven by the First Claimant's Production Manager ("the Production Manager"); a white Vauxhall Astra, driven by Employee V; a silver Kia Sorento, driven by Employee B; a white Skoda Fabia, driven by Employee AA; a grey Vauxhall Corsa, driven by Employee J; a white Ford motor car, driven by Employee P; a blue Ford Kuga; and a grey Honda Civic, driven by Employee I ("the First Incident").
211. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles in the First Incident, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway.
212. Later that same morning ("the Second Incident"), the Claimants allege that Mr Curtin (and others) caused a further public nuisance by obstructing a grey pickup truck towing a trailer, being driven by an employee of the First Claimant. The vehicle was delivering dog crates to the Wyton Site, and it is alleged that Mr Curtin obstructed the vehicle by approaching the front driver's side of the vehicle, causing it to stop. It is alleged that a further public nuisance was caused when Mr Curtin (and others) obstructed the same vehicle as it attempted to exit the Wyton Site a little time later. The obstruction of the vehicles, on both occasions, is also alleged to be part of a course of conduct involving harassment of the drivers of the relevant vehicles by Mr Curtin.
213. In the final incident that day, in the afternoon, the Claimants allege that Mr Curtin (and others) caused a further public nuisance by obstructing the highway for several vehicles driven by the Production Manager, Employee AA and Employee A which were

attempting to leave the Wyton Site (“the Third Incident”). The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin and an interference with the First Claimant’s common law right of access to the highway.

214. The Production Manager and Employees B, J and V gave evidence at trial. The Claimants relied upon the evidence of Employees I and P in relation to this incident as hearsay.
215. In respect of the First Incident:
- (1) the Production Manager’s witness statement does not contain any evidence relating to an alleged obstruction of his/her vehicle entering the Wyton Site on 8 September 2021;
 - (2) Employee AA’s witness statement does allege that Mr Curtin was part of the group of protestors involved in the First Incident. The evidence is limited to the allegation that Mr Curtin held a placard inches from his/her vehicle and shouted abuse, the content of which is not specified. Employee AA’s evidence does not state, in terms, that Mr Curtin obstructed his/her vehicle; and
 - (3) Employees B, I, J, P and V’s witness statements also allege that Mr Curtin was part of the group of protestors involved in the First Incident. Employee B was driving the third vehicle in the convoy. S/he states that Mr Curtin stood on the Access Road with a placard *“to the front and side of my car”*. Employee I states that s/he was obstructed by Mr Curtin and another protestor both of whom stood *“to the front and side of my vehicle as I drove along the Access Road”* towards the gate. Employee I felt intimidated by the protestors’ actions. Employee P was the fifth car in the convoy. S/he said that Mr Curtin had held a placard in front of his/her window as s/he drove by. Employee V was driving the second vehicle in the convoy and said that s/he felt frightened during the incident.
216. Mr Curtin was cross-examined about most of these incidents. In respect of the First Incident, Mr Curtin accepted that he had trespassed on the First Claimant’s land, but stated that he was not aware that he was trespassing at the time. Ms Bolton did not ask Mr Curtin any questions in cross-examination about the alleged obstruction of vehicles entering the Wyton Site during the First Incident.
217. In relation to the Second Incident, the CCTV evidence shows that the van is forced to stop on the highway. Mr Curtin stood next to the vehicle and other protestors were standing either in the main carriageway or in the Access Road. Mr Curtin can be seen talking to the driver of the vehicle. The driver has not given evidence. Mr Curtin thought that he would simply have been engaging the driver in the usual conversation about the purpose of his/her visit and whether s/he was aware of the business of the First Claimant.
218. About 10 minutes later, the same van then attempts to leave the Wyton Site. Mr Curtin accepted that he and a few other protestors had obstructed the exit of the vehicle from the Wyton Site. Mr Curtin made the point that he had disconnected the banner to allow the vehicle to leave. He said that he had personally stood in the front of the vehicle only because he was concerned about a risk to the dog that was present. Mr Curtin accepted

that he had again tried to engage the driver in conversation as s/he left when another protestor stood in front of the vehicle.

219. In relation to the Third Incident, Mr Curtin accepted that he had been part of the protestor group who had obstructed vehicles leaving the Wyton Site as part of the daily 'ritual'. The evidence shows that the effect of the obstruction was short-lived and – after a few minutes of delay – the vehicles made their way off along the highway. There is no evidence that anything harassing was shouted at the employees on this occasion.
220. My findings in relation to the three pleaded incidents on 8 September 2021 incident are:
- (1) During the First Incident, Mr Curtin trespassed on the First Claimant's land and (with others) obstructed the vehicles of several employees who were attempting to enter the Wyton Site. The obstruction was short-lived; being measured only in minutes. At worst, it could have caused only minor inconvenience to each driver.
 - (2) The two occasions of obstruction of the grey truck entering and later leaving the Wyton Site that make up the Second Incident were also short-lived, measured only in minutes. Again, if it caused any inconvenience to the driver (as to which there is no evidence) it could only have been trivial. The obstruction on these occasions could not remotely be described as harassing conduct (whether on its own or in combination with any other of the acts alleged against Mr Curtin).
 - (3) During the Third Incident, Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience. I do not accept that the actions of Mr Curtin in obstructing the vehicles were inherently harassing in nature (or had any elements that would mark them out as harassing)
 - (4) To the extent that there was any obstruction of the highway in any of these incidents, on no occasion did the obstruction amount to a public nuisance. The obstruction on each occasion was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only the specific individuals involved rather than the public generally.

13 September 2021

221. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles attempting to leave the Wyton Site. Employee C was driving a black Kia Sportage and Employee B was driving a silver Kia vehicle.
222. About an hour later, it is alleged that Mr Curtin (and others) trespassed on the same land and obstructed further vehicles, attempting to leave the Wyton Site: a white Volvo XC60 driven by the Production Manager, a white Skoda car driven by Employee AA and a blue Volkswagen driven by Employee A.

223. Both incidents are alleged to be an interference with the First Claimant's common law right of access to the highway and part of a course of conduct involving harassment of the relevant employees.
224. In addition to the CCTV footage, the Production Manager and Employees A and B gave evidence at the trial. The Claimants relied upon the evidence of Employee C as hearsay.
225. The Production Manager was the driver of one of the vehicles whose exit from the Wyton Site was obstructed by the protestors on this day. The Production Manager identified Mr Curtin as one of the protestors and said that s/he felt that Mr Curtin's pointing at him/her was threatening: *"I was scared that he might know who I was, and he was attacking me personally (even though I was wearing a balaclava and sunglasses...)"*. The Production Manager said that Mr Curtin's actions made him/her feel anxious about his/her safety.
226. Employee A stated that Mr Curtin stood to the front and side of his/her vehicle, pointed at Employee A and shouted through a loudhailer *"Shame on you! Where do you tell people you work?"*. Mr Curtin's actions of pointing at Employee A made him/her feel worried for his/her safety. The sound of the loudhailer so close to the car's window was alarming.
227. Employee B stated that, as s/he was attempting to leave the Wyton Site, protestors blocked the road. Employee B recognised Mr Curtin, who had a loudhailer. Mr Curtin and another protestor stood in front of the car in front of Employee B's vehicle, causing both vehicles to stop. Employee B said that s/he felt *"very scared and shaky"* as s/he was worried about what the protestors were going to do to the vehicles. S/he found it stressful and intimidating, particularly because there were no police or security personnel present. Employee B recalled hearing Mr Curtin shout, using the loudhailer: *"here comes the shit shovellers... hold them back"*. He was also yelling: *"shame on you!"*.
228. Employee C was attempting to leave the Wyton Site on the same occasion. S/he was unable to do so for a time because his/her exit was blocked by the protestors, one of whom was Mr Curtin. Employee C considered that Mr Curtin was organising the protestors because, as the vehicles were waiting to leave the Wyton Site, Mr Curtin used his loudhailer to address the other protestors and he said: *"For those who haven't been here before, the workers are coming out now. The shit shovellers. And ... because of an injunction and the police, the idea is to stand here, hold them back, keep moving and they'll get to the road, and they'll go off."* Mr Curtin then removed the banners that were placed over the main gate and a line of protestors then stood in the path of the vehicles. Mr Curtin used his loudhailer to address the protestors: *"Move back!"* and then addressing the employees in the vehicles: *"Puppy killers... Shame on you. You're scandalous! Have you noticed, have you noticed what everyone thinks about you now the secret's out... Where do you tell people you work, puppy killer!"*
229. Employee C said that s/he felt intimidated during the incident: *"I was hostage to the protestors in front of my car"*.
230. After the incident, Employee C made a report to the police complaining that Mr Curtin had struck her car. Mr Curtin was apparently prosecuted, and Employee C attended to

give evidence. Little further information is given about the charge, but Employee C confirmed in his/her witness statement that Mr Curtin was acquitted.

231. Ms Bolton cross-examined Mr Curtin about this incident. She suggested to him that, in his address to the other protestors, he had made plain that the purpose was to obstruct the workers leaving the Wyton Site. Mr Curtin accepted that, as part of the ‘ritual’ they were going to be held up “*to some degree*” but there was not going to be a blockade: “*We’re going to have a demonstration. They’re going to look at our banners, and they’re going to go home*”. He wanted the other protestors to observe the ‘ritual’, rather than lashing out at the employees’ vehicles. Mr Curtin accepted that the video evidence showed him standing in front of a vehicle. Mr Curtin accepted that he hoped that the protest activities against the First Claimant would lead to it being closed down. He denied that his protest was targeting workers to get them to leave their jobs. He denied that the protest methods adopted by him and others at Camp Beagle had sought to target individual employees.
232. In cross-examination, Ms Bolton did not pursue the allegation that Mr Curtin was guilty of trespass in this incident.
233. My findings in relation to the incident on 13 September 2021 are:
- (1) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant’s common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience.
 - (2) The obstruction of the highway in this incident did not amount to a public nuisance. The obstruction on each occasion was temporary and, applying the test of what amounts to “public nuisance” (set out in [93] above), it affected only the specific individuals involved rather than the public generally.
 - (3) I state my conclusions below ([298]-[308]) on whether, taken with other incidents, the events on 13 September 2021 amount to a course of conduct by Mr Curtin that involves harassment of the employees of the First Defendant. However, looked at in isolation, I am not persuaded that Mr Curtin’s behaviour in this incident crossed the line from unattractive, even unreasonable, to that which is oppressive and unacceptable.

22 September 2021

234. The Claimants allege that Mr Curtin (and others) caused a public nuisance by obstructing the highway for an Anglian Water vehicle that was attempting to leave the Wyton Site. Specifically, Mr Curtin is alleged to have stood in front of the vehicle and instructed other protestors to do similarly. The obstruction of this vehicle is also alleged to be part of a course of conduct involving harassment of the driver by Mr Curtin and an interference with the First Claimant’s common law right of access to the highway.
235. Apart from the narrative in Ms Pressick’s witness statement (which is simply a commentary on the CCTV footage) the evidence relating to this incident comes solely

from the CCTV footage. There is no evidence from the driver of the Anglian Water van.

236. Mr Curtin was cross-examined about this incident. Mr Curtin agreed that he had stood in front of the vehicle as it attempted to leave the Wyton Site. He explained that he had wanted to give the driver of the vehicle a leaflet about the protest. The video footage shows that once the vehicle had stopped, Mr Curtin approached the driver's window. As he did so, another protestor stood in front of the vehicle to prevent it from driving off. The driver refused to lower his window. Mr Curtin's recollection was that the driver was not interested in taking a leaflet. The incident then appears to escalate, with more protestors being drawn towards the vehicle. It appears from the footage that another protestor then places what may well be a leaflet under the windscreen wiper of the vehicle. Mr Curtin accepted that he could not force the driver to accept a leaflet, but he also recognised that the incident "*got out of hand*". It is apparent that the driver wants to leave, and the vehicle moves incrementally forward. Mr Curtin said that the driver was revving his engine, being obnoxious and "*winding people up*". This, Mr Curtin said, inflamed the situation. Mr Curtin can be heard saying "*take a leaflet, you buffoon*" at some point. Mr Curtin stood in front of the vehicle and used a phone to photograph or record the driver. He said, in evidence, "*I'm wound up by his behaviour. So, I'm allowed to be a human being too. I can get wound up with someone's obnoxious behaviour, what I consider obnoxious... I had no intention whatsoever of holding an Anglian Water man up for any longer than a second to take the leaflet.*"
237. The incident did not end there. Confronted by the protestors, who refused to move, the driver of the Anglian Water van then reversed back into the Wyton Site. Mr Curtin said that this was not his intention: "*My little plan to give the guy a leaflet ended up as a bit of a ten-minute debacle*". Mr Curtin said that the incident had escalated because another protestor had claimed that the driver had attempted to run her over, and word had spread amongst the protestors: "*Things like this can really quickly escalate*".
238. My findings in relation to the incident on 13 September 2021 are:
- (1) Mr Curtin (with others) obstructed the Anglian Water vehicle leaving the Wyton Site from gaining access to the highway. This was a more significant obstruction than had become typical in the 'ritual', and it forced the driver of the vehicle to retreat. It is perfectly apparent from the footage that the incident escalates. The protestors – including Mr Curtin – bear some responsibility for this escalation. Mr Curtin appeared to accept his responsibility this part when he gave evidence; he clearly regretted that things had got out of hand. Nevertheless, the driver of the Anglian Water vehicle also plays a part in the escalation, principally in the manner he edged his vehicle forward when there were protestors standing in front of the vehicle. That act significantly contributed to the escalation, with the protestors feeling aggrieved at what they perceived to be an aggressive act. Standing back, and judging the matter objectively, this incident is fairly trivial. In total, the driver of the Anglian Water vehicle was delayed for 10-15 minutes leaving the Wyton Site. There was some shouting. There is no evidence of any damage having been caused to the vehicle, and the Claimants have called no evidence from the driver as to whether he was caused distress or alarm in the incident. No-one apparently considered that the incident should be reported to the police.

- (2) Such obstruction of the highway as there was in this incident did not amount to a public nuisance. Although the obstruction of the vehicle on this occasion was longer than had typically been the case in the 'rituals' it was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a single driver rather than the public generally.
- (3) Although this incident has been pleaded against Mr Curtin as part of a course of conduct involving harassment, in my judgment it is incapable of supporting the harassment claim. There is no evidence from the driver of the vehicle that Mr Curtin's conduct caused him distress or alarm. I am not persuaded that Mr Curtin's behaviour in this incident crossed the line from unattractive, even unreasonable, to that which is oppressive and unacceptable. At worst, Mr Curtin's role in the episode can be described as regrettable, as I think he accepted when he gave evidence.

10 April 2022 and 7 May 2022

239. I shall take these two incidents together, because they amount, essentially, to a single complaint. The Claimants allege that, on 10 April 2022, Mr Curtin placed a CCTV camera (or similar device) on a mast erected outside the Wyton Site and, on 7 May 2022, Mr Curtin (and another unidentified male) placed a CCTV camera (or similar device) on a container within Camp Beagle. It is alleged that these cameras were positioned and used to monitor the activities of the First Claimant's staff. Mr Curtin's activities are alleged to be part of a course of conduct involving harassment of the First Claimant's staff.
240. The Claimants' evidence as to the positioning of the cameras in these incidents is CCTV footage, and Mr Curtin does not dispute that he was one of those who was involved in the siting of the relevant camera in each incident.
241. None of the Claimants' witnesses gave evidence regarding the siting of and use of the cameras in the two incidents complained of by the Claimant. There is therefore no evidence that any of them was caused distress or alarm at what Mr Curtin was alleged to have done. Instead, the Claimants relied upon the evidence of several witnesses as to their fears about being filmed/photographed. In her closing submissions, Ms Bolton identified the following:

- (1) Mr Markou said:

"Around this time (summer 2021) the protestors were very active on social media and would upload videos from their protests at the Wyton Site, as well as 'live stream' from outside the Wyton Site on Facebook. As I explain below, it was very invasive and caused me distress that images of my (albeit covered) face and vehicle were being uploaded to public social media sites where I could then potentially be identified and targeted. I knew (from reading articles online and speaking to other colleagues) that some of the protestors ([one] in particular [not Mr Curtin]) had criminal records in relation to activities that they had undertaken in the course of earlier protests, and this made me fear for my own safety even more as I didn't know what they were capable of. I have taken every single step I can to protect my identity, and I fear for my own safety if I am recognised by the protestors.

Since the protests began, I have always been really worried about being identified by the protestors and then being targeted outside of work at my own home. Sadly, targeting at home has happened to a few of my colleagues who have been identified by the protestors, including Employee L (who had their house vandalised), Employee Q (who had their car vandalised outside of their parents' house), Employee K (who also had their car vandalised) and Dave Manning (who has been approached and abused in public, and had his house vandalised as well). I fear that the same will happen to me if I am identified by the protestors.

As I set out below, I was also followed by protestors on 1 August 2021, a protestor took a photo of me through my car window whilst I was stationary at traffic lights. This image was then uploaded to the Camp Beagle Facebook group but thankfully the image quality was not very good, and the image could not reasonably be used to identify me. Nonetheless, this was a scary experience and has caused me a significant amount of anxiety about being recognised ever since."

(2) Ms Read said:

"When driving to and from the Wyton Site, I would wear particular clothes and accessories to disguise my identity. I would wear dark glasses, a face mask, and have my hood up. I wore these clothes and accessories so that the protestors could not identify me. The Production Manager and I also advised staff to cover up as much as possible, to disguise their identity.

I was anxious to disguise my identity because I did not want my face posted on social media. On 22 April 2021, the Production Manager and I identified that the protestors had published on social media footage of staff the Wyton Site whilst they working, which appeared to be taken from a camera hidden in the fence line at the Wyton Site. This behaviour continued, with the protestors then trying to film or photograph us as we entered and exited the Wyton Site every day, and posting images and videos on social media for anyone to identify us. The most prudent thing is to cover yourself from head to toe.

Even though I have experienced many protests at the Wyton Site, I have never worn a disguise before, as I did not feel as at risk with previous protestors that protested at the Wyton Site. The historic protestors would usually notify police in advance of a big protest, so we could plan accordingly. Now the protests are 24/7 and can never be avoided. In the historic protests, the protestors were not interested in the staff as individuals, and they would not harass or target individual people like the current protestors do. Social media was not existent or not as prevalent as it currently is, so the protestors were not able to as easily share the identities of employees. Now the protestors seem to be protesting not only against MBR as a company, but also against the specific individuals that work for the company."

(3) Employee A said:

"Initially, when arriving in convoy, we would drive in our own cars. However, on a date I cannot remember, we started to car share to reduce the

number of cars entering and exiting the Wyton Site. Car sharing also meant that we could provide physical and emotional support to each other, and I felt more comfortable and slightly safer by having more people in the car with me, rather than being isolated on my own and in my car...

Car sharing was helpful as when I was in my own car, and the protestors surrounded me (which happened often), it was incredibly scary, intimidating and harassing. I felt nervous and bullied. The intimidation and feeling of being personally targeted was heightened by the protestors holding the car captive by surrounding it, making a lot of noise, by playing drums and shouting threateningly, and filming me. I was scared that the protestors might smash the windows of the car, slash the tyres or damage the car in some way. It was helpful to have the emotional support of those with me in the car."

242. Whilst this evidence gives an insight into the fears of some of the employees, it provides little (if any) support for the particular claim advanced against Mr Curtin concerning his siting of the two cameras. First, the evidence of these three witnesses, particularly that of Ms Read, fails to distinguish between Mr Curtin's actions and the methods practised by different protestors. The evidence shows that *some* protestors have adopted a strategy of filming or photographing the employees. Others have not. Of those that have, some of them – a small minority – appear to have posted a small number of images on social media. Not all protestors adopt these methods. Only some protestors – again a small minority – have directed their protests at individual workers. Importantly, the Claimants do not suggest that Mr Curtin has adopted any of these tactics. Mr Curtin is not to be judged by the conduct of other protestors. If there is a complaint about such conduct, it is better dealt with on a direct basis by seeking to identify and take steps against the individuals concerned. I appreciate that many of the workers *feel* that they are being personally targeted by the protestors, but save for a few isolated incidents – which in all probability amount to criminal offences – the vast majority of protestors are not targeting any individual worker. Perhaps of most importance for the case against Mr Curtin, the Claimants do not allege that he has been targeting individual workers.
243. Mr Curtin was cross-examined about the allegations that his act of siting these two cameras was part of a campaign of harassment against the employees. In relation to the camera positioned outside the main gate of the Wyton Site, Mr Curtin said that it had been the idea of another protestor to place a camera. He had hoped that it might enable the footage to be "*beamed across the world*". The device was a "Ring" camera and this apparently meant that anyone with the relevant password could log in and view the livestream from the camera. Mr Curtin said that there were several cameras. One faced the gate and others pointed in the direction of the carriageway. The "Ring" camera provided a fixed view. Other cameras could be controlled to point in different directions. Ms Bolton suggested to Mr Curtin that "*if the target of the protest wasn't the staff, there would be no need to have a camera facing the gate, would there?*" Mr Curtin disagreed, and he rejected the suggestion that the camera was installed to intimidate the workers. Mr Curtin said that the cameras had been removed after there had been some falling out in the camp.
244. In relation to the later incident of siting a camera on a container within Camp Beagle, Mr Curtin again rejected Ms Bolton's suggestion that it had been placed there to "*capture ... the staff arriving in the morning and leaving*". Mr Curtin said that camera

was not capable of doing that and that he had tried to use it as a way of alerting the camp to the movement of vehicles into and out of the Wyton Site, but it had not worked. The protestors, he said, had been concerned that there had been some night-time movement of vans which the “Ring” camera had not detected.

245. Ms Bolton suggested to Mr Curtin that the cameras were used to identify vehicle number plates and then put them on social media, as a means of targeting the employees. The Claimants had no evidential basis to make that assertion. Ms Bolton clarified that she was not suggesting that Mr Curtin had done this but that the footage could be used for this purpose. There followed this exchange:

Q: It’s reasonable, isn’t it, that when [the employees] see cameras pointed at the gates, as they come and go, that that’s going to cause them distress that yet again they are being recorded and that that could be for the purposes of identifying them, stopping them in the road, working out where they live. That’s foreseeable, isn’t it, that that’s going to cause them distress?

A: They live in Britain. They live in a place where they know damn well the controversial nature... they know how sensitive it is. They can now expect people to be watching their movements because they are so controversial. So a person of reasonable firmness – unless you want the protest to absolutely like I said, vaporise, once the secret is out – they were happy enough when nobody knew it was there and the local people didn’t know it was there. Now it’s out, a reasonable person kind of has to accept some sort of... well people watching them. They know it.”

...

Q: It’s right, isn’t it, Mr Curtin, that whilst the employees have accepted there will be a degree of protest, it’s quite a different thing, isn’t it, for them to have to experience the distress of knowing that, if they don’t put on a disguise to drive in and out of work everyday, that they could be picked up on cameras and that information may be shared and they may be identified? That’s going to cause them distress, isn’t it.

A: Not all of the workers cover their faces... If there are fears – there have been some incidents – where people have been outed publicly. If these cameras went along with parallel, with say like the rogues’ gallery, then yes there’s like ‘The cameras are going to mean we’re going to be put on some site and they are going to generate hate for us’. That hasn’t happened, that hasn’t materialised, apart from some – there have been no incidents with individuals. The campaign has not gone down that road.

246. My conclusions in relation to these allegations are as follows:

- (1) These two incidents cannot, and do not, support the Claimants’ case that Mr Curtin is guilty of a course of conduct involving harassment.
- (2) Mr Curtin accepts that he was involved in the siting of the two cameras. The Claimants have adduced no evidence as to the footage that was actually captured by either of these devices. They have not challenged Mr Curtin’s evidence that, in relation to the camera sited in Camp Beagle (not opposite the

gate), that it did not work as intended (i.e. as an early warning device to alert the camp to vehicle movements).

- (3) No witness has said that s/he was caused distress or alarm or otherwise felt harassed by the siting of the cameras. It may be that none of them noticed one or other of the cameras, or that they were more concerned by the hand-held recording of them by individual protestors, but this would be to speculate about evidence I do not have. The short – and simple – point is that the Claimants have adduced no evidence that the siting of these cameras caused any distress/alarm/upset to any employee. In the absence of that evidence, the cross-examination of Mr Curtin (see [245] above) was conducted on a hypothetical basis.

26 April 2022 and 12 May 2022: the Third Contempt Application

247. The Claimants allege that, on 26 April 2022, Mr Curtin (and others) caused a public nuisance by obstructing the highway for an Impex delivery vehicle after it had left the Wyton Site. Specifically, Mr Curtin is alleged to have stood in front of the vehicle.
248. The Claimants allege that, on 12 May 2022, Mr Curtin (and others) caused a public nuisance by obstructing the highway for a police van that sought to move off from a stationary position on the carriageway outside the Wyton Site. Specifically, Mr Curtin is alleged to have stood in front of the vehicle.
249. As these allegations were the subject of contempt proceedings against Mr Curtin (the Third Contempt Application), the evidence (and submissions) were dealt with at a separate hearing, following the trial, on 23 June 2023. Mr Curtin had been granted legal aid for the Third Contempt Application, and he was represented by Mr Taylor.
250. At an earlier directions hearing in November 2022, the Claimants indicated that they would not be pursuing Ground 3 (kicking the box) and Ground 4 (assisting someone in a dinosaur costume). At the commencement of the hearing on 23 June 2023, Ms Bolton indicated that the Claimants had agreed also not to proceed (as an allegation of contempt) with Grounds 1 and 5 (entry into the Exclusion Zone) and Ground 6 (obstruction of the police van leaving the Exclusion Zone). That left Ground 2 as the only allegation of breach of the Interim Injunction pursued by the Claimants. On behalf of Mr Curtin, Mr Taylor indicated that Mr Curtin accepted the breach of the Interim Injunction in Ground 2.
251. As noted already, Mr Curtin gave evidence at the hearing on 23 June 2023. He stated that he had been campaigning against vivisection for 40 years. He hoped that, by protesting, he would draw attention to the activities of the First Defendant and he wanted the law to be changed to prohibit testing on animals. Mr Curtin accepted that he was aware of the terms of the Interim Injunction. In light of that, Mr Curtin was asked by Mr Taylor about the events in the small hours of 26 April 2022, which gave rise to Ground 2 of the contempt application. Mr Curtin said this:

“We had some information that night-time – shipments of dogs at night-time had already happened, a number. They’d sneak the vans in and out. We had an assurance from the police liaison officer that the police were not prepared to cover night-time actions. That was the understanding, and I couldn’t believe this

information we received. I was shocked. So we began to have a night-time shift and, hey presto, the van turned up without any police escort and now my intention –once I’m there, apart from the shock of, ‘Oh my God, they’re actually doing this’, there hadn’t been a daytime shipment... for 40 days. I tried to bring it up in court, why are there no more shipments anymore? It wasn’t – I don’t believe it was because of the protestors. They have the police to facilitate that. There was another reason. So I was in shock, it was at night-time, I feel the police had broken their word... They’re sneaking in at night and that’s all. There was no intention to ever stop a van. Other people were always having a go at me, ‘We’ve got to stop the vans’; ‘The police will stop you stopping the vans, the injunction will stop you stopping the vans’... When I spoke to Caroline Bolton after the last hearing, ‘Are we going ahead with this contempt?’, I said, ‘Where’s the obstruction?’, and she said ‘Approaching’. That word ‘approaching’, even I’d sat through the entire injunction, it hadn’t and it still hasn’t — I don’t think it’s filtered into anyone’s mind actually. What does ‘approaching’ mean? I didn’t have on that night I’m not going to approach a van as in ‘Shame on you’ because that’s breaking the injunction, isn’t it, if we’re going to use the English language? But not to block any van, not to – no.”

252. Mr Curtin confirmed that, as can be seen in the video evidence, he was using his mobile phone to film the incident so that he could post it as evidence to a wider audience. He said saw the injunction as imposing a sort of “*force field*” and he would “*just work around it*”. By that he meant that he was content to observe the terms of the injunction because it enabled Camp Beagle to maintain a presence at the site and he just needed to avoid the Exclusion Zone.
253. I am satisfied, based on the circumstances of the events that gave rise to Ground 2 and Mr Curtin’s evidence, that Mr Curtin had not deliberately flouted the Interim Injunction. It is clear from the audio from the various recordings that emotions were running high early that morning because the nocturnal movement of the dog vans was an unexpected and unwelcome development, so far as the protestors were concerned. Mr Curtin got partly carried away by those emotions. As a result, he approached, and fleetingly obstructed, the van leaving the Wyton Site. That, as he accepts, was a breach of the injunction. I will deal with the penalty for this breach of the Interim Injunction below (see Section O(3): [400]-[407] below).
254. For the purposes of the civil claim against Mr Curtin, his obstruction of the van leaving the Wyton Site in the early hours of 26 April 2022 and his obstruction of the police van on 12 May 2022 were both temporary and, applying the test of what amounts to “public nuisance” (set out in [93] above), it affected only the specific individuals involved rather than the public generally. Insofar as there was any obstruction of the highway on these two occasions, neither amounted to a public nuisance. The police were present on both occasions, and they did not take any action against Mr Curtin, or others, involved in alleged obstruction of the highway. Almost certainly, that reflects the fact that any obstruction was very short-lived and required no police intervention.

21 June 2022

255. The Claimants allege that, on 21 June 2022, Mr Curtin flew a drone directly over the Wyton Site, at a height of less than 150m and/or 50m, without the permission of the

First Claimant. The footage obtained was posted to the Camp Beagle Facebook page the same day.

256. They flying of the drone is alleged by the Claimants to be (a) a trespass; and (b) part of a course of conduct involving harassment of the First Claimant's staff.
257. Although some of the Claimants' witnesses give general evidence of drone usage over the Wyton Site, the evidence relating to this specific incident – as it relates to Mr Curtin – is solely video, drawn largely from footage obtained from the drone that was posted on the Camp Beagle Facebook page. The drone is equipped with a camera, that clearly has the ability to zoom in and magnify the image of the terrain below it.
258. Ms Pressick, in her witness statement, gave a narrative commentary on drone usage based on the video evidence available to her. Ms Pressick purports to give evidence as to the height at which the drone was being flown on each occasion. However, much of the evidence she gives is (a) vague and imprecise (e.g. *"at a height I estimate was below 150 and/or 50 meters"*) (which appears to embrace a range between 1 to 150m); and (b) expert evidence which she is not qualified to give. The only reliable evidence as to the height at which any drone was being flown, on any occasion, comes from instances where the height of the drone is shown as part of the footage (e.g. the footage posted to Camp Beagle's Facebook page on 16 June 2022 which records the height as being 50 metres). Finally, much of Ms Pressick's witness statement about generic drone usage is irrelevant to the claim in trespass. Her contention, for example, that, in one example, *"the drone is being used to monitor business activity"* is not relevant to the claim in trespass. Either the drone is trespassing on the relevant occasion, or it is not. Absent any suggestion of implied licence (of which there is none), the purpose of a drone's alleged trespass is not relevant.
259. Ms Pressick was questioned about Mr Curtin's use of a drone. She stated that, in around April/May 2022, staff had been forced to transport dogs around the site in a van rather than in crates because of the drone. Mr Curtin disputed that this was a regular practice. Ms Pressick accepted that the workers might still move the dogs in crates, even when the drone was around the site. Ms Pressick said that she had personally seen the drone whilst she had been on site. Asked at what height it was being flown, Ms Pressick said that it was *"above building height"*. Ms Pressick stated that her main objection to the drone use was the fact that it was filming. It was that aspect, rather than any annoyance caused by the drone operations, that was the concern. Ms Pressick said that she understood why the protestors wanted to monitor the activities on site which was linked to their protest activities: *"It's what the feel they need to do"*.
260. Potentially relevant evidence was provided by several witnesses who spoke of their direct experience of drones flying over the Wyton Site (emphasis added):

(1) Mr Manning stated:

"In general, I do not have an issue with the use of drones if they are flown in the right manner and they are not being used to invade people's privacy. However, there are a number of occasions when I have experienced the protestors flying their drones in a dangerous manner. For example, sometimes they are very erratically flown downwards, and then from side to side quickly. Sometimes the drones are also flown really low, **to about the**

height of a one storey building, which I would say happens about 20–40% of the time I see a drone flight over the Wyton Site. Very occasionally, they come down **very low, so it feels like I could reach up and grab the drone**. It is very concerning when the low and erratic flights happen, as they drop them suddenly from quite a height. I fear for my safety on these occasions as a drone dropped from such a height could potentially cause physical harm to me or one of my colleagues. I am often concerned for the safety of the staff when the protestors are flying the drones. Typically, the pilot will be sitting in the tent outside the Gate, and will not have a clear view of where the drone is flying. If they were to lose video signal on the drone, they would not be able to see what they were doing and someone could be injured.

I have also noticed the protestors fly the drones directly overhead the Wyton Site, and over areas that cannot be observed from the fence line of the Site; I believe that the drones are flown there so they can see what the staff are doing every step of the way during the day. In this respect, there is no privacy.

Due to the nature of my role, I spend a lot of time working outside on the Wyton Site, making sure the site is secure and checking the fence, so I have seen a lot of the drones being flown around the site. I do not like being outside when the drones are being flown, because I find them dangerous for the reasons outlined above. However, I have no choice to be outside, as part of my job is keeping an eye on what is going on around the Wyton Site. I am responsible for logging whenever there is a drone sighted on site. I log the date and time each time a drone goes up and is brought down by the protestors. I also try to locate who the pilot is by looking around outside the perimeter of the Wyton Site, and into their camp to see who goes to retrieve the drone when it lands. The security staff undertaking the nightshift follow the same process, and write it on a whiteboard for me to review when I return to work the next day. I then update a central spreadsheet, which I started keeping in September 2022... The CCTV sometimes captures the use of the drones, but they are very small and move around so quickly that they can be hard to spot on CCTV footage.”

(2) Employee A stated:

“Previously, when the protestors were flying a drone flying over area of the Wyton Site on which I was working, my colleagues used to stop carrying out tasks outside; we did not want to be identified by the protestors or have footage of us posted online (which the protestors do regularly). Stopping outdoor tasks whilst drones were flying meant that anything we needed to do was delayed. For example, part of my role is taking the electric meter reading in the generator room, which involves walking across the car park. On the occasions when I have heard from my colleagues that the protestors are flying the drone, I will delay undertaking the task until I have heard that the drone has come down.

I often hear the drones flying, even from inside the office, however as I am not often outside I do not know how low they fly. If I ever do go outside, such as when moving between buildings or during my breaks, to prevent the drone camera capturing images of my face and being identified as a result, I put a mask on and make sure that my face is covered.

I am aware that the drones are flown by the protestors a few times a week as I can either hear them, or a member of staff will notify all other staff members about it on the internal radios. If a drone is up, I will try not to go outside. I feel like we are constantly under surveillance, and it is quite a suffocating environment to be in. It feels like an invasion of privacy.

On four or five occasions (but I cannot recall when) I have been outside at the Wyton Site when a drone was being flown, and have been scared of it and being identified by it that I turned and faced a wall until it was gone.

I will never get used to the sound of a drone for the rest of my life. If I hear one in my personal life, I am worried it is the protestors' and that they have found me. This happened recently when a neighbour flew a drone over my garden. I panicked and went and hid indoors."

(3) Employee B stated:

"The use of drones by the protestors over the Wyton Site has affected my day-to-day activities when at work. It feels like I am being watched 24/7. I wear a cap, balaclava, mask and sunglasses now when working outside at the Wyton Site, because I do not want the drones to video my face and for the protestors to then know my identity. Even though the protestors might know what my name is (for which, see below), they currently do not know what I look like. I do not want to be harassed by protestors who recognise my face. I go outside to empty the bins and I have to wear a disguise just to protect myself.

When drones are being flown, we have to adopt a different procedure on how we move around the site, and how we move the animals around the site. We minimise staff working outside to avoid exposing them to the drones, and transport the animals in van instead of in an open air trolley. These different procedures add time to our tasks and means we cannot perform our tasks efficiently.

When I hear the drones, it makes me feel uneasy.

The drones do fly very low on occasion. One has come within 10 feet of my head before. It does not feel very safe when a remotely controlled drone is flying that close to me."

(4) Employee G stated:

"In addition to the harassment as we arrive and leave the Wyton Site, the staff also have to deal with invasive filming by overhead drones. These are now a daily occurrence. I understand from my colleagues that most staff can hear the drones as they buzz overhead, but I have hearing difficulties and will only be aware they are there if I see them. I therefore look up before I leave the buildings to check for drones and make sure that I am covered up with my hat, snood and glasses. **The drones often fly really low, sometimes little higher than the single storey buildings on the Wyton Site.**

When there is a drone overhead and I am outside, I don't look up. Whilst I am covered up, I really don't want to be recognised for the reasons I detail

above. In order to ensure that I am not recognised I have to carry my hat, snood and glasses with me everywhere I go in case I have to go outside. I also wear these, just to get to the car park in case I am filmed walking to my vehicle. I have seen footage of myself taken by the drones online. The footage shows me moving the animals around site. I believe I saw the footage posted on the Facebook page of Camp Beagle. I recognised myself from the hat I was wearing in the footage and for the activity that I was involved in.”

(5) Employee I stated, by way of hearsay evidence:

“I remember drones first started appearing over the Wyton Site sometime in 2021, around the time the protests started increasing in intensity in June.

Sometimes the drones come as low as the height of our buildings (which are only one storey high), and one time I remember a drone looking through our tea room window. If we are doing something outside, like moving dogs, the drones seem to come lower.

The presence of the drones makes me feel like I am constantly being watched, so that the protestors can find more ammunition against us. I can usually hear the drones when I am working outside. They make me feel on edge, and I second guess everything I am doing. The lower the drone is, the more I second guess myself, and whether anything I am doing could be captured by the drone and the footage used by the protestors in a negative light. When the drone is higher, I do not feel as stressed, as it does not feel like the drone is focusing on me as much.

Because of the drones, when I am working outside I wear a facemask, a jumper, and I tie my hair up in a bun, to avoid being identified. Photos taken of me by the drones moving animals have been shared on social media but, because of my disguise, I cannot be identified from those photographs.”

(6) Employee P stated, by way of hearsay evidence:

“The protestors fly drones over the Wyton Site and film staff working or moving on site. When I was first filmed by a drone, I was moving dogs around the Wyton Site. Given the use of the drones, we had started moving the dogs by van to prevent footage of the dogs being captured but, on this occasion, the Production Manager asked me to carry a small number of dogs between buildings. I was carrying a dog across the field when the drone came overhead. I could hear the buzz of the drone. I was wearing a facemask and sunglasses to protect my identity while carrying the dog. After the incident I saw the footage of me on the Camp Beagle Facebook page, being followed by the drone.

Being filmed by the drone was really invasive. It made me feel scared and anxious. The drones have become more common and they are spotted almost every day. I do not normally leave the buildings unless I have to because of the drones. If I do leave the buildings, I always wear a face mask.”

(7) Employee V stated:

“The lowest I have seen a drone flying at the Wyton Site is approximately 3ft above the ground to capture information from dog travel boxes.

I am constantly concerned for my safety when drones are flown by the protestors, as a drone could cause a bad injury if it were to crash into something or someone. I hear the drone nearly every day, and on **average the drone flies at a 2-storey building height**. The protestors used to fly the drone much lower than this, but a couple of months ago this changed and it started to fly higher (but, as I say, it is still about the height of a 2-storey building).

To stop the drones filming through windows, I have installed protective measures in all windows of the Wyton Site, for example frosting the glass, installing one way glass laminate or installing curtains.

When there is a drone over the Wyton Site, I used to stop carrying out tasks outside, which meant that anything I needed to do was delayed. Now, as it was not possible to carry out the outside tasks required in the time the drone was not up, I have to wear my concealment clothing when working outside at the Wyton Site, as well as driving in and out. I do this to prevent the drones from capturing footage identifying me to the protestors, for the reasons that I have set out above. Having to cover up like this when working is particularly uncomfortable in summer time due to the heat.

The drone sound has had a real effect on my mental health. I was once on holiday sitting on the beach and heard a stranger’s drone. I thought that the protestors had found me and as a result I was concerned for my safety. I believe the use of drones is another form of psychological intimidation tactics used by the protestors. I used to immediately report the drones to security, now I just try to ignore it. The drones have a psychological and physical impact on my health.”

261. I note the following things about this evidence:

- (1) None of the evidence concerns (or supports) the single allegation of drone trespass made against Mr Curtin. None of the witnesses links his/her evidence to the use of a drone on any particular occasion. In relation to the harassment claim made against Mr Curtin, therefore, none of the witnesses says that the incident of the drone use on 21 June 2022 caused him/her distress or upset, or why it did on this particular occasion.
- (2) Insofar as the witnesses complain of low-flying drones (see sections marked in bold), this cannot relate to the incident alleged against Mr Curtin as the drone was being flown by him at 50m.
- (3) As the Claimants are not pursuing a harassment claim against “Persons Unknown” in relation to drone flying, the evidence from these witnesses about the impact on them is not relevant to trespass claim. Equally, whilst understandable, the concerns expressed about privacy infringement are equally irrelevant in the absence of a pleaded cause of action to which this evidence might have been relevant.

262. In short, the evidence of these witnesses, is not relevant to the claim brought against Mr Curtin personally.
263. When he was cross-examined, Mr Curtin agreed that, on 21 June 2022, he had operated a drone above the Wyton Site, and he had used it to observe what some of the workers were doing on site. The drone, he said, weighed 249 grammes and was flown by him at a height of 50m. His evidence was that it was better to fly the drone at a height at which it was not noticed by anyone at the Wyton Site. He said he can tell the height of the drone from its controls. The weight, Mr Curtin said, was important because there are regulations which govern the flying drones that weigh more than that. Those regulations were not explored at the trial. Mr Curtin said that his primary interest in using the drone was to monitor what was going on at the Wyton Site and specifically the movement of the dogs. Mr Curtin also accepted that, in the past, there had been occasions when the drone had crashed on the site.
264. In response to questions asked by me, Mr Curtin confirmed that he knew of 4 or 5 other people who had regularly flown drones over or in the vicinity of the Wyton Site and there were possibly between 30-50 people who had flown drones occasionally the identity of whom he did not know. He said that he did not start flying a drone until about a year into the protest activities (i.e. around June 2022).
265. Rather than concentrating on this single alleged incident on 21 June 2022, Ms Bolton's cross-examination ranged widely and included putting to Mr Curtin evidence from the Claimants' witnesses about use of drones generally. That was not helpful, not least because Mr Curtin is not the only person who has flown drones over the Wyton Site. It confused general evidence – which is only potentially relevant to the claim made for relief against "Persons Unknown" – and the specific evidence relating to Mr Curtin's drone use. Ms Bolton indicated that the Claimants do not have any evidence – beyond that relating to the incident on 21 June 2022 – of Mr Curtin operating a drone on any other occasion.
266. I accept that, as a matter of principle, it is legitimate for Ms Bolton to explore not only the past incident of drone usage on 21 June 2022 alleged against Mr Curtin but also whether, absent an injunction, Mr Curtin threatens to fly drones in the future that would amount to a civil wrong. But even that exercise needed to focus clearly upon the acts of Mr Curtin which give rise to the credible risk that, without an injunction, he will commit a civil wrong. What is impermissible is to attempt to advance a case against Mr Curtin based on historic drone usage when the Claimants cannot establish that the relevant incident was one in which he was operating the drone. The Claimants cannot, for example, establish that Mr Curtin was the person responsible for the incidents of drone flying – reported in the general evidence given by some of the witnesses (see [260] above) – where the drone was alleged to have been flown as low as head height.
267. On the contrary, Mr Curtin's evidence, which I accept, is that he typically flies the drone at 50 metres, not least because he hopes that, at that height, it goes unnoticed. In the Claimants' general evidence, advanced against "Persons Unknown", Ms Pressick produced evidence relating to a further drone incident where an image obtained from the camera on the drone was posted on the Camp Beagle Facebook page. That image showed some information which included "H 50m", which she interpreted (I believe correctly) that the drone was being flown at a height of 50 metres.

268. In answer to the Claimants' claim that flying the drone – generally – amounted to harassment of the workers at the Wyton Site, in cross-examination, Mr Curtin made the point that at no stage has footage from the drone been used to attempt to identify workers or images placed on the Camp Beagle website in a sort of 'rogues gallery'. And, indeed, the Claimants have adduced no evidence of the drone footage being used for that purpose. Again, on this point, the concerns of the employees are directed at what might happen rather than what has happened. At a prosaic level, if the workers are concerned about the risks of being potentially photographed whilst they are going about their duties outdoors at the Wyton Site, then that threat is ever-present because they could be photographed by someone standing at the perimeter fence or by a drone not flying directly over the Wyton Site. For the purposes of the case against Mr Curtin, the short point is that there is simply no evidence that Mr Curtin has been flying drones, or taking photographs, as part of an exercise to identify employees at the Wyton Site. I accept Mr Curtin's evidence that he has not sought to do so.
269. Mr Curtin accepted that footage from drones has been posted on the Facebook page of Camp Beagle. Mr Bolton suggested to Mr Curtin in cross-examination that his posting of drone footage of the Wyton Site might provide an opportunity for someone to learn more about the layout of the site and that this knowledge might assist someone who wanted to break into the site. Mr Curtin's immediate response to this suggestion was "*that's stretching it*", but he accepted that it might assist such a person. This section of cross-examination was hypothetical and not helpful – or relevant – to the issues I must decide.
270. As the Claimants have submitted – correctly – in relation to the main claim for trespass, the tort is simple and one of strict liability. The decision to be made is whether the flying of the drone is a trespass or not. What Mr Curtin hopes to achieve by flying the drone, and the risks that might arise from publication of footage obtained from the use of the drone, are simply irrelevant. It is either a trespass or it is not. I identified the potential limits of the law of trespass – as it concerns drone use – in the Interim Injunction Judgment ([111]-[115]). Despite having ample opportunity to seek to amend their claim to do so, the Claimants have chosen not to seek to advance any alternative causes of action that might more effectively have addressed the concerns they have over drone use.
271. The final part of Ms Bolton's cross-examination was taken up with Mr Curtin being asked questions about other drone footage for which the Claimants had not alleged he was responsible. With the benefit of hindsight, and particularly considering the exchanges that followed (which consisted of little more than Mr Curtin being asked to comment on extracts from the drone footage and what it showed), I should have stopped the cross-examination. It quickly became speculative and, insofar as it was attempting to ascertain whether Mr Curtin was responsible for further drone flights beyond the specific example alleged against him, potentially unfair to him. I had wanted to ensure, in fairness to the Claimants, that they had an opportunity to develop as best they could their case (a) as to the threat of Mr Curtin carrying out further acts of alleged trespass/harassment with the drone; and (b) against Persons Unknown.
272. The Claimants have sought to adduce no expert evidence relating to drone usage, for example, based on the photographs and footage captured by the drones that have been put in evidence (a) at what height was the drone flying; and (b) whether the drone was immediately above the Wyton Site. Ms Bolton attempted to make up for this lack

of expert evidence by asking Mr Curtin to offer his view as to the height at which the relevant drone was being flown. That will not do. Mr Curtin may be a drone user, but he is not an expert qualified to comment on other drone use. He cannot offer an expert opinion, from a photograph or footage, as to how high the drone was flying when it was taken. I raised the issue of the need for expert evidence on the critical issue of the height at which drones were being flown during at least one interim hearing. The Claimants have chosen not to seek to advance any expert evidence in support of this aspect of their claim. Again, that is their choice.

273. The state of the evidence, at the conclusion of the trial, is that, in relation to the claim for trespass by drone usage against “Persons Unknown”, I have no reliable evidence as to the height at which the drones were being flown in the incidents complained of in the evidence. In respect of the claim against Mr Curtin for trespass and/or harassment arising from his use of a drone on 21 June 2022, the only evidence that is available as to the height at which the drone was being flown is that given by Mr Curtin; i.e. at or around 50 metres.
274. Returning to the central issue, the question is whether Mr Curtin’s flying of the drone on 21 June 2022 was a trespass on the land or alternatively part of the course of conduct involving harassment. My conclusions on this are as follows:
- (1) Mr Curtin’s use of the drone on 21 June 2022 was not a trespass.
 - (2) Based on the authority of *Bernstein* (see [64]-[71] above), the question is whether the incursion by Mr Curtin’s drone into the air space above the Wyton Site was at a height that could interfere with the ordinary user of the land. Mr Curtin’s drone was flying at or around 50 metres. To put that in context, a building that is 50 meters tall is likely to have between 15-16 storeys. Did flying a drone the size of Mr Curtin’s drone, for a short period, at the height of a 15-16 storey building interfere with the First Claimant’s ordinary user of the land. In my judgment plainly it did not. It is not possible – on the evidence – to conclude whether Mr Curtin’s drone, flying at 50m on 21 June 2022, could even have been seen by the naked eye from the ground. Mr Manning’s evidence was that it was very difficult to see smaller drones higher in the sky.
 - (3) On analysis, and in reality, the Claimants’ real complaint is not about trespass of the drone at all. If the drone had not been fitted with a camera, the Claimants would not be pursuing a claim for trespass (or harassment). The Claimants have attempted to use the law of trespass to obtain a remedy for something that is unrelated to that which the law of trespass protects. The real object has been to seek to prevent filming or photographing the Wyton Site. The law of trespass was never likely to deliver that remedy (even had the claim succeeded on the facts), not least because it is likely that substantially similar photographs/footage of the Wyton Site could be obtained either by the drone avoiding direct flight over the site, flying at a greater height, or, even, the use of cameras on the ground around the perimeter. As I have noted (see [73] above), the civil law may provide remedies for someone who complains that s/he is effectively being placed under surveillance by drone use, but adequate remedies are unlikely to be found in the law of trespass.

- (4) Turning to the harassment claim, the position is straightforward. There is no evidence that anyone was harassed by Mr Curtin's flight of the drone on 21 June 2022. It cannot therefore form any part of the alleged course of conduct involving harassment.
- (5) Finally, considering whether the Claimants' evidence shows that, unless restrained, Mr Curtin is likely to use the drone to harass in the future, I am not persuaded on the evidence that the Claimants can demonstrate a credible threat that he will. I have accepted Mr Curtin's evidence that he flies the drone at 50 metres. Flown at that height, there is no credible basis to contend that future flights of the drone are likely to amount the harassment of any of the employees. There is no evidence that Mr Curtin is carrying out surveillance of individual employees, for example to be able to identify them. I appreciate that several witnesses expressed the fear that this was one of the objectives of the drone flights. But these are their subjective fears; they are not objectively substantiated on the evidence.

11 July 2022

275. The Claimants allege that Mr Curtin (and others) caused a public nuisance by obstructing the highway for a vehicle driven by Ms Read that had left the Wyton Site. Specifically, it is alleged that Mr Curtin stepped in front of and walked in front of the vehicle causing the vehicle to slow.
276. The incident is captured on CCTV. In her witness statement, Ms Read described the incident as follows:

“On 11 July 2022 at 15.04, [Mr Curtin] walked in front of my car as I was driving along the main carriageway of the Highway... The incident happening as I was leaving the Wyton Site for the day; I left a few minutes later than everyone else on this day. I saw [Mr Curtin] walk across the Highway to the tent, and linger about, I had a feeling as I drove towards him that he was going to step out in front of me. [Mr Curtin], as I approached him in my car, he then walked in front of my car, causing me to slow down to avoid hitting him. He looked at me, and it felt like he was goading me – as if he was thinking ‘I can do what I want away from the Access Road’. I found [Mr Curtin's] conduct very intimidating and I was fearful, as I did not know what he was planning to do.”
277. Ms Read was not called to give evidence, and her evidence has been relied upon as hearsay by the Claimants. It is perhaps unfortunate that her evidence on this incident could not be explored and tested in cross-examination, particularly having regard to what can be seen of the incident from the CCTV recording. What that footage shows is little more than Mr Curtin crossing the B1090 road some 100 yards from the entrance to the Wyton Site.
278. Mr Curtin was cross-examined by Ms Bolton. She put to him that he had deliberately walked out in front of Ms Read's car because she had come from the Wyton Site. Mr Curtin disagreed, and maintained that he was simply crossing the road.
279. My conclusions in relation to this incident are as follows:

- (1) In the CCTV footage, Mr Curtin can be seen to be crossing the road. There is nothing more to this incident than that. It caused Ms Read slightly to slow her vehicle. She did not stop, and she was caused no obstruction. There was no obstruction of the carriageway. There was no public nuisance
- (2) I cannot accept Ms Read's evidence in relation to this incident. Having reviewed the footage – as apparently Ms Read also did when making her statement – I conclude that an element of paranoia must have contributed to Ms Read's perception of this incident. Like some other witnesses, Ms Read is clearly fearful of what Mr Curtin *might* do, rather than rationally assessing what he has *actually* done. There was nothing remotely intimidating in Mr Curtin's action of crossing the road. Objectively, there was nothing in the incident that should have caused her any fear.
- (3) The inclusion of this incident in the Claimants' claim against Mr Curtin is remarkable. The evidence simply does not demonstrate, even arguably, any wrongdoing by Mr Curtin. Based on the evidence available to the Claimants, this allegation should not have been pleaded or pursued.

(2) Unpleaded allegations against Mr Curtin

280. There are three further incidents of alleged harassment that were raised in the Claimants' evidence and pursued in cross-examination with Mr Curtin that did not form part of the Claimants' pleaded case against him. I raised the lack of pleaded allegations with Ms Bolton during Mr Curtin's cross-examination. I expressed the provisional view that, if they were to be relied upon as part of the course of conduct alleged to amount to harassment against Mr Curtin, then they ought to be pleaded. Ms Bolton did not return to the issue until addressing the issue in her closing submissions. No application to amend was made by the Claimants.
281. In her closing submissions, Ms Bolton said that it was "*regrettable*" that the details of these three incidents had not been pleaded, they had only come to light when draft witness statements were received. The Claimants' position – as advanced in their closing submissions – is that "*whilst no 'claim' is brought in relation to these incidents, it is submitted that they are important incidents that should inform the Court's view of the strength of the pleaded harassment claim against Mr Curtin, and the likelihood of further acts of harassment occurring*".
282. I will return below to how I intend to deal with these unpleaded allegations after summarising them and the evidence that has been presented during the trial.

7 September 2021

283. This was an incident concerning Mr Manning. In his witness statement, Mr Manning said this:

"... on 7 September 2021, [Mr Curtin] approached me at the Gate and said he had some personal details I would not want anyone else to see, which [Mr Curtin] had been given by a member of staff or security who passed it to [Mr Curtin] through the car window. He would not tell me what the details were or what he would do with them, but said that he could contact me at any time and that I would

find out what he had at some point. I reported this incident to the police, and I felt really shaken up by it. Later that day, he approached me again, when I was by the perimeter fence. He said he would pass a piece of paper that was in his pocket with personal details of mine. I asked him to show the piece of paper. He looked through his pockets and said he thought it was in a folder. I walked away”.

284. Mr Curtin did ask Mr Manning some questions about this incident when he was cross-examined. Mr Manning could recall few details. Mr Curtin suggested to Mr Manning that he had told him on this occasion that he had been given Mr Manning’s telephone number by another security officer. Mr Manning replied that Mr Curtin had not told him what the information was.
285. As this is not a pleaded allegation against Mr Curtin said to form part of the alleged course of conduct involving harassment, I can deal with this shortly. Objectively judged, what Mr Curtin did (as described by Mr Manning) lacks the necessary qualities to amount to harassment. The incident has not been repeated, and therefore it sheds no light on whether, if the Claimants can prove a case of actual or threatened harassment against Mr Curtin, they can credibly suggest that this incident shows that there is need for an injunction to restrain future acts of harassment by Mr Curtin.

8 July 2022

286. The incident on 8 July 2022 concerned Mr Curtin and Employee V, a maintenance engineer at the Wyton Site. There was footage of the incident recorded by Mr Curtin. In his/her witness statement, Employee V stated that on 8 July 2022, s/he had been tasked with repairing a hole in the perimeter fence around the Wyton Site. As s/he was operating outside the perimeter, s/he was accompanied by a member of the First Claimant’s security team. Mr Curtin followed Employee V, and the security officer, and Employee V alleged that Mr Curtin intimidated and harassed him/her whilst s/he undertook the repairs. Mr Curtin recorded the incident and livestreamed it to the Camp Beagle Instagram and Facebook pages. The video of the incident goes on for some 15-20 minutes, but the key parts, identified by Employee V in his/her witness statement, were the following:
- (1) Mr Curtin said “*we are going to do our darndest to make sure some workers go to prison from here you deserve it you really do deserve it*”. Employee F said that this upset him/her, because s/he had not done anything illegal.
 - (2) Mr Curtin said, “*how low can you go working here?*” Employee V regarded this as a “*psychological intimidation tactic*” as s/he was “*not working in a ‘low job’*”. Employee V felt that Mr Curtin was attempting to make him/her feel bad for what s/he did at the Wyton Site.
 - (3) Mr Curtin called Employee F a “*freak*”. Employee V said that this upset him/her, as it portrayed him/her to be something that s/he was not.
 - (4) At one point during this incident, Employee V said that Mr Curtin was so close to him/her that he was nearly touching his/her face with his phone whilst livestreaming. Employee V said that s/he felt “*really threatened and uncomfortable*”.

- (5) Employee V said s/he felt “*constantly scared*” that Mr Curtin would pull down his/her mask and reveal his/her identity.
- (6) Employee V felt that Mr Curtin’s actions of being close to him/her, and abusing him/her for 15 to 20 minutes as s/he carried out his/her job was “*overwhelming*”. S/he was “*very distressed*” after the incident and believed that it led to a deterioration in his/her mental health. “*I think this was a reaction to feeling so vulnerable (i.e. without a fence or car between me and [Mr Curtin]) and feeling degraded by not being able to retaliate or respond, as we have been advised by the police*”.
287. In cross-examination, Employee V confirmed that s/he knew that Mr Curtin was livestreaming the encounter. In relation to the comment that s/he was a “*freak*”, Employee V accepted that Mr Curtin had been reading out comments that had been received from people watching the livestream. Mr Curtin put to Employee V that the context of the encounter was him making a livestream during which he was offering a general commentary about the First Claimant. Employee V replied:
- “... you intensified your livestream to intimidate me. You got very close to me. I do agree you did not touch me, but at one point you became very close and you did everything possible to slow my work down.”
288. In questioning, Employee V accepted that s/he had carried out research on Mr Curtin and this had coloured the impression s/he had of him. Employee V considered Mr Curtin to be one of the main leaders of the camp, who advised the other protestors on their tactics. S/he described the protestors as seeming to be very fanatical in their beliefs. Employee V said s/he had carried out internet research on the tactics used by protestors. This appears to have generated in Employee V a significant fear based not so much on what the protestors had actually done, but what Employee V believed they might be capable of doing.
289. This is not a pleaded allegation of harassment against Mr Curtin, so I intend to state my conclusions on this incident quite shortly.
290. It was clear from his/her evidence as a whole that Employee V had been significantly affected by the protests at the Wyton Site and not just this encounter with Mr Curtin. S/he was concerned that s/he might become a target away from the Wyton Site and expressed a fear, shared by several employees, at what the protestors might be capable of doing. I do not doubt that the particular encounter with Mr Curtin did upset him/her. I accept his/her evidence as to how s/he felt and how it affected him/her, but, in part, his/her sense of concern appears to have been elevated by his research on Mr Curtin rather than anything that Mr Curtin had actually done, whether during the incident or before.
291. Employee V appeared to me also to lack insight. S/he did not appreciate why protestors called the workers, generically, “*puppy killers*”. S/he approached the issue simply on the basis that, as s/he personally had not been involved in the killing of any of the animals, it was wrong for the allegation to be made. That is to take literally the words used, and to fail to recognise that this was a protest message directed at the First Claimant’s operation at the Wyton Site.

292. It is very important that Employee V was aware that Mr Curtin was livestreaming the encounter. To that extent it should have been immediately apparent to Employee V that this was not a normal conversation; there was an obvious element of performance by Mr Curtin that Employee V should have appreciated. I think it is likely that Employee V failed to appreciate this because of his/her elevated anxiety towards Mr Curtin and fears of what he might do. Whilst I recognise that, subjectively, Employee V did feel intimidated by the encounter, there was a significant element to which these fears were self-generated rather than being based on what Mr Curtin actually did or any threat that he realistically presented. Objectively judged, I am not persuaded that Mr Curtin's behaviour crossed the line between conduct that is unattractive, even unreasonable, and conduct which is oppressive and unacceptable.
293. Ms Bolton has relied upon this incident not as part of the alleged course of conduct involving harassment but as demonstrating Mr Curtin's propensity towards harassing behaviour, and therefore, supportive of the need for some form of injunctive relief. I will come on to consider the harassment claim advanced against Mr Curtin by the Claimants in due course, but I can reject now that this incident provides any evidence of "propensity". Far from demonstrating a tendency to act in a particular way – and compared to the repetitive incidents of obstructing the vehicles of employees leaving the Wyton Site in the 'ritual' – the incident with Employee V was a one off. It was the product of a particular set of circumstances, that had a unique dynamic. The only thing that really links it to the other activities about which the Claimants complain is that it could be said to be loosely part of the broader protest activities. But the issues raised in this incident are wholly different.

19 August 2022

294. This act of alleged harassment by Mr Curtin concerns an incident that took place on 19 August 2022 outside the Wyton Site, near to the notice board erected by the First Claimant. Mr Manning describes the event in his witness statement as follows:
- “... as I and another member of staff was [sic] putting the notice back up following it needing to be cleaned due to it being spray painted (and to put up new documents) on 19 August 2022 from 14.04 onwards [Mr Curtin] approached me and my colleague to film us, and came very close to me, almost touching me, multiple times. If someone came that close to me outside of work, I would tell them to get out of my personal space.”
295. The incident is captured on CCTV. The footage does not support Mr Manning's description of Mr Curtin's physical proximity. Mr Manning must have misremembered how closely Mr Curtin came to him during this incident. From the video footage, there is nothing intimidating or harassing in Mr Curtin's physical closeness. I appreciate that, particularly given the long period over which Mr Manning has been dealing with Mr Curtin (and the other protestors), Mr Manning regards Mr Curtin as an irritant whose presence is not appreciated. But, judged objectively, Mr Curtin's behaviour on this occasion does not pass the threshold to amount to harassment under the law.
296. In cross-examination, Ms Bolton put to Mr Curtin that this incident was “*another example... of you targeting the staff as part of your actions to persuade the staff to leave MBR Acres*”. Mr Curtin rejected that. I would simply note, by way of finding, that the incident does not remotely support the Claimants' characterisation of it.

297. As this is not a pleaded allegation against Mr Curtin said to form part of the alleged course of conduct involving harassment, I can deal with this shortly. Objectively judged, what Mr Curtin did (as described by Mr Manning and shown on the footage) lacks the necessary qualities to amount to harassment. The incident has not been repeated, and therefore it sheds no light on whether, if the Claimants can prove a case of actual or threatened harassment against Mr Curtin, they can credibly suggest that this incident shows that there is need for an injunction to restrain future acts of harassment by Mr Curtin.

(3) Conclusion on the claim of harassment against Mr Curtin

298. As noted above ([108]), the harassment claim brought against Mr Curtin is brought under s.1(1A) PfHA.
299. In the section above, I have stated my conclusions in respect of each of the acts alleged by the Claimants to constitute a course of conduct involving harassment of those in the Second Claimant class. I have not found that any of them, individually, were serious enough to amount to harassment applying the principles I have identified (see [99]-[108] above).
300. Nevertheless, I must step back and consider whether, taken together, these incidents do reach the required threshold of seriousness to amount to harassment. I am quite satisfied that they do not.
301. Although, in the pre-injunction phase, the repeated surrounding of vehicles of those entering and leaving the Wyton Site, has an element of repetition that might supply the necessary element of oppression, the same element of repetition meant that those in the vehicles should, objectively, quickly have become used to it. The ‘ritual’ did not change much. Although it was inconvenient, caused delay, and upset some employees, the ‘ritual’ was predictable and could not have failed to have been understood to be an expression of protest. Objectively, it was not targeted at any individual employee. Several witnesses were more concerned about what the protestors *might* do, rather than what they actually did.
302. As I am dealing with the claim made against Mr Curtin, it is necessary to concentrate on the evidence about what Mr Curtin did, not the actions of other protestors. At its height, the Claimants’ evidence demonstrates that Mr Curtin participated in several ‘rituals’ and he expressed his protest message. It goes no further than that. Ms Bolton, in her final submissions, placed no reliance on the content of what Mr Curtin shouted at the employees.
303. I am not persuaded that this crosses the threshold between unattractive or unreasonable behaviour to that which is oppressive and unacceptable. In a democratic society, the Court must set this threshold with the requirements of Articles 10 and 11 clearly in mind. It would be a serious interference with these rights if those wishing to protest and express strongly held views could be silenced by actual or threatened proceedings for harassment based on subjective claims by individuals that they were caused distress or alarm. The context for alleged harassment will always be very important. In terms of whether the conduct supplies the necessary element of oppression to constitute harassment, there is a big difference between an employee of the First Claimant having to encounter, and withstand, a protest message with which s/he is confronted on his/her

journey to/from work and having the same protest message shouted through his/her letterbox at home at 3am.

304. My findings mean that the Claimants have failed to demonstrate the element of the tort required under s.1(1A)(a). In consequence, the claim in harassment brought against Mr Curtin will be dismissed.
305. In any event, I would also have found that the Claimants had failed to demonstrate the element of the tort required under s.1(1A)(c).
306. As part of the harassment claim against Mr Curtin, it is the Claimants' case that Mr Curtin's intention behind, or the underlying purpose of, the alleged acts of harassment of the First Claimant's employees (and others in the class of the Second Claimant) was to get them to sever their connection with the First Claimant (for employees to leave, for suppliers to cease business etc). Mr Curtin rejected this allegation on the several occasions when it was put to him during his long cross-examination.
307. I shall give one example of the answers he gave when this allegation was put to him, in the context of the unpleaded allegation of harassment of Mr Manning on 7 September 2021 (see [283]-[285] above):

Q: ... it was an attempt to intimidate [Mr Manning] because you want to persuade the officers, staff, workers of MBR not to work there, in pursuit of your goal to get MBR shut down?

A: The case against me – you haven't spent millions of pounds to stop me trying to persuade people. I'm allowed to persuade people. It's a legal right for me to --- it's what protesting is, persuasion.

Q: Your attempt to persuade Mr Curtin is done by intimidation?

A: It's absolutely not my intention the way to close down MBR is to get Mr Manning to leave and then the maintenance man. That's not – that has never been the thrust of what's driven me behind my campaigning. It's going to be a lot more complicated than that to shut MBR down."

308. I accept Mr Curtin's evidence. I am not concerned with the evidence of what other protestors have done. Mr Curtin, in the protest methods he adopted, did not pursue the sort of crude intimidation of the First Claimant's staff that Ms Bolton ascribed to him. He was quite candid in accepting that he wished to see the First Claimant shut down, but he was equally clear about the ways in which that objective could be achieved.

K: The evidence at trial against "Persons Unknown"

(1) Trespass on the Wyton Site

309. It would be disproportionate to set out the evidence of all the incidents where "Persons Unknown" have trespassed on the First Claimant's land prior to the grant of the Interim Injunction. By dint of the fact that the First Claimant owns the Driveway at the Wyton Site and part of the Access Land, hundreds of people have potentially been guilty of trespass on this land. Basically, anyone who seeks to use the entry phone outside the

main gate could only do so by standing on the Driveway. Without a defence of implied licence, each and every person doing so would be a potential trespasser.

310. In addition, and during the currency of the proceedings, the understanding of where the public highway ended, and the First Claimant's land began significantly changed (see [22]-[23] above). This means that the number of unidentified individuals who arguably have trespassed on the First Claimant's land whilst protesting increases yet further. At the time of this alleged trespass, neither the individuals standing on the Access Land nor the Claimants would have been aware that this was an arguable trespass.
311. The incidents of more serious trespass – i.e. people accessing the Wyton Site by going beyond the entry gates or over the perimeter fence are very few. There were significant trespass incidents on 19-20 June 2022. On the first occasion, 25 people broke into the Wyton Site. On 20 June 2022, an unknown number of unidentified individuals broke into the Wyton Site and stole five dogs. There were several arrests.
312. Since the grant of the Interim Injunction, and specifically the imposition of the Exclusion Zone, the incidents of alleged trespass have significantly reduced (although not eliminated entirely). The Claimants' evidence shows that there have been isolated incidents of "Persons Unknown" entering the Exclusion Zone and/or trespassing on the First Claimant's land. For example, on 13 July 2022, 2 unidentified individuals chained themselves to the gate of the Wyton Site, delaying the departure of a van carrying dogs, and on 24 September 2022, 4 unidentified individuals glued themselves to the gate to the Wyton Site. They were removed by the police.

(2) Trespass by drone flying over the Wyton Site

313. I have dealt above with the specific allegations made against Mr Curtin relating to drone flying. The Claimants also maintain a claim, and seek a *contra mundum* injunction to prevent drone flying over the Wyton Site.
314. In the Claimants' pleaded case, the claim is advanced as follows
- “[Persons Unknown have], without the licence or consent of the First Claimant, committed acts of trespass by flying drones:
- (1) directly over the Wyton Site; and/or
 - (2) below 150 metres over the airspace of the Wyton Site; and/or
 - (3) within 150 metres of the Wyton Site; and/or
 - (4) below 50 metres over the airspace of the Wyton Site; and/or
 - (5) within 50 metres of the Wyton Site; and/or
 - (6) at a height that was not reasonable and interfered with the First Claimant's ordinary and quiet use of the Wyton Site.

315. Although this pleading is difficult to follow, the Claimants' position, at the end of the trial, was that they sought a *contra mundum* injunction to prohibit "*fly[ing] a drone or other unmanned aerial vehicle at a height of less than 100 meters over the Wyton Site*".
316. The claim in respect of alleged drone trespass can only be maintained in respect of direct *overflying*. The First Claimant has no arguable right, under the law of trespass, to prevent drones flying other than directly over the Wyton Site. For drones flown directly over the Wyton Site, the question is at what height does flying a drone represent a trespass on the land below (see [62]-[73] above).
317. The Claimants allege in the Particulars of Claim that "Persons Unknown" have flown a drone over the Wyton Site on 25 and 27 July 2021, 25 and 27 August 2021, 17 March 2022, 6 and 16 June 2022. Save for the incident on 27 July 2021, the allegation made in the Particulars of Claim is that the drone was flown "*at a height that was below 150m and/or 50m*". On 27 July 2021, the Claimants allege that the drone was flown "*at a height that was below 50m*". Again, for a sense of scale, the 'Walkie Talkie' building at 20 Fenchurch Street in London is 160m tall, with 38 floors. I have already summarised the Claimants' evidence about general drone usage (see [260] above).
318. In her witness statement of 19 March 2024, Ms Pressick provided some further evidence of drone use by "Persons Unknown":

"Drones flown by the protestors are known to have crash landed on MBR's land on 5 occasions (10 May 2022, 12 May 2022, 3 July 2022, 3 February 2023, and 19 September 2023). This is indicative of drones being flown outside their operational parameters and/or by unsafe piloting. Where the drone has been recovered by the security team, it has been handed over to the police.

I asked the security team to consider drone usage over a 5-month period, and this was closely monitored between 1 July and 30 November 2023. This is something that we had not done consistently previously. Staff tried to monitor use of the drone, noting days it was flown and the duration of the flight time over the Wyton Site. In that 5-month period, the security noted that at least 184 drone flights took place over the Wyton site, with an overall flight duration of at least 2,097 minutes (nearly 35 hours). I assume, but do not know, that the protestors filmed and recorded throughout each flight. During this period, there has been a notable increase in drone usage. There have been more drone flights, and the flight time appears to have increased over this period.

In the period looked at in detail (1 July to 30 November 2023), the security team have tried to identify the protestors that fly the drone. Of the 89 flights noted by the security team, it has not been possible to identify a drone pilot in respect of 59 flights (this is equivalent to around 66% of the observed flights). Mr Curtin has been identified as the drone pilot on 18 occasions (or around 20% of the observed flights). The security team have identified a protestor known as [name redacted] as being the drone pilot on 12 occasions (or roughly 13.5% of the observed flights). It is generally understood from previous observations, and the footage uploaded to the Camp Beagle Facebook page, that Mr Curtin is the primary drone pilot..."

319. The evidence that Ms Pressick has included about Mr Curtin's drone flying I will not take into account in the claim against him. The opportunity to file further evidence was limited to the Claimants' claim for a *contra mundum* 'newcomer' injunction. It was not

an opportunity to supplement the evidence against Mr Curtin. The evidence against him was presented at the trial. Even had I taken this evidence into account, it would not have made any difference to my conclusions in relation to this aspect of the claim against Mr Curtin. He does not deny flying a drone. His evidence is that he flies it no lower than 50 metres. Ms Pressick's further evidence therefore takes the claim against him no further.

320. The evidence satisfies me that there is a risk that "Persons Unknown" may in the future fly drones over the Wyton Site. However, beyond the particular evidence of drone having crashed, the Claimants have failed to adduce reliable evidence as to the height at which any drone has been flown (or is likely in the future to be flown). Without that, it is impossible to conclude that there is a credible risk of trespass by drone flying.

(3) Threatened trespass at the B&K Site

321. In her witness statement, Ms Pressick included a section headed "*Protest activities at the B&K Hull Site*". She recognises, immediately, that the scale of protest activities has been much reduced at the B&K Site. Between June-July 2021, staff at the B&K Site received what Ms Pressick describes as "*threatening calls*" and there was a protest event held at the B&K Site on 15 August 2021 which was attended by some 40 people. The Claimants make no complaint about this demonstration. Much of Ms Pressick's evidence concerning the B&K Site was considered in the Interim Injunction Judgment (see [22]-[23]). At that stage, the evidence was being advanced in support of a claim for an interim injunction to restrain harassment. I refused to grant any injunction on that basis: [129(4)]. The Claimants have adduced no evidence that there has been any trespass at the B&K Site. Ms Pressick states in her evidence:

"[The Third Claimant], its staff and myself apprehend that the protestors may focus, or refocus, on the B&K Site. Given that [the First and Third Claimants] are sister companies, there would be real benefit in the final injunction applying to both sites so that injunctive relief over the Wyton Site does not simply move the acts of unlawful protest over to the B&K Hull Site...

[The Third Claimant] continues to receive nuisance calls. I understand from the staff on the switch board that sometimes the callers are silent and, on occasion, they express a negative view of the work that B&K does. It is therefore clear that the B&K Hull Site is still on the radar of animal rights protestors, and that it is reasonable for the Claimants to apprehend that acts of protest similar to those occurring at the Wyton Site may occur at the B&K Hull Site."

322. This evidence is very tenuous and involves a significant leap between the willingness of unidentified people to register displeasure with the activities of the Third Claimant in messages and calls and a real risk that, without an injunction, "Persons Unknown" will trespass upon the B&K Site. As I have noted, there is no evidence at anyone has trespassed at the B&K Site since the protests began in the summer of 2021. On the evidence, I am not satisfied that there is a credible threat of trespass at the B&K Site by "Persons Unknown".

(4) Interference with the right of access to the highway

323. Again, it would be disproportionate to identify all the occasions on which vehicles entering or leaving the Wyton Site had been obstructed prior to the grant of the Interim

Injunction. The ‘ritual’ was a regular and, at the height of the protests, almost daily occurrence. This inevitably meant that vehicles were obstructed getting from the Wyton Site to the highway.

324. On the evidence, I am satisfied that there is a real risk that “Persons Unknown” who are protesting about the activities of the First Claimant will engage in the obstruction of vehicles as they enter or leave the Wyton Site.

(5) Public nuisance by obstruction of the highway

325. Before the grant of the Interim Injunction, some large-scale demonstrations took place outside the Wyton Site. There were also some further isolated incidents of significant obstruction of the highway, primarily targeted at those going to or from the Wyton Site. The key events have been as follows:

- (1) On 9 July 2021, a demonstration was attended by between 150-200 protestors. It lasted for nearly 2 hours.
- (2) On 1 August 2021, there was another large-scale demonstration, numbering up to 260 protestors. The Claimants allege that the police struggled to contain the protestors and that reinforcements were required. Four protestors were arrested.
- (3) On 13 August 2021, a convoy of staff cars was intercepted on the main carriageway around 70 metres from the entrance to the Wyton Site. It took 40 minutes for the vehicles to travel along the highway and to enter the Wyton Site.
- (4) On 15 August 2021, approximately 250 people attended a large demonstration (see [192]-[198] above).
- (5) On 1 July 2023, approximately 50 people attended the two-year anniversary of Camp Beagle. Ms Pressick described this as “*a relatively quiet event considering its significance*”. Although she identified several alleged incidents of breach of the Interim Injunction (trespass and entry into the Exclusion Zone), there was no large scale obstruction of the highway.

326. There was also a significant protest event, on 20 November 2021, after the grant of the Interim Injunction. On that occasion, there was a significant obstruction of the highway. This incident was one of those included in the First Contempt Application, and it led subsequently to the variation of the Interim Injunction (see [39]-[40] above).

327. Whether any of these events amounted to a public nuisance is difficult to determine on the evidence. Perhaps because of their belief that any obstruction of the highway was a public nuisance, the Claimants have not provided evidence of the wider impact of the obstruction of the carriageway in each of the incidents I have identified above. On the evidence I have I can, I think, properly draw the inference that the incident on 15 August 2021, in terms of the length of the obstruction of the highway and its likely community impact, was a public nuisance. But the other incidents are not as clear cut, and, on the evidence, the Claimants have not proved that they were a public nuisance.

328. It is also important to note that in each of these incidents there was a significant police presence. In none of the incidents did the police seek to intervene or use their powers

to clear the obstruction of the highway. It appears to me that, in the incident on 15 August 2021, the police had closed the road. I am not criticising the decisions of the police in these incidents. It is an important part of policing demonstrations for police officers (both individual officers on the ground and senior officers in their strategic decision-making) to assess the extent to which the police need to use their undoubted powers to control what are essentially public order issues.

329. In summary, the evidence shows that this is some risk, perhaps diminished since the height of the demonstrations in 2021, that “Persons Unknown” will congregate in such numbers outside the Wyton Site that they cause a public nuisance. I will deal below whether the Court’s response to that risk, in these proceedings, should be to grant any form of *contra mundum* order.

L: Evidence from the police

330. At an earlier stage of the proceedings, evidence was provided to the Court by a senior police officer, Superintendent Sissons, who was responsible for policing the protest activities at the Wyton Site. I set out this evidence in the Second Injunction Variation Judgment on 22 December 2022 [43]-[51] and Appendix.

331. Based in part on Superintendent Sissons evidence, I declined to vary the Interim Injunction:

[76] ... unless the Claimants can demonstrate a clear case for an injunction, in my judgment it is better to leave any alleged wrongdoing to be dealt with by the police. Officers on the ground are much better placed to make the difficult decisions as to the balancing of the competing rights (see Injunction Judgment [85] and [96]).

[77] The evidence from Superintendent Sissons shows that this is precisely what the police are doing. There is no complaint from the Claimants that the police are failing in their duties or that the targeted measures taken by the police have been ineffective. Arrests are being made of some protestors, including it appears those engaged on protests at Impex, and several people have been charged. Appropriate use of bail conditions or, upon conviction, restraining orders will restrict further unlawful acts of individuals more effectively and on a targeted basis.

[78] Arrests for offences under s.14 Public Order Act 1986 suggest that the police have already utilised their powers to impose conditions on public assemblies. I appreciate that the Claimants contend that, notwithstanding the efforts of the police, some people are continuing to break the law. The issue for the Claimants is that, before meaningful relief can be granted by way of civil injunction, it is necessary to identify the alleged wrongdoers so that they can be joined to the proceedings.

332. The Claimants’ evidence at trial has not demonstrated that the police are failing to respond appropriately to any threats posed by the protestors. In my judgment, and as I have observed before, proportionate use, by police officers making decisions based on an assessment ‘on-the-ground’, of the powers available to them, adjudged to be necessary and targeted at particular individuals, is immeasurably more likely to strike the proper balance between the demonstrators’ rights of freedom of

expression/assembly and the legitimate rights of others, than a Court attempting to frame a civil injunction prospectively against unknown “protestors”.

M: *Wolverhampton* and its impact on this case

(1) Background

333. The context of the litigation that gave rise to the Supreme Court decision in *Wolverhampton* was a preponderance of cases in which Courts had granted injunctions against “Persons Unknown” (and in at least one case a *contra mundum* injunction) to restrain trespass on the land of local authorities by Gypsies and Travellers. The facts are set out in the first instance decision: *LB Barking & Dagenham -v- Persons Unknown* [2021] EWHC 1201 (QB). Four issues of principle were resolved by me, the most significant being whether a “final injunction” against “Persons Unknown” could bind people who were not parties to the action at the date the injunction was granted (the so-called ‘newcomers’).
334. Based on established authorities, principally the decisions of the Supreme Court in *Cameron -v- Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471 and the Court of Appeal in *Canada Goose UK Retail Ltd -v- Persons Unknown* [2020] 1 WLR 2802, I decided that it could not: [161]-[189]. I reached that conclusion based on the application of conventional principles of civil litigation and the established limits of those who were made subject to the Court’s orders.
335. I also considered the question of whether *contra mundum* injunctions might provide an answer for restraining the actions of ‘newcomers’, but held that *contra mundum* orders were wholly exceptional and were reserved for cases (like those decided under the *Venables* jurisdiction) where the Court was effectively compelled to grant a *contra mundum* order to avoid a breach of s.6 Human Rights Act 1998: [224]-[238].

(2) The Court of Appeal decision

336. The Court of Appeal reversed my decision: [2023] QB 295. Disapproving the previous Court of Appeal decision in *Canada Goose* and applying *South Cambridgeshire District Council -v- Gammell* [2006] 1 WLR 658, the Court of Appeal held that that s.37 Senior Courts Act 1981 gave the court power to grant a final injunction that bound individuals who were not parties to the proceedings at the date when the injunction was granted. The Court held that there was no difference in jurisdictional terms between an interim and a final injunction, particularly in the context of those granted against “Persons Unknown”. Where an injunction was granted, whether on an interim or a final basis, the court retained the right to supervise and enforce that injunction, including bringing before the court parties violating the injunction who thereby made themselves parties to the proceedings.

(3) The Supreme Court decision

337. Despite there being no defendants to appeal the Court of Appeal’s decision, the Supreme Court nevertheless heard an appeal brought by the interveners.
338. The appeal from the Court of Appeal’s decision was dismissed, but the Supreme Court disagreed with the Court of Appeal’s reasoning. The Supreme Court held that the Court

had jurisdiction to grant a *contra mundum* injunction that restrained newcomers. The judgment concluded with this summary of the decision [238]:

- “(i) The court has jurisdiction (in the sense of power) to grant an injunction against ‘newcomers’, that is, persons who at the time of the grant of the injunction are neither defendants nor identifiable, and who are described in the order only as persons unknown. The injunction may be granted on an interim or final basis, necessarily on an application without notice.
- (ii) Such an injunction (a ‘newcomer injunction’) will be effective to bind anyone who has notice of it while it remains in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action. It is inherently an order with effect *contra mundum*, and is not to be justified on the basis that those who disobey it automatically become defendants.
- (iii) In deciding whether to grant a newcomer injunction and, if so, upon what terms, the court will be guided by principles of justice and equity and, in particular:
 - (a) That equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue.
 - (b) That equity looks to the substance rather than to the form.
 - (c) That equity takes an essentially flexible approach to the formulation of a remedy.
 - (d) That equity has not been constrained by hard rules or procedure in fashioning a remedy to suit new circumstances.
 - (e) These principles may be discerned in action in the remarkable development of the injunction as a remedy during the last 50 years.
- (iv) In deciding whether to grant a newcomer injunction, the application of those principles in the context of trespass and breach of planning control by Travellers will be likely to require an applicant:
 - (a) to demonstrate a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant.
 - (b) to build into the application and into the order sought procedural protection for the rights (including Convention rights) of the newcomers affected by the order, sufficient to overcome the potential for injustice arising from the fact that, as against newcomers, the application will necessarily be made without notice to them. Those protections are likely to include advertisement of an intended application so as to alert potentially affected Travellers and bodies which may be able to represent their interests at the hearing of the application, full provision for liberty to persons affected to apply to vary or discharge the order without having to show a change of

circumstances, together with temporal and geographical limits on the scope of the order so as to ensure that it is proportional to the rights and interests sought to be protected.

- (c) to comply in full with the disclosure duty which attaches to the making of a without notice application, including bringing to the attention of the court any matter which (after due research) the applicant considers that a newcomer might wish to raise by way of opposition to the making of the order.
- (d) to show that it is just and convenient in all the circumstances that the order sought should be made.
- (v) If those considerations are adhered to, there is no reason in principle why newcomer injunctions should not be granted.”

(a) The *Gammell* principle disapproved as the basis for newcomer injunctions

339. As noted in paragraph (ii) of the Supreme Court’s summary, the ‘newcomer’ injunction it recognised was a *contra mundum* order. In disagreement with the Court of Appeal, the Supreme Court disapproved of the previous basis upon which ‘newcomer’ injunctions had been granted using the principle from ***Gammell*** to treat ‘newcomers’, by their conduct, as having become defendants to the proceedings and bound to comply with the injunction: [127]-[132].
340. Ms Bolton submitted that the species of injunction newly sanctioned by the Supreme Court was “*analogous*” to a *contra mundum* injunction. Whilst the Supreme Court did use the word “*analogous*” in discussion of ‘newcomer’ injunctions ([132]), the new form of order that it ultimately approved is not analogous to a *contra mundum* order; it is a *contra mundum* order. That is plain from [238(ii)].

(b) The key features of, and justification for, a *contra mundum* ‘newcomer’ injunction

341. The Supreme Court identified the “*distinguishing features*” of a ‘newcomer’ injunction as follows [143]:
- “(i) They are made against persons who are truly unknowable at the time of the grant, rather than (like Lord Sumption’s class 1 in ***Cameron***) identifiable persons whose names are not known. They therefore apply potentially to anyone in the world.
 - (ii) They are always made, as against newcomers, on a without notice basis (see [139] above). However, as we explain below, informal notice of the application for such an injunction may nevertheless be given by advertisement.
 - (iii) In the context of Travellers and Gypsies they are made in cases where the persons restrained are unlikely to have any right or liberty to do that which is prohibited by the order, save perhaps Convention rights to be weighed in a proportionality balance. The conduct restrained is typically either a plain trespass or a plain breach of planning control, or both.

- (iv) Accordingly, although there are exceptions, these injunctions are generally made in proceedings where there is unlikely to be a real dispute to be resolved, or triable issue of fact or law about the claimant's entitlement, even though the injunction sought is of course always discretionary. They and the proceedings in which they are made are generally more a form of enforcement of undisputed rights than a form of dispute resolution.
 - (v) Even in cases where there might in theory be such a dispute, or a real prospect that article 8 rights might prevail, the newcomers would in practice be unlikely to engage with the proceedings as active defendants, even if joined. This is not merely or even mainly because they are newcomers who may by complying with the injunction remain unidentified. Even if identified and joined as defendants, experience has shown that they generally decline to take any active part in the proceedings, whether because of lack of means, lack of pro bono representation, lack of a wish to undertake costs risk, lack of a perceived defence or simply because their wish to camp on any particular site is so short term that it makes more sense to move on than to go to court about continued camping at any particular site or locality.
 - (vi) By the same token the mischief against which the injunction is aimed, although cumulatively a serious threatened invasion of the claimant's rights (or the rights of the neighbouring public which the local authorities seek to protect), is usually short term and liable, if terminated, just to be repeated on a nearby site, or by different Travellers on the same site, so that the usual processes of eviction, or even injunction against named parties, are an inadequate means of protection.
 - (vii) For all those reasons the injunction (even when interim in form) is sought for its medium to long term effect even if time-limited, rather than as a means of holding the ring in an emergency, ahead of some later trial process, or even a renewed interim application on notice (and following service) in which any defendant is expected to be identified, let alone turn up and contest.
 - (viii) Nor is the injunction designed (like a freezing injunction, search order, *Norwich Pharmacal* or *Bankers Trust* order or even an anti-suit injunction) to protect from interference or abuse, or to enhance, some related process of the court. Its purpose, and no doubt the reason for its recent popularity, is simply to provide a more effective, possibly the only effective, means of vindication or protection of relevant rights than any other sanction currently available to the claimant local authorities."
342. Paragraph (iii) has particular importance in relation to some of the torts that are relied upon in relation to protest cases; e.g. public nuisance arising from an obstruction of the highway, interference with the right of access to the highway and harassment.
343. The Supreme Court was also very clear that this new form of *contra mundum* 'newcomer' injunction – "*a novel exercise of an equitable discretionary power*" – was only likely to be justified in the following circumstances [167]:
- "(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other

statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.

- (ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see [226]-[231] below); and the most generous provision for liberty (i.e. permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.
- (iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.
- (iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.
- (v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries."

344. The Supreme Court described the need to demonstrate a "*compelling justification*" for the order sought as an "*overarching principle that must guide the court at all stages of its consideration*" of such orders: [188].

(c) Protest cases

345. Necessarily, the factors identified by the Supreme Court were directed at the particular issue of unlawful encampments of Gypsies and Travellers on local authority land. So far as their potential application of *contra mundum* 'newcomer' injunctions in protest cases, the Supreme Court said only this:

[235] The emphasis in this discussion has been on newcomer injunctions in Gypsy and Traveller cases and nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protestors who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2's land with the intention of disrupting construction. Each of these activities may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers. Any of these persons who have notice of the order

will be bound by it, just as effectively as the injunction in the proceedings the subject of this appeal has bound newcomer Gypsies and Travellers.

[236] Counsel for the Secretary of State for Transport has submitted and we accept that each of these cases has called for a full and careful assessment of the justification for the order sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, in so far as the applicant seeks an injunction against newcomers, the judge must be satisfied there is a compelling need for the order. Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained.

346. Whilst the matters addressed by the Supreme Court were specific to the particular context of Gypsies and Travellers' encampments (see [190]-[217]), what emerges is that, before *contra mundum* 'newcomer' injunctions are granted, the Court must consider "*whether the [applicant] has exhausted all reasonable alternatives to the grant of an injunction*". Of course, in the context of the problems of unlawful encampments of land, a local authority has a range of other options available to it – ranging from byelaws, public space protection orders to directions made under s.77 Criminal Justice and Public Order Act 1994.
347. Private litigants, such as the Claimants in this case, do not have access to similar powers. The fact that an applicant for a *contra mundum* 'newcomer' injunction can demonstrate infringements of the civil law does not mean that they can have immediate recourse to a *contra mundum* 'newcomer' injunction. Consideration of both whether the applicant has demonstrated a compelling justification for the remedy and whether it is just and convenient to grant such an order will require the Court to consider what other (and potentially better) solutions may be available, particularly in the context of protests.
348. In the context of protest cases, the Court is entitled to and must have regard to (a) the extensive powers the police have to deal with protest activities, including, from 28 June 2022, the new statutory offence of public nuisance in s.78 Police, Crime, Sentencing and Courts Act 2022 (see [81] above); and (in relation to potential exclusion zones) (b) the powers of local authorities to impose public space protection orders under the Anti-social Behaviour, Crime and Policing Act 2014 (see *Wolverhampton* [204]).
349. In *Canada Goose -v- Persons Unknown* [2020] WLR 417, a protest case, I said this:
- [100] The evidence in the current case shows that there have been few arrests by the police of demonstrators prior to the grant of the injunction. I was told at the hearing that the Claimants know of no prosecutions of any protestors. Evidence before Teare J suggested that the cost of policing the demonstrations was around £108,000. Of course, individuals and companies are entitled to pursue such private law remedies as are available to them and to seek interim injunctions where appropriate, but this case (and *Ineos* and *Astellas* – see [119] below) perhaps demonstrate the

difficulties and limits of trying to fashion civil injunctions into quasi-public order restrictions.

[101] When considering whether it is *necessary* to impose civil injunctions (even if they can be precisely defined and properly limited to prohibit only unlawful conduct) the Court must be entitled to look at the overall picture and the extent to which the law provides other remedies that may be equally if not more effective.

[102] The police play an essential and important role in striking the appropriate balance between facilitating lawful demonstration and preventing activities that are unlawful. Consistent with the proper respect for the Article 10/11 rights (see [99(viii)] above), it is only those engaged upon or intent on violence (or other criminal activity) who are liable to arrest and removal, leaving others to demonstrate peacefully. The police have available an extensive array of resources and powers to keep protests within lawful bounds, including:

- i) their presence; often itself a deterrent to unlawful activities;
- ii) the power of arrest, in particular for breach of the peace, harassment, public order offences (under Public Order Act 1986), obstruction of the highway (see [107] below), criminal damage, aggravated trespass (contrary to s.68 Criminal Justice and Public Order Act 1994) and assault;
- iii) the use of dispersal powers under Part 3 of the Anti-social Behaviour Crime and Policing Act 2014;
- iv) the imposition of conditions on public assembly under s.14 Public Order Act 1986; and/or
- v) an application for a prohibition of trespassory assembly under s.14A Public Order Act 1986.

[103] Selected and proportionate use of these powers, adjudged to be necessary and targeted at particular individuals, by police officers making decisions based on an assessment ‘on-the-ground’, is immeasurably more likely to strike the proper balance between the demonstrators’ rights of freedom of expression/assembly and the legitimate rights of others, than a Court attempting to frame a civil injunction prospectively against unknown “protestors”.

[104] Parliament has also provided local authorities powers to make public space protection orders which can restrict the right to demonstrate. Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014 empowers local authorities to make such orders if the conditions in s.59 are met: see *Dulgheriu -v- London Borough of Ealing* [2020] 1 WLR 609.

350. The Court of Appeal in *Canada Goose* [2020] 1 WLR 2802 [93] agreed:

“... Canada Goose’s problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a

continually fluctuating body of protestors. It wishes to use remedies in private litigation in effect to prevent what it sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protestors. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, ***Dulgheriu -v- Ealing London Borough Council* [2020] 1 WLR 609**. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it.”

351. Although the Supreme Court in ***Wolverhampton*** disagreed with the Court of Appeal’s decision in ***Canada Goose*** (see [133]-[138]), that was on the ground that Court of Appeal was wrong to find that a final injunction could not bind ‘newcomers’. The Supreme Court did not specifically address – or contradict – the Court of Appeal’s identification of the problems of attempting to use civil injunctions to control public protest. The decision found that *contra mundum* ‘newcomer’ injunctions can, as a matter of principle, be granted in protest cases, but says nothing (beyond what is noted in [235]-[236]) about the particular issues that arise in such cases, other than to acknowledge the different issues that will call for decision and that, with all *contra mundum* ‘newcomer’ injunctions, a compelling justification for the order must be demonstrated.

(d) The need to identify the prohibited acts clearly in the terms of any injunction

352. The Supreme Court set out the requirements of any *contra mundum* ‘newcomer’ injunction:

[222] It is always important that an injunction spells out clearly and in everyday terms the full extent of the acts it prohibits, and this is particularly so where it is sought against persons unknown, including newcomers. The terms of the injunction – and therefore the prohibited acts – must correspond as closely as possible to the actual or threatened unlawful conduct. Further, the order should extend no further than the minimum necessary to achieve the purpose for which it was granted; and the terms of the order must be sufficiently clear and precise to enable persons affected by it to know what they must not do.

[223] Further, if and in so far as the authority seeks to enjoin any conduct which is lawful viewed on its own, this must also be made absolutely clear, and the authority must be prepared to satisfy the court that there is no other more proportionate way of protecting its rights or those of others.

[224] It follows but we would nevertheless emphasise that the prohibited acts should not be described in terms of a legal cause of action, such as trespass or nuisance, unless this is unavoidable. They should be defined, so far as

possible, in non-technical and readily comprehensible language which a person served with or given notice of the order is capable of understanding without recourse to professional legal advisers.

(4) Other consequences of *contra mundum* litigation

353. There are further implications of the move to *contra mundum* orders. In despatching the **Gammell** principle as the jurisdictional basis to bind newcomers, the Supreme Court did away with the notion that the people bound by a ‘newcomer’ injunction are parties to the litigation. They are not bound as a party; they are bound because the injunction is framed as a prohibition generally on the identified act(s) that, subject to notice of the injunction, binds everyone: “*anyone who knowingly breaches the injunction is liable to be held in contempt, whether or not they have been served with the proceedings*”: [132].

354. The Supreme Court did not really address the issue of service of a Claim Form in a wholly *contra mundum* claim (i.e. one in which there are no named defendants). All that was said was [56]:

“Conventional methods of service may be impractical where defendants cannot be identified. However, alternative methods of service can be permitted under CPR r 6.15. In exceptional circumstances (for example, where the defendant has deliberately avoided identification and substituted service is impractical), the court has the power to dispense with service, under CPR r 6.16.”

355. In litigation brought solely *contra mundum* there can be no expectation or requirement to serve the Claim Form on the putative defendant. In *contra mundum* litigation, “*there is, in reality no defendant*”: **Wolverhampton** [115]. There is therefore no one upon whom the Claim Form can be served. If, exceptionally, the Court is satisfied that it is appropriate to proceed to without a defendant, the Court can dispense with the service of the Claim Form under CPR 6.16. That was the course adopted in ***In the matter of the persons formerly known as Winch* [2021] EMLR 20** [31].

356. The absence of any defendant(s) also means that, whilst the Court must ensure that the terms of any *contra mundum* injunction are (a) clear as to what conduct is prohibited (see [352] above), and (b) compellingly shown to be necessary, there is now no need carefully to define the category of “Persons Unknown” who are to be defendants to the claim; there are no defendants in such a claim.

357. I note that the Supreme Court said the following about the description of those who are to be restrained by a *contra mundum* ‘newcomer’ injunction:

[132] ... Although the persons enjoined by a newcomer injunction should be described as precisely as may be possible in the circumstances, they potentially embrace the whole of humanity...

[221] The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in **Cameron** [2019] **1 WLR 1471**, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these

persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible.”

358. Of course, every case will have to be decided on its facts. In a case of unlawful encampment on land, it may very well be possible to identify, if not to name, (a) those currently on the land; (b) those immediately threatening to move onto the land; and (c) newcomers who might at some future point move onto the land. I read the Supreme Court’s guidance as a reminder that the fact that the injunction sought includes a *contra mundum* ‘newcomer’ injunction against (c), does not relieve the local authority for taking such steps as are available to identify, and serve the Claim Form upon, those in categories (a) and (b) (if necessary, by an alternative service order).
359. But there can be no question of service of a Claim Form on those in category (c). These people cannot be identified. They cannot be served, not even under the terms of an alternative service order. As against them, the *contra mundum* ‘newcomer’ injunction is made, necessarily, without notice. For persons in category (c), the Supreme Court regarded their interests adequately safeguarded by their ability to apply to vary or discharge the order.
360. Ms Bolton had advanced, as an alternative to the *contra mundum* order, what might be regarded as the pre-**Wolverhampton** form of “Persons Unknown” injunction. Reflecting the need to identify, clearly, the categories of “Persons Unknown” defendants (c.f. **Canada Goose** [82(4)]), the injunction sought restrain particular categories of defendants. Following **Wolverhampton**, this is no longer necessary, nor appropriate for *contra mundum* ‘newcomer’ injunctions. Indeed, one benefit of the **Wolverhampton** decision is that the form of the injunction order, if granted, can be much simplified. The experience that I have gained in this case suggests that, if there is an opportunity to simplify injunction orders directed at those who are not parties to the proceedings, it should be grasped.
361. The form of the Interim Injunction Order that has been in force since 2 August 2022 lists a total of 33 Defendants, of which there are 10 separate categories of “Persons Unknown” (the various descriptions can be seen in Annex 1). It is not until page 4 of the 8-page document that a person reading it would get to the actual terms of the injunction. Even then, s/he would have to refer back to the defined categories of “Persons Unknown” to understand (a) whether s/he now fell (or, if s/he did an act prohibited by the injunction, would fall) within this category; and, if so (b) what s/he was therefore prohibited from doing. During these proceedings, I have become increasingly concerned that the Interim Injunction Order in this case has become an impenetrable legal thicket, likely to be beyond the comprehension of most ordinary people. That was an unavoidable product of the complicated legal basis on which “Persons Unknown” injunctions were granted. Courts should always strive to ensure that its orders are clear, but in a case concerning protest, it is especially important to avoid uncertainty as to what is and is not permitted. Such uncertainty is likely to chill lawful exercise of important rights under Articles 10 and 11.

362. Now that the Supreme Court has despatched the legal thicket, in favour of *contra mundum* ‘newcomer’ injunctions, all of these historic complications can (and in my view should) be swept away. I would also suggest, and it will be the practice I shall adopt in this case, that the *contra mundum* ‘newcomer’ injunction should be contained in a separate order from any injunction made against parties to the litigation. In that way, the terms of the *contra mundum* ‘newcomer’ injunction can state, clearly and simply, what acts the Court is prohibiting by *anyone*. It is particularly important that injunctions that place limits on a citizen’s right to demonstrate must be spelled out in clear and readily comprehensible terms so that there is no inadvertent chilling effect.

(5) *Contra mundum* injunctions as a form of legislation?

363. In *LB Barking & Dagenham* (the first instance decision in *Wolverhampton*), I had expressed the concern that, by granting *contra mundum* injunctions, the Court risked moving from its constitutionally legitimate role of resolving disputes raised by the parties before it, to an arguably constitutionally illegitimate role of using injunctive powers effectively to legislate to prohibit behaviour generally [260]:

“If these established principles and the limits they impose on civil litigation are not observed, the Court risks moving from its proper role in adjudicating upon disputes between parties into, effectively, legislating to prohibit behaviour generally by use of a combination of injunctions and the Court’s powers of enforcement. There may be good arguments - and Mr Anderson QC’s submissions made points that could have been made by all of the Cohort Claimants - as to why such behaviour ought to be prohibited, but it is not the job of the Court, through civil injunctions granted *contra mundum*, to venture into that territory. Stepping back, the injunction that *Wolverhampton* was granted, with a power of arrest attached, effectively achieved the criminalisation of trespass on the 60 or so sites covered by the injunction. In a democracy, legislation is the exclusive province of elected representatives. A court operating in an adversarial system of civil litigation simply does not have procedures that are well-suited or designed to prohibit, by injunction, conduct generally...”

364. The view the Court of Appeal took as to the availability of “Persons Unknown” injunctions meant that the point did not arise.
365. The appellants in the Supreme Court did argue that *contra mundum* orders were objectionable on the ground that they were, effectively, a form of legislation (see [154]). The Supreme Court rejected the argument:

[169] We have already mentioned the objection that an injunction of this type looks more like a species of local law than an in personam remedy between civil litigants. It is said that the courts have neither the skills, the capacity for consultation nor the democratic credentials for making what is in substance legislation binding everyone. In other words, the courts are acting outside their proper constitutional role and are making what are, in effect, local laws. The more appropriate response, it is argued, is for local authorities to use their powers to make byelaws or to exercise their other statutory powers to intervene.

[170] We do not accept that the granting of injunctions of this kind is constitutionally improper. In so far as the local authorities are seeking to

prevent the commission of civil wrongs such as trespass, they are entitled to apply to the civil courts for any relief allowed by law. In particular, they are entitled to invoke the equitable jurisdiction of the court so as to obtain an injunction against potential trespassers. For the reasons we have explained, courts have jurisdiction to make such orders against persons who are not parties to the action, i.e. newcomers. In so far as the local authorities are seeking to prevent breaches of public law, including planning law and the law relating to highways, they are empowered to seek injunctions by statutory provisions such as those mentioned in para 45 above. They can accordingly invoke the equitable jurisdiction of the court, which extends, as we have explained, to the granting of newcomer injunctions. The possibility of an alternative non-judicial remedy does not deprive the courts of jurisdiction.

[171] Although we reject the constitutional objection, we accept that the availability of non-judicial remedies, such as the making of byelaws and the exercise of other statutory powers, may bear on questions (i) and (v) in para 167 above: that is to say, whether there is a compelling need for an injunction, and whether it is, on the facts, just and convenient to grant one...

366. I note that in ***Valero Ltd -v- Persons Unknown* [2024] EWHC 124 (KB)** [57], Ritchie J described *contra mundum* injunctions as “a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future”.
367. As a first instance Judge, my obligation is clear. I must faithfully follow and apply the law as declared by the Supreme Court. But I remain troubled by the Courts seeking to set the boundaries upon lawful protest by *contra mundum* injunctions. I remain concerned that, constitutionally, the prohibition of conduct by citizens generally, with the threat of punishment (including imprisonment) for contravention, ought to be a matter for Parliament.
368. Prior to ***Wolverhampton***, the grant of *contra mundum* injunctions was limited to exceptional cases where the court was “driven in each case to make the order by a perception that the risk to the claimants’ Convention rights placed it under a positive duty to act”: ***Wolverhampton*** [110]. As that duty was imposed by Parliament, by s.6 Human Rights Act 1998, there could be no suggestion that by granting the order, the Court was arrogating to itself a power of legislation that was exclusively the province of Parliament.
369. As recognised by Richie J in ***Valero***, the reality of the imposition of *contra mundum* injunction, with the threat of sanctions including fines and imprisonment for breach, is that it is akin to the creation of a criminal offence. It is a prohibition on conduct generally that has been imposed by a Court, not by the democratic process in Parliament.
370. Further, a *contra mundum* injunction is a prohibition, the alleged breach of which has none of the safeguards that are present in the criminal justice process. If a protestor is alleged to have broken the criminal law, unless exceptionally the prosecution is brought privately, it falls to the Crown Prosecution Service to decide whether to institute criminal proceedings against the protestor and to decide what charge(s) s/he should face. That involves the independent assessment of the evidence and an independent

decision whether it is in the public interest to prosecute. Those important safeguards – in addition to the safeguards in the substantive criminal law – ensure that in our society proper respect is afforded to protest rights under Article 10/11. Even if a private prosecution were brought in a protest case, the Director of Public Prosecutions has the power to take over and discontinue the prosecution.

371. In protest cases, there are additional reasons to be concerned at the risk of abuse. The Court may well grant the injunction (and its enforcement) to a private individual, often the very person against whom the protest is directed.
372. These concerns are not speculative. As the experience in this case has demonstrated, the risks of abuse are real. In the Second Contempt Application, the Claimants actively sought the imposition of a sanction on Ms McGivern, a solicitor, as a “Person Unknown”, for behaviour that was either not a civil wrong at all, or a breach of the civil law that was utterly trivial. Yet, because of the terms of the Interim Injunction Order, and the imposition of the Exclusion Zone, the Claimants were able to pursue contempt application against her leading to a 2-day hearing. In the contempt application against Mr Curtin – the Third Contempt Application – the Claimants brought an application that sought to punish Mr Curtin for lending his footwear to a person in a dinosaur costume whom Mr Curtin was alleged to have encouraged to enter the Exclusion Zone. Such a claim would be laughable, if it did not have such serious implications. Apart from Ground 2, the other grounds advanced against Mr Curtin were trivial. None of actions alleged against Mr Curtin amounted to civil wrongs.
373. Had the Crown Prosecution Service been responsible for deciding whether to bring criminal proceedings against Ms McGivern or Mr Curtin for causing or authorising a person in a dinosaur costume to enter the Exclusion Zone, I am confident that a decision would have been made that it was not in the public interest to prosecute. The Claimants, however, are not subject to any analogous requirement to consider whether it is necessary or proportionate to bring a contempt application. On two separate occasions, therefore, they have shown themselves incapable of exercising any sense of proportionality in launching and pursuing the contempt applications in respect of alleged breaches of the Interim Injunction. As a result of the Second Contempt Application, the Court imposed the Contempt Application Permission Requirement (see [49] above) to protect against the abuse of using the Interim Injunction as a weapon.
374. All but one of the allegations brought in the Third Contempt Application against Mr Curtin were trivial. This immediately raises the question as to why the Claimants would pursue trivial breaches of the Interim Injunction. As the Claimants have not had an opportunity to address this specific issue, I shall leave its final resolution, if necessary, to the hearing at which this judgment will be handed down and the Court makes all consequential orders.

M: The relief sought by the Claimants

(1) Against Mr Curtin

375. The Claimants do not seek damages against Mr Curtin.
376. The terms of the final injunction order sought by the Claimants against Mr Curtin are set out in Annex 2 to the judgment.

(2) *Contra mundum*

377. The terms of the *contra mundum* ‘newcomer’ injunction sought by the Claimants are set out in Annex 3 to the judgment.

O: Decision

378. In this final section of the judgment, I will set out my decision. The final form of the orders that will be made consequent upon the judgment will be finalised at the hearing at which the judgment is handed down. As the only represented parties, I invite the Claimants’ team to provide the first draft. The orders that the Court ultimately makes will be posted on the Judiciary website: www.judiciary.uk.

(1) The claim against Mr Curtin

379. Based on my factual findings, the First Claimant is entitled to judgment against Mr Curtin in respect of its claims against him for (1) trespass on the physical land at the Wyton Site; and (2) interference with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site.
380. The First Claimant’s claims against Mr Curtin for public nuisance, harassment and trespass by drone flying are dismissed. The claims of the remaining Claimants against Mr Curtin will be dismissed.
381. Consequent upon the judgment that the First Claimant has been granted, I am satisfied that it is necessary that an injunction should be granted to restrain Mr Curtin from (a) any physical trespass on the land owned by the First Claimant at the Wyton Site; and (b) any direct and deliberate obstruction of vehicles entering or leaving the Wyton Site. The injunction will not include any restrictions in relation to the B&K Site.
382. I have considered carefully whether to continue the prohibition on Mr Curtin’s entering the Exclusion Zone. I have concluded that I should not. The Exclusion Zone was a temporary expedient to resolve the flashpoint of vehicles being surrounded. The objectionable, and unlawful, conduct is obstructing vehicles entering or leaving the Wyton Site. The injunction should target that behaviour directly. Continuation of the Exclusion Zone would subject Mr Curtin to restrictions on activities that are not unlawful, for example if Mr Curtin wanted simply to stand on that part of the grass verge that is presently within the Exclusion Zone. The Claimants have not demonstrated that such a restriction is the only way of protecting their legitimate interests. Mr Curtin should not be exposed to the risk of proceedings for contempt by doing acts that are not themselves a civil wrong.
383. The restriction on obstructing vehicles will be drafted in a way that is clear and specific. It will not include the word “*approach*” or the concept of “*slowing*” a vehicle. Approaching a vehicle in a way that is not an obstruction of that vehicle is not an act that the First Claimant is entitled to restrain. The incident on 11 July 2022 (see [275]-[279] above) demonstrates the risks that an injunction framed in these terms risks capturing behaviour that the Court never intended to restrain. Mr Curtin, and the Claimants, now know what acts amount to obstructing a vehicle.

384. The words “*direct and deliberate*” will be included in the injunction to ensure that indirect or inadvertent obstruction is not caught. A disproportionate amount of time was spent at the time considering the extent to which Mr Curtin’s simply standing at the side of the Access Road obstructed the view of the driver of a vehicle leaving the Wyton Site, and therefore amounted to an obstruction of the “*free passage*” of the vehicle. As I have held (see [80] above), the First Claimant’s common law right of access to the highway is not unqualified. If Mr Curtin simply walks across the Access Road, to get from one side of the entrance of the Wyton Site to the other, he does not interfere with the First Claimant’s right of access to the highway if a vehicle attempting to enter or leave the Wyton Site momentarily has to give way to Mr Curtin. Deliberately standing in front of a vehicle to prevent it entering or leaving the Wyton Site is different, and obviously so. The injunction will prohibit the latter, but not the former. An injunction framed in these terms will also enable Mr Curtin to invite drivers of vehicles to stop, to speak to them and to offer them leaflets about the protest.
385. As a result, the injunction granted against Mr Curtin will consist of Paragraph (1)(a) of the Claimants’ draft (in Annex 2) together with a new paragraph (2) which will prohibit Mr Curtin from directly and deliberately obstructing vehicles entering or leaving the public highway outside the Wyton Site.

(2) *Contra mundum* claim

386. Based on my factual findings, I am satisfied that the First Claimant has proved that persons who cannot be identified threaten to (a) trespass upon the First Claimant’s land at the Wyton Site; and/or (b) interfere with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site.
387. The First Claimant has failed to prove that persons who cannot be identified threaten to fly drones over the Wyton Site at a height that amounts to trespass upon the First Claimant’s land. In any event, the First Claimant has not made out a compelling case for the grant of a *contra mundum* injunction or that such an order would be just and convenient. The Claimants have adduced no evidence as to the height at which flying a drone interferes with its user of the First Claimant’s land. 100 meters (and indeed the other heights that have variously been proposed by the Claimants) are simply arbitrary. The Claimants have been forced to choose a height (albeit without supporting evidence) because they are seeking to rely upon trespass. In reality the Claimants want to prohibit all drone flying over the Wyton Site (at whatever height) because it is not the trespass that it represents but the filming opportunity that it provides. As I have explained, there is a palpable disconnect between the tort relied upon and the wrong that the Claimants are seeking to address.
388. I am satisfied that there is a compelling need, convincingly demonstrated by the First Claimant’s evidence of repeated infringements of its civil rights, for the Court to grant a *contra mundum* injunction to restrain future acts by protestors of (a) trespass at the Wyton Site; and (b) interference with the right of access from the Wyton Site to/from the public highway caused by the obstruction of vehicles entering or leaving the Wyton Site.
389. I considered carefully whether it was just and convenient to grant an injunction *contra mundum* to restrain future trespass. On the one hand, the First Claimant is particularly

vulnerable to deliberate acts of trespass by protestors targeted against it because of the nature of its business. Leaving the First Claimant to pursue ad hoc civil remedies against individual trespassers would be likely to provide inadequate protection for its civil rights. On the other hand, I have real concerns that this form of order is potentially open to abuse by the First Claimant. It threatens to expose people who do nothing more than step momentarily on the First Claimant's land at the Wyton Site to the threat of proceedings for contempt of court. However, I have decided that these risks are adequately mitigated by the following factors:

- (1) First, a contempt application would only be successful if the First Claimant demonstrates that the alleged trespasser had notice of the terms of the *contra mundum* injunction. It is quite clear from the Supreme Court's decision in **Wolverhampton** that notice is an essential pre-requisite of liability for breach of the new *contra mundum* 'newcomer' injunction that it has sanctioned. (I say nothing about what, if any, notice is required for the sort of *contra mundum* injunction made under the *Venables* jurisdiction, which appear to me to raise very different questions, and upon which I have received no submissions).
- (2) Second, the First Claimant is subject and will remain subject to the Contempt Application Permission Requirement that was imposed on 2 August 2022 (see [49] above). This will mean that the First Claimant will have to make an application to the Court for permission to bring a contempt application alleging breach of the *contra mundum* order. The evidence in support of the application for permission would need to demonstrate that the proposed contempt application (a) is one that has a real prospect of success; (b) is not one that relies upon wholly technical or insubstantial breaches; and (c) is supported by evidence that the respondent had actual knowledge of the terms of the injunction before being alleged to have breached it. Ms Bolton accepted that the continuation of the Contempt Application Permission Requirement was appropriate if the Court were prepared to grant a *contra mundum* injunction. The *contra mundum* order will record, again, the Contempt Application Permission Requirement, and what the First Claimant must demonstrate in order to be granted permission.

390. Based on my experience in this case, and my concerns about potential abuse of such injunctions (see [370]-[374] above), it is my very clear view that all *contra mundum* 'newcomer' injunctions, particularly those in protest cases, should include a requirement that the Court's permission be obtained before a contempt application can be instituted. This would reduce the risks of a *contra mundum* injunction being used as a weapon against perceived adversaries for trivial infringements.
391. The decision in relation to granting a *contra mundum* injunction to restrain interference with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site is more straightforward. If the injunction focuses, as it should, on direct and deliberate obstruction, then unlike trespass, this is unlikely to be an unintentional act or one committed by inadvertence. On the contrary, people who attend the Wyton Site to protest will quickly come to understand that the Court has prohibited direct and deliberate obstruction of vehicles entering or leaving the Wyton Site.

392. The inclusion of the words “*direct and deliberate*” is also required in the *contra mundum* injunction, for the same reasons as they are needed in the injunction against Mr Curtin (see [384] above). There is a further important reason why these words are required in the *contra mundum* order. They will ensure that if a group of protestors lawfully processed along the B1090, and past the entrance of the Wyton Site, for the time they were passing the entrance they would probably prevent a vehicle leaving or entering the Wyton Site. It would be a serious interference to the right of lawful protest, for the *contra mundum* injunction (by an unintended side wind) to prohibit such a procession. This is to be contrasted with a group of protestors assembling outside the Wyton Site (as has happened in the past) which deliberately and directly obstructs vehicles attempting to leave or enter the Wyton Site. This conduct the injunction intends to prevent.
393. Although the First Claimant has demonstrated that there is a continuing risk that large scale demonstrations may be of such a size and duration that they may amount to a public nuisance, it has not demonstrated a compelling case that a *contra mundum* injunction is needed to tackle this risk or that it is just and convenient to make an order in these terms.
394. First, a public nuisance on this scale is primarily a matter for the police, who have ample powers to deal with both obstruction of the highway and public nuisance. I am satisfied that the police are using their powers appropriately and, in doing so, are setting the right balance between the legitimate interests of the First Claimant and the rights of protestors.
395. Second, whether the obstruction of a highway amounts to a public nuisance is entirely dependent upon a factual assessment of what happened on a particular occasion. It clearly does not fit into the category identified by the Supreme Court in *Wolverhampton* [143(iv)]. It is virtually impossible to fashion an injunction to restrain public nuisance that complies with the requirements reiterated by the Supreme Court (see [352] above). There is an obvious risk that granting an injunction that was targeted at prohibiting public nuisance would in fact chill perfectly lawful protest activity.
396. The First Claimant has not demonstrated that there is a compelling need for an Exclusion Zone to be imposed *contra mundum*. Even if such an order was directed specifically at protestors, it would still be very problematic. As I have already noted in the context of Mr Curtin’s claim, the Exclusion Zone was a temporary expedient granted as an interim measure. It has largely had the desired effect of removing the main flashpoint in the demonstrations. I understand, therefore, why the First Claimant wishes to see it maintained. However, the central objection to this being continued *contra mundum* is that it restrains acts that are not even arguably unlawful. When it is remembered that the Court is going to prohibit obstruction of vehicles entering or leaving the Wyton Site, it is also difficult to argue that this further restriction is necessary. For that part of the Exclusion Zone that is part of the highway, it is, in my judgment, for the police to deal with obstructions of the highway that are anything more than transitory. There may be scope for an Exclusion Zone to be imposed in protest cases (c.f. those imposed around abortion clinics), but that is best done by a Public Spaces Protection Order, not a civil injunction.
397. For vehicles that are leaving or entering the Wyton Site via the public highway, obstruction of those vehicles will be prohibited. That aspect of the “*flashpoint*” will

continue to be restrained. I accept that the Claimants have provided evidence of at least one occasion where there has been significant surrounding, obstruction and delay of vehicles further down the B1090 highway. However, none of the Claimants has demonstrated a legal entitlement to restrain that activity. Save in the most extreme cases, it is unlikely to amount to a public nuisance, and I have explained above why I am not prepared to grant a *contra mundum* injunction to restrain public nuisance. For understandable reasons, the Claimants did not pursue a harassment claim against “Persons Unknown”. It suffers from the same problem as public nuisance; the tort is so fact sensitive as to whether the threshold has been crossed into unlawful behaviour as to make it almost impossible to fashion a *contra mundum* injunction in acceptable terms. In my judgment, these are simply the inevitable limits of what can be achieved in attempting to control public order issues by civil injunction.

398. For these reasons, I shall grant to the First Claimant a more limited form of *contra mundum* injunction than that sought by the Claimants. It will restrain future acts by protestors of (a) trespass at the Wyton Site; and (b) interference with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site. Given that *contra mundum* ‘newcomer’ injunctions remain relatively uncharted waters, I am going to provide that the injunction shall last initially for a period of 2 years, at which point the Court will consider whether it should be renewed, discharged, or potentially extended.

399. Turning to paragraphs 3-5 of the Claimants’ proposed order.

(1) It is very important to ensure that those affected by the order are made aware of their right to apply to the Court to vary or discharge it. Anyone affected by the order, which would embrace anyone who is protesting at the Wyton Site, or is intending to do so, is entitled to apply to the Court or vary or discharge the order. For that purpose, they must have an immediately available and effective method of being provided with all of the evidence that was relied upon by the Claimants to obtain the *contra mundum* order.

(2) It is not appropriate to provide for any sort of alternative service of the injunction order. It is for the First Claimant to decide how best to give notice of the injunction to those who need to be aware of its terms. In terms of any subsequent enforcement action, the burden will fall on the First Claimant to demonstrate that the terms of the injunction have come sufficiently to the attention of the person against whom the First Claimant wants to bring contempt proceedings. The effect of paragraphs 3-5 of the Claimants’ proposed order would be that, once the relevant steps were completed, the whole world would be deemed to have received notice of the injunction. That would be a palpable fiction. It could even embrace people who are not yet born. Subject to proof of breach of the injunction, it would deliver, practically, a strict liability regime. That is not what remotely what the Supreme Court envisaged, and it is not fair.

(3) Mr Curtin’s penalty in the Third Contempt Application

400. When deciding the appropriate penalty for contempt of court, the Court assesses the contemnor’s culpability and the harm caused by the breach. The concept of harm, in contempt cases, includes not only direct harm caused to those who the injunction was

designed to protect, but also the harm to the administration of justice by the contemnor's disobedience to an order of the Court.

401. As to Mr Curtin's culpability, I have already found that, in his admitted breach of the Interim Injunction that formed Ground 2, he did not deliberately flout the Court's order; he got partly carried away by his emotions. I accept that, when the breach was committed, he was engaged on protest activities reflecting his sincerely held beliefs. Overall, I assess his culpability as low.
402. As to harm, the breach was in respect of a protective order that was designed to prevent the sort of behaviour in which Mr Curtin engaged. However, against that, the van was only fleetingly obstructed as it attempted to leave the Wyton Site. The incident had none of the significantly aggravating factors that had led to the imposition of the Interim injunction. Overall, this was not a serious breach of the injunction, and it has no other aggravating features. I assess the harm to be low.
403. Mr Curtin accepted the breach represented by Ground 2 at the substantive hearing. By analogy with criminal proceedings, it is fair to reflect the equivalent of a guilty plea with a 10% reduction in the sentence.
404. I am quite satisfied that seriousness of Mr Curtin's breach of the Interim Injunction is not so serious that only a custodial sentence is appropriate. I indicated as much at the conclusion of the hearing on 23 June 2023. I am satisfied that, reflecting upon the culpability and harm, it is appropriate to deal with this breach by way of a fine. In terms of mitigation, this is the first breach of the Interim Injunction and there has been no repetition since the incident almost 3 years ago. I also accept Mr Curtin's evidence that he has always tried to abide by the terms of the Court's order.
405. I have considered the sentencing guidelines for the less serious public order offences as a useful cross reference. On the Sentencing Council Guidelines for disorderly behaviour, in breach of s.5 Public Order Act 1986, Mr Curtin's conduct would appear to fall into category 2B, which gives a starting point of a Band A fine, with a range from discharge to a Band B fine. A Band A fine, is between 25-75% of the defendant's weekly wage, with a Band B fine range of 75-125% of weekly wage. I have also reminded myself of Superintendent Sissons' evidence of penalties that have been imposed on protestors following conviction in the Magistrates' Court. Although not a precise analogue, in my judgment it would be wrong if the penalty I imposed were to be out of all proportion to the penalties that have been imposed by the Magistrates' Court for offences arising out of similar protest activities.
406. Of course, when sentencing for contempt, there is an important element – usually absent from most criminal sentencing – that the conduct is a breach of a court's order. A breach of a protective order is a further aggravating factor.
407. In my judgment, the appropriate penalty for Mr Curtin's breach of the Interim Injunction under Ground 2 would have been a fine of £100. I will reduce that to £90 to reflect his admission of liability at the substantive hearing. When the judgment is handed down, I will invite submissions as the time Mr Curtin might need to pay this sum.

Annex 1: Full list of Defendants to the claim

(1) FREE THE MBR BEAGLES (formerly Stop Animal Cruelty Huntingdon) (an unincorporated association by its representative Mel Broughton on behalf of the members of Free the MBR Beagles who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd)

(2) CAMP BEAGLE (an unincorporated association by its representative Bethany Mayflower on behalf of the members of Camp Beagle who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd)

(3) MEL BROUGHTON

(4) RONAN FALSEY

(5) BETHANY MAYFLOWER (also known as Bethany May and/or Alexandra Taylor)

(6) SCOTT PATERSON

(7) HELEN DURANT

(8) BERNADETTE GREEN

(9) SAM MORLEY

(10) PERSON(S) UNKNOWN (who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd)

(11) JOHN CURTIN

(12) MICHAEL MAHER (also known as John Thibeault)

(13) SAMMI LAIDLAW

(14) PAULINE HODSON

(15) PERSON(S) UNKNOWN (who are entering or remaining without the consent of the First Claimant on the land and in buildings outlined in red on the plan at Annex 1 of the Amended Claim Form, that land known as MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(16) PERSON(S) UNKNOWN (who are interfering with the rights of way enjoyed by the First Claimant over the access road on the land shown in purple at Annex 3 of the Amended Claim Form and enjoyed by the Second Claimant as an implied or express licensee of the First Claimant)

(17) PERSON(S) UNKNOWN (who are obstructing vehicles of the Second Claimant entering or exiting the access road shown in purple Annex 3 of the Amended Claim Form and/or entering the First Claimant's land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(18) LOU MARLEY (also known as Louise Yvonne Firth)

(19) LUCY WINDLER (also known as Lucy Lukins)

(20) LISA JAFFRAY

(21) JOANNE SHAW

(22) AMANDA JAMES

(23) VICTORIA ASPLIN

(24) AMANDEEP SINGH

(25) PERSON UNKNOWN 70

(26) PERSON UNKNOWN 74

(27) [Not used]

(28) PERSON(S) UNKNOWN (who are, without the consent of the First Claimant, entering or remaining on land and in buildings outlined in red on the plans at Annex 1 to the Amended Claim Form, those being land and buildings owned by the First Claimant, at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(29) PERSON(S) UNKNOWN (who are interfering, without lawful excuse, with the First Claimant's staff and Second Claimants' right to pass and repass with or without vehicles, materials and equipment along the Highway known as the B1090)

(30) PERSON(S) UNKNOWN (who are obstructing vehicles exiting the First Claimant's land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and accessing the Highway known as the B1090)

(31) PERSON(S) UNKNOWN (who are protesting outside the premises of the First Claimant and/or against the First Claimant's lawful business activities and pursuing a course of conduct causing alarm and/or distress to the Second Claimant and/or the staff of the First Claimant for the purpose of convincing the Second Claimant and/or the staff of the First Claimant not to: (a) work for the First Claimant; and/or (b) provide services to the First Claimant; and/or (c) supply goods to the First Claimant; and/or (d) to stop the First Claimants' lawful business activities at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(32) PERSON(S) UNKNOWN (who are photographing and/or videoing/recording the First Claimant's staff and members of the Second Claimant and/or their vehicles and vehicle registration numbers as they enter and exit and/or work on the First Claimant's land outlined in red at Annex 1 to the Amended Claim Form for the purpose of causing alarm and/or distress by threatening to use and/or in fact using the images and/or recordings to identify members of the Second Claimant, follow the Second Claimant or ascertain the home addresses of the Second Claimant for the purpose of convincing the Second Claimant not to: (a) work for the First Claimant; and/or (b) not to provide services to the First Claimant; and/or (c) not to supply goods to the First Claimant)

(33) PERSON(S) UNKNOWN (who are, without the consent of the First Claimant, trespassing on the First Claimant's land by flying drones over the First Claimant's land and buildings outlined in red on the plans at Annex 1 to the Amended Claim Form, that being land and buildings owned by MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(34) LAUREN GARDNER

(35) LOUISE BOYLE

(36) PERSON(S) UNKNOWN (who are, without the consent of the First Claimant, entering or remaining on the land shaded in orange on the plans at Annex 1 to the re-re-re-Amended Claim Form – which land measures 2.85 metres from the boundary outlined in red on the plans at Annex 1 to the re-re-re-Amended Claim Form, that boundary marking those land and buildings owned by the First Claimant, at MBR Acres Limited, Wyton, Huntingdon PE28 2DT, and only where that boundary runs adjacent to the Highway known as the B1090)

Annex 2: The relief sought by the Claimants against Mr Curtin

In the draft order provided to the Court as part of their closing submissions, the Claimants seek the following by way of injunction against Mr Curtin:

“The Eleventh Defendant, Mr John Curtin **MUST NOT** whether by himself or by instructing or encouraging any other person, group, or organisation do the same:

- (1) Enter the following land:
 - (a) The First Claimant’s Land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 (‘the Wyton Site’);
 - (b) The Third Claimant’s premises known as B&K Universal Limited, Field Station, Grimston, Aldbrough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 (‘the Hull Site’);
- (2) Enter into or remain upon or park any vehicle or place any other item (including, but not limited to, banners) in the area marked with black hatch lines on the plan at Annexes 1 and 2 [which includes all the land up to the midpoint of the highway that is adjacent to the Claimants (sic) property at the Wyton Site]. Save that nothing in this prohibition shall prevent the Defendant from Accessing the highway whilst in a vehicle, for the purpose of passing along the highway only and without stopping in the area marked with black hatching, save for when they are stopped by traffic congestion or any traffic management arranged by or on behalf of the Highways Authority, or to prevent a collision or road accident.
- (3) Approach and/or obstruct the path of any vehicle directly entering or exiting the area marked in black hatching (save that for the avoidance of doubt it will not be a breach of this Injunction Order where a vehicle is obstructed as a result of an emergency)
- (4) Approach, slow down, or obstruct any vehicle which is travelling to or from the First Claimant’s Land along the B1090 Abbots Ripton Road, or within 1 mile in either direction of the First Claimant’s Land at the Wyton Site;
- (5) Fly a drone or other unmanned aerial vehicle over the Wyton Site as marked on the Plan at Annex 1 [at a height below 50 metres, 100 meters, 150 metres]
- (6) Record or use other surveillance equipment (including drones, camera phones and CCTV) to record individual staff members at the Wyton Site, or when staff are carrying out work on the perimeter fence of the Wyton Site. Save that nothing shall prohibit the filming of activities at the gates of the Wyton Site other than the filming of staff cars.”

Annex 3: The relief sought by the Claimants *contra mundum*

In the draft order provided to the Court as part of their closing submissions, the Claimants seek the following by way of *contra mundum* injunction:

“UNTIL AND SUBJECT TO ANY FURTHER ORDER OF THE COURT OR UNTIL AND INCLUDING [date – 3 years from the date of grant] (WHICHEVER IS SOONER) IT IS ORDERED THAT:

1. Any person with notice of this Order **MUST NOT**
 - (1) Enter the following land:
 - (a) The First Claimant’s land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 (‘the Wyton Site’);
 - (b) The Third Claimant’s land known as B&K Universal Limited, Field Station, Grimston, Aldbrough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 (‘the Hull Site’);
 - (2) approach, slow down or otherwise obstruct any vehicle entering or exiting the Wyton Site
 - (3) during the course of protesting against the First Claimant’s business activities, enter into, remain upon or park any vehicle or place any other item (including, but not limited to, banners) in the area marked with black hatching on the plan at Annexe 1 (‘the Exclusion Zone’). For the avoidance of doubt, the Exclusion Zone extends to 20 metres on both sides of the gate to the Wyton Site, measured from the centre of the gate, and extends from the boundary of the Wyton Site up to the midpoint of the B1090 Sawtry Way that runs adjacent to the Wyton Site. Nothing in this prohibition shall prevent any person from accessing the areas of the Exclusion Zone comprising adopted highway in a manner unconnected with protesting and for the purpose of passing and re-passing along the highway, or for any purpose incidental thereto and otherwise permitted by law;
 - (4) during the course of protesting against the First Claimant’s business activities, approach, slow down or otherwise obstruct any vehicle that is entering or exiting the Exclusion Zone;
 - (5) during the course of protesting against the First Claimant’s business activities, approach, slow down or otherwise obstruct any vehicle that is travelling to or from the Wyton Site and is within a one-mile radius of the Wyton Site;
 - (6) fly a drone or other unmanned aerial vehicle at a height of less than 100 meters over the Wyton Site.

FURTHER APPLICATIONS ABOUT THIS ORDER

2. Any person affected by the injunction in paragraph 1 above may make an application to vary or discharge the injunction to a High Court Judge on not less than 48 hours' notice to the Claimants.

SERVICE OF THIS ORDER

3. A copy of this Order will be placed on the Judiciary Website.
4. Pursuant to CPR 6.15 and CPR 6.27, the Claimants are permitted to serve this Order endorsed with a penal notice as follows (with the following to be treated conjunctively)
 - (1) by uploading a copy to the dedicated share file website at <https://apps.fliplet.com/mbr-injunctionwebapp/>
 - (2) by affixing copies (as opposed to originals) to the notice board opposite the Wyton Site. A covering letter shall accompany the Order explaining that copies of all documents in the Claim, including the evidence in support of the Claim and the skeleton argument and note of the hearing at which this Order was made, can be accessed at the designated share file website: <https://apps.fliplet.com/mbr-injunctionwebapp/>. The cover letter will also include an email address and telephone number at which the Claimants' solicitors can be contacted, and advise that hard copy documents can be provided upon request;
 - (3) by affixing in a prominent position around the perimeter of the Wyton Site signs advising that an injunction that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: <https://apps.fliplet.com/mbr-injunctionwebapp/> and a QR code through which the designated share file website may also be accessed;
 - (4) by affixing in a prominent position at the Hull Site signs advising that an injunction that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: <https://apps.fliplet.com/mbr-injunctionwebapp/> and a QR code through which the designated share file website may also be accessed;
 - (5) by positioning four signs adjacent to the main carriageway of the public highway known as the B1090 Sawtry Way within a one-mile radius of the Wyton Site. Those signs shall advise that an injunction that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: <https://apps.fliplet.com/mbr-injunctionwebapp/> and a QR code through which the designated share file website may also be accessed.
5. The deemed date of service of this Order shall be one working day after service is completed in accordance with all of the steps set out in paragraph 4 above.

ANNUAL REVIEW

6. The Claimants shall, by 4.30pm on [date – 12 months from the grant of this Order] make an Application to the Court (accompanied by any evidence in support) and seek the listing of a review hearing at which the continuation of the injunction in paragraph 1 above will be considered. The Claimants must by the same date serve that Application and any evidence in support on Persons Unknown in accordance with paragraph 4 above...”



Neutral Citation Number: [2025] EWHC 738 (KB)

Case No: QB-2018-003748

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/03/2025

Before :

KIRSTY BRIMELOW KC sitting as a Deputy Judge

Between :

**(1) BASINGSTOKE & DEANE BOROUGH
COUNCIL
(2) HAMPSHIRE COUNTY COUNCIL**

Claimants

- and -

Defendants

**(1) HENRY LOVERIDGE
(2)-(115) OTHER NAMED DEFENDANTS
(116) PERSONS UNKNOWN WHO ARE
FORMING UNAUTHORISED
ENCAMPMENTS IN THE BOROUGH OF
BASINGSTOKE AND DEANE**

Natalie Pratt for the Claimants

The Defendants did not appear and were not represented

Hearing date: 20 March 2025

JUDGMENT

DHCJ Brimelow KC :

INTRODUCTION

1. This is an application by Basingstoke and Deane Borough Council and Hampshire County Council (the Claimants) for the renewal of an injunction (the Injunction) against the 116th Persons Unknown. The Injunction is due to expire at 00:00 hrs on 4 April 2025 and the Claimants seek a continuation for a further 12 months.
2. There is no longer an Order against any Named Defendant in these proceedings, it having expired on 3 April 2024 and the Claimants not having sought renewal of the same.
3. The Injunction, referred to as a Traveller Injunction (and now as a new Traveller Injunction against newcomer Persons Unknown) prohibits unauthorised encampments and the depositing of waste. The Injunction covers just over 10% of the land comprised in the borough of Basingstoke and Deane, an area of 26 miles square (the Injunction Area).
4. The original injunction was made on 4 April 2019 by HHJ Dight CBE, sitting as a Deputy Judge of the High Court. It was an injunction which was then characterised as a final injunction and was granted against 85 named Defendants and Persons Unknown for a period of five years. That injunction prohibited the forming of unauthorised encampments and the depositing of controlled waste and applied to the same area of just over 10% of the Borough.
5. The injunction was then sought in response to the Borough, and the Injunction Area specifically, experiencing a high volume of unauthorised encampments and resulting harm. According to the evidence of Chris Williams (Mr. Williams), Environmental Health Team Leader (Housing Standards) in the period between April 2016 and 14 June 2018 (up until the granting of the

interim injunction), the Borough experienced 158 encampments, 141 of which were formed within the Injunction Area.

6. These proceedings were then described by the Claimants as having been caught within the *Barking & Dagenham* litigation from October 2020 onwards, and so the Claimants became successful respondents in the appeal to the Supreme Court in *Wolverhampton City Council and others v The London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2WLR 45 (*Wolverhampton*).
7. The original injunction was due to expire on 3 April 2024 and the Claimants sought to continue injunctive relief against Persons Unknown for a further period of one year. That continuation was granted by Freedman J for a further one-year period from its original date of expiration: *Basingstoke and Deane Borough Council and Hampshire County Council v Loveridge and others* [2024] EWHC 1828 (KB).
8. Freedman J considered and applied the case of *Wolverhampton*. On the evidence, between April 2019 to January 2024, there had been 35 unauthorised encampments in the Borough, 18 of which were within the injunction area.
9. The current position is that in the period February to December 2024, there have been a total of 17 unauthorised encampments within the Borough, only one of which was formed in the Injunction Area (Chris Williams para 29). That encampment remained for less than a day.

The Claimants

10. The Claimants sought the injunctive relief in the discharge of their public functions pursuant to s187B of the Town and Country Planning Act 1990 and s222 of the Local Government Act 1972 to restrain breaches of planning control, and to promote or protect the interests of the inhabitants of their administrative areas (including to restrain acts of trespass). The First Claimant is the local planning authority for Basingstoke and Deane Borough Council (the Borough of Basingstoke and Deane) such that it has the administrative function

of enforcing planning control within the Borough. The Second Claimant is the local highway authority, in whom the adopted highways are vested.

The Defendants

11. The defendants are the 116th Persons Unknown who are forming unauthorised encampments in the borough of Basingstoke and Deane.
12. There no longer is an application against a named person, the injunction made between 2019 – 2024 having served its purpose. It is a category of application for a Traveller injunction against newcomer Persons Unknown, as considered in *Wolverhampton*. The court is satisfied that procedural service requirements have been fulfilled. Service is considered later in the judgment under procedural protections.

The Injunction Area

13. Mr. Williams identified the land in the Injunction area as needing the specific protection of an injunction for the following reasons: see paragraph 23:
 - i. *historically, the injunction area has suffered a disproportionate number of encampments as compared to the rest of the Borough. To that end, the injunction area, which covers just over 10% of the Borough, experienced 89% of all encampments in the Borough between April 2016 and 14 June 2018 (pre injunction). Further, in the period April 2019 to January 2024, the injunction area experienced 51% of the of all encampments in the Borough. As such, the inhabitants of the injunction area have suffered disproportionately the negative impacts of the encampments (which impacts I shall discuss further below); relatedly*
 - ii. *encampments have been concentrated in a very small area, such that the negative impacts of the encampments (which I shall discuss further below) are often magnified and exacerbated;*
 - iii. *the nature of the land that falls within the injunction area means that greater harm is often suffered when encampments are formed there. For example, the*

urbanised area covered by the Injunction includes sites such as schools, public car parks, local businesses (such as supermarkets and other shops), sports facilities and public parks. When sites of that nature are targeted by encampments, the inhabitants of the area (and the Borough generally) suffer, as they often cannot use or access those sites, which have a high public amenity value. Further the sites on which encampments are formed are sometimes damaged (I shall discuss further below the impact that encampments have on the Borough and the sites on which they are formed), again affecting the use of the sites by the public and their amenity value. As such, the sites within the injunction area are generally not appropriate sites on which an encampment should form.

14. He describes the harm caused by unlawful encampments in the Injunction Area as including risks to public health due to the deposit of untreated human faeces which can result in disease and water contamination, threats and intimidation to the inhabitants of the Borough, various nuisances, including smoke and noise and financial harm to the Claimants in seeking to deter, enforce against and clean up after encampments.
15. Of relevance is that this harm is largely historic. Since the granting of the Injunction by Freedman J there have been no incidents of intimidation or anti-social behaviour, although clean-up and eviction costs have been incurred by private landowners. Eviction costs also have been incurred by the First Claimant outside of the Injunction Area. Enforcement has reduced to zero with nuisance such as burning also eliminated.
16. Mr. Williams emphasises that the injunctive relief sought is not trying to prevent the Gypsy and Traveller community encampments in the Brough altogether or generally and they are able to stop and encamp on the remaining 90% of land in the Borough. Rather, he says, it is focussed only on a small area where encampments are especially harmful and inappropriate or where it may be especially harmful. The land is a mix of private, charity and Borough land with the majority belonging to the Borough.

17. He summarises the Claimant's application as being a fear that without the Injunction there will be an increase in unauthorised encampments in the Injunction Area and also that "*the Council reasonably apprehends that, if the Injunction was not continued, and the injunction area were to lose its protection, encampments may migrate from neighbouring administrative areas (especially Reading), and once again start forming with an increased frequency in the injunction area.*" This was firmed up in submissions to being a likelihood that such migration will take place.

18. Whilst the harm has been outlined above as detailed in Mr. Williams's evidence, the Borough acknowledges in its Negotiated Stopping Policy and Agreement that the anti-social behaviour is not representative of the Gypsy and Traveller community generally and that to the extent that those individuals who engage in this activity identify as Gypsy or Traveller, they are a small and non-representative minority within those groups.

Relevant Legal Principles

Review or *De Novo*

19. The Claimants argued that the court should approach this case as a review and so the court needs only consider if there has been a material change in circumstances. They relied upon *Wolverhampton* at paragraph 225, which expressed that the temporal limitation and periodic review of newcomer injunctions:

give[s] all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.

20. They also relied upon *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB) and *Transport for London v Persons Unknown & Ors* [2025] EWHC 55 (KB) as applied and approved in *Valero Energy Ltd v Persons Unknown* [2025] EWHC 207.
21. Due to this being an application without notice, the Claimants have complied with full and frank disclosure and raised the competing arguments that in both *TfL* and *Valero*, the court was dealing with orders that had been made for a period of 5 years, subject to an annual review.
22. In the current application, the order was granted for a year and will expire by effluxion of time at the end of that year, absent application for renewal. The Claimants accepted that it therefore could be argued that, in those circumstances, the court *should* start de novo and perform a full assessment.
23. Further, when granting the Injunction, Freedman J expressly considered the purpose of the review hearing in light of *Wolverhampton* – where he warned of a tick-box exercise- as well as in these specific proceedings ([2024] EWHC 1828 (KB at paragraphs 55-59). He rejected the meaning within “a review” in this case and said that “a more careful evaluation is required in relation to the matter going further.” Freedman J also raised the need for the future court to scrutinise “very carefully” that the local authority actions in implementing a formal, negotiated stopping policy. Finally, Freedman J expressly said that it would be better not to refer to a future application for a renewal as a review and that it is a “renewal application rather than some type of review”.
24. This is not a case where I would be undertaking a potential undermining of the judgment of Freedman J but rather following his requirement that there is close scrutiny of whether there remained a compelling need for the granting of a further injunction.
25. In these circumstances, I consider the case should be heard *de novo* and so invited submissions in line with it being a *de novo* hearing. In addition, the

Claimants had produced a very helpful and detailed skeleton argument addressing law and evidence as for a *de novo* hearing.

Power to Grant Injunction

26. The court's power to grant injunctions is wide-ranging, and is derived from the Senior Courts Act 1981, s37, which provides:

(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.

27. However, as observed in *Wolverhampton* at paragraph 145, section 37 is of limited assistance as a stand-alone power due to its lack of particularity.

28. The Injunction is sought pursuant to the Local Government Act 1972, s222 and the Town and Country Planning Act 1990, s187B. The Town and Country Planning Act 1990, s187B provides:

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to court for an injunction, whether or not they have exercised or are proposing to exercise any of their powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section "the court" means the High Court or the county court.

29. The underlying cause of action in a claim brought under s187B is a breach of planning control.

30. The Town and Country Planning Act 1990 at section 55(1) defines development as:

“...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

31. Section 55(3) of the Town and Country Planning Act 1990 provides:

“For the avoidance of doubt it is hereby declared that for the purposes of this section—

(b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if—

(i) the superficial area of the deposit is extended, or

(ii) the height of the deposit is extended and exceeds the level of the land adjoining the site.”

32. Planning permission is required by the Town and Country Planning Act 1990 s57(1)), for the carrying out of any development of land, as defined as set out above in the Town and Country Planning Act 1990 s55(1) and s55(3)(b). Planning permission may be obtained by way of express grant, or by way of deemed grant through permitted development rights. Carrying out development without the required planning permission constitutes a breach of planning control (Town and country Planning Act 1990 s171A (1)).

33. The breaches of planning control complained of by the Claimants are primarily the material change in the use of the relevant land to a temporary Traveller site, and by the depositing of refuse or waste materials, without the requisite planning permission.

34. The cause of action that underlies a claim brought further to the Town and Country Planning Act 1990 s187B is not one upon which the court can adjudicate; the court is not entitled to reach its own independent view on the planning merits of the case. The House of Lords in *South Buckinghamshire District Council v Porter & Anr* [2003] UKHL 26; [2003] 2 AC 558 (*Porter*) at paragraphs 11, 20, 29 and 30 confirmed that the decision as to whether something is or is not a breach of planning control is a matter for the local planning authority, or the Secretary of State on appeal, and not the court.

35. However, the court's power to grant an injunction under the Town and Country Planning Act 1990 s187B is discretionary, albeit that discretion must be exercised judicially. In *Porter* at paragraph 29 and relevant to this context, Lord Bingham said as follows:

"...that the power must be exercised with due regard to the purpose for which it was conferred: to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for."

36. A local authority also is given powers to step into the shoes of local landowners and bring proceedings, by the Local Government Act 1972 s.222:

"(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area –

a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and

b) they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment.”

37. This power to enforce obedience with public law does not require the involvement of the Attorney General as established in *Stoke-on-Trent City Council v B&Q (Retail) Ltd* [1984] AC 754.

38. The fundamental principles to be followed by the court in exercising its discretion under the Local Government Act 1972 s222 are set out in *City of London Corporation v Bovis Construction Ltd* [1992] 3 All ER 697 at 714 per Bingham LJ and include:

“...the essential foundation for the exercise of the court’s discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant’s unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will be effective to restrain them: see Wychavon DC v Midland Enterprises (Special Events) Ltd (1986) 86 LGR 83 at 89.”

39. The court has power to attach a power of arrest to an injunction is granted under the Local Government Act s222, utilising its power under the Police and Justice Act 2006, s27.

The *Wolverhampton* case

40. The *Wolverhampton* case is considered by Freedman J at paragraphs 22 – 26 of *Basingstoke and Deane Borough Council and Hampshire County Council v Loveridge and Ors* [2024] EWHC 1828 (KB).

41. Throughout the judgment, the court examined whether this was a new type of injunction and analysed newcomer injunctions initially outside the context of proceedings against Travellers, with the earliest in time being *Venables* [2001] Fam 430. This was possibly the first *contra mundum/against the world*

equitable injunction granted in recent times; see paragraphs 108 – 125 of *Wolverhampton*.

42. Importantly, the Supreme Court considered so-called Traveller Injunctions against newcomer persons unknown. The Court ruled that final injunctive relief can be granted against newcomer persons unknown, albeit that it held that such an injunction is neither interim nor final in substance and is instead a form of without notice relief; see paragraph 139. In essence, the Court considered the reasoning that since an interim injunction is designed only to hold the ring, pending trial between the served parties, its use against newcomers for any other purpose would fall outside the principles that regulate the granting of interim injunctions. It then considered the *South Cambridgeshire District Council v Gammell* [2005] EWCA Civ 1429 (*Gammell*) solution that a newcomer becomes a defendant by acting in breach of the interim injunction and the tidy solution to both issues as it makes the newcomer a party and at that point justifies the interim injunction against newcomers as- as put by the Supreme Court – a way of smoking them out before trial.
43. In its consideration of this issue, the Supreme Court said that the focus on the duality of interim and final injunctions was unhelpful as a means of providing a remedy to the risk of a right being breached. The Supreme Court considered that the injunction against newcomers is a without notice injunction or –in old language- an *ex parte* injunction.
44. The Supreme Court considered that the evaluation of potential injustice inherent in the process of granting injunctions against newcomers is more likely to be reliable if there is no assumption that the newcomer affected is a person who “is so regardless of the law” that they will commit a breach of the injunction.
45. From recognition that injunctions against newcomers are always a form of without notice injunction, whether in interim or final form, the starting point is whether they should be made at all and if so by reference to what principles and subject to what safeguards.

46. Firstly, to determine whether the injunction sought falls into an established class of injunction or is “a legitimate extension of the court’s practice”, the distinguishing features of the sought after injunction require scrutiny (see paragraph 143). The features left the court in no doubt that the injunction against newcomers is a new type of injunction, pithily described as having “*no very closely related ancestor from which it might be described as evolutionary offspring, although analogies can be drawn*” (paragraph 144).

47. There is no argument that the Injunction is an injunction against newcomers. The principles of when such relief can and should be granted were then considered by the Supreme Court, particularly at paragraph 167, where the court set out its reservation, its caution and its guiding principles:

" These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:

- i. There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority’s boundaries.*
- ii. There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong*

prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (i.e. permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

- iii. *Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.*
- iv. *The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.*
- v. *It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries.*

48. The practical application of these principles affecting an application for a newcomer injunction against Gypsies and Travellers and the safeguards were considered by the Supreme Court in its judgment at paragraphs 188 to 237. The court states that these principles and safeguards will evolve as cases come before the courts.

49. I now will turn to the matters that have to be considered in order for the Claimants to justify their application for such an injunction, as referred to in paragraph 167 and in the subsequent paragraphs of the judgment in *Wolverhampton*.

Compelling justification for the remedy

50. The guidance at paragraph 167(i) requires there to be a compelling need, sufficiently demonstrated by the evidence, for the remedy that is sought, which is not adequately met by other measures available to the claimants. The compelling need is described at paragraph 188 as the "overarching principle that must guide the court at all stages of its consideration". At paragraph 218, it was also held that there must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this "will cause real harm". At paragraph 189, there were identified three preliminary questions:

(1) whether the local authority has complied with its obligations to consider and provide lawful stopping places for gypsies and travellers;

(2) whether the local authority has exhausted all reasonable alternatives, including whether it has engaged in dialogue with the gypsy and traveller community to try and find a way to accommodate their way of life by giving them time and assistance to find alternative or transit sites or permanent accommodation;

(3) whether the local authority has taken steps to control or prohibit unauthorised encampments and related activities by using other measures and powers at its disposal.

Evidence of wrongful conduct requiring a remedy

51. The Claimants rely on a number of statements, including Mr. Williams' fourth witness statement, the first witness statement of Inspector Charles Ilderton and

the fourth witness statement of Nicholas Waite, the Gypsy liaison officer of the Second Claimant. The first two witnesses give detailed evidence of wrongful conduct requiring of a remedy. It is summarised above under the consideration of the “Injunction Area”.

52. In addition to above, from the Council’s internal case management system, Mr. Williams details:

- a. After the injunction: in the period of April 2019 to January 2024, there were a total of 35 unauthorised encampments, 18 of which were within the injunction area and 17 of which were outside. That equates to 51% of encampments being in the injunction area. Of those 18 encampments in the injunction area, 17 were removed with the assistance of the injunction granted by HHJ Dight CBE (sitting as a Judge of the High Court). One encampment left voluntarily on the same day as it arrived (7 June 2021) without the need for intervention.
- b. In the period February to December 2024 there were a total of 17 unauthorised encampments, of which one was within the injunction area.
- c. the number of unauthorised encampments in the Borough generally and the injunction area specifically have reduced significantly;
- d. the duration of stay of an unauthorised encampment in the injunction area has reduced significantly;
- e. the duration of stay of an unauthorised encampment in the injunction area is significantly lower than it is for encampments outside of the injunction area;
- f. there are two encampments which are formed by those travelling through the Borough, there has been an equal division of encampments within in and outside of the injunction area in 2024.
- g. If the injunction is not made there is a likelihood that those forming unauthorised encampments in neighbouring Boroughs will migrate to the Injunction area and the harms suffered prior to the granting of injunctive relief will resume.

53. There also is evidence of Nicolas Waite pointing to the statistically backed downward trend that is not reflected in other boroughs in the County of Hampshire, rather those other borough trends are upwards. The notable exception is Test Valley where, since 2020, there has also been a significant downward trend. However, in 2020, Test Valley also obtained injunctive relief to prohibit encampments in some urban areas, with that relief first being granted in 2020.

54. It is of note that of the 17 unauthorised encampments, there appear to be only two that were not part of one family (the family). Mr. Williams addresses the family in his witness statement and states that they have a good history of complying with the injunction and so the Claimants do not seek an injunction against the family as a named party. Further the family is on the First Claimant's housing list and is seeking permanent accommodation, described as "bricks and mortar".

The three preliminary questions: (1) the obligation to consider and provide lawful stopping places

55. The relevant guidance in *Wolverhampton* is at paragraphs 190-202.

56. Mr Williams addresses the negotiated stopping policy and states that, in compliance with the First Claimant's undertaking, it put a negotiated stopping policy and agreement before its cabinet on 10 September 2024, and it was adopted.

57. The negotiated stopping policy and agreement at paragraph 9 sets out considerations that the Council must take into account when dealing with an application. It is published on the Council's website. If permission is granted, the expected duration of the encampment is 24-72 hours with 14 days maximum duration.

58. I was informed by Ms. Pratt that there had not been any engagement with the negotiated stopping policy by the Gypsy and Traveller community until the week prior to this hearing on 20 March 2025. This engagement is from the

family, and I was informed that they have instructed lawyers. However, this is in the early stages.

59. Further, the First Claimant places much reliance on their practice of toleration of temporary encampments on a case-by-case basis, including checks on welfare of those forming unauthorised encampments. The witnesses urge that one advantage of a specific and individual consideration of each encampment is that the encampment can be closer to facilities or amenities, such as a hospital. I was told that there is no evidence that the case-by-case approach has been the subject of complaints. I pay particular regard to the evidence of Mr. Williams that this informal approach has worked in achieving a balance between the interests of Gypsy and Traveller groups and local inhabitants. In his second witness statement, he gave six examples of this toleration in action. There are no specific examples given for the last year but the Council's flexible approach of assessing need and welfare is said by Mr. Williams to be of greater benefit to the Gypsy and Traveller community than setting up a transit pitch in an inconvenient location relative to sought out facilities. An absence of sufficient transit sites in an area (or information as to where available sites may be found) may itself be a sufficient reason for refusing a newcomer injunction (paragraph 202 *Wolverhampton*).

60. Considerations for the court are beyond transit site provision and the court must look at the local authority's provision for the Gypsy and Traveller community more generally when exercising their operation as a local planning authority.

61. The evidence from Sally Boxall, the principal technical planning officer of the Council sets out that the current Gypsy and Traveller Needs Assessment is for 17 pitches between 2024 and 2029. As of 1 April 2025, 8 pitches are considered deliverable up to 2029. The reason for the increased need is due to the expansion of definition of Gypsies and Travellers, in December 2024, to include all other persons with a cultural tradition of nomadism or of living in a caravan. An updated Gypsy and Traveller and Travelling Show People Accommodation Assessment is being compiled.

62. Currently, therefore the need of Gypsy and Travellers is not being met by the Borough. In addition, no need has been identified by the First Claimant for a transit pitch.

63. The Council is updating its local plan, and this includes a call for sites for Gypsies and Travellers. Historically, these calls have not been successful. At the hearing, the Council were not able to provide the court with any update. However, they pointed to these sites relating to permanent or semi-permanent pitches rather than transit pitches. Further, there was the same assessment at the time of the granting of the Injunction that there was no assessed need for a transit pitch.

64. In his fourth witness statement, Nicolas Waite the Second Claimant's Gypsy liaison officer states that currently there is no statutory duty for Hampshire County Council to provide any form of permanent or transit site for the Gypsy and Traveller community. It was on this basis that Hampshire County Council has been able to dispose of three of its stock of permanent residential sites by transferring them into the ownership of a company belonging to a member of the Travelling community.

65. There is one permanent site under the management of the Second Claimant, with 19 pitches. It is full, with five names on a waiting list.

66. In considering all the evidence of the Claimants actions to properly address where Travellers and Gypsies could stop when passing through the Borough, I take into account Mr. Williams emphasis that there remains 90% of the Borough. Also, I am helped by Mr. Williams' local informed knowledge, and he states:

“Historically, encampments were not forming in the injunction area because there was nowhere else for them to go, or because they would not be tolerated in appropriate circumstances on appropriate sites, but because the

convenience of the injunction area was attractive, and often because it enabled members of the Travelling community to run their commercial enterprises most efficiently. The same is clear from the scale and nature of the fly-tipping that was associated with some encampments (which included commercial and green waste); these people were not simply passing through the Borough and in need of a place of a temporary place of rest.”

The three preliminary questions: (2) exhaustion of all reasonable alternatives

67. Mr. Williams has provided detailed evidence as to how the Injunction is managed and he points to constructive dialogue whereby its content is explained to those who may be about to breach the Injunction and there has not been a requirement to move to enforcement. The Council operates a Memorandum of Understanding with the Hampshire Constabulary which includes operational guidance on the management of encampments within the Injunction Area. There will be some circumstances where, as both the Council and Hampshire Constabulary acknowledge, there will be tolerance even within the Injunction Area. In other words, it is emphasised to the court that the Injunction is not blind to compelling welfare needs.

68. In relation to the family, there has been and is ongoing interactions over their housing requirements with the offer of previous properties. These previous offers have been rejected by the family as unsuitable. Mr. Williams’ evidence shows that the Injunction has been cost saving in that the one unlawful encampment since the Injunction did not result in costs of clean up as the Injunction was used to move the encampment in a matter of hours.

The three preliminary questions: (3) steps to control or prohibit unauthorised encampments by other measures and powers

69. In particular, the First Claimant has relied on the alternative powers contained within the Criminal Justice and Public Order Act 1994 (‘CJPO 1994’), ss77-78. However, they have not been effective, and enforcement is costly. In the

period 2016 to 2018, the First Claimant exercised its s77 powers on 10 occasions (with 7 occasions requiring an order to be sought under s78), at a cost of £4649. Following the grant of injunctive relief, the powers were not exercised at all between April 2019 and January 2024. In the period February to December 2024, the powers were exercised once at a cost of £1053.50. It also was submitted that it can be easy for an encampment to thwart enforcement attempts under s.77 – s.78 by the encampment waiting to be served with a direction to leave the land and then move to another section of land nearby, necessitating the process to restart. It appears a neutral argument that harm is minimised if removal of the encampment is swift, as has been the result of the injunction.

70. Mr. Williams described that public space protection orders (PSPOs) and byelaws are not helpful in addressing unauthorised encampments as they are slow to enact, and the enforcement is ineffective. The PSPOs and breach of a byelaw would result in fixed penalty notices and subsequent summons to court.

71. Mr. Williams states that the Council does not seek to punish Travellers for their way of life but simply restrict the areas of the Borough in which they can exercise their way of life by 10%.

72. I questioned the Claimants about the requirement for a power of arrest and they point to it being needed to give the injunction teeth. Mr. Williams paints the teeth as smiling in practice as the Injunction has been used to educate those in breach by providing advice. He underlines that the power of arrest is a last resort and has never yet been used. As a result, every occasion where the Injunction (and its predecessor Order) has been breached has resulted in the occupants moving on voluntarily once provided with advice by a Council officer.

Procedural protections

73. Following the requirement in *Wolverhampton*, at paragraph 167 (ii) and 226 to 232 for there to be procedural protections for the rights of newcomers to overcome the strong prima facie objection of subjecting them to a without

notice injunction, the Order continuing the Injunction must include a generous liberty to apply provisions and an obligation to take all reasonable steps to bring the application and any order to the attention of those who may be affected by any order made. The draft order includes posting selected documents on the land and a notice directing persons unknown to a website on which all evidence in support of this claim has been uploaded.

74. The court was provided with documents evidencing the service of this application, on 17 and 18 February 2025, whereby notices, the application and draft order have been attached to various lampposts, footpath bridges, telegraph poles and signs. Many documents are tightly wrapped around the poles and so are difficult to read. The Order of Freedman J are clearly displayed as it is affixed in a manner that does not require folding. There also is an email address utilised by the London Gypsy and Travellers group. The Application notice was sent to this email. On 20 March 2025, during the hearing, there was an email requesting a link to the evidence.

Territorial and temporal limits

75. The Claimants point to their application being for an injunction with a temporal limit of one year and so it would be a two-year period of a Traveller Injunction against Persons Unknown, including newcomers. The court must consider whether this is a proportionate response to the unlawful activity at which it is directed. In *Wolverhampton* at paragraph 167 (iv) the Supreme Court refers to the requirement of restraint of newcomer injunctions to ensure as far as practicable they neither “outflank nor outlast the compelling circumstances relied upon.” This is expanded in paragraph 225 where the Supreme Court emphasises the exceptional nature of this type of injunction.
76. The evidence demonstrates that the Injunction has been effective. This creates the circular question and answer as to whether its requirement is therefore redundant. However, there is evidence that the threat or risk or mischief at which the Injunction is directed have not dissipated. Mr. Williams provided evidence that he contacted the neighbouring local authorities, and they

provided figures of unlawful encampments in public areas, with all being in an urban area, which is the attraction of the Injunction area. By far the largest number of unauthorised encampments is in Reading, numbering 59 according to the witness statement of Acting Inspector Beasley of Thames Valley Police. Reading is an urban area. The cessation of the Injunction, the police and council urge, will likely lead to a movement of some of these encampments to the Injunction area.

77. In relation to the territorial limits of the injunctions, it covers just over ten per cent of the borough and includes the urban areas of Basingstoke Town and outlying areas of Bramley, Sherbourne, St. John and Silchester as well as an area of land at Stratfield Turgis. During the hearing the First Claimant pointed to the rural areas not covered by the Injunction also including towns as well as villages with amenities. However, the unauthorised encampments in these areas do not have the same impact on local inhabitants as they did within the Injunction Area which includes public parks, schools, sports facilities and shops and local businesses. Further detail is addressed in Mr. Williams statement and is summarised above under consideration of the Injunction Area. The First Claimant points to the risk that these unauthorised encampments will move to the Injunction Area.

Is it just and convenient to grant the injunctive relief sought?

78. Paragraph 167 of *Wolverhampton* underlines the novel equitable discretionary power of an injunction against newcomer Travellers and that they are only likely to be justified if a number of factors are satisfied, as set out above, including that the granting of the Injunction is just and convenient on the particular facts.
79. The Claimants make points relying on paragraphs 188 to 237 of *Wolverhampton*:
- i. that the intended respondents to an application must be defined as precisely as possible, identified and enjoined where possible and, if the order is sought

against newcomers, the possibility of defining the class of persons by reference to conduct and/or intention should be explored and adopted if possible; paragraph 221 of *Wolverhampton*. This was addressed by Freedman J and so the 116th Defendant is more precisely defined as “persons unknown who are forming unauthorised encampments in the Borough of Basingstoke and Deane”.

- ii. the injunction should be clear and precise, and use everyday terms, when setting out the acts that it prohibits. The prohibited acts must correspond as closely as possible to the actual or threatened unlawful conduct and extend no further than the minimum necessary to achieve the purpose for which it was granted; paragraphs 222 to 224 of *Wolverhampton*. Again, this was considered by Freedman J, and the proposed Order reflects the previous wording.
- iii. the order is not an interim order, in the sense that it is holding the ring until the final determination of the merits at trial. However, it is appropriate that there be consideration of whether there should be a cross-undertaking in damages: see paragraph 234 of *Wolverhampton*.

Cross-undertaking as to Damages

80. This was considered by Freedman J at paragraph 48 of his judgment. I don't repeat his analysis save to highlight the potential engagement of the 116th Defendant's rights pursuant to Article 8 ECHR in respect of a right to a private and family life following a nomadic lifestyle. It is a qualified right and must be balanced against competing rights and such engagement would usually occur when an unknown person becomes a known person.

81. In the circumstances of this cases there is no reason to depart from the ordinary position summarised by Freedman J. The Claimants are not required to give an undertaking in damages.

Full and frank disclosure

82. The court has been assisted by the Claimants' full and frank disclosure and detailed skeleton argument and the court is alerted to the fact that the First Claimant can no longer meet its five-year supply need for Gypsy and Traveller pitches.

The *Vastint* multifactorial test

83. The Claimants seek precautionary relief. The principles in respect of precautionary relief are 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. The extent to which these guidelines and multifactorial test should be considered in light of *Wolverhampton* is unclear. They have not been disapproved. The court had paid careful regard to them, in particular paragraph 31 as set out in the judgment of Freedman J.

Gypsy and Traveller Communities and granting of this Application for an Injunction

84. I find on the evidence and information provided to the Court that the multifactorial test in *Vastint* and the guidelines in *Wolverhampton* are satisfied.

85. The Injunction sought is constrained by temporal and geographical limitations to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

86. In considering whether there is a compelling need for an injunction and it is, on the facts, just and convenient to grant one, I find that it is clearly evidenced that the injunctive relief has been an effective way of dealing with the formation of unauthorised encampments in the Injunction Area and the harm caused by those encampments, whether by preventing the formation of encampments, or in assisting with moving encampments on in a timely and cost-efficient manner once they have been formed. I consider that there is a

strong possibility (applying *Vastint*) that unless restrained by an injunction, Persons Unknown will breach the Claimant's rights. The resulting harm from the breach could be of a type that could not be adequately compensated for by damages.

Concluding Remarks

87. A nomadic lifestyle is part of the tradition and culture of Gypsy and Traveller communities. It is part of their identity and the importance of this lifestyle to Travellers and Gypsies is recognised by the European Court of Human Rights in a number of judgments, including *Chapman v United Kingdom* (2001) 33 ECHR 18.
88. Gypsies and Traveller people have been present in England since at least the 16th century. Historically, they have been persecuted across Europe and the United Kingdom. In the twenty first century, The Equality and Human Rights Commission has published a number of reports showing that Gypsy and Traveller people have unequal and poor outcomes in health, education and economy. They suffer the worst outcomes of any group, across a wide range of social indicators, with their life chances being in decline.
89. Meeting the accommodation needs of Gypsies and Travellers, which includes transit stopping, is important to protecting their way of life. In practical terms, it is necessary to help improve the life chances of their families.
90. The Claimants will be aware of qualitative research in 2022 by the Office of National Statistics into the lived experiences of this community in England and Wales. One finding is that instability and apprehension about being moved on leads to increased anxiety amongst those who wish to maintain a nomadic or partially nomadic lifestyle.

91. In granting this injunction, the court takes into account the conduct of the Claimants that they take a collaborative approach when Gypsies and Travellers require a place to stop, and that enforcement always is a last resort.
92. However, the Claimants are expected to reflect further on their reasons for not pursuing byelaws. This type of injunction must remain as exceptional and it will be in place, in near identical terms, for a second year. It should never be a solution looking for a problem.
93. If there is a further application to renew, it should not be listed as a review and should be considered again with real care and scrutiny. The onus is on the Claimants to ensure that this information is communication to the court. Any application to renew should be considered again, *de novo*, with real care and scrutiny. This type of application must not dilute into a routine, or a “tick box” exercise as described by Freedman J in his judgment at paragraph 55.
94. Currently the Borough is not meeting the needs of the Gypsy and Traveller community. The decision not to create a transit site is justified on a hypothetical basis that it might not be in as convenient a place as would be served by informal and formalised stopping processes. However, a transit site would satisfy anxiety of Gypsies and Travellers that they might be moved from whenever they stop in the Borough. The court expects that a transit site is reconsidered by the Claimants and consultation is carried out with the Traveller and Gypsy community.
95. If the Claimants decide to make a further application to renew this injunction, they need to be prepared to address considerations into reducing the size of the area as well as produce evidence of satisfying the needs of the Gypsy and Traveller community where those needs currently are not being met. In addition, the need for a power of arrest will require review. Although there is a memorandum of understanding with Hampshire police, informal understandings amongst council officers and police can cease to work when personnel change. Intention can be harder to safeguard the longer that there is for time to pass.

96. In any future application, the Claimants must ensure that evidence relied upon is accessible to the persons who may be affected, including the London Gypsy and Travellers group.

Conclusion

97. Subject to my concluding remarks, the Claimants have demonstrated a compelling need for the promotion and protection of the interests of the inhabitants of the Borough. Applying the strictures of *Wolverhampton* as required when considering precautionary relief, the court is satisfied that (a) the Claimants have exhausted all reasonable alternatives before seeking renewal of the injunction, (b) there is no other realistic or proportionate alternative to injunctive relief, (c) the statutory requirements for a power of arrest have been satisfied and (d) the Claimants have taken proportionate steps to control encampments and the depositing of waste. There is a real risk that the offending acts will continue and will return without the restraint of an injunction. Exceptionally, the injunction is required against newcomer Persons Unknown. The court orders the injunction in the terms of the draft Order.



Neutral Citation Number: [2025] EWHC 1314 (KB)

Case No: QB-2017-005202

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28th May 2025

Before :

MR JUSTICE GARNHAM

Between :

**ROCHDALE METROPOLITAN BOROUGH
COUNCIL**

Claimant

- and -

**(90) PERSONS UNKNOWN (BEING MEMBERS
OF THE TRAVELLING COMMUNITY WHO
HAVE UNLAWFULLY ENCAMPED WITHIN
THE BOROUGH OF ROCHDALE)**

Defendant

**(93) PERSONS UNKNOWN forming unauthorised
encampments in the Metropolitan Borough of
Rochdale**

Natalie Pratt (instructed by **Sharpe Pritchard**) for the **Claimant**

Hearing dates: 16th May 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 28th May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE GARNHAM :

Introduction

1. The claimant in these proceedings, Rochdale Metropolitan Borough Council (hereafter “Rochdale” or “the Borough”), applies for the renewal for a further 12 months of an injunction against Persons Unknown granted by Butcher J on 11 June 2024.
2. That Injunction binds 56 Named Defendants for a period of five years up to and including 7 June 2029, and the 90th and 93rd Defendants (two categories of Persons Unknown) for 12 months. The order in respect of Persons Unknown is due to expire at 00:00 hrs on 8 June 2025. No Application is made in relation to the Named Defendants.
3. The Injunction is a so-called ‘Traveller injunction’. It prohibits unauthorised encampments and the depositing of waste in the Borough. The Injunction is Borough-wide against the Named Defendants but, in relation to Persons Unknown, applies to 334 identified sites which I am told equates to 9.7% of the land area in the Borough.
4. Subject to one matter I return to below, the Application has been served on the “Persons Unknown” in accordance with paragraphs 5 and 7 of the Order of Butcher J and on three Traveller organisations, namely London Gypsies and Travellers; Friends, Families and Travellers; and the Derbyshire Gypsy Liaison Group who were the Appellants in the Supreme Court case of the Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors [2023] UKSC 47 (hereafter “Wolverhampton”).
5. The Claimants correctly acknowledge that, following the Supreme Court’s decision in Wolverhampton, an injunction against newcomer Persons Unknown is technically always sought and granted on a without notice basis, but there remains an important obligation to take all reasonable steps to draw the Application to the attention of Persons Unknown. In my judgment that obligation has been met in all cases except Site 334, where an error was made which meant the relevant steps were not taken until 14 May.

Procedural Background

6. This matter was last before me on 19 February 2018 when I granted an interim injunction. On 11 June 2024, Butcher J granted the Injunction in the form now before the court against the 56 Named Defendants for a period of five years, and against Persons Unknown for a period of 12 months. Butcher J’s judgment is reported at [2024] EWHC 1653 (KB). A power of arrest was attached to the Injunction.
7. The Injunction (and the interim relief before it) prohibit the forming of unauthorised encampments and the depositing of controlled waste (such as fly-tipping). As against Persons Unknown, the relief was granted on an interim basis over 325 sites in the Borough. In June 2024, nine further sites were added so that the Injunction now applies to 334 sites (the “Injunction Sites”). Members of the Travelling community are not prohibited from entering the Injunction sites or encamping lawfully on those sites, nor are they in breach of the Injunction if they establish an unauthorised encampment elsewhere.

8. It is argued by the Claimants that the 334 sites were “carefully selected by reference to the Claimant’s analysis of the sites that were frequently targeted by unauthorised encampments visiting the Borough”. It is said that those sites include sensitive and vulnerable sites, such as industrial areas, sports and recreation facilities, schools and other public amenities, where it is said greater harm is suffered by the inhabitants of the Borough when unauthorised encampments are formed there.
9. The Claimant seeks the injunctive relief in the discharge of its public functions pursuant to s187B of the Town and Country Planning Act 1990 and s222 of the Local Government Act 1972 to restrain breaches of planning control, and to promote or protect the interests of the inhabitants of their administrative areas (including to restrain acts of trespass). The Claimant is the local planning authority for the Borough, such that it has the administrative function of enforcing planning control within the Borough. It is also the local highway authority, in whom the adopted highways are vested.
10. The Injunction was sought in response to the high volume of unauthorised encampments and the harm it is said resulted from those encampments. The harm caused by the encampments was serious and included risks to public health caused by the depositing of untreated human waste, threats and intimidation to the local inhabitants and financial harm to the Claimant in seeking to deter, enforce against and clean up after encampments.
11. These proceedings became part of the Barking & Dagenham litigation from October 2020 onwards, which culminated in the appeal to the Supreme Court in the Wolverhampton case. The Claimant was a successful respondent in the appeal. The Claim had been listed for final hearing on 22 November 2022, but was adjourned after the Supreme Court granted permission to appeal in Wolverhampton on 25 October 2022.
12. The Claim proceeded to a ‘final’ hearing on 21 May 2024 (although, following Wolverhampton, the relief was only ‘final’ as against the Named Defendants). I am told that throughout the period in which the interim relief was in force, unauthorised encampments continued to form in the Borough (and on Injunction Sites), but had done so less frequently, and were of limited size and duration. Butcher J granted the relief, as described above.

The Evidence

13. The facts relevant to the current application are set out in two lengthy witness statements. The first is the second statement in these proceedings from Mr Stuart Morris; the second is the fourth statement of Mr Anthony Johns. It is not necessary to recite all the detail of those statement here, but the following is of particular significance.
14. Stuart Morris is the Head of Strategic Housing at Rochdale Metropolitan Borough Council and his responsibilities include permanent and temporary stopping provision for Gypsies and Travellers. He explains that the Council is required to make provision for Gypsy and Traveller accommodation within the Borough, and monitors the provision required of it by way of the Greater Manchester Gypsy and Traveller Accommodation Assessment (the ‘GMGTAA’). The GMGTAA was last updated in

December 2024 with a published final report setting out the projected need for caravan pitches to 2040/41.

15. As to permanent provision, he says that the council has its own site at Roch Vale which provides 27 plots and seven council provided chalets. It also leased a site at Heritage Park which was owned and managed by a Traveller family, but that site has recently been closed by the Traveller family. In December 2024, the Greater Manchester Gypsy and Traveller Accommodation Assessment was updated to take into account the new expanded definition of Gypsies and Travellers. During the current year, two further sites have been identified and are being developed. They will provide for six additional permanent pitches which it is anticipated will meet the increased need for pitches.
16. Mr Morris also gives evidence about unauthorised encampments in Rochdale since the grant of the injunction by Butcher J on 11 June 2024. He says these encampments have been almost exclusively on inappropriate and unsafe locations including road verges, industrial and business premises, and car parks serving sports centres and shopping centres. He says that in each case the council has adopted an approach of engagement and negotiation with the occupiers of the sites. That policy has been effective in that, once made aware of the Injunction, Travellers have generally left the relevant site within a few hours or, at most, by the following morning. He says that that approach of engagement and tolerance has meant that it has not been necessary to take legal action to enforce the orders.
17. Mr Morris explains that Rochdale has had contact with neighbouring authorities across Greater Manchester, with whom Rochdale work closely on management of Traveller sites and unlawful encampments, and none of them have raised any issue with the council regarding the displacement of encampments into other areas.
18. Anthony Johns is Rochdale council's service manager for environmental action and enforcement and, amongst other functions, manages officers responsible for attending unauthorised encampments and the enforcement of the injunction. He says in his statement that the council's approach, of taking a "constructive and educational approach by advising those who are forming the encampment about the injunction" has proved effective. He says that the power of arrest is a last resort and has never, in fact, been used. But, he says, it is that power which makes the injunction "so effective".
19. He says that injunctive relief was first sought in response to the high number of unauthorised encampments occurring between January 2015 and September 2017 "many of which caused significant harm to the Borough and had or were associated with... noise nuisances, anti-social behaviour, threats of violence...and fly tipping." Encampment numbers peaked at 69 in 2017, and have since dropped to single figures.
20. Mr. Johns explains that the Injunction sought by the council is not Borough-wide, but is limited to the 334 sites which together cover 15.3 square kilometres. Since the Borough covers an area of 158 square kilometres that is about 9.7% of the total.
21. He explains that sites were identified which required the protection of an injunction. They were chosen because they were sites where encampments would be especially harmful and where either there had been previous encampments or they were of the same nature as sites that were frequently targeted. "Typically those sites include schools, recreational areas and green spaces, business parks and industrial areas".

Encampments were often associated with the depositing of waste, including fly tipping and the depositing of untreated human excrement. There was often a significant clean-up operation required, at great expense to either the council or the landowner, when the encampment was vacated.

22. Mr Johns gives evidence as to the effectiveness of the interim injunction granted in 2018. He says that in 2015 there were 28 encampments, in 2016 there were 40, and in 2017 there were 69. In the remainder of 2018, after the grant of the interim injunction, there were 21 encampments. In 2019, there were 10; in 2020, 13; in 2021, 9; in 2022, 10; in 2023, 12; in 2024, 6. And in the period up until the date of his statement, 25 April 2025, there were 2.
23. The duration of the encampments has also shown a significant decline since the grant of the Injunction. He attributes that to the “council’s ability to move encampments on from protected land swiftly and efficiently with the use of the injunction.” In 2015 the average duration for each encampment was 4.6 days; in 2016, 3.85 days; in 2017, 6.28 days; and in 2018, 1.09 days. In 2023 the average duration was 1.16 days, but for all the other years between 2019 and 2025 it was less than 24 hours.
24. Data collected by the council also shows that the reduction in the frequency and duration of encampments has significantly reduced the harm caused by unauthorised encampments. “In particular, the Borough was experiencing significant fly tipping that was associated with the formation of unauthorised encampments...often on a commercial scale.” I am told that the expression “commercial scale” was used to indicate both the volume of material deposited and also the fact that the fly-tipping was apparently done for profit. Clean up costs were over £25,000 in 2015; £23,000 in 2016; £87,000 in 2017; £944 in 2018 and zero ever since.
25. Mr Johns says that “the Borough’s business parks and industrial areas were often the main target for unauthorised encampments and... these areas suffered a disproportionate number of encampments... Following the grant of the interim injunction the Borough’s business parks and industrial areas were still targeted but there was a significantly reduced number”, down from 126 in 2015-2017 to 16 in 2023-2024. He explains that the Borough’s business and industrial areas are important for the wealth and prosperity of the Borough.
26. According to Mr. Johns, tension often arose between the settled local inhabitants and the Travelling community who were forming unauthorised encampments in the Borough. “The council often received reports of confrontations between members of these two communities...Local residents often became exasperated with the various nuisances associated with encampments.” He says that the council’s experience is that since the grant of the injunctions “reduced frequency and duration of encampments appears to have reduced tensions in the community.” He says that since the grant of the injunction in 2024, he has received no reports from members of the public of any threatening or intimidating behaviour from those forming unauthorised encampments.
27. Mr Johns also notes the disappearance of damage to green spaces or property, previously associated with unauthorised encampments, since the grant of the Injunction.

28. It is acknowledged that there have been some unauthorised encampments since the grant of the Injunction in 2024. There were two in May 2024, one in September 2024, one in October 2024 and two in February 2025. But, as those figures demonstrate, these were much less frequent than had occurred hitherto. In addition, all of them were smaller in size and all were resolved in a matter of hours.

Relevant Legal Principles

29. Against that factual background, I set out what seem to me the relevant legal principles on the following three topics:
- (i) The Court's power to grant injunctive relief and the entitlement of local authorities to seek that relief;
 - (ii) The proper approach to applications against persons unknown; and
 - (iii) The test to be applied to renewed applications for injunctions against persons unknown.

(i) The power to grant and the entitlement to seek

30. The court's power to grant injunctions is derived from the Senior Courts Act 1981, s37, which provides:

(1) The High Court may by order (whether interlocutory or final) grant an injunction ... in all cases in which it appears to the court to be just and convenient to do so.

31. The authority of a local authority to seek injunctive relief in cases like the present stems from s187B of the Town and Country Planning Act 1990, which provides that:

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to court for an injunction, whether or not they have exercised or are proposing to exercise any of their powers under this Part.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.

(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section "the court" means the High Court or the county court.

32. Pursuant to s57(1) of the Town and Country Planning Act 1990 planning permission is required for the carrying out of any development of land. 'Development' is defined to include the carrying out of any building operation on, over or under land or the making of any material change of use of land (**s55(1)**), and the depositing of refuse or waste materials on land (**s55(3)(b)**). Planning permission may be obtained by way of express grant, or by way of deemed grant through permitted development rights. Carrying out development without the required planning permission constitutes a breach of planning control (**s171A(1)**).

33. The breaches of planning control complained of are primarily the material change in the use of the relevant land to a temporary Traveller site, and the depositing of refuse or waste materials, without the requisite planning permission. The decision as to whether something is or is not a breach of planning control is a matter for the local planning authority, or the Secretary of State on appeal, and not the court (***South Buckinghamshire District Council v Porter & Anr* [2003] UKHL 26; [2003] 2 AC 558** at [11], [20], [29] and [30]).
34. That said, the court's power to grant an injunction under s187B remains a discretionary one, albeit that that discretion is not unfettered. The discretion must be exercised judicially meaning, in this context
- ...that the power must be exercised with due regard to the purpose for which it was conferred: to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for. (Porter at [29] per Lord Bingham).*
35. The Local Government Act 1972, s222 provides that:
1. *Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area –*
 - a) *they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and*
 - b) *they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment.*
36. Accordingly, **s222** does not create a cause of action; instead it confers on local authorities a power to bring proceedings to enforce obedience with public law, without the involvement of the Attorney General (***Stoke-on-Trent City Council v B&Q (Retail) Ltd* [1984] AC 754**).
37. The guiding principles as to the exercise of the court's discretion under s222 are identified in ***City of London Corporation v Bovis Construction Ltd* [1992] 3 All ER 697** at 714 (per Bingham LJ), and include:
- ...the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will*

be effective to restrain them: see Wychavon DC v Midland Enterprises (Special Events) Ltd (1986) 86 LGR 83 at 89.

38. Where an injunction is granted under s222, a power of arrest may be attached to the injunction pursuant to the Police and Justice Act 2006, s27.

(ii) Applications against persons unknown

39. In **Wolverhampton**, the Supreme Court, (Lords Reed, Briggs and Kitchin with whom Lords Hodge and Lloyd-Jones agreed), considered a number of conjoined cases in which injunctions were sought by local authorities to prevent unauthorised encampments by Gypsies and Travellers. The appeal raised the question whether (and if so, on what basis, and subject to what safeguards) the court has the power to grant an injunction which binds persons who are not identifiable at the time when the order is granted, and who have not at that time infringed or threatened to infringe any right or duty which the claimant seeks to enforce, but may do so at a later date, a class of persons referred to as “newcomers”.

40. At [167] the Supreme Court held that.

...there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:

- i. There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority’s boundaries.*
- ii. There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.*
- iii. Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to*

research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

- iv. *The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.*
- v. *It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries.*

41. At [225] the court said

One of the more controversial aspects of many of the injunctions granted hitherto has been their duration and geographical scope. These have been subjected to serious criticism, at least some of which we consider to be justified. We have considerable doubt as to whether it could ever be justifiable to grant a Gypsy or Traveller injunction which is directed to persons unknown, including newcomers, and extends over the whole of a borough or for significantly more than a year. It is to be remembered that this is an exceptional remedy, and it must be a proportionate response to the unlawful activity to which it is directed. Further, we consider that an injunction which extends borough-wide is likely to leave the Gypsy and Traveller communities with little or no room for manoeuvre, just as Coulson LJ warned might well be the case Similarly, injunctions of this kind must be reviewed periodically (as Sir Geoffrey Vos MR explained in these appeals at paras 89 and 108) and in our view ought to come to an end (subject to any order of the judge), by effluxion of time in all cases after no more than a year unless an application is made for their renewal. This will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.

(iii) The test to be applied to renewed applications

- 42. An issue has arisen, in some recent cases at first instance level, as to the test that should be applied when applications are made to renew injunctions against persons unknown.
- 43. In ***Basingstoke v Loveridge*, [2024] EWHC 1828 (KB)** Freedman J considered the purpose of the review hearing. He said at [55]:

the continuation of the injunction is something that has to be constrained and checked. It is for that reason that there are the constraints in respect of territorial and temporal limitations. There is a danger in a matter like this that the reaction to the Supreme Court case would be to be involved in tick-boxing so that the case would then be reviewed every year and then continued at the end of the year subject to the tick-boxing.

That would fail to reflect the nature of the guidance given by the Supreme Court, that makes it clear that the remedy is to be carefully scrutinised and only granted in respect of where there is a compelling need for the protection of the rights in the locality.

44. In **High Speed Two (HS2) Ltd v Persons Unknown** [2024] EWHC 1277 (KB) Ritchie J, was considering an application for the continuation of an interim injunction against protesters. In addressing how a review hearing should be approached, he said:

32. ... on a review of an interim injunction against PUs and named Defendants, this Court is not starting de novo. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the quia timet, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.

33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply.

45. In **Arla Foods v Persons Unknown** [2024] EWHC 1952 at [128], Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) described the annual review process as “...allow[ing] a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate.”

46. Morris J took a similar approach in **Transport for London v Persons Unknown & Ors** [2025] EWHC 55 (KB). At [54]-[55] he said:

In the present cases, TfL has already provided detailed evidence at a full trial and the Court has, on two occasions, already made a full determination of the issue of risk and the balance of interests. In my judgment, in those circumstances there needed to be some material change in order to justify a conclusion that the Final Injunctions should not continue. (For example, as in the HS2 case where Phase 2 of the HS project had subsequently been abandoned: see paragraph 40 above).

47. This approach was approved and applied by Hill J in **Valero Energy Ltd v Persons Unknown** [2025] EWHC 207 (KB) (*‘Valero’*) and in **Multiplex Construction Europe Ltd v Persons Unknown** [2025] 2 WLUK 578.

48. When **Basingstoke v Loveridge** came back before the court on a review hearing in March 2025, a somewhat different approach was adopted by the judge. Ms Kirsty Brimelow KC, sitting as a deputy judge of this court, considered the observation of Freedman J at [56] – [57] to the effect that “*As this matter goes forward, there needs*

to be considered the absence of a formally-negotiated stopping policy. As indicated above, at the moment there is an informal policy of limited toleration of encampments. There is only the very beginning of a negotiated stopping policy. It is very difficult to supervise an informal policy of limited toleration of encampments... The court going forward needs to scrutinise very carefully that the local authority is taking steps to procure a formal, negotiated stopping policy.”

49. Perhaps unsurprisingly, in those circumstances, Ms Brimelow held at [25]-[26] in her judgment that she should follow Freedman J’s requirement that there be “*close scrutiny of whether there remained a compelling need for the granting of a further injunction*” and “*in these circumstances, I consider the case should be heard de novo and so invited submissions in line with it being a de novo hearing.*”
50. In ***Test Valley Borough Council & Anr v Persons Unknown*** (unreported), HHJ Sarah Richardson (sitting as a deputy), considered the point at length and gave a detailed ex tempore judgment of which I was provided with a note (no transcript being presently available). She held that the correct test to apply on an annual review is that identified in the authorities of ***HS2***, ***TfL*** and ***Valero***, namely, the Court should ask whether there has been a material change of circumstances. If there has not, and all procedural and legal rigour has been followed, the Order should be continued. If there has, only then should a full ***Wolverhampton*** assessment be conducted to determine whether the relief should be continued, and on what terms. The Judge took the view that the ***HS2*** approach, as adopted in ***TfL*** and ***Valero*** was principled and in keeping with the ***Wolverhampton*** guidance, and was the correct approach to review hearings of this nature. The court should not perform a full ***Wolverhampton*** assessment on review unless there is a material change of circumstances that necessitates the same.
51. In my judgment the correct approach is dictated by the Supreme Court’s judgment in ***Wolverhampton*** and in particular in [225]. This is not a “tick box” exercise, but the matters on which evidence should be adduced and argument focused are (i) how effective the order has been; (ii) whether any reasons or grounds for its discharge have emerged; (iii) whether there is any proper justification for its continuance; and (iv) whether and on what basis a further order ought to be made. The parties should give full disclosure, supported by appropriate evidence, directed towards those questions.
52. There will be cases, such as ***Basingstoke***, where an issue has emerged, whether at the original hearing or in preparation for the renewed hearing, which needs to be addressed expressly at that renewal hearing. Whether that necessitates an expanded renewal hearing or what Ms Brimalow calls a *de novo* hearing will depend on the facts. The position may also be different where the application for further injunctive relief is not made during the currency of the previous order, but after it has expired. But the guiding light will always be the Supreme Court’s judgment in ***Wolverhampton***.

Discussion

53. I address in turn what seem to me the appropriate elements of the analysis, namely:
 - i) The existence of any material change of circumstances;
 - ii) The efficacy of the order to date;

- iii) The justification for its continuance;
- iv) Whether any grounds for discharge have emerged;
- v) The basis on which any further order ought to be made; and
- vi) The other Wolverhampton requirements.

(i) Any material change in circumstances?

- 54. In the run of first instance cases discussed above, there is frequent reference to the need for there to be no material change in circumstances if an injunction against persons unknown to is to be continued. It may well be that that expression is used to encompass the points made in [225] of the Wolverhampton case.
- 55. In my judgment, there is indeed value in identifying whether there has been any material change of circumstances but there must then be focus on the requirements set out in the Wolverhampton case.
- 56. Two potential changes of circumstances are mooted.
- 57. First, there has been some significant reduction in the occurrence of unauthorised encampments. But I entirely agree with the submission of Ms Pratt that the reduction in the threat is not evidence that the threat has dissipated, but evidence that the Injunction is having its intended effect.
- 58. Second, there is one change of circumstance from June 2024 to which, very properly, the Claimant drew expressly to the Court's attention, although it is submitted it is not material to the continuation of the Injunction. That change concerns the availability of pitches in the Borough.
- 59. As noted above, in December 2024, the GMGTAA was updated to take into account the new expanded definition of Gypsies and Travellers. Following that update, the Claimant requires a further five permanent pitches to meet the assessed need. In consequence, there is currently a five-pitch shortfall. However, in 2025, the Council has identified and "lined up" two sites that can provide six pitches to meet the shortfall. I accept that in those circumstances the shortfall in supply of permanent pitches was only temporary, and steps have been and are being taken to meet the shortfall.
- 60. In any event, this assessed need relates to pitches for permanent (or seasonal/semi-permanent) residence by members of the Travelling community (ie. those who are settled, or wish to settle, in the Borough). The Injunction being sought, on the other hand, is intended to apply to those persons who are transiting through the Borough, forming temporary encampments in inappropriate and harmful places, and/or undertaking harmful activities such as fly-tipping. There is no evidence that the Borough is experiencing unauthorised encampments because it has a shortfall of permanent pitches.
- 61. In my judgment there has been no material change of circumstance that requires change to, or discharge of, the Injunction. The risk of the formation of unauthorised encampments and resulting harm persists.

(ii) The efficacy of the Order

62. In my judgment it is perfectly clear on the evidence that the Injunction has been highly effective. Whilst there are still unauthorised encampments that occur in the Borough, and occur on Injunction Sites specifically, the frequency and duration of those encampments, and the resulting harm, is greatly reduced.
63. As Mr Johns explains, there has been a significant reduction in the number of unauthorised encampments forming in the Borough. The reduced frequency, duration and size of unauthorised encampments has caused a significant reduction in the harm suffered by reason of those encampments. There have been no deposits of untreated human waste associated with unauthorised encampments since the grant of injunctive relief; the frequency and duration of encampments in industrial areas has reduced; there have been reduced instances of threats to and intimidation of the inhabitants of the Borough, reduced instances of community tension, and reduced instances of property damage (with no instances at all since the grant of the Injunction in June 2024).
64. Incidents of fly-tipping associated with unauthorised encampments, and the cost incurred by the Claimant in clearing the same, have been greatly reduced. Clean-up costs incurred by the Claimant peaked at £87,895.63 in 2017, and have fallen to nil since 2019.
65. All this evidence serves to establish that the Injunction has achieved its objectives.

(iii) Justification for the continuation of the Order

66. In my judgment, it is well established on the evidence that the potential harm which prompted the application for the injunction persists. The fact that, on occasions, unauthorised encampments appear in the Borough (albeit with reduced frequency) demonstrates that continued risk.
67. Furthermore, unauthorised encampments continue to occur in areas geographically close to Rochdale. The fear of the Claimant's officers that should the Injunction be discharged, those encampments will "migrate" into the Borough, and to the 334 protected sites specifically is, in my view, entirely realistic given the history. That is particularly so given that those sites appear, historically, to be especially attractive to those forming unauthorised encampments. On the evidence, it is clear that it is the existence of the Injunction, and the threat of enforcement by arrest, which discourages the establishment of unauthorised encampments, and limits their size and duration of such encampments as do occur.
68. The experience of neighbouring local authorities in the Greater Manchester area supports that conclusion. Of the five local authorities that responded to enquiries from the Claimant, all but one reported a higher number of unauthorised encampments in the last 12 months than in Rochdale. By way of example, Wigan Council reported 64 encampments, which caused £124,000 in removal costs and associated expenses, and £17,248 of council officer time.

(iv) Grounds for Discharge

69. I have been able to detect no possible grounds for the discharge of the order.

(v) *Basis for a further order*

70. The basis for a continuation of the order, both legally and factually is the same as that which justified the grant of the order in 2024. The terms of the order will be similar.

(vi) *The Wolverhampton requirements*

71. For the reasons set out above, in my judgment a full Wolverhampton assessment is not necessary on the facts of this case. I see no ground for going behind the findings of Butcher J.
72. For the sake of completion I can indicate, however, that I have no doubt that there has been clear and comprehensive evidence of wrongful conduct requiring a remedy; there remains a compelling justification for the Injunction; the Claimant has complied with its obligations to consider and provide lawful stopping places for Gypsies and Travellers; the Claimant has considered all reasonable alternative means of controlling or prohibiting unauthorised encampments; and has properly attempted to engage with Gypsy and Traveller communities in an attempt to encourage dialogue and co-operation, and better understand the needs of the respective parties.
73. The order I propose making includes generous liberty to apply provisions, and an obligation to take all reasonable steps to bring the application and any order to the attention of those who may be affected by any order made. It makes provision for (alternative) service (or, more accurately after the Wolverhampton ‘notification’) of the Order and any subsequent continuation application.
74. The order is constrained by territorial and temporal limitations so as to ensure, as far as it practicable, that they neither ‘outflank nor outlast the compelling circumstances relied upon’. It is not borough-wide against Persons Unknown, (nor has it or the interim relief ever been). The Injunction is appropriately limited; the 334 protected sites equate to less than 10% of the Borough and have been carefully selected. They include sensitive sites such as schools, recreational areas, green spaces and business parks, on which the formation of unauthorised encampments is especially harmful. The selected sites are sites that were either targeted frequently prior to the grant of injunctive relief, or are of the same nature as those sites that were frequently targeted.
75. The order’s operation is limited to one-year, with the possibility of continuation upon review. If no further application is made, the Order will expire by the effluxion of time.
76. The proposed respondents are defined as precisely as possible, identified and enjoined where possible. The injunction sought by the Claimant is, in my judgment, clear and precise, it uses everyday terms, when setting out the acts that it prohibits. The prohibited acts correspond closely to the actual or threatened unlawful conduct, and extend no further than the minimum necessary to achieve the purpose for which it was granted.
77. In my judgment there is no reason to depart from the usual position that no undertaking as to damages is required.
78. In my judgment, the test articulated by Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 and approved by Sir Geoffrey Vos MR in *Barking and Dagenham v Persons Unknown* [2022] EWCA Civ 13 has been subsumed into the

Wolverhampton framework. The Vastint test, however, provides a useful double check. In my judgment, for the reasons set out above, this case satisfies that check. There is a strong possibility that, unless restrained by an injunction, persons unknown will act in breach of the rights which the Claimant is seeking to protect and if that happens the resulting harm would be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate.

79. Finally, so far as I can judge, the Claimant has complied with the duty of full and frank disclosure throughout its evidence and submissions.

Conclusion

80. In those circumstances, in my judgment, it is just and convenient to grant the injunctive relief sought.
81. The error in the notification in respect of Site 334, referred to at [5] above, needs to be addressed. In my judgment, the appropriate and proportionate response to that issue is to suspend the operation of the injunction as it affects that site for 28 days. That will give any person affected sufficient time to make an application to the Court under the liberty to apply clause of the Order.
82. The claimant will be granted a one-year continuation of the Injunction as against the 90th and 93rd Defendants, Persons Unknown.



Neutral Citation Number: [2025] EWHC 1768 (KB)

Case No: QB-2022-001098

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/07/2025

Before:

THE HONOURABLE MR JUSTICE SWEETING

Between:

(1) ESSO Petroleum Company, Limited

Claimants

(2) Exxonmobil Chemical Limited

- and -

(1) PERSONS UNKNOWN who, in connection with the 'Extinction Rebellion' campaign or the 'Just Stop Oil' campaign, enter or remain (without the Consent of the First Claimant) upon any of the Sites.

Defendants

(2) PERSONS UNKNOWN who, in connection with the 'Extinction Rebellion' campaign or the 'Just Stop Oil' campaign, enter or remain (without the Consent of the First Claimant or the Second Claimant) upon The Chemical Plant, Marsh Lane, Southampton S045 1TX.

(3) PERSONS UNKNOWN who, in connection with the 'Extinction Rebellion' campaign or the 'Just Stop Oil' campaign, enter onto any of the Claimants' property and obstruct any of the vehicular entrances or exits to any of the Sites.

(4) Paul Barnes

(5) Diana Hekt

Timothy Morshead KC and Yaaser Vanderman (instructed by **Norton Rose Fulbright LLP**)
for the **Claimants**
The **Defendants** did not appear

Hearing dates: 09/07/2025

Approved Judgment

This judgment was handed down remotely at 10.00am on 11.07.2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SWEETING

Mr Justice Sweeting:

Introduction

1. This is the second annual review of the injunction granted in this matter to Esso Petroleum Company, Limited and ExxonMobil Chemical Limited (“the Claimants”). They seek the continuation of the existing order with some amendments. The First, Second, and Third Defendants are identified as Persons Unknown who are connected with the ‘Extinction Rebellion’ (“XR”) campaign or the ‘Just Stop Oil’ (“JSO”) campaign. The Fourth Defendant (“D4”), Paul Barnes, and the Fifth Defendant (“D5”), Diana Hekt, are named individuals.

Background to the Case

2. The injunction was originally obtained by the Claimants in 2022 in response to environmental protest campaigns. The injunction protects various sites (“the Sites”), which include an oil refinery, fuel terminals, logistic hubs, and compounds across the United Kingdom. The Sites form a significant element of the national energy infrastructure. The Fawley site, for instance, is the largest oil refinery in the United Kingdom, providing 20% of the nation’s refinery capacity.
3. The history of protest action at these Sites and elsewhere is well-documented in the evidence, including in the statements of Mr. Anthony Milne, Mr. Stuart Sherbrooke Wortley, Mr. Nawaaz Allybokus, and Mr. Martin Pullman. These statements describe the significant problems experienced by the Claimants, not as isolated events, but as part of a wider pattern of “direct action” at oil terminals across the country. The Sites are mainly complex industrial units which process or store substantial amounts of volatile and highly flammable material capable of being released in liquid or vapour form. The sites are secure and subject to stringent safety measures and protocols which would not be apparent to a member of the public. They therefore involve managed risk. The consequences of any of the risks involved eventuating present a clear and significant danger to those who work at or visit the Sites, anyone entering unlawfully or protesting at the Sites and, not least, the local population and environment.
4. On 19 July 2023, Linden J granted “final” relief, imposing an injunction effective for a period of five years, subject to annual review (“the Linden Order”). Subsequently, on 29 January 2024, Ellenbogen J reviewed the Linden Order, prior to its first annual review, to consider whether any changes were necessary in the light of the Supreme Court’s judgment in *Wolverhampton CC v. London Gypsies & Travellers* [2024] AC 983 (“*Wolverhampton*”). Ellenbogen J concluded that no changes were required, granting similar relief with minor “tidying up” in relation to one area no longer requiring protection and another where previously unregistered land had become registered (“the Ellenbogen Order”). The first annual review hearing took place on 10 July 2024 before Tipples J, who concluded that there had been no material change in circumstances warranting the discharge or amendment of the injunction. She ordered that it continued unchanged. D4 and D5 were, as previously, “carved out” of the injunctions due to assurances they had provided.

Relevant Law

5. The purpose of a review hearing for an injunction, particularly one against Persons Unknown, was clearly articulated by the Supreme Court in *Wolverhampton*. At [225], the Court observed that a review:

“...will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.”

6. As Mr Morshead KC observed, this is an area of evolving jurisprudence so that it is also open to the Court to review the operation of continuing injunctive relief in the light of legal developments. That has already taken place in this case following the decision in *Wolverhampton*. I am satisfied that the Claimants have drawn to my attention all of the recent relevant case law in relation to the granting of similar injunctive relief.
7. In cases where the review is uncontested, the primary focus is not to revisit the merits afresh but rather to determine whether the injunction has outlasted the compelling need which led to its initial imposition, in view of any changed circumstances. This approach is consistent with the views expressed by Hill J in *Valero v Persons Unknown* (2025 review) [2025] EWHC 207 (KB) at [20-30], and by Garnham J in *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (hereafter “*Rochdale*”) at [42-52].
8. I agree that this is the practical and proportionate way to approach a review ordered as part of the original grant of relief. Such a review is also an opportunity to make necessary adjustments in the light of experience of the practical operation of the injunction and changing circumstances. The Court should nevertheless be wary of embarking upon fundamental changes to the scope or nature of injunctive relief at a review hearing rather than requiring a further and full application to be made. I also bear in mind that there is no legal presumption of continuance.

Continued Threat of Direct Action

9. The evidence before me, particularly from the fifth and sixth witness statements of Ms Stebbing demonstrates that the threat of direct action at and against the Sites continues to be a real one.
10. First, there is direct evidence from JSO itself acknowledging the effectiveness of injunctions in deterring their actions. A tweet from 13 September 2023 stated, in relation to protests on highways:
- “Disruption is frustrating, but we have no other choice. Fossil fuel companies have taken out private injunctions that makes protests impossible at oil refineries, oil depots and even petrol stations...”
11. This strongly suggests that the injunctions covering oil refineries have compelled JSO to target other infrastructure and, conversely, that the removal of the injunction would invite renewed activity of the sort that it was designed to prevent.

12. Secondly, other courts have also recently found there to be a continuing threat in cases similar to the present application (see *Valero* (above) and *Exolum Pipeline Systems Ltd v Persons Unknown* - 25 February 2025, Swift J reviewing the order made in that case in 2024 – see *Exolum Pipeline System Ltd & Ors v Persons Unknown* [2024] EWHC 1015 (KB)).
13. Thirdly, specific incidents indicate ongoing interest in the Sites. For example, in December 2023, an individual trespassed on the Fawley Site to film its layout by drone, subsequently publishing the footage online, which has gathered over 146,000 views to date. Whilst some time ago and not overtly a protest, the filming of the site and the high number of continuing views demonstrates a persistent interest in the Claimants' infrastructure. Broader interest in the Claimants' assets across England by environmental activists is also described in Ms Stebbing's evidence.
14. Fourthly, XR and JSO continue to focus their attention on the oil and gas sector. Recent examples include multiple environmental activist groups, including JSO, targeting airports in Europe in July-August 2024, with JSO stating that "areas of key importance to the fossil fuel economy will be declared sites of civil resistance around the world". In October 2024, XR activists blockaded the United Kingdom Oil & Gas plc production site in Surrey, and in January 2025, XR occupied the Manchester office of an insurance broker, because it was involved, it was said, in insuring fossil fuel projects. Direct action by other related groups, such as Shut the System and Youth Demand, also occurred in 2025.
15. Fifthly, whilst JSO issued a press release on 27 March 2025 stating it would be "hanging up the hi vis" at the end of April 2025, the evidence in Ms Stebbing's sixth witness statement casts significant doubt on the finality of this change in approach. The press release itself contained a "Note to Editors" that is hard to reconcile with an unequivocal renunciation of direct action. More significantly, undercover reporting on 16 May 2025 referred to an alleged recording of JSO indicating it had not disbanded, prompting JSO to email its mailing list on 21 May 2025 stating: "GB News was right for once. We are "plotting a very big comeback"". The email further suggested that this renewed campaign might operate under a new title albeit with the same aims and conducted by the same protesters:

"Just Stop Oil was just the beginning. A new campaign is in the works—one that will build on our knowledge and success as Just Stop Oil and will face the grinding injustice of our political and economic system head on. We're just getting started."

16. Similar statements by XR in the past, that it was relinquishing particular forms of protest, have not been honoured. On 19 May 2025, JSO posted a social media photo stating "JUST GETTING STARTED". A Times report in June 2025 indicated JSO activists were recruiting for Youth Demand, with events advertised using the JSO logo, and an organiser quoted as saying,

"This is an inhale before we breath out and expand into brand new territory, into something even bigger than we've tried before. This is the start of something genuinely thrilling".

17. As Linden J observed in his judgment in this matter [67]:

“It would have been very easy for Extinction Rebellion or Just Stop Oil to give assurances or evidence to the court that there was no intention to return to their activities of 2021/2022, and no risk of trespass on the Sites or damage to property by protesters in the foreseeable future, but they did not do so.”

18. It may of course be that any leadership or governance that exists within these campaigning movements is limited and that a binding assurance from the centre cannot in fact be given. That in itself would make it difficult to rely upon any announcement that there had been a cessation of the activities at which the injunction is aimed. Equally it continues to be the position that no assurances have been given which leads me to conclude that there remains a real risk of direct action from JSO or XR or those connected with their campaigns.

Service and Provision of Documents

19. I am satisfied that the hearing of this review was properly notified in accordance with paragraph 15 of the Ellenbogen Order. Ms Stebbing’s seventh witness statement details the steps taken, including uploading documents to the webpage, placing copies in clear plastic containers at the Sites, and sending emails to relevant addresses for the First, Second, and Third Defendants. In relation to D4 and D5, service was by email, and where delivery failures occurred for D4, extra measures were taken to provide the information by first-class post.
20. Mr Morshead submitted that the provisions at paragraph 15.1 of the present Order were becoming unwieldy to operate in practice because of the accumulation of documentation produced as a result of the further hearings following the grant of relief. He suggested that if the order were to continue then it would be sensible and necessary to remove the requirement for full paper copies of documents to be deposited, other than the orders themselves (as provided for at paragraph 12), in favour of the links already given on the Warning Notices (see further below) which point to the relevant documents online by means of a link to a website. I agree that requiring the Claimants to maintain a growing library of material at the Sites, in ever larger plastic boxes, is unsatisfactory and may well prove unworkable in future. The solution suggested will meet the requirement to serve the material concerned in an effective way. Links to a website may indeed prove to be a more satisfactory arrangement.

Warning Notices

21. Photographic evidence of four Notices being displayed at all Sites was provided by 13 June 2024 for the annual review hearing. However, it was discovered that Avonmouth and Alton only had two Notices each, and Purfleet had a damaged Notice. These deficiencies had been promptly rectified by ordering new Notices on 11 June 2024.
22. While there was a period where some Sites may not have had the full complement of four Notices, the Claimants have explained that this confusion arose from changes to the wording of the Notices following court orders, and that at all times at least two Notices were present. Furthermore, other methods of notification, such as website publication and email, were consistently used. I accept the Claimants’ submission that this oversight did not cause prejudice to any Persons Unknown, given the other

notification steps undertaken. I also note that the Claimants now conduct monthly checks to ensure Notices and containers are in place.

Fourth and Fifth Defendants

23. D4 and D5 remain carved out of the injunction due to their earlier undertakings and assurances. D5 has provided a signed copy of a further undertaking, effective until 31 July 2026 or the date of the next review hearing. However, D4 has not yet returned a signed copy of his undertaking, despite continued efforts by the Claimants to contact him, including through letters sent on 24 June 2025 and 3 July 2025. The Claimants propose a pragmatic course which is to allow them liberty to apply to make D4 subject to the injunctions in the absence of receiving further assurances of the same sort as were originally obtained from him, a course which has already been taken in earlier orders in these proceedings. I agree with that proposal.

Harm

24. The potential harm arising from direct action at the Sites remains substantial and, potentially, dangerous. The operations at the Sites involve hazardous substances, regulated under the Control of Major Accident Hazards Regulations 2015. Entry by untrained protesters who lack appropriate protective clothing or equipment poses significant risks to personal injury and health and safety. Moreover, such actions clearly risk disrupting the Claimants' operations and, consequently, the United Kingdom's downstream fuel resilience, impacting contractual obligations to customers essential for maintaining critical services, including road, rail, and air travel.

Discussion

25. I have to consider whether any reasons or grounds for the discharge of the injunction have emerged since the last review. The principal factual development has been JSO's announcement in March 2025 in relation to "hanging up the hi vis". However, as I have outlined above, the evidence shows, in my view, that this announcement cannot be taken as an unequivocal and final renunciation of direct action. The amorphous nature of the group, combined with the past experience of similar unfulfilled statements by XR, and JSO's subsequent communications and activities, mean that it would be premature to rely on this announcement as a basis for amending or discharging the injunction. The risk of direct action by those connected with the JSO campaign remains real and imminent.
26. In relation to legal developments, there have been discussions in recent cases concerning two procedural matters: (a) how "Persons Unknown" ought to be described; and (b) whether orders against them should include a requirement for permission before a contempt application may be brought.
27. As to the description of "Persons Unknown," the Supreme Court in *Wolverhampton* stated at paragraph 221:

“...Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach

(and, if necessary, by reference to intention) should be explored and adopted if possible.”

28. While Nicklin J in *MBR Acres Ltd v Curtin* [2025] EWHC 331 suggested it was "no longer necessary, nor appropriate" to restrain particular categories of defendants for contra mundum injunctions, and Fordham J adopted a similar approach in *University of Cambridge v Persons Unknown* [2025] EWHC 454, I note that Soole J subsequently doubted this position in *University of Cambridge v Persons Unknown* [2025] EWHC 724, reverting to the orthodox approach. I am told that Bourne J at the review hearing of an injunction relating to London City Airports, on 24 June 2025 preferred a more straightforward reading of *Wolverhampton* paragraph 221 and held that this point was procedural, not justifying re-writing orders on review. I find no compelling reason to amend the description of the Defendants in this case when considering it on review save in one respect (see further below). The current description best adheres to the guidance in *Wolverhampton* by identifying a class by reference to conduct notwithstanding the cogent reasons set out by Nicklin J for taking a different course in *MBR*. I do however consider that the prospect of JSO evolving, deliberately, into a differently named campaign essentially involving the same organisation, supporters and protesters is demonstrated on the evidence and requires an adjustment to the description of the Defendants to add “or other environmental campaign” so as not to, potentially, thwart the purpose of the injunction. This course was taken in the City Airport injunction proceedings. Any concern that this may involve a widening of the injunction is tempered by the fact that the description involves conduct that is on its face unlawful and where Convention rights are qualified so that the balancing exercise is heavily in favour of a restraint.
29. As to a requirement for permission before a contempt application may be brought, this measure was adopted in *MBR* and the *University of Cambridge* cases. It is apparent that Nicklin J in *MBR Acres* was significantly influenced by the particular claimants' conduct in that case, which involved trivial and inappropriate contempt applications. However, I observe that the suggestion of a blanket requirement for all newcomer injunctions in protest cases appears to have been made per incuriam given other relevant authorities, such as *AG v Times Newspapers Ltd* [1974] AC 273, *Sectorguard plc v Dienne plc* [2009] EWHC 2693 (Ch), and *PJSC Vseukrainskyi Aktsionernyi Bank v. Maksimov & Ors* [2014] EWHC 4370 (Comm). These cases suggest that the courts already possess adequate mechanisms to address disproportionate committal applications. In the present case, there is no evident need or justification, in my view, to impose a requirement for the Claimants to seek permission before commencing any committal applications. The Supreme Court in *Wolverhampton*, which carefully balanced the interests of landowners and Persons Unknown, did not impose such a requirement. There is no evidence before me that claimants are generally bringing trivial committal applications in cases of this nature. While the specific factual circumstances may have driven the decisions in *MBR Acres* and the *Cambridge* cases, those particular concerns are not present here. Imposing such a permission filter could lead to disproportionate burdens and complexities, potentially requiring multiple hearings and appeals, which would be more stressful for potential defendants and consume significant court resources. It is generally preferable for all matters to be addressed in one committal hearing unless a specific factual reason necessitates otherwise.

30. I am satisfied that the injunction has been effective to date, as there has been no direct action at the Sites for some years. Indeed, the evidence from JSO itself supports this conclusion, indicating that the existence of injunctions at oil refineries has caused them to target other sites.
31. There remains a proper justification for the continuance of the injunction. A real and imminent risk of direct action at the Sites persists if they were to be left unprotected. This view has been consistently taken by multiple judges in this claim and in other similar claims. The substantial harm, particularly the health and safety risks, to those who are not trained to understand the many hazards at the Sites, underscores the necessity of the injunction. The Defendants have no lawful reason to enter or remain upon these restricted and fenced-off private lands for the purpose of direct action. The evidence has clearly demonstrated that the existence of criminal offences is insufficient to deter the Defendants.

Conclusion

32. I conclude that nothing material has changed since the Ellenbogen Order was made to warrant its discharge or amendment. The evidence demonstrates a continued threat of direct action at the Sites. The injunction has not outlasted its need.
33. It remains necessary for the injunction to continue in its present form subject to the limited amendments referred to above.

END



Neutral Citation Number: [2026] EWHC 292 (Admin)

Case No: AC-2025-LON-002122

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/02/2026

Before :

PRESIDENT OF THE KING'S BENCH DIVISION
THE HON. MR JUSTICE SWIFT
THE HON. MRS JUSTICE STEYN DBE

Between :

THE KING	<u>Claimant</u>
(on the application of HUDA AMMORI)	
- and -	
SECRETARY OF STATE FOR THE HOME	<u>Defendant</u>
DEPARTMENT	
- and -	
(1) UNITED NATIONS SPECIAL RAPPORTEUR	
ON THE PROMOTION AND PROTECTION OF	
HUMAN RIGHTS AND FUNDAMENTAL	
FREEDOMS WHILE COUNTERING	
TERRORISM	
(2) AMNESTY INTERNATIONAL UK	
(3) LIBERTY	<u>Interveners</u>

Raza Husain KC, Blinne Ní Ghrálaigh KC, Paul Luckhurst, Owen Greenhall, Audrey Cherryl Mogan, Mira Hammad, Rayan Fakhoury, Rosalind Burgin and Grant Kynaston
(instructed by Birnberg Peirce Solicitors) for the Claimant

Sir James Eadie KC, David Blundell KC, Andrew Deakin, Natasha Barnes, Stephen Kosmin and Karl Laird (instructed by Government Legal Department) for the Defendant
Tim Buley KC, Dominic Lewis and Jesse Nicholls (assisted by the Special Advocates' Support Office) Special Advocates for the Claimant

Adam Straw KC and Rabah Kherbane (instructed by **Hickman & Rose Solicitors**) for the
First Intervener

Tom Hickman KC, Jessica Jones and Rosalind Comyn (instructed by **Deighton Pierce
Glynn**) for the **Second and Third Interveners (written submissions only)**

Hearing dates: 26-27 November and 2 December 2025

OPEN JUDGMENT

PRESIDENT OF THE KING'S BENCH DIVISION :

1. This is the judgment of the court.

A. Introduction

- (i) The decision, the claim and the proceedings*

2. On 5 July 2025 the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2025 (“the Order”) came into force. The Order had been made on 4 July 2025, having been laid before Parliament by the Home Secretary on 30 June 2025, approved by the House of Commons on 2 July 2025 and by the House of Lords on 3 July 2025. The Order added the names of three organisations to the list of proscribed organisations at Schedule 2 to the Terrorism Act 2000 (“the 2000 Act”). One of those organisations was Palestine Action.

3. The decision to add Palestine Action to the list of proscribed organisations was made by the Home Secretary on 20 June 2025. On 23 June 2025, a week before the Order was laid before Parliament, she provided a statement to the House of Commons which included the following:

“I have decided to proscribe Palestine Action under section 3 of the Terrorism Act 2000. A draft proscription order will be laid in Parliament on Monday 30 June. If passed, it will make it illegal to be a member of, or invite support for, Palestine Action.

This decision is specific to Palestine Action and does not affect lawful protest groups and other organisations campaigning on issues around Palestine or the Middle East.

The disgraceful attack on Brize Norton in the early hours of the morning on Friday 20 June is the latest in a long history of unacceptable criminal damage committed by Palestine Action. The UK’s defence enterprise is vital to the nation’s national security and this Government will not tolerate those that put that security at risk. Counter Terrorism Policing are leading the criminal investigation into this attack. It is important that this process is free from interference and the police are allowed to carry out their important work gathering evidence and working to bring perpetrators to justice.

Since its inception in 2020, Palestine Action has orchestrated a nationwide campaign of direct criminal action against businesses and institutions, including key national infrastructure and defence firms that provide services and supplies to support Ukraine, the North Atlantic Treaty Organisation (NATO) ‘Five Eyes’ allies and the UK defence enterprise. Its activity has increased in frequency and severity since the start of 2024 and its methods have become more aggressive, with its members demonstrating a willingness to use violence. Palestine Action has also broadened its targets from the defence industry to

include financial firms, charities, universities and government buildings. Its activities meet the threshold in the statutory tests established under the Terrorism Act 2000. This has been assessed through a robust evidence-based process, by a wide range of experts from across government, the police and the Security Services.

In several attacks, Palestine Action has committed acts of serious damage to property with the aim of progressing its political cause and influencing the Government. These include attacks at Thales in Glasgow in 2022; and last year at Instro Precision in Kent and Elbit Systems UK in Bristol. The seriousness of these attacks includes the extent and nature of damage caused, including to targets affecting UK national security, and the impact on innocent members of the public fleeing for safety and subjected to violence. The extent of damage across these three attacks alone, spreading the length and breadth of the UK runs into the millions of pounds.

During Palestine Action's attack against the Thales defence factory in Glasgow in 2022, the group caused over a million pounds worth of damage including to parts essential to submarines. The Sheriff, in passing custodial sentences for the attackers' violent crimes, spoke of the panic among staff who feared for their safety as pyrotechnics and smoke bombs were thrown in the area where they were evacuating. He further recorded the extent of damage to legitimate business activities which included 'matters of nationwide security' and disputed the groups' claims its actions were non-violent. The attacks at Elbit Systems in Bristol and Intro Precision in Kent remain sub judice. To avoid prejudicing future criminal trials the Government will not comment on the specifics of these incidents.

Palestine Action has provided practical advice to assist its members with conducting attacks that have resulted in serious damage to property. In late 2023, Palestine Action released 'The Underground Manual'. The document encourages the creation of cells; provides practical guidance on how to carry out activity against private companies and government buildings on behalf of Palestine Action; and provides a link to a website which contains a map of specific targets across the UK. The manual encourages its members to undertake operational security measures to protect the covert nature of their activity.

Through its media output, Palestine Action publicises and promotes its attacks involving serious property damage, as well as celebrating the perpetrators.

Palestine Action's online presence has enabled the organisation to galvanise support, recruit and train members across the UK to take part in criminal activity and raise considerable funds

through online donations. The group has a footprint in all 45 policing regions in the UK and has pledged to escalate its campaign.

It is vitally important that those seeking to protest peacefully, including pro-Palestinian groups, those opposing the actions of the Israeli government, and those demanding changes in the UK's foreign policy, can continue to do so. The right to peaceful protest is a cornerstone of our democracy. Should Parliament vote to proscribe, that right will be unaffected.

What it will do is to enable law enforcement to effectively disrupt the escalating actions of this serious group. Only last month, Palestine Action claimed responsibility for an attack against a Jewish-owned business in North London where the glass-front of the building was smashed and the building and floor defaced with red paint including the slogan 'drop Elbit'. Such instances do not represent a legitimate or peaceful protest. Regardless of whether this instance itself amounts to terrorism, such activity is clearly intimidatory and unacceptable. It is one that has been repeated many times by this organisation at sites the length and breadth of the UK.

I have considered carefully the nature and scale of Palestine Action's activity. Proscription represents a legitimate response to the threat posed by Palestine Action. The first duty of government is to keep our country safe, which is the foundation of our Plan for Change.

Given significant public concern over recent activities by this group, including the incident in Brize Norton last week, and balancing the relevant considerations, I have decided to confirm this decision to proscribe to the House in advance of laying the relevant order."

4. The claimant, Huda Ammori, challenges the decision to proscribe Palestine Action. Ms Ammori was one of the co-founders of Palestine Action.
5. These proceedings were filed on 27 June 2025 and were issued on 30 June 2025. Permission to apply for judicial review was considered by Chamberlain J in a judgment handed down on 30 July 2025 ([2025] EWHC 2013 (Admin)) and by the Court of Appeal in a judgment handed down on 17 October 2025 ([2025] EWCA Civ 1311). The combined effect of the two judgments is that the claimant has been granted permission to apply for judicial review on four of the eight pleaded grounds of challenge. Those grounds are:
 - (1) Ground 8: that the Home Secretary acted unlawfully by failing before deciding to lay the Order before Parliament to give Palestine Action the opportunity to make representations that it should not be proscribed;

(2) Ground 5: that when deciding to seek an order proscribing Palestine Action the Home Secretary failed to have regard to relevant considerations;

(3) Ground 6: that the decision to seek the Order proscribing Palestine Action was made by the Home Secretary in breach of her own policy on when she would exercise her discretion to seek an order proscribing an organisation; and

(4) Ground 2: that the decision to seek proscription was contrary to the Human Rights Act 1998 (the HRA) because it amounted to an unjustified interference with the rights protected by the European Convention on Human Rights (the Convention) under article 10 of the Convention, to freedom of expression and under article 11 of the Convention, to freedom of association and peaceful assembly; and further, amounted to discrimination contrary to article 14 of the Convention.

6. A preliminary issue raised in the proceedings was whether there was an alternative remedy to judicial review such that judicial review of the Home Secretary's decision to seek an order proscribing Palestine Action should, as a matter of discretion, be refused. The Home Secretary contended that the alternative remedy was the right of appeal to the Proscribed Organisations Appeal Commission (POAC) against a refusal to remove an organisation from the list at Schedule 2 to the 2000 Act (i.e. a decision to refuse to "deproscribe" that organisation). Chamberlain J and the Court of Appeal both concluded that the existence of the right to appeal to POAC did not have that consequence.
7. The decision of the Court of Appeal rested primarily on its analysis of the scheme established by Part II of the 2000 Act and its conclusion that a material distinction should be drawn between a decision by the Home Secretary in the exercise of her power under section 3(3) of the 2000 Act to proscribe an organisation as an organisation concerned in terrorism, and any subsequent decision by the Home Secretary to refuse an application to deproscribe that organisation in exercise of her power under section 4 of the 2000 Act. Where an application for deproscription is refused the applicant has a right of appeal to POAC under section 5 of the 2000 Act. Such an appeal must be decided by POAC applying "the principles applicable on an application for judicial review". There is then a further right of appeal from POAC to the Court of Appeal (see section 6 of the 2000 Act).
8. The Court of Appeal's conclusion was that the deproscription process in the 2000 Act was not intended to be a means of challenging the initial decision to proscribe. There was, therefore, no statutory procedure for challenging a decision to proscribe an organisation and no alternative remedy to judicial review of such a decision. The court summarised its reasoning at paragraph 56 of its judgment as follows:

"In our judgment, the process of applying for deproscription, and an appeal against a refusal, is intended to deal with another situation. It is most obviously, though not exclusively, a means of bringing proscription to an end when circumstances have changed. An organisation may well have been an appropriate candidate for inclusion in the list of proscribed organisations at the time when the order adding it to the list of such organisations was made. However, circumstances may change, and the organisation may cease at some stage to be involved in terrorism.

That explains why an organisation or an affected person may wish to apply for an order removing the organisation from the list of proscribed organisations. That explains why convictions may only be challenged in respect of the period on and after the date at which it should have been recognised that the organisation should no longer be proscribed. It may be that an applicant may advance the fact that the organisation should not have been proscribed in the first place as a ground for deproscription. The application is, however, for an order removing the organisation from the list. It is not an application challenging the order adding the organisation to the list. Put simply, the process in section 4 and 5 is concerned with whether an organisation should continue to be proscribed. It is not intended to be a means of challenging the initial decision to proscribe and does not provide for the removal of the consequences of an initial decision to proscribe an organisation.”

- (ii) *The power to proscribe under the 2000 Act and the consequences of proscription*
9. The consequence of the decision of the Court of Appeal is that the focus of this challenge is on the Home Secretary’s use of her power to proscribe.
 10. By section 3 of the 2000 Act the Home Secretary may proscribe an organisation if she believes the organisation is concerned in terrorism. “Concerned in terrorism” is defined at section 3(5) of the 2000 Act:

“For the purposes of subsection (4) an organisation is concerned in terrorism if it –

 - (a) commits or participates in acts of terrorism,
 - (b) prepares for terrorism,
 - (c) promotes or encourages terrorism, or
 - (d) is otherwise concerned in terrorism.”
 11. “Terrorism” is defined at section 1 of the 2000 Act as the “use or threat of action” when the use or threat is “designed to influence the government ... or to intimidate the public or a section of the public” and “is made for the purpose of advancing a political, religious, racial or ideological cause”. “Action” is also a defined term. By section 1(2) of the 2000 Act (so far as is material for present purposes) action must involve either “serious violence against a person” or “serious damage to property”.
 12. Any decision to proscribe an organisation must be made by the procedure specified in section 123(4) of the 2000 Act. The Home Secretary must lay an order before Parliament which takes effect only when approved by resolution by each House of Parliament (pursuant to an affirmative resolution procedure).
 13. Proscription under the 2000 Act is an event defined by its consequences. Three offences in Part II of the 2000 Act are a direct consequence of proscription. By section 11 of the 2000 Act it is an offence to belong, or profess to belong, to a proscribed organisation. By section 12 of the 2000 Act it is an offence to invite support for a proscribed organisation (other than the provision of money or property, which is not an offence

under section 12 but is an offence under section 15 of the 2000 Act). The offence under section 12 includes expression of “an opinion or belief that is supportive of a proscribed organisation” when what it is said recklessly “as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation”. By section 12, it is also an offence to arrange a meeting that is to support a proscribed organisation, further its activities, or be addressed by any person who belongs or professes to belong to a proscribed organisation. By section 13 of the 2000 Act it is an offence to wear any clothing in public or display any article in public in such a way “as to arouse reasonable suspicion that [the person] is a member or supporter of a proscribed organisation”.

14. There are further consequences of proscription in respect of property. Two definitions are important for this purpose. First, by section 1(5) of the 2000 Act, action taken “for the purposes of terrorism” includes “action taken for the benefit of a proscribed organisation”. Secondly, by section 14 of the 2000 Act the definition of “terrorist property” includes “money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation)”. Taken together these definitions ensure that the offence at section 15 of the 2000 Act concerning fundraising, the offence at section 16 of the 2000 Act relating to the use and possession of property for the purposes of terrorism, the offence at section 17 of the 2000 Act concerning arrangements for the provision of funding for the purposes of terrorism and the offence at section 18 of the Act which is headed “money laundering”, and concerns retention or control of property on behalf of another when that property is terrorist property, all apply to the property of proscribed organisations.

(iii) *Palestine Action*

15. Although the claimant has filed several witness statements and exhibits in support of her application for judicial review, that evidence provides surprisingly little information about Palestine Action as an organisation.
16. Palestine Action was founded in 2020. The claimant was one of its co-founders. In her evidence, the claimant describes Palestine Action’s purpose in a number of different ways. In her first statement she states that Palestine Action is:

“...a direct action protest group aimed at preventing military targets in the UK from facilitating gross abuses of international law.”

In her second statement the claimant says:

“Palestine Action’s aim is to take direct action against Israel’s arms trade in Britain and to stop the complicity of corporate actors in atrocity crimes.”

She also refers to a statement on Palestine Action’s website which states:

“Palestine Action targets corporate enablers of the Israeli military-industrial complex and seeks to make it impossible for these companies to profit from the oppression of Palestine.”

The main target of Palestine Action’s activities in the United Kingdom is Elbit Systems UK Limited (“Elbit”). The claimant states that “stopping Elbit” is Palestine Action’s “main target”.

17. Elbit is a defence technology company. With its subsidiaries, Elbit operates at 16 sites in the United Kingdom. Elbit is itself a subsidiary of Elbit Systems Limited, an Israeli-based defence contractor. Elbit Systems Limited is Israel’s largest military manufacturer and is a major supplier of military equipment to the Israel Defence Forces. It is clear that Palestine Action takes its objective of “stopping Elbit” seriously and interprets it widely. Palestine Action’s direct action is directed at Elbit’s premises across the United Kingdom. It is also directed at any other company or organisation considered by Palestine Action to enable Elbit’s business in the United Kingdom. Examples include banks, insurance companies and landlords. The National Police Co-ordination Centre is a cross-constabulary organisation which provides intelligence briefings to police forces. The information provided by that organisation is that Palestine Action has undertaken 385 direct actions since 2020. In substance, “stopping Elbit” is an attempt by Palestine Action to close the company down and prevent its parent company, Elbit Systems Limited, from operating in the United Kingdom or being assisted by any other business that operates here.
18. The extent and nature of Palestine Action’s membership and organisation is largely unexplained. A page on Palestine Action’s website is headed “Newsletter”. The “Newsletter” invites people to “Join Palestine Action”. The claimant’s evidence explains Palestine Action’s social media presence but does not explain how many have taken up the invitation to join Palestine Action unless this is the same cohort as the 20,000 people who are said to be on the organisation’s mailing list. Those who do fill in the “Join Palestine Action” form are asked to state if they are “interested in taking direct action against Israel’s arms trade” and whether they have “taken part in a Palestine Action direct action workshop”. The claimant’s evidence does not explain how many people have signed up to take direct action or to receive training.
19. Information about how Palestine Action is organised and run is also sparse. The claimant describes Palestine Action’s organisation as “grassroots, non-hierarchical” and as having “no formal structure”. The absence of a “formal structure” however is not the same as the absence of any structure at all. The claimant does not explain her own role in the organisation, other than as a spokesperson, nor does she explain the extent to which Palestine Action prepares for, co-ordinates, or assists the operations undertaken by its members. Some emphasis was placed on the fact that there is no need to be a member of Palestine Action to act in the name of the organisation. This is a point made on the website page that invites people to join the organisation and it is a point made in the “Underground Manual” published on the Palestine Action website. We refer further to this Manual and its contents at paragraph 24 and following below. It is possible, up to a point, that Palestine Action is a form of loosely structured organisation that permits people to act independently or as a “franchise” under cover of Palestine Action’s “brand”. It is not plausible that this is the whole story. It is entirely unlikely that an organisation committed to achieve an objective through direct action would do nothing to direct that action to its best effect and would have no structure to promote and guide its direct action.
20. A further matter linked to this concerns Palestine Action’s finances. The claimant’s evidence refers to Palestine Action raising funds through its website, from individual

donations, and from selling merchandise. She gives no explanation about how those funds are used. Given the objectives of the organisation however, it is a reasonable inference that the major part of its funds are directed to supporting direct action, adding further support to the point made above, that Palestine Action's organisation, even if "non-hierarchical", provides direction and support to its campaign of direct action.

21. The general form of Palestine Action's public actions is well known. What Palestine Action refers to as "direct action" comprises for the most part various types of criminality including acts of criminal damage such as spray painting, damaging buildings or other property and destroying or attempting to destroy property. The submission for the claimant is, in substance, that these actions amount to no more than acts of protest that are legitimate in a democratic society. In this vein, the claimant contends that Palestine Action's campaign of direct action prior to proscription was in the tradition (by way of example) of Gandhi's campaign against the Indian Salt Act 1882, or the civil rights movement in the United States of America in the 1950s and 60s. The submission rests on an assumption that direct action undertaken by Palestine Action was synonymous with civil disobedience. This is the premise for the general contention made by the claimant that the Home Secretary's decision to proscribe Palestine Action was an "extreme" decision "repugnant to the traditions of the common law".
22. The premise for this contention is false. In his judgment in *Cuadrilla Bowland Limited v Persons Unknown* [2020] EWCA Civ 9, [2020] 4 WLR 29, Leggatt LJ explained what civil disobedience was:

"97. Civil disobedience may be defined as a public, non-violent, conscientious act contrary to law, done with the aim of bringing about a change in the law or policies of the government (or possibly, though this is controversial, of private organisations): see e.g., John Rawls, *A Theory of Justice* (1971) p. 364. Where these conditions are met, such acts represent a form of political protest, both in the sense that they are guided by principles of justice or social good and in the sense that they are addressed to other members of the community or those who hold power within it. The public nature of the act – in contrast to the actions of other law-breakers who generally seek to avoid detection – is a demonstration of the protestor's sincerity and willingness to accept the legal consequences of their actions. It is also essential to characterising the act as a form of political communication or address. Eschewing violence and showing some measure of moderation in the level of harm intended again signal that, although the means of protest adopted transgress the law, the protestor is engaged in a form of political action undertaken on moral grounds rather in mere criminality."

These observations resonate with what the courts have said on other occasions. See for example Lord Hoffman's observations in *R v Margaret Jones and others* [2006] UKHL 16, [2007] 1 AC 136 at paragraphs 84 to 89.

23. The core hallmarks of civil disobedience, namely the objective of seeking a change in the law or government policy, an approach to law breaking that is characterised by

restraint and acceptance of the legal consequences of their actions, are emphatically not the hallmarks of Palestine Action's campaign. Its campaign is intended to close down the operations of a company pursuing a lawful business. The campaign has not been pursued with restraint. The wide range of targets is significant. It lays bare that Palestine Action's campaign and pursuit of criminal damage is designed to intimidate the persons and businesses targeted so they end their commercial relationships with Elbit. Palestine Action is not engaged in any exercise of persuasion, or at least not the type of persuasion that is consistent with democratic values and the rule of law.

24. In this context, the content of Palestine Action's Underground Manual published on its website in late 2023 is revealing. The Palestine Action website provides opportunities for training, referring to "Direct Action Training Days" and to "Online Crash Courses". The claimant has provided no evidence of the nature of the training provided through these courses or the scale of Palestine Action's training programmes. The Underground Manual however provides an insight both into the nature of the direct action that Palestine Action promotes and the risks that are likely to arise in consequence. The Underground Manual is aimed at those who have signed up as members of Palestine Action and those who, though not "members", are attracted to the possibilities and opportunities this type of action presents. The Underground Manual emphasises the importance of covert action. Members of the public reading it are encouraged to form "cells" of "trusted people". They are encouraged and told how to take security precautions when communicating, when using the internet, and when surveying "target" sites. The Underground Manual includes advice on how to avoid being identified or arrested and how to destroy incriminating material. The Underground Manual is also a source of advice. Within it there is a link to a list of suggested targets. It also refers to "a list [on the Palestine Action website] of secondary and primary targets who enable and profit from the Israeli weapons industry in Britain". Under the heading "Plan your action" the Underground Manual advocates "creativity". It says:

"If your inexperienced it's best to start simple and build your way up. Dream up crazy ideas in your cell, remember that your action is to destrupt, damage or destroy your target". [sic]

The Underground Manual then refers to paint spraying. It recommends "smashing stuff ... with an efficient sledgehammer in your hand" as something that is "very quick" and can cause "quite a bit of damage". It suggests targeting expensive equipment or blocking drains with concrete and recommends "breaking in" and damaging contents as "obviously a very effective tactic". The Underground Manual encourages those involved to record their actions so Palestine Action can publicise them and then contact the cell again to suggest other targets and pass on "tips and tricks".

25. It is plain then that through the Underground Manual, Palestine Action encourages its members and others who align with it to plan and cause damage to property. There is no suggestion of restraint or proportionality. On the contrary, and entirely consistent with its objectives, Palestine Action encourages the causing of more, rather than less harm.
26. The claimant says in her evidence that the Underground Manual is written "in a deliberately dramatic and tongue-in-cheek way". That is as may be. The style in which the Underground Manual is written however neither hides nor diminishes its significance. It contains an unmistakable invitation to individuals to group together to

commit acts of criminal damage. This is not limited to symbolic acts. Palestine Action encourages those who read the Underground Manual to “be creative” and to “disrupt damage or destroy” targets without restraint.

27. This is significant. Anyone who follows the Underground Manual, and damages property, particularly if equipped with an “efficient sledgehammer”, runs the risk that something worse will happen. That risk is all the greater, because the Underground Manual encourages everyone to take matters into their own hands.
28. There is a further point. As we have said, the evidence from the National Police Co-ordination Centre is that Palestine Action has conducted 385 actions. The claimant relies heavily on the fact however that by the time the Home Secretary made her decision to proscribe, only three incidents were assessed to have resulted in “serious damage to property” that amounted to “action” of the type referred to in section 1(1) of the 2000 Act, capable of comprising an act of terrorism. These incidents were the incident in 2022 at the premises of Thales SA in Glasgow; the incident in June 2024 at the premises of Instro Precision in Kent; and the incident in August 2024 at the Elbit premises in Bristol. All three incidents were referred to by the Home Secretary in her statement to Parliament on 23 June. The (implicit) suggestion appears to be that these three incidents were outliers both as to scale and extent, and were not therefore indicative of Palestine Action’s activities. That is not an inference we are able to draw, having regard to the absence of evidence from the claimant about Palestine Action’s organisation and structure or the way in which, or the extent to which Palestine Action planned these incidents or how this differed from the way in which it planned or executed any of its other actions. Absent such evidence it is difficult to know whether those three incidents were genuine outliers or whether they were events at the end of a spectrum of activities, the whole of which Palestine Action fully embraces.
29. The claimant in her case in these proceedings has sought to portray Palestine Action as a “non-violent” organisation. This is not a sustainable proposition. It rests on the premise that damage to property, regardless of extent, does not involve the use of violence. That is a view that many would struggle to comprehend, and we for our part are unable to accept, especially when such damage goes further than the merely symbolic. The proposition also ignores the real risk of injury (to members of the public) which may occur when individuals go equipped with sledgehammers to do damage to property as Palestine Action suggests they should do, and are intent at the same time on avoiding detection.
30. It follows from what we have said that the picture the claimant seeks to paint of an ordinary protest group engaged in activities that fall within the well-established tradition of peaceful protest is not an accurate picture. It also follows that the starting point for any consideration of the legality of the Home Secretary’s decision to proscribe Palestine Action is significantly more complicated than the submission for the claimant would otherwise suggest.

(iv) The Home Secretary’s decision to proscribe

31. The Home Secretary’s statement to Parliament that she had decided to proscribe Palestine Action was made, as we have said on 23 June 2025, shortly after the incident in which three Palestine Action activists broke into RAF Brize Norton and damaged two military planes with spray paint. The Home Secretary’s decision to proscribe

however, which appears from the documents to have been made no later than 20 June 2025, had been under consideration since the end of 2024.

32. Jonathan Sinclair is the Director, National Security in the Home Office's Homeland Security Group. In a witness statement made in these proceedings, he states that, on 9 December 2024, the Home Secretary received advice on organisations that could be considered for proscription, including Palestine Action. On 10 February 2025, the Home Secretary asked that the candidate organisations for proscription, including Palestine Action, be considered by the Proscription Review Group, a cross-departmental group. Those represented on the Proscription Review Group included "Counter Terrorism Policing" (CTP) which comprises specialist police officers from many police forces.
33. In anticipation of the Proscription Review Group meeting:
 - (1) The Joint Terrorism Analysis Centre (JTAC) produced a report dated 7 March 2025 (the JTAC assessment). JTAC comprises counter-terrorism experts from the United Kingdom intelligence agencies, police forces and government departments;
 - (2) CTP produced the "General Report – Palestine Action" (the CTP report) dated 5 March 2025 together with a letter dated 6 March 2025;
 - (3) The Foreign Commonwealth and Development Office provided an assessment dated 11 March 2025;
 - (4) A community impact assessment dated 6 March 2025 was prepared by the Department of Housing, Communities and Local Government, amongst others.
34. In summary, JTAC concluded that Palestine Action met the requirements under section 3(5) of the 2000 Act to be an organisation concerned in terrorism:
 - (1) Although most of its activity could not be classified as terrorism within the definition in section 1 of the 2000 Act, JTAC assessed that Palestine Action had "commit[ted] or participate[d] in acts of terrorism" to the extent of the attacks at Thales, Glasgow on 1 June 2022, at Instro Precision (a subsidiary of Elbit) in Kent on 17 June 2024, and at Elbit in Bristol on 6 August 2024. JTAC noted that those participating in the Bristol attack had "entered the [Elbit] warehouse, using weapons including sledgehammers, axes and whips" and "during the attack two responding police officers and a security guard were assaulted and suffered injuries. One police officer had been assaulted with a sledgehammer and sustained a serious back injury";
 - (2) Palestine Action prepared for terrorism by publishing the Underground Manual which JTAC concluded provided "... practical advice and advocates for serious property damage" and could "increase the capability of cells to conduct actions constituting preparation for terrorism";
 - (3) Palestine Action promoted or encouraged terrorism because it had "publicised the 6 August terrorist attack [at Elbit in Bristol] and celebrated its perpetrators" referring to them as the "Filton 18" and "as political prisoners" and encouraged the public to send messages of support to them. JTAC noted that Palestine Action had not published video footage of the assaults that had occurred, only of the damage to property "consistent

with its previous practice”. JTAC also stated that Palestine Action had “shared media relating to further incidents of property damage which JTAC assesses to have been carried out in accordance with [Palestine Action’s] political cause”;

(4) Palestine Action continued to conduct direct action activities and in the next 12 months “... will conduct further activity constituting serious property damage in an act of terrorism”.

35. The CTP report also referred to Palestine Action’s direct action activity. Particular reference was made to the attacks at Bristol and in Kent, which at that time were the subject of ongoing police investigations. The report considered the “operational impact of proscription” by reference to what it referred to as the “limitations” of the legislation that applied absent proscription and the “benefit” of proscription, namely: the criminal offences under sections 11, 12 and 13 of the 2000 Act, stating that “... the availability of these additional ... offences would increase prevention and disruption opportunities against those subjects who would continue to engage with [Palestine Action] post proscription”; and the provisions in the 2000 Act that defined terrorist property as including the resources of a proscribed organisation and defined action “for the purposes of terrorism” as including action for the benefit of a proscribed organisation.
36. The Proscription Review Group met on 13 March 2025. The evidence filed by the Home Secretary in these proceedings includes a note summarising the discussion on that occasion. So far as material for present purposes the following matters emerge. First, the Proscription Review Group considered whether Palestine Action was “concerned in terrorism” as defined in section 3(5) of the 2000 Act. It concluded that Palestine Action committed or participated in acts of terrorism relying on the JTAC assessment of the three attacks in Glasgow, Kent and Bristol. The Proscription Review Group also concluded, again by reference to the JTAC assessment of the Underground Manual, that Palestine Action prepared for terrorism. The Proscription Review Group further concluded, again by reference to the JTAC assessment, that Palestine Action promoted or encouraged terrorism.
37. The Proscription Review Group then considered the “exercise of discretion”. By section 3(3) and (4) of the 2000 Act, if the Home Secretary believes an organisation is concerned in terrorism she has a power not a duty to proscribe. The Home Secretary has a long-standing policy in respect of the exercise of the power, first stated in Parliament when the 2000 Act was before it as a Bill. The present statement of that policy, so far as material, provides as follows:

“What is a proscribed organisation?

Under the Terrorism Act 2000, the Home Secretary may proscribe an organisation if they believe it is concerned in terrorism, and it is proportionate to do. ...

...

What determines whether proscription is proportionate?

If the statutory test is met, the Home Secretary will consider whether to exercise their discretion to proscribe the organisation.

In considering whether to exercise this discretion, the Home Secretary will take into account other factors including:

- [1] the nature and scale of the organisation's activities
- [2] the specific threat that it poses to the UK
- [3] the specific threat that imposes to British Nationals overseas
- [4] the extent of the organisation's presence in the UK
- [5] the need to support other members of the International community in the global fight against terrorism."

[numbers in square brackets added]

38. When considering discretionary factor [1], the Proscription Review Group considered (1) the matters that had led it to conclude that Palestine Action was an organisation concerned in terrorism; and (2) a further JTAC assessment that

"...over the next 12 months [Palestine Action] will conduct further activity constituting serious property damage in an act of terrorism".

39. The Proscription Review Group then considered "additional discretionary factors" namely:

(1) that proscription would provide "significant disruptive benefits beyond the current policing powers";

(2) that proscription "would be proportionate to support police efforts to mitigate the threat posed and would discredit [Palestine Action's] brand and its aims to radicalise others to engage in serious high-level activity";

(3) the impact of Palestine Action's activity "on wider UK defence equities, including UK efforts to support Ukraine";

(4) that proscription could place a burden on the police to enforce the offences at sections 11-13 of the 2000 Act;

(5) that the severe penalties for the offences under sections 11-13 of the 2000 Act would "deter rather than embolden individuals"; and

(6) that proscription might undermine criminal proceedings arising from the attacks in Kent and Bristol.

40. The note of the meeting recorded the Proscription Review Group's recommendation as follows:

"The PRG unanimously concluded that JTAC's assessment offers a basis on which the Home Secretary can hold a reasonable belief that based on its activity in the UK, Palestine Action is

currently concerned in terrorism. The PRG concluded that the discretionary considerations weigh in favour of proscription and agreed that a robust comms strategy would be required to support a decision to proscribe, including sharing more detail on [Palestine Action's] terrorist activity in the public domain."

41. The recommendation of the Proscription Review Group was taken up in a written submission to the Home Secretary dated 26 March 2025, disclosed in these proceedings.
42. The submission first provided advice on the legal requirements for a decision to proscribe. The following was at paragraph 3 of the submission:

"Under section 3 of the Terrorism Act 2000 (TACT), you (Home Secretary) may proscribe an organisation if you believe it is concerned in terrorism. That belief must be reasonable. You have discretion whether or not to proscribe (see Annex A for more detail)."

[bold type as in the original]

So far as concerns the exercise of the discretion to proscribe, paragraph 3 of Annex A to the submission stated as follows:

"If you (Home Secretary) decide the statutory test is met (i.e. believe the organisation to be concerned in terrorism), you then need to consider whether to exercise your discretion to proscribe the organisation. Having discretion means you are not required to proscribe an organisation that meets the statutory test and you may choose not to do so. In exercising your discretion, you should have regard to the following factors, which were set out to Parliament during the passage of TACT 2000, as well as any other relevant factors (including whether the circumstances justify the interference that proscription would have with the rights of those who are members of, or support the group, specifically ECHR Articles 10 (freedom of expression) and 11 (freedom of association)):

- the nature and scale of an organisation's activities;
- the specific threat that the organisation poses to the UK;
- the specific threat that the organisation poses to British nationals overseas;
- the extent of the organisation's presence in the UK; and
- the need to support other members of the international community in the global fight against terrorism"

[bold type as in the original]

43. The submission document then considered, on the facts then known, the application of the "concerned in terrorism" test and the question of the Home Secretary's "discretion".

When dealing with the former, the submission followed the reasons and conclusions set out in the JTAC document and the note of the Proscription Review Group meeting, both of which were appended to the ministerial submission. The part of the ministerial submission dealing with the “discretionary considerations” included the following:

“18. The PRG unanimously agreed that the discretionary considerations weigh in favour of proscription. [Palestine Action] is responsible for an escalatory campaign of direct action across the UK that has crossed the threshold into terrorism. Proscription would provide law enforcement with additional levers to disrupt [Palestine Action’s] operations and critical infrastructure, operate overtly and use media platforms to project legitimacy and potentially radicalise people to its cause.

...

Discretionary factors – detail

21. In discussing the nature and scale of [Palestine Action’s] activity, the PRG noted the evidence in JTAC’s assessment ... and CTP’s report... that [Palestine Action’s] intent and targets have broadened; its activity has increased in its frequency and seriousness.

22. [Palestine Action] have been responsible for at least three incidents (Bristol, Kent, Glasgow) that involve serious damage to property amounting to terrorism, and [Palestine Action] members have shown a willingness to use serious violence against individuals.

23. Evidence collected through police investigations indicates [Palestine Action] members have intended to further escalate the seriousness of the activity.

24. The PRG also noted [Palestine Action’s] intentions to radicalise certain individuals into their cause. CTP highlighted that [Palestine Action] has openly promoted its cause and direct action methods on a podcast (which included promoting a strategy of extensive criminal damage in order to achieve a jury trial), and the police outlined their retrieval of investigatory evidence indicating an individual planned to enter prison on remand in order to radicalise the prison population.

25. [Palestine Action’s] social media following is significant and there is a core of [Palestine Action] members that have, and are willing to, conduct what CTP reported [Palestine Action] themselves describe as ‘high level’ action.

26. The PRG also noted the impact of [Palestine Action’s] activity on individuals, organisations and the UK Government’s strategic defence aims. Defence companies and

Barclays have separately reported that individuals have experienced abuse, intimidation, and fear for personal safety while at work. Organisations have reported a financial impact from both the cost of damage and the cost of additional security measures. Discussions following the PRG with Ministry of Defence (MoD) officials have confirmed that while the total impact on the UK Defence Industry is low proportion, there is a risk that [Palestine Action] activity could reduce the attractiveness of working in the defence industry; defer [sic] foreign investment in the industry and inhibit the UK's ability to supply partners, including NATO and Ukraine.

...

Operational impact

30. Proscription would enable operational partners to disrupt [Palestine Action's] activity and organisational infrastructure. Proscription would provide law enforcement with additional levers to disrupt [Palestine Action's] operations and critical infrastructure, operate overtly and use media platforms to project legitimacy and potentially radicalise people to its cause.

31. The PRG agreed that targeted financial sanctions against [Palestine Action] or individual members would not provide a sufficient level of disruption. Proscription would set a stronger statement that the Government (and Parliament) consider [Palestine Action] to be terrorist and not a legitimate protest organisation as a result of its actions.

32. Without proscription, [Palestine Action] could continue to operate despite sanctions, with the ongoing risk that it radicalises more people to join and participate in acts of terrorism."

[bold type as in the original]

44. Having considered the 26 March 2025 ministerial submission, the Home Secretary requested further information from CTP. That was provided in a further submission dated 2 April 2025 which noted that Palestine Action's activity had "escalated in seriousness" in the previous 18 months. A letter from the Permanent Secretary to the Home Secretary dated 14 May 2025 stated that the Home Secretary had accepted the recommendation to proscribe Palestine Action and wanted to proceed as soon as possible. However, an order for proscription was not sought as quickly as anticipated. The proscription process came to be paused when, at the end of May 2025, the Home Secretary requested information on Palestine Action's activities since the attack at Bristol in August 2024 and JTAC's opinion on Palestine Action.
45. That further information was provided in a further ministerial submission dated 4 June 2025 and documents attached to it. The submission reported that since August 2024 Palestine Action had been responsible for 158 "direct action events", 28 of which had

caused significant damage to property (i.e. either events where repair costs exceeded £50,000 or events that had required significant police presence). In the course of the direct action events 159 arrests had been made. The submission stated that the businesses affected by the direct action events were “consistent with [Palestine Action’s] typical operating model”, including Elbit, its subsidiaries, and companies that provided it with insurance or financial services. This conclusion was also reflected in the JTAC assessment annexed to the ministerial submission. That assessment referred to “coordinated direct action” i.e., attacks on a number of sites all on the same day, and noted that the tactics remained “typical of the group, including lock-ons, occupations, blockades and vandalism (most often damaging windows and spray paint)”. On use of the power to proscribe the submission stated as follows (underlining and bold type as in the original):

“11. As set out in the proscription advice of 26 March, the PRG unanimously agreed that [Palestine Action] is currently concerned in terrorism with three of the four criteria of the statutory test satisfied An organisation only needs to satisfy one criterion for you (Home Secretary) to reasonably believe it is concerned in terrorism. Not all of the groups on the list of proscribed organisations will have committed terrorist attacks, some may not have become involved in preparing for terrorism either having been proscribed solely for their involvement in promoting and encouraging terrorism. The PRG agreed that [Palestine Action] has been responsible for committing three terrorist attacks; [Palestine Action] is involved in preparing for terrorism (including through the distribution of its Underground Manual which provides practical advice to members on committing future attacks); and [Palestine Action] continues to promote and encourage terrorism (including through the glorification of the attacks it has committed and the perpetrators of those attacks).

12. As was set out in the proscription advice (26 March), proscription would provide significant benefits to operational partners working to disrupt [Palestine Action’s] activity. Proscription would provide law enforcement with additional levers to disrupt [Palestine Action’s] operation and critical infrastructure, operate overtly, and use media platforms to project legitimacy and potentially radicalise people to its cause.”

46. On 20 June 2025, the Home Secretary confirmed her earlier decision to proscribe Palestine Action. On 23 June 2025 the Home Secretary made the written statement to Parliament set out above at paragraph 3 stating her intention to proscribe Palestine Action and the reasons for that decision. As stated above, the Order was laid before Parliament on 30 June 2025, was made on 4 July 2025, following approval by each House of Parliament, and came into effect on 5 July 2025.

B. Decision

(1) Ground 8. Procedural Fairness

47. The claimant's submission is that before laying the Order in Parliament the Home Secretary was required, at common law, to consult Palestine Action on her proposed decision. The claimant's case is that the obligation on the Home Secretary would have been met had she provided information to Palestine Action along the lines of that set out in the statement she made to Parliament on 23 June 2025. That information, so the submission goes, should have been provided to Palestine Action before any public announcement and the Home Secretary ought to have invited Palestine Action to respond and considered a response before deciding whether to go ahead and seek an Order for proscription.
48. The submission for the claimant that these requirements arose at common law rests in particular on the reasoning of the majority of the Supreme Court in *Bank Mellat v HM Treasury (No.2)* [2013] UKSC 39, [2014] AC 700.
49. In *Bank Mellat*, the court considered the legality of a direction made by HM Treasury in exercise of powers at section 62 of and Schedule 7 to the Counter-Terrorism Act 2008 ("the 2008 Act"). Under those powers the Treasury was permitted to issue directions to any United Kingdom business or person operating in the financial sector in relation to transactions or business relationships they had with people or entities based in a foreign state. Directions could be given only when activities of or in that foreign state gave rise to a risk of terrorist financing, or money laundering activities, or the risk of proliferation of nuclear, biological, or other weapons in that state. When the power to give a direction arises a direction to United Kingdom businesses may impose due diligence requirements, monitoring requirements, reporting requirements, or may require the relevant United Kingdom businesses to limit or cease business with the foreign person entities concerned. The form of the direction in exercise of the powers at Schedule 7 to the 2008 Act is a matter for the Treasury to decide depending on circumstances. Under the 2008 Act any direction given must be made by an Order and approved by affirmative resolution of each House of Parliament.
50. In *Bank Mellat* the Treasury had given a direction to United Kingdom businesses not to participate in any business with Bank Mellat, an Iranian bank. The complaint was that before the direction was made the Treasury ought to have given Bank Mellat the opportunity to respond to allegations that it provided banking services to companies involved in the Iranian Government's nuclear proliferation programme. The 2008 Act was silent on the matter of advance notice and whether opportunity should be given to make representations before a direction was made, but did provide (at section 63) a right of application to a court to set any direction aside.
51. The major part of the majority reasoning in *Bank Mellat* is in the judgment of Lord Sumption. Having referred to the speech of Lord Mustill in *R v Secretary of State for the Home Department ex p Doody* [1994] 1 AC 531, Lord Sumption observed (at paragraph 31) that:

“...unless the statute deals with the point, the question whether there is a duty of prior consultation cannot be answered in wholly

general terms. It depends on the particular circumstances in which each directive is made.”

By “*deals with the point*” Lord Sumption was referring to whether the statute expressly or by necessary implication excluded the obligation to give prior notice and an opportunity to make representations (see his judgment at paragraph 32).

52. On the facts of that case Lord Sumption concluded first that the case was one where the obligation for prior notification and consideration of representations did arise because Bank Mellat was the target of the direction; that the direction “deprived” Bank Mellat of effective use of the goodwill in its English business, and use of its United Kingdom-based assets; that the decision to make the direction rested on matters which Bank Mellat could have disputed; and that there were no practical considerations standing in the way of the obligation. Secondly, and on consideration of the provisions in the 2008 Act (specifically, consideration of the right of access to a court under section 63 and the requirement that directions be made by Orders subject to Parliamentary approval), Lord Sumption concluded that nothing in the 2008 Act served to exclude the obligation to give prior notice and invite representations.
53. In the present case, the claimant further relies on paragraph 179 in Lord Neuberger’s judgment in *Bank Mellat* where he said:

“In my view, the rule is that, before a statutory power is exercised, any person who foreseeably would be significantly detrimentally affected by the exercise should be given the opportunity to make representations in advance, unless (i) the statutory provisions concerned expressly or impliedly provide otherwise or (ii) the circumstances in which the power is to be exercised would render it impossible, impractical or pointless to afford such an opportunity. I would add that any argument advanced in support of impossibility, impracticality or pointlessness should be very closely examined, as a court will be slow to hold that there is no obligation to give the opportunity when such an obligation is not dispensed with in the relevant statute.”
54. The claimant’s overall submission is that in this case the obligation to give advance notice and the opportunity to provide representations was neither excluded by any provision in the 2000 Act nor excluded by any practical consideration.
55. By contrast the submission for the Home Secretary relies heavily on the judgment of the Court of Appeal in *Begum v Secretary of State for Home Department* [2024] EWCA Civ 152, [2024] 1 WLR 4269. That case concerned an order made under section 40(2) of the British Nationality Act 1981 by which the claimant was deprived of British nationality. So far as relevant for present purposes, the claimant contended that the order made was unlawful because she had had no opportunity to make representations before the deprivation decision was made. The Court of Appeal rejected that submission relying on two matters. The first was the legislative purpose of the deprivation power. On this the court said (at paragraph 106, emphasis as in the original):

“at least a main purpose of section 40(2), if not the main purpose is to protect the public from a threat to national security”.

The court was concerned that providing an opportunity to make representations before the decision was taken could frustrate that purpose. The second matter was the right of appeal to the Special Immigration Appeals Commission that arose when a deprivation decision was made on national security grounds. The court described that right of appeal as “distinctive” as it went beyond “merely a judicial review exercise”: see generally at paragraph 109-112.

56. The thread that links both the reasoning and the outcomes in *Bank Mellat* and *Begum* is the six principles stated by Lord Mustill in *Doody*, at page 560D-G. Those six principles may be further distilled. Executive powers provided under statute will be exercised in a manner “fair in all the circumstances”. What fairness requires must depend on the circumstances. The devil is in the detail. Regard must be had to all aspects of the nature and context of the decision being made. While, as Lord Mustill said, “fairness will very often require that a person who may be adversely affected by the decision will have the opportunity to make representations on his own behalf ...”, that is not an invariable rule. The requirements of fairness must be measured in specifics.
57. On consideration of the detail in this case, we do not accept the claimant’s submission that fairness required the Home Secretary to give Palestine Action notice that she was minded to exercise her power to proscribe, to provide such reasons as she could, and to permit Palestine Action to have the opportunity to make representations.
58. The context in which this statutory power exists is a critical consideration. The power to proscribe an organisation rests on the Home Secretary’s belief that it is concerned in terrorism and is, self-evidently, a power that engages the Home Secretary’s responsibility to safeguard national security. A procedure for the exercise of this power is set out in Part II of the 2000 Act, requiring that an order be made by statutory instrument and requiring that the order must have the approval of both Houses of Parliament. The national security context means that a court should be cautious to supplement these procedural requirements. That is particularly so since any decision to require further procedural steps in this case would necessarily apply to all other occasions when the Home Secretary was considering use of the power to proscribe an organisation. There is nothing in section 3 of the 2000 Act to suggest that different procedural requirements could or should arise from case to case; and any such course would remove the certainty and clarity a decision-maker should have when it comes to knowing the conditions for the exercise of a statutory power.
59. In this respect, the present case is very different from the situation before the Supreme Court in *Bank Mellat*. In that case, the Treasury’s power to make directions could arise in a range of circumstances not just circumstances touching on national security. Further, the matters on which directions could be made were broadly framed and concerned only business relationships and commercial transactions, and any direction likely to be made by the Treasury would be tailored to specific circumstances. All these matters no doubt informed Lord Sumption’s conclusion that in that context the existence of an obligation to give prior notice and invite representations could not be answered “in wholly general terms”.

60. A further respect in which the present case differs from the situation in *Bank Mellat* concerns the identity and nature of the person to be consulted. By the time the matter was considered by the Supreme Court it was apparent that the requirement contended for was one to consult a privately-owned commercial undertaking. When it comes to the power to proscribe under 3(3) of the 2000 Act, the situation is likely to be very different. By the time the obligation to give prior notice and seek representations arises the Home Secretary will already have formed, albeit provisionally, a reasonable belief that the organisation to be consulted is an organisation concerned in terrorism. Consultation with such an organisation is not an obvious or natural step. Various considerations might arise.
61. One issue could be the nature and extent of communication that would be consistent with the public interest. Any communication by any Home Secretary with such an organisation would necessarily be guarded. Even if the procedural obligation the claimant contends for existed there could be no question that any part of that obligation would require the Home Secretary to provide any information when it was contrary to the public interest to do so. However, even allowing for that derogation, the practical problem is that drawing the line between information that can be disclosed consistent with the public interest and information that cannot is always a matter of judgement and often a judgement that is very difficult. For this reason, it would be both expected and entirely permissible for any Home Secretary to adopt a precautionary approach were any communication to take place. Moreover, it is entirely conceivable in the context of a power to proscribe organisations considered to be concerned in terrorism that in some cases, and taking a precautionary approach, the Home Secretary might conclude that advance notice of a decision to proscribe could not to be given – i.e., that having regard to the public interest, there was no information that could be disclosed.
62. Another issue could be how the organisation (provisionally) believed by the Home Secretary to be an organisation concerned in terrorism might react to advance notice of proscription. Here too, given the range of situations in which exercise of the power to proscribe could arise, it is not difficult to imagine circumstances in which prior notification might cause the organisation concerned either to take steps to pre-empt the consequences of proscription or, for example, to bring forward activity that might be frustrated by proscription. These matters also weigh in favour of a precautionary approach to whether an obligation to give prior notice and seek representations should exist. In the course of submissions, it was suggested that little or no weight ought to attach to such possibilities because proscription is not (save in cases of urgency, see section 123(5) of the 2000 Act) an instantaneous process. This is not to the point. The fact that the procedure required by the 2000 Act takes some time and happens in Parliament in public, is not a reason to say that any passage of time is a matter of no importance at all.
63. Matters such as these, which arise on a comprehensive consideration of circumstances in which exercise of the power to proscribe an organisation could arise, weigh heavily against the existence of any procedural obligation beyond those on the face of Part II of the 2000 Act.
64. A further weighty practical consideration is how the proposed procedural requirement would work in practice. In *Bank Mellat* the position was relatively straightforward. Bank Mellat was a corporate entity with identifiable management both in Iran and in the United Kingdom. The position for any putative proscribed organisation is likely to

be very different. The power to proscribe is not limited to organisations either based in or with a presence in the United Kingdom, a point that is readily apparent from the list of proscribed organisations at Schedule 2 to the 2000 Act. Further, organisations that may be proscribed may come in many different shapes and sizes. By section 123 of the 2000 Act the term “organisation” is defined in a manner that is deliberately broad being stated to include “... any organisation or combination of persons”. Any putative proscribed organisation may be less than forthcoming about how it should be contacted for the purpose of a consultation exercise. Further, it is plausible, again considering the range of circumstances in which the power to proscribe might fall to be used, to consider that in some circumstances such knowledge as the Home Secretary may have about an organisation’s leadership and location may rest on sensitive intelligence material, the existence of which the Home Secretary might not wish to reveal. All these matters could affect the practice of consultation and for present purposes are therefore material to whether any such obligation exists.

65. Some indication of the practical difficulties that could arise are apparent in the circumstances of the present case, even though that case is a long way from the situation we have just suggested. How and to whom (on behalf of Palestine Action) prior notification could have been given is not clear. The claimant describes herself as a “co-founder” of Palestine Action but expressly states she is “not the leader”. She provides no description of Palestine Action’s organisation other than referring to the existence of “different working groups for different things”. No doubt this lack of information about the leadership or organisation of Palestine Action is intentional and is consistent with the image of a covert organisation that is cultivated in the Underground Manual. Be that as it may, the circumstances of the present case, even if only on a small scale, indicate practical obstacles to any obligation to give prior notice of proscription and seek representations on the matter.
66. Drawing these matters together, comprehensive consideration of the nature and purpose of the power to proscribe and of the likely practical difficulties that would be consequent upon any general obligation to give prior notice and invite representations points only to the conclusion that no such obligation arises. This ground of challenge therefore fails.
67. We would add, only for the sake of completeness, that we have reached this conclusion without reference to the procedure in sections 4 and 5 of the 2000 Act for deproscription applications and appeals against refusals to deproscribe. Given the reasoning of the Court of Appeal at paragraph 56 of its judgment on the preliminary issue in this case, a challenge to a decision to proscribe is discrete from any issue of deproscription. Similarly, the availability of an appeal to POAC against a decision refusing a deproscription application is immaterial to the ground of challenge in this case.

(2) Ground 5. Failure to consider relevant matters

68. The claimant submits that four relevant considerations were disregarded by the Home Secretary:
 - (1) The Home Secretary “failed to have regard to the fact that [Palestine Action] sought to prevent conduct which it (and large sections of the British public) reasonably considered to constitute the aiding and abetting or facilitation of genocide and other serious violations of international law”;

(2) The Home Secretary “failed to consider the adequacy of alternative criminal and civil measures to address any criminal conduct for which [Palestine Action] was responsible”;

(3) The Home Secretary “failed to have regard to the fact that the proscription of [Palestine Action] would have a wider impact on freedom of expression including ... speech in favour of direct action against arms companies supplying military equipment to Israel; and ... acts of low-level direct action and civil disobedience against arms companies by persons not associated with [Palestine Action]”;

(4) The Home Secretary “failed properly to consider the fact that the decision to proscribe [Palestine Action] amounted to differential treatment viz other protest groups using direct action”.

69. As already stated, any decision to proscribe in exercise of the powers in Part II of the 2000 Act falls into two parts: first a decision that the organisation is concerned in terrorism (the condition at section 3(4) of the 2000 Act); and second, a decision to add the organisation’s name to the list at Schedule 2 to the 2000 Act (the power at section 3(3) of the 2000 Act). The latter decision is taken by the Home Secretary in exercise of her discretion. As put, this ground of challenge goes only to the exercise of the discretion.
70. The legal principles relevant to this ground of challenge are well-established. In the exercise of a statutory discretionary power a decision-maker must have regard to any/all matters specified in the statute as relevant considerations. Beyond that, it is a matter for the decision-maker to decide what matters to take account of when exercising the discretionary power, subject to the usual public law requirements of relevance and rationality and subject to any requirement arising from any policy that the decision-maker has chosen to adopt. If, as in this case, the decision-maker has adopted a policy on relevant considerations, that policy should be followed absent good reason not to. The decision-maker must also have regard to matters that are “so obviously material” to the decision that to disregard them would be contrary to the intention of the statute: see *Re Findlay* [1985] 1 AC 318 per Lord Scarman at pages 333G to 334B.
71. This part of the claimant’s case was not the focus of submissions at the hearing and is not the focus of her challenge. It is not a ground of challenge of any substance. As to Part (1) of the Ground it is obvious from the ministerial submissions that when taking her decision, the Home Secretary was well aware of the reasons Palestine Action relied on as justifying its campaign of direct action including damage to property. The remaining parts of this ground ((2) to (4)) collapse into repetition of arguments made in support of Ground 6 (that the Home Secretary failed to apply her policy) and Ground 2 of the challenge (that proscription was contrary to section 6 of the HRA). Each is simply a different way of contending that the claimant should succeed on Ground 2 or Ground 6 because the Home Secretary’s decision amounted to an unjustified interference with Convention rights and was not made in accordance with her policy. Further, Parts (3) and (4) as formulated assume the validity of factual contentions the claimant relies on in support of her case under Ground 2. All this being so, this ground of challenge fails.

(3) *Ground 6. The decision to proscribe was contrary to the Home Secretary's own policy*

72. This ground of challenge also goes to the legality of the Home Secretary's exercise of discretion under section 3(3) of the 2000 Act. As stated above, the Home Secretary has adopted a policy in respect of the exercise of that discretionary power. The policy was first stated when the Terrorism Bill was before Parliament and has remained in materially the same form since. At the time the decision now under challenge was made, the policy on the exercise of the discretion appeared in a "policy paper" dated 27 February 2025 under the heading "What determines whether proscription is proportionate?". The policy is set out above at paragraph 37.
73. During the hearing two points arose on the meaning and effect of the policy. The first concerned the meaning of "proportionate". The policy states that the Home Secretary may proscribe an organisation if it is concerned in terrorism "... and it is proportionate to do", and also contains the section under the side-heading "What determines whether proscription is proportionate?". Both the claimant and the Home Secretary contended the reference to whether proscription was proportionate was a reference to "*Bank Mellat*-style" proportionality" – i.e. to paragraph 20 of Lord Sumption's judgment in that case and the passage in Lord Reed's judgment at paragraphs 68 – 82.
74. We do not consider that this submission properly captures the policy's meaning. The substance of the policy (under the heading "What determines whether proscription is proportionate?") is that the Home Secretary will decide whether to proscribe an organisation taking account of the five stated factors and/or other matters that are relevant. Four of the five factors stated on the face of the policy concern the characteristics of the organisation: its size, the activities it undertakes and the threat the organisation presents. The fifth stated factor engages consideration of foreign policy. In this context, taking those matters into account must mean weighing them against the consequences of proscribing the organisation. Since the objective of proscribing an organisation is that that organisation should cease to exist, the policy requires the Home Secretary to weigh the "benefits" that would achieve, by reference to the five stated factors or other factors of the same nature, against the "cost" of proscription. That cost is the impact of the proscription decision on others, for example in terms of interference with freedom of assembly and freedom of expression and speech and any other interests that are affected by the criminal offences that either arise on proscription or are otherwise brought into play (see above at paragraphs 13 and 14).
75. As a matter of common language this could be described as a consideration of proportionality, an evaluation of whether the objective sought justified applying the means that would achieve it. However, we hesitate to accept that this is, as the parties called it, "*Bank Mellat* proportionality".
76. In *Bank Mellat*, the Supreme Court considered both the application of section 6 of the HRA which imports the proportionality provisions written into each of the qualified Convention rights, including articles 10 and 11, and the application of paragraph 9(6) of Schedule 7 to the 2008 Act. The requirement for legality imposed by paragraph 9(6) is formulated simply by reference to the word "proportionate":

"The requirements imposed by a direction must be proportionate having regard to the advice mentioned in paragraph 1(2) or, as

the case may be, the risk mentioned in paragraph 1(3) or (4) to the national interests of the United Kingdom.”

77. In that case the Supreme Court concluded that proportionality under the HRA required a four-step approach. At paragraph 74 of his judgment Lord Reed stated:

“... it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure’s effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter. ... In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure.”

78. When it came to paragraph 9(6) of the 2008 Act, Lord Reed concluded that three of these four steps had to be considered: see his judgment at paragraphs 77 – 82, in particular at paragraph 82:

“In stipulating that the requirements must be proportionate having regard to the risk, paragraph 9(6) reflects a principle which has roots in the common law: there are a number of cases where administrative acts of an oppressive or penal character have been quashed as being disproportionate ... In the context of legislation enacted in 2008, however, it seems to me that Parliament can be taken to have been aware of the development of a more structured approach to proportionality by United Kingdom courts, in particularly following *de Freitas*, and to have intended that that approach should be applied. I would therefore interpret paragraph 9(6) as stipulating that the requirements must be proportionate to the risk in the sense that they meet the second, third and fourth criteria listed in para 74 ...”

79. However, it is important to note that when it came to paragraph 9(6) of Schedule 7 to the 2008 Act the court was identifying the test that the court itself should apply when scrutinising the legality of a decision. The context of a policy is very different. A policy is a guide a decision-maker provides for herself to inform and structure her own decision-making process. When a policy applies, compliance with that policy is a necessary condition of legality of the decision taken, but not a sufficient condition. Further, reading the reference to “proportionate” in this policy (or for that matter, any other policy) as requiring a decision that satisfied the test a court would apply (as *per* paragraph 82 of Lord Reed’s judgment in *Bank Mellat*) tends to produce odd outcomes. One example is that the Home Secretary could only comply with her policy by reaching the substantive decision a court would consider to be lawful. Thus, compliance with the policy would collapse into a requirement for compliance with the general law and, to that extent the policy would contract-out the decision-maker’s decision to the court. In

the present case, this would mean that Ground 6 of the claimant's challenge would largely collapse into the proportionality part of the Ground 2 HRA challenge. Another example is how, in order to reach her decision, the Home Secretary would go about affording herself the latitude a court could ordinarily afford a decision-maker when applying steps (2) – (4) of the *Bank Mellat* test?

80. Overall, we consider that the better approach is that the requirement in the policy to proscribe an organisation only if it is “proportionate” required the Home Secretary to approach the exercise of her discretion comprehensively: to appreciate the likely consequences of proscribing Palestine Action on its members/supporters and others; to understand the nature and significance of Palestine Action by reference to the five stated factors and/or other relevant considerations; and then to assess the need for proscription.
81. This is the approach we shall apply when considering this ground of challenge. However, even if we are wrong on this matter and the policy required the Home Secretary to apply the *Bank Mellat*-style approach that a court would apply when assessing legality, that would make no difference to the outcome of this case.
82. The second point on the meaning and effect of the policy is the meaning of “activities” as used in the first of the five factors stated on the face of the policy: “the nature and scale of an organisation’s activities”. The suggestion for the Home Secretary is that this was apt to refer to the totality of an organisation’s activities rather than only such activities as amounted to terrorism within the definition in section 1 of the 2000 Act.
83. We disagree. As already said, a decision to proscribe under the 2000 Act requires two conclusions to be reached: the first is that the organisation is “concerned in terrorism”; the second is that as a matter of discretion the organisation should be proscribed. The policy applies at the second stage. Three reasons weigh against the Home Secretary’s submission on this point. First, and since the policy is intended to inform use of the discretion at section 3(3) of the 2000 Act, the policy should be construed consistently with the Act. The power in the 2000 Act is to proscribe organisations because they act in ways that mean they are concerned in terrorism, not because of other activities that fall short of terrorism. The nature and scale of an organisation’s activities ought therefore to concern only those activities that amount to terrorism. Second, the elements of the policy should be construed coherently. Each of the other four factors stated in the policy concerns the consequences of terrorist acts. The activities that comprise the nature and scale must be understood in the same way. Third, the purpose of the policy is clearly to constrain use of the discretion so that not all organisations that meet the concerned in terrorism requirement will be proscribed. This is apparent from the other four stated factors, and this too means that the activities referred to in the first factor are activities that amount to terrorism, not simply any activity that the organisation undertakes.
84. Drawing this together, the policy is an additional qualitative threshold to use of the power to proscribe. The policy requires the Home Secretary to assess the restrictions consequent on proscription of the organisation under consideration and determine whether they are, in a general sense, proportionate to the nature and scale of the threat presented by the organisation, to the extent that it is concerned in terrorism (and not by reference to other activities that it may undertake).

85. The claimant's case under Ground 6 is that the Home Secretary did not apply her policy because she failed to undertake a *Bank Mellat*-style proportionality assessment, failed properly to assess the effect of the five factors stated on the face of the policy, and relied on what were referred to as the "benefits of proscription".
86. For the reasons already given, the policy requires an exercise in proportionality to the extent that it requires a qualitative assessment of an organisation that meets the concerned in terrorism standard, to determine whether it is also an organisation that should be proscribed.
87. The remainder of the claimant's submission on this ground falls into two parts: the approach to consideration of the five factors stated on the face of the policy; and the approach taken as regards "other factors". There is no direct evidence of the Home Secretary's consideration of these matters. Rather, the court is invited to draw inferences from the contents of the documents the Home Secretary considered when making her decision. Two documents evidence consideration of the policy: the note of the Proscription Review Group meeting on 13 March 2025; and the ministerial submission dated 26 March 2025. (There were later ministerial submissions on 2 April 2025 and 4 June 2025. We have considered these documents but neither adds anything material so far as concerns the Home Secretary's consideration of the policy on the discretion to proscribe.)
88. The March 2025 documents show consideration of the five factors stated on the face of the policy. It is apparent that two of those factors were treated as pertinent: the nature and scale of Palestine Action's activities, and the extent of the threat the organisation posed in the United Kingdom. We are satisfied that this approach was appropriate and that the Home Secretary's assessment of those matters as weighing in favour of proscription was reasonably open to her. The submission for the claimant has emphasised that only three of Palestine Action's many actions were assessed to amount to acts of terrorism. That is so, but we are satisfied the Home Secretary was entitled to attach significant weight to any act occurring in the United Kingdom that came within the section 1 definition of terrorism. Similarly, the specific threat presented to the United Kingdom was a matter the Home Secretary was entitled to conclude weighed in favour of proscription. JTAC had assessed that in the 12 months following March 2025, further serious property damage amounting to an act of terrorism would occur in the United Kingdom. This was consistent with the evidence that from the latter part of 2024 the frequency and seriousness of Palestine Action's activities had increased. Further, on this point, the Home Secretary was entitled to attach weight to the risk that Palestine Action's activities would deter development of the United Kingdom defence industry and thereby cause prejudice to the United Kingdom's strategic defence objectives.
89. However, the Home Secretary's approach to "other factors" was not consistent with her policy. As regards "other factors" the theme starting in the CTP report dated 5 March 2025, and running through the documents that followed, was that proscription would be advantageous because it would mean that the offences at sections 11 to 13 of the 2000 Act could be used against any person supporting Palestine Action, and that the presumptions arising from the definitions of "terrorist property" and "for the purposes of terrorism" that adversely affect proscribed organisations could also be applied to Palestine Action. These consequences of proscription were referred to in the note of the Proscription Review Group meeting as providing "significant disruptive benefits beyond the current policing powers being utilised to deal with" Palestine Action. In the

26 March 2025 ministerial submission, the same matters were referred to as “additional levers to disrupt [Palestine Action’s] operations”. Both documents presented this as a key matter in favour of exercising the discretion to proscribe.

90. It is undeniable that the consequences of proscription are as described in the documents, are designed to disrupt proscribed organisations, and in the present case would have that effect on Palestine Action. But so far as concerns the lawful application of the Home Secretary’s policy on the use of the discretion to proscribe, that is not a relevant consideration. That is so notwithstanding that on a proper construction of the policy the Home Secretary does have latitude to decide for herself which matters are appropriate “other factors”. Although such latitude exists it is not unlimited. The Home Secretary’s power to choose which matters are “other factors” must be used consistently with the usual *Wednesbury* principles, including that such “other factors” as are chosen must be consistent with the purpose of the policy.
91. The purpose of this policy is to limit use of the discretionary power to proscribe. Each of the five factors stated on the face of the policy has that effect. Any “other factor” considered when applying the policy must be of the same nature. To fit with the policy any “other factor” need not be unique to the organisation under consideration. Each of the five stated factors is generic, and relevant “other factors” could also be so. But whether generic, or specific to the organisation under consideration, the factor must contribute to explain the particular need to proscribe that organisation above and beyond the necessary belief that the organisation is one that is concerned in terrorism.
92. This conclusion may appear to rest on a very narrow basis – the Home Secretary had, after all, formed the belief that Palestine Action is an organisation concerned in terrorism and in these proceedings the claimant does not challenge that decision. However, this conclusion is a direct and necessary consequence of the policy the Home Secretary has applied to the exercise of her discretion to proscribe such organisations. The purpose of the policy is that not all organisations that meet the concerned in terrorism requirement should be proscribed.
93. Any decision-maker who adopts a policy for a particular purpose is at liberty to disapply or modify that policy in a particular case, but any such disapplication or modification must be express and must be for a sufficient reason. In this case, the Home Secretary’s approach was to apply the policy (a policy of long-standing, dating back to the time the 2000 Act was enacted), without modification.
94. The operational consequences and advantages of proscription is not a factor consistent with the policy for the obvious reason that such consequences and advantages will apply equally to any organisation that could be proscribed – i.e. any and every organisation that meets the requirement to be an organisation concerned in terrorism. In principle the position could be otherwise if in a particular case, by reason of an organisation’s structure, membership, activities or otherwise, the measures in the 2000 Act that are the consequences of proscription would be unusually effective. In such a case, it could be consistent with the policy to regard the operational consequences of proscription as an “other factor”. But that is not the present case. There is no such evidence so far as concerns Palestine Action. Nor in the present case could it be contended that the reliance placed on the consequences of proscription was immaterial to the exercise of the discretion or the application of the policy. Both in the note of the meeting of the Proscription Review Group and in the 26 March 2025 ministerial submission, the

operational advantages are relied on as providing a clear case to use the discretion to proscribe. Each suggests that it is an important matter going to the exercise of the discretion, if not the central consideration in that exercise in that case.

95. The consequence and conclusion of this point is that, notwithstanding the latitude that the policy provides, the Home Secretary's decision to proscribe Palestine Action was not consistent with her policy. The closed material does not affect our conclusion on this ground.
96. The Home Secretary's further submission on this ground was that, applying section 31(2A) of the Senior Courts Act 1981, the court should not as a matter of discretion grant relief on the basis that it is "highly likely" that had the policy been properly applied the decision taken would have been the same. We will consider this submission at the end of this judgment.

(4) Ground 2. Conventions rights

(i) The claimant's case

97. The claimant contends that the proscription decision is unlawful because it is in breach of Convention rights, specifically, articles 10, 11 and/or 14. Article 10 provides:

"(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11 provides:

"(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition

of lawful restrictions on the exercise of those rights by members of the armed forces, of the police or of the administration of the State.”

98. The claimant’s pleaded case also referred to article 9 and article 1 of Protocol 1 to the Convention. However, the latter was removed by amendment and the former was not pursued at the hearing. The primary focus of the pleaded case and the parties’ submissions has been articles 10 and 11, which we will address together, before turning to consider separately the alleged breach of article 14. There can be no room at all for doubt that this proportionality issue is to be decided following the *Bank Mellat* four-step approach.

(ii) *Is proscription a specific measure or a general one?*

99. There was debate before us as to whether we are concerned with the proportionality of a specific or general measure. The Home Secretary seeks to take advantage of the approach to general measures. In *Animal Defenders International v United Kingdom* [2013] EMLR 28, a case concerned with restrictions on broadcasting of paid political advertisements, the Grand Chamber observed:

“108. ... in order to determine the proportionality of a general measure, the court must primarily assess the legislative choices underlying it. ... The application of the general measure to the facts of the case remains, however, illustrative of its impact in practice and is thus material to its proportionality ...

109. It follows that the more convincing the general justifications for the general measure are, the less importance the court will attach to its impact in the particular case...

110. The central question as regards such measures is not ... whether less restrictive rules should have been adopted, or, indeed, whether the state could prove that, without the prohibition, the legitimate aim would not be achieved. Rather the core issue is whether, in adopting the general measure and striking the balance it did, the legislature acted within the margin of appreciation afforded to it ...”

In the same case in the House of Lords (*R (Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15, [2008] 1 AC 1312), Lord Bingham observed at paragraph 33:

“A general rule means that a line must be drawn, and it is for Parliament to decide where. The drawing of a line inevitably means that hard cases will arise falling on the wrong side of it, but that should not be held to invalidate the rule if, judged in the round, it is beneficial.”

100. As Lord Reed explained in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32, [2023] AC 505, at paragraph 14:

“... where there is an *ab ante* challenge to a legislative provision (that is to say, a challenge to the provision in advance of its application to any particular facts), the striking down of the provision is only justifiable if the court is satisfied that it is incapable of being applied in a way which is compatible with the Convention rights, whatever the facts may be. If the legislation is capable of being applied compatibly with the Convention, then it will survive an *ab ante* challenge.”

Consequently, the court will not strike down a legislative provision if it is capable of being operated in a proportionate way in “all or almost all cases”: see also *In re Abortion Services*, at paragraphs 12 – 18; and *Christian Institute v Lord Advocate* [2016] UKSC 51, SC (UKSC) 29.

101. When a decision to proscribe an organisation is made, it automatically follows that the proscription regime will apply. It is a fixed suite of prohibitions and criminal offences, not a list of options from which the Home Secretary had power to pick and choose. The “regime of proscription in Part II of the 2000 Act is integral to the measures that Parliament has considered necessary to combat organisations concerned with terrorism”: *R v Choudary* [2016] EWCA Crim 61, [2018] 1 WLR 695, at paragraph 38. The offences in Part II “enable the state to counter and attack proscribed organisations, the influence that they have on third parties and, ultimately, the threat that they pose to society”: *R v ABJ* [2024] EWCA Crim 1597, [2025] 1 WLR 1909.
102. However, this claim is not concerned with a challenge to any legislative provision. This is not an *ab ante* challenge to the compatibility of the Terrorism Acts, or any of the provisions in those Acts, with Convention rights. The challenge is to a specific, executive decision (albeit one required to be approved by Parliament by affirmative resolution) to proscribe Palestine Action. That is not a general measure. The interference (if any) with Convention rights consequent upon that specific decision is what is required to be justified. It follows that the focus is not primarily on legislative choices; and the importance of considering issues such as whether less intrusive measures could have been adopted without unacceptably compromising the objective is not diminished.

(iii) *The interference with Convention rights consequent on the offences in the 2000 Act.*

103. The starting point for this part of the claimant’s claim is the extent of the interference with Convention rights as a result of the decision to proscribe Palestine Action. That interference is the consequence of the criminal offences that are either (a) expressly contingent on proscription (the offences under sections 11, 12 and 13 of the 2000 Act); or (b) the offences that will be more easily proved through acts undertaken in connection with a proscribed organisation, such as the property and funding offences where the *actus reus* requires proof that what was done was “for the purposes of terrorism” and that requirement is deemed to be met if the act was done for the benefit of a proscribed organisation. We have referred to such offences above at paragraphs 13 and 14 and we do not need to set them out in detail for the purposes of considering this part of the claimant’s claim. The scope of some of those offences has been considered in other litigation. The conclusions in those cases are also material to identifying the extent of the interference with Convention rights. One example is the judgment in *R v*

Choudary (above). There the court considered the offence under section 12(1) of the 2000 Act of inviting support for a proscribed organisation and concluded that support encompassed not only practical or tangible support, but also “intellectual support: that is to say, agreement with and approval, approbation or endorsement of, that which is supported”: see the judgment at paragraph 46. Another example is the judgment in *R v ABJ* (also above). In that case the Court of Appeal, considering the offence under section 12(1A) of the 2000 Act of expressing an opinion or belief supportive of a proscribed organisation, concluded: (a) that the offence did not require proof that at the time the defendant expressed the opinion or belief he knew that the organisation in question was proscribed; and (b) that the ingredients of the offence satisfy the proportionality requirement so that if they are made out, conviction would not breach the defendant’s rights under article 10.

104. We are satisfied that, taken together, the criminal law consequences of proscription are very significant.
105. So far as concerns article 11, the offence under section 11 of the 2000 Act is a clear interference with the right of freedom of association with others. A person cannot be or profess to be a member of Palestine Action. The section 12 offence on arranging etc. meetings, whether public or private is also an interference with article 11 rights. The section 13 offence that, among other matters, prohibits wearing or displaying articles in such a way as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation is also directed to membership of a proscribed organisation and therefore limits the right of freedom of association. Overall, the interference with article 11 rights is very significant. Since the purpose of proscription is to eliminate the organisation concerned, it could hardly be otherwise. The interference that exists applies to everyone, anyone who might wish to associate with Palestine Action, and not just those who, at the point of proscription, were members or supporters.
106. The offences under section 12(1) and (1A) and (3) of the 2000 Act entail significant interference with the article 10 right to receive and impart information. A person cannot “invite support” for Palestine Action or express an opinion or belief “supportive” of Palestine Action if he is reckless whether the person hearing it will be encouraged to support Palestine Action. Nor can a person address a meeting to encourage support for Palestine Action or further its activities. The offence under section 13 of the 2000 Act also impinges on article 10 rights. These interferences too apply to everyone. Taken in the round, these comprise a very significant interference with the right to free speech.

(iv) Preliminary matters

107. As to the scope of interference with these Convention rights, two in principle submissions were made for the Home Secretary. The first was that violent protest does not fall within the scope of Convention rights; the second relied on article 17 of the Convention, the provision that makes clear that activity intended to destroy the rights and freedoms provided under the Convention cannot itself claim the protection of Convention rights.
108. As to the first of these points, it is settled law that Convention rights do not afford any protection to violent or non-peaceful protest. In *Attorney General’s Reference (No 1 of 2022)* [2022] EWCA Crim 1259 [2023] KB 37, Lord Burnett CJ stated (at paragraph 102 of the judgment of the court):

“This review of Strasbourg authority has concerned cases of protest or political expression aimed at governments and involving public property rather than private property. In the context of public property, damage inflicted in a violent or non-peaceful manner attracts no Convention protection against prosecution and conviction; and nor does causing significant damage because its infliction could not sensibly be thought of as peaceful, alternatively prosecution and conviction would necessarily be proportionate. Moreover, there is no “clear and constant” jurisprudence of the Strasbourg court that suggests that damaging private property during protest attracts the protection of the Convention in the first place or, in the second, that prosecution and conviction for damaging private property would be disproportionate even if it did. That is unsurprising because in addition to the usual questions about the applicability of a Convention right and then proportionality the AIP1 rights of the non-state owner are in play. We find it difficult to imagine that the Convention could ever be used to avoid conviction for damaging private property, even if very rarely it might be when considering damage to public property which is not significant. ...”

109. However, that does not provide the Home Secretary with the answer to the claimant’s claim. The interference with Convention rights that needs to be justified does not comprise the prohibitions so far as they affect Palestine Action’s ability to persist (for example) in its campaign of undertaking and encouraging damage to property. Rather, what needs to be justified is the restriction on actions comprising peaceful protest, consistent with Convention rights, under the Palestine Action banner.

110. The position so far as concerns the article 17 submission is essentially the same. Article 17 provides:

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

111. In *Perinçek v Switzerland* (2016) 63 EHRR 6 the Grand Chamber stated:

“113. In *Ždanoka v Latvia*, having reviewed the preparatory work on the Convention, the Court said that the reason why art.17 had been included in it had been that it could not be ruled out that a person or a group of persons would attempt to rely on the rights enshrined in the Convention to derive the right to conduct activities intended to destroy those rights.

114. However, art.17 is, as recently confirmed by the Court, only applicable on an exceptional basis and in extreme cases. Its effect is to negate the exercise of the Convention right that the applicant seeks to vindicate in the proceedings before the Court. In cases

concerning art.10 of the Convention, it should only be resorted to if it is immediately clear that the impugned statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention.”

On the facts, which concerned a criminal conviction for denial of the genocide of Armenians in 1915 and the following years, the Court held there were no grounds to apply article 17.

112. In *Roj TV A/S v Denmark* (2018) 67 EHRR SE8 (an admissibility decision), the Second Section stated:

“30. The purpose of art.17, in so far as it refers to groups or to individuals, is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention; ‘therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms...’ (see *Lawless v Ireland* (1979-80) 1 EHRR 15 at [7]). Although to achieve that purpose it is not necessary to take away every one of the rights and freedoms guaranteed from groups and persons engaged in activities contrary to the text and spirit of the Convention, the Court has found that the freedoms of religion, expression and association guaranteed by arts 9, 10 and 11 of the Convention are covered by art.17...

31. Speech that is incompatible with the values proclaimed and guaranteed by the Convention is not protected by art.10 by virtue of art.17 of the Convention ... The decisive point when assessing whether statements, verbal or non-verbal, are removed from the protection of art.10 by art.17, is whether the statements are directed against the Convention’s underlying values, for example by stirring up hatred or violence, and whether by making the statement, the author attempted to rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it...”

The applicant company had, via television programmes, for four years promoted the terror operation of the Kurdistan Workers’ Party (the PKK), which was listed as a terrorist organisation by the European Union, Canada, the US, Australia and the UK. The Strasbourg Court stated:

“46. ... the one-sided coverage with repetitive incitement to participate in fights and actions, incitement to join the organisation/the guerrilla, and the portrayal of deceased guerrilla members as heroes, amounted to propaganda for the PKK, a terrorist organisation, and that it could not be considered only a declaration of sympathy. In addition, the applicant company had been financed to a significant extent by the PKK ...

47. Consequently, the Court finds that, taking account first of the nature of the impugned programmes, which included incitement to violence and support for terrorist activity, elements extensively examined by the national courts, secondly, the fact that the views expressed therein were disseminated to a wide audience through television broadcasting and, thirdly, that they related directly to an issue which is paramount in modern European society – the prevention of terrorism and terrorist-related expressions advocating the use of violence – the applicant company’s complaint does not, by virtue of art.17 of the Convention, attract the protection afforded by art.10.”

113. The submission on behalf of the Home Secretary in this case is that in circumstances where Palestine Action has been designated a terrorist organisation by the order made pursuant to her decision, any expression of support for, or association with, Palestine Action amounts to the expression of support for or association with terrorist activity, and so falls outside the scope of articles 10 and 11 by virtue of article 17.

114. We reject this submission. The Home Secretary cannot rely on the fact of designation – the lawfulness of which is in issue – to establish that a statement, such as “I support Palestine Action”, or a wish to associate with Palestine Action, aims to destroy Convention rights and values. In *Roj TV*, the PKK’s designation as a terrorist organisation, including by the European Union, was not in issue and the repeated statements were incitement to violence. That is a very different case. Moreover, reliance on *Roj TV* for the contention that article 17 applies to *any* expression of support for a proscribed organisation is inconsistent with the judgment of the same Section in *Sabuncu v Turkey* (23199/17, 19 April 2021) in which it was said (at paragraph 222):

“Freedom of political debate, which is at the very core of the concept of a democratic society, also includes the free expression by prohibited organisations of their views, provided that these do not contain public incitement to commit terrorist offences, or condone the use of violence.”

115. In any event, this case is primarily concerned with the rights of individuals who have not acted unlawfully either before or since proscription, who would have wanted to express support for and associate with Palestine Action – whose stated aim is “to stop genocide and other atrocity crimes by causing disruption to corporate actors who aid, abet, facilitate and profit from those crimes” – and who wished to engage in peaceful protests under the banner of Palestine Action, but are stopped from doing so. It cannot sensibly be said that such persons are seeking to deflect the article 10 and 11 rights from their real purpose by employing them for ends contrary to Convention values. Nor could that be suggested in respect of others, such as journalists, academics and civil society organisations who are conscientiously seeking to abide by the law, and whose rights are impacted. The Home Secretary’s article 17 submission fails.

(v) *The claimant’s evidence in this case*

116. The claimant has relied on extensive evidence from witnesses explaining how they feel they have been or will be affected by the decision to proscribe Palestine Action. We were taken to much of this evidence in the course of the hearing and we have considered

it carefully. The assessment of the extent of any interference with Convention rights is a matter for the court, to be determined objectively.

117. Although as already stated, we accept the interference with article 10 and article 11 rights is very significant, we consider that various parts of the evidence the claimant relies on overstate the impact of proscription. *First*, proscription will not prevent continuing expressions of support through peaceful protest in support of the Palestinian cause or in opposition to actions undertaken in Gaza by the government of Israel and/or the Israel Defence Forces. The activities undertaken by Palestine Action against Elbit and other entities it regarded as associated with that company's business were very well known. However, it cannot be said that the role of Palestine Action was so dominant as to mean that any/all support for the Palestinian cause or opposition to actions of the Israeli government is synonymous with Palestine Action. *Second*, proscription of Palestine Action will not prevent any or all demonstrations targeted at Elbit. Elbit has been the particular focus of Palestine Action's activities but we do not consider it can reasonably be said that Palestine Action has a monopoly on opposition to Elbit. In principle, peaceful protest directed against Elbit can continue notwithstanding the decision to proscribe Palestine Action. The evidence before us is that protests at Elbit premises have in fact continued and have not been treated by the police as either a Palestine Action activity or expressions of support for Palestine Action. *Third*, we do not consider that particular forms of protest action (for example, "lock-ons", sit-ins, and blockades) are so closely or uniquely associated with Palestine Action that either undertaking such actions or advocating them could properly be considered to be support for Palestine Action.
118. There are two further points that also go to the general extent of the interference with Convention rights consequent on the proscription decision. One concerns the actions taken since proscription referring to Palestine Action that have led to many arrests. The various forms this action has taken are well known. Immediately following the proscription decision there were large protests. More than 2,000 people at these protests were arrested, primarily on suspicion of committing the offence under section 13 of the 2000 Act. The vast majority of those arrested had chosen to hold signs which read, "I oppose Genocide, I support Palestine Action". We attach little weight to this when it comes to assessing the extent of the interference with Convention rights in this case. All those holding such signs either did or ought to have realised that what they were doing was showing support for Palestine Action. It was or ought to have been obvious to all concerned that such "carefully worded" placards were carefully worded only to the extent of sending the message that the person holding the placard was expressing support for Palestine Action. What happened on these occasions was not evidence of difficulty or uncertainty in respect of what actions could be taken following the proscription of Palestine Action. Rather, it was evidence of calculated action.
119. The other general point made on behalf of the claimant is the risk that, following proscription, people may be wrongly identified by the police as supporters of Palestine Action or that the police might otherwise act in exercise of the powers available to them consequent on the proscription and that turns out to be wrong. The possibility for such errors is always present and mistakes will be made. We do not consider however there is any particular feature that arises in the context of a decision to proscribe (from the way in which the criminal offences consequent on proscription are formulated, or by reason of this decision to proscribe Palestine Action) which make the possibility for

such errors a particular feature of the interference with Convention rights in this case. The evidence here is to the effect that appropriate practical steps have been taken to reduce the likelihood of error. The version of a national guidance document provided to local police forces by CTP on 28 August 2025, part of the open evidence in this case, includes the following:

- “i. Be careful not to confuse supporting this proscribed organisation with protestors demonstrating general support for Palestine. The support must be directed towards the proscribed organisation itself.
- ii. It is important to note that being in support of de-proscribing Palestine Action would not necessarily be supporting Palestine Action.
- iii. The group themselves are proscribed, and not the activity or the cause, for example, saying ‘shut down Elbit Systems’, which is one of their aims, would not be supporting a proscribed organisation.
- iv. Saying ‘stop genocide, free Gaza’, or similar pro-Palestinian chants would not be supporting a proscribed organisation.
- v. Disagreeing with proscription is not supporting a proscribed organisation.
- vi. Sending money to support the deproscription fund would also not be an offence.”

Thus, police forces have guidance that provides information necessary for them to act appropriately and to apply the relevant offences under the 2000 Act correctly.

120. Further, the likelihood of error is likely to reduce further over time, as the police become more familiar with the practicalities of assessing situations which give rise to the possibility that any of the offences under the 2000 Act have been committed, and those circumstances that do not – if necessary, with the assistance of guidance given by the criminal courts in specific cases.
121. Notwithstanding all these points, we accept that the fact of proscription and the heavy penalties for the offences under the 2000 Act will mean that it is reasonable to expect people to be risk averse, to adjust their behaviour and to avoid doing things that run any significant risk that they might commit any of those criminal offences. Since this is so, the interference with Convention rights in this case must be measured both by the restrictions required by the letter of the criminal offences; and by the further extent to which people will exercise self-restraint in terms of what they say and what they do. One example of this mentioned in the claimant’s evidence is her fear that she will be “no-platformed” – that she will not be invited to speak at events because organisers will be concerned that if someone such as her, previously very closely associated with Palestine Action, does speak that will give rise to an offence under either section 11 or 12 of the 2000 Act.

122. We also accept that it is reasonable to assume that others who, like the claimant, were very closely associated with Palestine Action, will be particularly careful not to act in a way that might amount to commission of any of the criminal offences under the 2000 Act. This group of people may self-censor to a greater degree than others. This will likely be because, by reason of their past, how they act in future, at least in the foreseeable short-term, may give rise (or they might reasonably believe could give rise) to closer police scrutiny. Given the paucity of the evidence that we have about Palestine Action there is nothing that could reliably identify how large this class of person would be. Although it likely will include people like the claimant who were very closely associated with Palestine Action, it also seems likely that the number of people in this class will be small. It will certainly not extend to all those who have signed up through the Palestine Action website, whether for the newsletter, or because they wanted to get involved in direct action, or even to all those who have undertaken some form of direct action. The persons in this larger group of former members or supporters will lack the profile of persons such as the claimant.
123. The evidence for the claimant includes evidence that is specifically directed to the position of journalists, academics and campaigning groups such as Amnesty International and Liberty. It is said that each of these groups of people is at particular risk of falling foul of criminal offences such as those in section 12 of the 2000 Act. We accept that some weight attaches to the evidence of the position of journalists, but not significant weight. In large measure the journalism that is in issue here will be the reporting of things said and done by others. Most people will, and all ought to understand this and understand that journalists' opinions and preferences are not *per se* aligned to the news events they report. No doubt there could be hard cases, and no doubt too, some journalists will want to err on the side of caution. This will be the extent of the particular interference in such instances. The position for academics is likely to be quite similar. In most, if not all instances, the context provided by teaching will be important and will show that teaching that addresses a controversial subject (for example, about resort to direct action in a class about, say, politics or civil liberties) is a legitimate part of imparting information and testing general ideas through discussion and debate. In that context, reference to Palestine Action is not the same as expressing support for a proscribed organisation. No doubt here too there is a risk of self-censorship and those concerned may well be risk averse. Each of these matters is a foreseeable consequence of proscription. The evidence from campaigning/civil liberties organisations concerns how they are inhibited from campaigning against the fact of proscription and the risks that their members might face if they were to campaign, generally, against the use of the power to proscribe. We can see that this is an area where the section 12 offences could cause genuine problems, and care will need to be taken to ensure that any general campaign against the use of proscription does not inadvertently descend into a campaign against any particular use of the power to proscribe. The points here do carry weight, although here, as with many aspects of the evidence on interference with Convention rights the claimant relies on, it is important to think carefully about the true nature and extent of the interference.
124. Drawing these points together (both those immediately above, and those at paragraphs 103 – 106 above), the interference with article 10 and 11 rights is very significant. Nevertheless, there is a general correlation between the proscription of Palestine Action and the interference insofar as the adverse impacts are generally limited to those who

have or would support Palestine Action and do not have any widespread or general impact on expressions of support for the general Palestinian cause.

(vi) Is the interference prescribed by law?

125. We have concluded that the Home Secretary failed properly to apply her policy (see above at paragraphs 89 – 95). It follows that the interference with Convention rights consequent on proscription is not prescribed by law. This conclusion, without more, has the effect that the decision to proscribe Palestine Action was in breach of section 6 of the HRA.
126. The claimant puts forward an additional basis on which she submits the prescribed by law criterion was not met. She contends that the criminal offences which arise consequent on proscription are insufficiently certain. The claimant’s pleading at least contends the “sanctions are unclear and their effects unforeseeable” (although there is no challenge to the lawfulness of any of the criminal law provisions in the 2000 Act).
127. We do not accept this submission. The criminal law offences are sufficiently certain to meet the “prescribed by law” standard. They have been interpreted by the courts, and their likely application from case to case is foreseeable with or without resort to legal advice.

(vii) The importance of the objective

128. The Home Secretary’s pleaded case is that the purpose of proscription was to “disrupt and degrade PA so as to protect the rights of others and maintain national security”. The submissions on behalf of the Home Secretary sought to define the objective as “controlling terrorism” or “controlling terrorist organisations” through proscription of organisations that engage in “terrorism” as defined in s.1 of the 2000 Act. It seems to us that the latter is a description of the means of obtaining the objective. The identified legitimate aims of the proscription decision are “the protection of the rights and freedoms of others” and “the interests of national security”. Those aims appear in each of articles 10(2) and 11(2), respectively and are objectives that, in principle, are capable of warranting an interference with each Convention right.

(viii) Rational connection between proscription and the legitimate aims

129. Although the claimant raised the question whether there is a rational connection between the means chosen and the aim in view, no basis for suggesting there is not a rational connection was put forward. Proscription is rationally connected to the objective of disrupting Palestine Action so as to protect the rights of others and the interests of national security. That is so whether the objective was limited to curtailing actions by Palestine Action causing serious property damage within the meaning of section 1 of the 2000 Act, or extended more broadly.

(ix) Less intrusive measures

130. In *Bank Mellat*, Lord Reed made it clear both that the issue was whether there was a less intrusive measure that did not “unacceptably compromise the achievement of the objective”, and that when applying this standard, the court could not step into the shoes

of the decision-maker but must allow a margin of appreciation (see his judgment at paragraphs 74 – 75).

131. The claimant's submission on less intrusive measures is that instead of proscription the Home Secretary ought: (a) to have encouraged those affected to seek civil remedies through the courts, such as injunctions; or (b) resorted to measures against individuals involved in undertaking action for Palestine Action, such as asset freezes or criminal behaviour orders or other similar orders; or (c) relied on prosecution for criminal offences available absent proscription. Having in mind the test set by Lord Reed (above), option (b) is not realistic. Even if individuals concerned could be identified, such measures would not address the collective impact of an order for proscription; they are measures that would be directed to a different objective. As to option (c), in this case this is not really a point about any alternative less intrusive measure but rather, one in favour of a *status quo* approach – i.e. that the Home Secretary ought to have done nothing. As such, this is something better considered at the next stage, fair balance.
132. As to option (a), we are not satisfied that the possibility to encourage those affected by Palestine Action's methods to seek civil remedies such as injunctions was an appropriate lesser alternative approach. There was evidence that one company, Teledyne, had taken this route. However, this type of self-help remedy may not be readily or reasonably available to many who might potentially be affected by Palestine Action's campaign. An application for an injunction must be supported by sufficient evidence of risk. For some companies, Elbit being the obvious example, that requirement would not be difficult to meet. However, Palestine Action's activities have been directed to a wide range of companies considered to support Elbit's operations in the United Kingdom and those targets have not always been obvious in advance. For such companies, a form of civil restraint would only be likely to become available after the event. In this regard it is telling that in the example given, Teledyne, the evidence for the claimant draws a distinction between no action being taken after the injunction had been obtained and Teledyne suffering a significant number of actions before the injunction was obtained. This is an important point going to the effectiveness of relying only on the availability of civil remedies. Reliance on this route would, unlike reliance on offences such as those at sections 11 - 13 of the 2000 Act, be likely to achieve little in terms of disrupting Palestine Action as an organisation.
133. The form that an injunction might take is also far from obvious. The consequence is that orders obtained might extend beyond Palestine Action and affect the general pro-Palestinian/anti-Israeli cause. If orders were in the form of general exclusion zones around premises they would go further than required: they would apply to all who wanted to exercise a right to protest regardless of any connection to Palestine Action. If orders were more specific – for example they sought to prevent persons accessing premises only if they were members of Palestine Action or only if they entered with an intent to cause criminal damage – those conditions would be very difficult if not impossible to enforce prior to any event occurring. Moreover, experience in other areas, such as injunctions aimed at protest groups such as Just Stop Oil, suggests that these types of orders tend to be self-perpetuating. Once granted, injunctions are often periodically renewed (annually or otherwise) on the basis that were the injunction to be discharged the protected premises or area would once again become an attractive and likely target. This makes it likely that any such injunctions obtained might remain in force for so long as Palestine Action was active.

134. Finally, a point of principle tells very heavily against the claimant's submission. Why or to what extent should it be appropriate for the state to promote self-help remedies rather than exercise the powers that are available to it, in the face of criminal and threatened criminal behaviour which, in some instances, has crossed the boundary into terrorist activity within the definition in the 2000 Act? In this case, the Home Secretary had concluded that Palestine Action was an organisation "concerned in terrorism", and that assessment is not challenged in these proceedings. In those circumstances we reject the notion that proportionality required the Home Secretary to resort only to encouraging those affected to take matters into their own hands through the civil courts.

(x) Has a fair balance been struck?

135. To the extent explained above (at paragraphs 103 – 106 and 116 – 124) the decision to proscribe Palestine Action has entailed a very significant interference with Convention rights. In submissions the focus for the claimant tended to be on article 10. However, the interference with article 11 rights is stark: the very purpose of proscription is to put measures in place that are designed to ensure that an organisation ceases to exist. This impact ought neither to be overlooked nor understated. Overall, there is a substantial interference that requires justification.
136. On the other side of the balance it is notable that there is no general mis-match between the impact of the proscription and Palestine Action as the target of the decision. We do not consider that the proscription of Palestine Action is likely to result in any general impact on expressions of support for the Palestinian cause or even opposition to Elbit. This provides some support for a conclusion that the proscription was proportionate.
137. Real weight must attach to the fact that Palestine Action has organised and undertaken actions amounting to terrorism as defined at section 1(1) of the 2000 Act. Those actions are small in number but they are still significant and it is also significant that these actions have happened in the United Kingdom. There is, obviously, a heightened public interest in eliminating the risk of any action amounting to terrorism as defined in the 2000 Act within the United Kingdom. Any such action is the antithesis to the notion of a democratic society that is the foundation of the European Convention on Human Rights. It is significant that Palestine Action has not suggested that its actions that have been assessed to comprise terrorism were either a mistake or an aberration. Rather, Palestine Action has lauded those who took part in those actions. It is, further, significant that the contents of the Underground Manual provide good evidence of Palestine Action's continuing intention to promote the use of violence regardless of the risk that this will result in serious damage to property or serious violence against members of the public.
138. Deciding where the balance should be struck in this case is difficult. When striking the balance between issues such as these the court must permit some latitude to the Home Secretary given that she has both political and practical responsibility to secure public safety. Nevertheless, we are satisfied that the decision to proscribe Palestine Action was disproportionate. At its core, Palestine Action is an organisation that promotes its political cause through criminality and encouragement of criminality. A very small number of its actions have amounted to terrorist action within the definition at section 1(1) of the 2000 Act.

139. For those actions, regardless of proscription, the criminal law is available to prosecute those concerned. If those involved are convicted they face the prospect of significant punishment, which would serve as a significant deterrent to others. For example, the CTP report noted that the ordinary criminal offences with which Palestine Action activists have been charged have most commonly included criminal damage (section 1 of the Criminal Damage Act 1971, for which the maximum sentence is 10 years' imprisonment), burglary (section 9 of the Theft Act 1968) and aggravated trespass (section 68 of the Criminal Justice and Public Order Act 1994). In respect of the two incidents in 2024, which the Home Secretary assessed fell within the definition of "terrorism" in section 1 of the 2000 Act, offences of aggravated burglary (section 10 of the Theft Act 1968, for which the maximum sentence is life imprisonment) and violent disorder (section 2 of the Public Order Act 1986, for which the maximum sentence is 5 years' imprisonment) were charged, as well as specific charges against certain individuals, such as a charge of committing grievous bodily harm with intent (section 18 of the Offences Against the Person Act 1861, for which the maximum sentence is life imprisonment) against one defendant involved in the Bristol incident.
140. Considering in the round the evidence available to the Home Secretary when the decision to proscribe was made, the nature and scale of Palestine Action's activities, so far as they comprise acts of terrorism, has not yet reached the level, scale and persistence that would justify the application of the criminal law measures that are the consequence of proscription, and the very significant interference with Convention rights consequent on those measures.
141. We have reached this conclusion on Ground 2 without attaching any weight to the submission made by the United Nations Special Rapporteur (an Intervener in the claim). That submission starts from the premise that a "consensus" existed in international law to the effect that the actions of Palestine Action assessed as amounting to terrorism within the definition at section 1(1) of the 2000 Act did not in fact amount to terrorism. The submission then continues that this opinion deriving from the international law consensus ought to be taken into consideration when deciding whether the Home Secretary's decision to proscribe was disproportionate.
142. We doubt that the consensus claimed exists: see and compare *R v Gul (Mohammed)* [2013] UKSC 64, [2014] AC 1260 per Lords Neuberger and Judge at paragraphs 44 – 51. In any event, this submission faces the further obstacle that, when taking her decision, the Home Secretary was entitled to rely on the definition of terrorism in the 2000 Act. Indeed, she was required to apply that definition. Had she purported to rely on any other definition for the purposes of her decision she would have acted unlawfully. A "consensus" in international law is not a trump card in English law; any such consensus cannot permit either disregard of or derogation from an English statute save to the extent permitted by statute.

(xi) *Article 14*

143. A further argument which was touched upon but not fully developed was that the proscription decision gave rise to a breach of article 14, read with articles 10 and 11. The contention was that proscription of Palestine Action gave rise to an unjustified difference in treatment compared to organisations such as Extinction Rebellion and Just Stop Oil, and on grounds of race/national origin and/or political opinion.

144. There is a short but decisive point in respect of any argument based on comparison with other organisations such as Extinction Rebellion or Just Stop Oil, and the argument based on political opinion. It is that there is nothing in the evidence before us to show that those organisations, through their members or supporters, have committed offences falling within the section 1 definition of terrorism. The fact that, like Palestine Action, they engage in direct action does not place them in an analogous position: the power to proscribe is unavailable if an organisation is not concerned in terrorism. Further, and in any event, the Home Secretary was entitled to consider the case for proscription of Palestine Action on its own merits.
145. Nor are we persuaded that the proscription of Palestine Action gives rise to a difference in treatment on grounds of race or national origin. The evidence does not show that Palestine Action drew members or supporters disproportionately from the Palestinian community in the UK. It is not obvious that is the case.

C. Section 31(2A) of the Senior Courts Act 1981

146. The Secretary of State invites the court to refuse relief under s.31(2A) of the Senior Courts Act 1981 if the claim succeeds on any ground other than Ground 2. We therefore consider this submission only in relation to Ground 6.
147. Section 31(2A) of the Senior Courts Act 1981 provides, so far as material:

“(2A) The High Court –

(a) must refuse to grant relief on an application for judicial review,

...

if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.”

148. In *R (Bradbury) v Brecon Beacons National Park Authority* [2025] EWCA Civ 489, [2025] 4 WLR 58, Lewis LJ stated (at paragraph 71):

“In relation to section 31(2A), the court is concerned with evaluating the significance of the error on the decision-making process. It is considering the decision that the public body has reached, and assessing the impact of the error on that decision in order to ascertain if it is highly likely that the outcome (the decision) would not have been substantially different even if the decision-maker had not made that error. It is not for the court to try and predict what the public authority might have done if it had not made the error. If the court cannot tell how the decision-maker would have approached matters, or what decision it would have reached, if it had not made the error in question, the requirements of section 31(2A) are unlikely to be satisfied.”

He observed at paragraph 74 that this is “*a high test to surmount*”.

149. We are not satisfied that the requirements of section 31(2A) are met. The Home Secretary's error on Ground 6 was significant: she exercised the discretion to proscribe taking account of a consideration inconsistent with her own policy, namely the advantages to be had, were Palestine Action to be proscribed, from the criminal offences consequent on proscription: see above at paragraphs 89 – 95. Therefore, it cannot be said that the same decision would have been reached had that irrelevant matter been disregarded. The court is not in a position to decide the matter – one of obvious difficulty and political sensitivity – to the standard necessary for section 31(2A) to apply. The strength of the case for proscription may need to be considered further by the Home Secretary.

D. Disposal

150. For the reasons given above, Grounds 5 and 8 of the claim fail and are dismissed, but the claimant succeeds on Grounds 6 and 2 of her claim. To this extent the claimant's claim is allowed. Subject to any further representations on relief, we propose to make an order quashing the Home Secretary's decision to proscribe Palestine Action.