

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
CHANCERY DIVISION

Claim No PT-2002-000303

BETWEEN:

(1) UNITED KINGDOM OIL PIPELINES LIMITED
(2) WEST LONDON PIPELINE AND STORAGE LIMITED

Claimants

-and-

PERSONS UNKNOWN

Defendants

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Human Rights Act 1998 c. 42

s. 6 Acts of public authorities.



Law In Force

Version 2 of 2

1 October 2009 - Present

Subjects

Human rights

Keywords

Declarations of incompatibility; Human rights; Public authorities

6.— Acts of public authorities.

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- (2) Subsection (1) does not apply to an act if—
 - (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
 - (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
- (3) In this section “*public authority*” includes—
 - (a) a court or tribunal, and
 - (b) any person certain of whose functions are functions of a public nature,

but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

[...] ¹

- (5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.
- (6) “*An act*” includes a failure to act but does not include a failure to—
 - (a) introduce in, or lay before, Parliament a proposal for legislation; or
 - (b) make any primary legislation or remedial order.

Notes

¹ Repealed by Constitutional Reform Act 2005 c. 4 [Sch.18\(5\) para.1](#) (October 1, 2009)

Public authorities > s. 6 Acts of public authorities.

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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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Schedule 1 THE ARTICLES

para. 1



Law In Force

Version 1 of 1

2 October 2000 - Present

Subjects

Constitutional law; Human rights

Keywords

Constitutional rights; Human rights

RIGHTS AND FREEDOMS

Right to life

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Prohibition of torture

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Prohibition of slavery and forced labour

Article 4

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "*forced or compulsory labour*" shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

- (d) any work or service which forms part of normal civic obligations.

Right to liberty and security

Article 5

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Right to a fair trial

Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

No punishment without law

Article 7

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Right to respect for private and family life

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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.

Freedom of thought, conscience and religion

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of expression

Article 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. 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.

Freedom of assembly and association

Article 11

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.

Right to marry

Article 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Prohibition of discrimination

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Restrictions on political activity of aliens

Article 16

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Prohibition of abuse of rights

Article 17

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.

Limitation on use of restrictions on rights

Article 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Schedule 1 THE ARTICLES > Part I THE CONVENTION > para. 1

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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Case No. PT-2022-000303

Courtroom No. 9

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Friday, 6th October 2023

Before:

MR SIMON GLEESON (SITTING AS A DEPUTY HIGH COURT JUDGE)

B E T W E E N:

1) UNITED KINGDOM OIL PIPELINES LIMITED, 2) WEST LONDON PIPELINE AND
STORAGE LIMITED

-v-

PERSONS UNKNOWN

MS M STACEY and MR Y VANDERMAN (instructed by Landmark Chambers and
Fieldfisher) appeared on behalf of the Claimants
NO APPEARANCE by or on behalf of the Defendants

JUDGMENT
(Approved)

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preserved. All persons, including representatives of the media, must ensure that this condition is
strictly complied with. Failure to do so will be a contempt of court.*

JUDGE GLEESON:

1. This is an application for summary judgment to restrain protesters against the oil industry at two particular sites, Buncefield and Kingsbury. It is, I think, very important that the order that has been sought has been carefully crafted in order not to interfere with the rights protected by the Human Rights Act 1998 to freedom of expression, and I note that one of the affidavits provided by the applicant to this order explicitly states that these parties do not wish to restrain that right. What they wish to restrain is trespass and nuisance, and those are the only things which the order seeks to restrain.
2. Now, the background to this is that an order restraining these activities was made on an interim basis by Peter Knox KC. That order was returned on 21 April. A year later, it was reviewed by HHJ Rajah. During that period, the whole issue of service was gone into in some detail. Orders for methods of alternative service were set out in those judgments. Ms Stacey has taken me to the evidence relating to service. I am entirely satisfied that as regards these proceedings service was effected in accordance with the directions given in those hearings. The parties have therefore been validly served, and have not appeared to oppose or contest this application. I am therefore asked to give summary judgment.
3. It is clear that it is possible to give an order of this kind in respect of an action in respect of persons unknown; there are plenty of authorities to that effect and I was taken to a number of them. It is also the case that the determination to be made must follow exactly the same mechanism as for any other summary judgment. This is the well-known approach set out by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch), as approved by the Court of Appeal in *AC Ward & Son v Catlin (Five) Ltd* [2009] EWCA Civ 1098).
4. The key question, which to some extent underpins the others, is as to realistic prospect of success. Now, I was taken to a great deal of evidence about the activities that have taken place by way of trespass and nuisance on this site. I think it is more or less impossible to imagine that it would be possible to argue at trial either that those activities have not happened or that they did not constitute trespass or nuisance. I do not think there is any possible line of investigation that would produce any different outcome. I am therefore satisfied that, if the activities which the Claimants fear were to take place, the result would be actionable harm to them.
5. That, however, takes me to the question of how likely it is that these activities would in fact take place if the injunction were not granted. As the Court of Appeal said in *Boyd and Another v. Ineos Upstream Limited and Others* [2023] EWHC 1485 (KB), an injunction of this kind will only be granted if there is a sufficiently real and imminent risk that the defendant will commit an actionable wrong against the claimant.
6. Now, the key point here, I think, is that it is accepted that there has been no recent protest. It seems fairly clear that the reason for that has been the existence of the injunctions. In this context, there was a great deal of evidence put forward in the various witness statements to the effect that the organisations under whose umbrella these protests take place, that is, Just Stop Oil and Extinction Rebellion, have absolutely not lessened or scaled back either their protests or their campaign; there are tweets and public statements from them to exactly that effect; and the fact that they are currently engaged in similar acts of civil disobedience is common knowledge. IN addition, there are public statements from the protest organisations which effectively say, in respect of the particular facilities which are the subject of this injunction, that “The reason we have stopped doing this is because of the injunctions”. Now, it seems to me that when you put those facts together, if these injunctions were not continued

- for any reason it is very hard to imagine that the protests concerned would not continue to take place. I therefore think the strong probability test is satisfied on this occasion.
7. I also note the point that was urged upon me that this was exactly the same conclusion that HHJ Warwick came to when he looked at this point six months ago, that the mere fact that the existing injunction had caused the activity to cease did not mean that there was no strong probability that the activity would not immediately resume if the injunction was lifted. Consequently, I am satisfied that there is a real risk, there is a strong probability that trespass and nuisance will continue, if not restrained by this injunction.
 8. I am aware that the burden is on the applicant to satisfy me to that extent. I think they have discharged that burden. As I say, I think the only imaginable defence, if this were to go to trial, would be something based somehow on Articles 10 and 11 of the Convention on Human Rights. However, as I say, the injunction which is sought on this occasion has been very specifically crafted in order to avoid engaging those articles.
 9. Therefore, it seems, in that regard, that the criteria for grant of summary judgment are satisfied. The only other thing which I think is required to be dealt with is that because this is an application regarding persons unknown, I need to give consideration to the issues set out in *Canada Goose v Persons Unknown* [2019] EWHC 2459, which set out some very specific issues that require to be considered in respect of really any proceeding relating to persons unknown. The first of these is are these persons capable of being identified, and are they capable of being served by alternative methods. The conclusion of Peter Knox KC and HHJ Rajah were that they clearly are, and directions for alternative service was given. It seems to me that this decision was entirely correct. The second is that the activity which is to be restrained must be clearly defined in the originating process. That, I think, is clearly the case here because of the clear way in which the activities to be restrained are set out. The question of sufficient risk I think we have already dealt with. The third is that the precise scope of the injunction, and in particular the conduct which is to be restrained, is precisely set out.. Well, that is not terribly hard. What is restrained is specifically trespass and nuisance. There is no issue here of restraints of any sort of legal activity or permitted activity, so I think the question of whether the activity is capable of being identified is that, yes, it can. The fourth is that the terms of the order must be sufficient and precise. I think the terms of the draft order that I have been asked to make satisfy that requirement. In addition, there must be clear geographical and temporal limits. The geographical limits are clear; they are set out in maps which accompany the draft order. Finally, the order must have defined limited scope in time. What is asked for here is an order to last for five years with provisions for annual review. That seems to me to be entirely sensible and appropriate. I also note that it is consistent with the orders that have been made in other very similar cases.
 10. I therefore think that all of that criteria which are required for the grant of an order of this kind are satisfied.
 11. A simple summary of all of that is that I think that those judges who have considered this issue before me analysed it correctly, , and I am really doing nothing more than following their footsteps.

End of Judgment.

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291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

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This transcript has been approved by the judge.



Neutral Citation Number: [2023] EWHC 1837 (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: 18/07/2023

Before :

THE HONOURABLE MR JUSTICE LINDEN

Between :

(1) ESSO PETROLEUM COMPANY, LIMITED

Claimant

(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
FOLLOWING SITES ("THE SITES")**

Defendants

- (A) THE OIL REFINERY AND JETTY AT THE
PETROCHEMICAL PLANT, MARSH LANE,
SOUTHAMPTON SO45 1TH (AS SHOWN FOR
IDENTIFICATION EDGED RED AND GREEN BUT
EXCLUDING THOSE AREAS EDGED BLUE ON THE
ATTACHED 'FAWLEY PLAN')**
- (B) HYTHE OIL TERMINAL, NEW ROAD, HARDLEY SO45
3NR (AS SHOWN FOR IDENTIFICATION EDGED RED ON
THE ATTACHED 'HYTHE PLAN')**
- (C) AVONMOUTH OIL TERMINAL, ST ANDREWS ROAD,
BRISTOL BS11 9BN (AS SHOWN FOR IDENTIFICATION
EDGED RED ON THE ATTACHED 'AVONMOUTH
PLAN')**
- (D) BIRMINGHAM OIL TERMINAL, WOOD LANE,
BIRMINGHAM B24 8DN (AS SHOWN FOR
IDENTIFICATION EDGED RED ON THE ATTACHED
'BIRMINGHAM PLAN')**
- (E) PURFLEET OIL TERMINAL, LONDON ROAD,
PURFLEET, ESSEX RM19 1RS (AS SHOWN FOR
IDENTIFICATION EDGED RED AND BROWN ON THE
ATTACHED 'PURFLEET PLAN')**

- (F) WEST LONDON OIL TERMINAL, BEDFONT ROAD,
STANWELL, MIDDLESEX TW19 7LZ (AS SHOWN FOR
IDENTIFICATION EDGED RED ON THE ATTACHED
'WEST LONDON PLAN')
- (G) HARTLAND PARK LOGISTICS HUB, IVELY ROAD,
FARNBOROUGH (AS SHOWN FOR IDENTIFICATION
EDGED RED ON THE ATTACHED 'HARTLAND PARK
PLAN')
- (H) ALTON COMPOUND, PUMPING STATION, A31,
HOLLYBOURNE (AS SHOWN FOR IDENTIFICATION
EDGED RED ON THE ATTACHED 'ALTON COMPOUND
PLAN')

(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 SO45 1TH (AS
SHOWN FOR IDENTIFICATION EDGED
PURPLE ON THE ATTACHED 'FAWLEY
PLAN')

(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 (WHERE "SITES" FOR THIS PURPOSE
DOES NOT INCLUDE THE AREA EDGED
BROWN ON THE PURFLEET PLAN)

(4) PAUL BARNES

(5) DIANA HEKT

Timothy Morshead KC and Yaaser Vanderman (instructed by **Eversheds Sutherland
(International) LLP**) for the **Claimant**

No appearance or representation by the **Defendants**

Hearing date: 10 July 2023

Approved Judgment

This judgment was handed down remotely at 2pm on 18 July 2023 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 LINDEN

Mr Justice Linden :

Introduction

1. This was the trial of the Claimants' claim for an injunction to restrain certain forms of trespass by Extinction Rebellion and Just Stop Oil protesters at specified sites around the country ("the Sites").

Procedural matters

2. An interim injunction was first granted in these proceedings by Ellenbogen J at a without notice hearing on 6 April 2022, and that injunction was extended by Bennathan J on the return date, which was 27 April 2022. That hearing was not attended by any of the Defendants, and they were not represented, but Counsel instructed by a person involved in the environmental movement attended and made submissions to the court with a particular focus on whether the Claimants had sufficient proprietary interests in the Sites which they sought to protect, to be entitled to bring a claim in trespass.
3. The injunction was then extended again by Collins Rice J at a hearing on 27 March 2023. However, she was unwilling to do so on an interim basis for a period of a year, as proposed by the Claimants, and she therefore gave directions for trial. Again, there was no attendance or representation on the Defendants' side. But four individuals who had been identified as actual or potential Defendants gave assurances that they did not intend to act inconsistently with the terms of the injunction. On that basis Collins Rice J directed that they were not subject to its terms.
4. Similarly, no Defendants attended the trial before me or were represented or submitted evidence. However, the Fourth and Fifth Defendants gave undertakings which were satisfactory to the Claimants, and these will be embodied in an Order which applies to their cases.
5. In the course of Mr Morshead KC's submissions, however, it became apparent that a person in the public gallery wished to address the court. She told me she was Ms Sarah Pemberton, that she was qualified as a barrister (though not practising) and that she was informally representing her friend, Mr Martin Marston-Paterson, because he would not have been able to attend the hearing until the afternoon. I allowed her to address the court and she drew to my attention the fact that there had been correspondence between Bindmans LLP, who were acting for Mr Marston-Paterson, and Eversheds Sutherland (International) LLP who were instructed by the Claimants. Bindmans had proposed that the hearing be adjourned pending the decision of the Supreme Court in the appeal from the decision in *London Borough of Barking & Dagenham & Others v Persons Unknown* [2022] EWCA Civ 13; [2023] QB 295 (now *Wolverhampton City Council & Others v London Gypsies and Travellers & Others* UKSC 2022/0046).
6. Ms Pemberton stressed that she was not making an application to adjourn the trial but she pointed out that if the Supreme Court were to overturn the decision of the Court of Appeal in the *Barking & Dagenham* case, any final injunction which I granted would likely be unlawful. She also told me that submissions had been made to the Supreme Court to the effect that the risk of an adverse order for costs was having a chilling effect on climate change protesters who might otherwise have contested this type of application for injunctive relief. She said that provision for a review of any injunction which I granted

would not adequately safeguard the position of the Defendants given that I would have made findings of fact which it would be problematic to reopen in circumstances in which, at least possibly, Defendants had been prevented from putting in evidence by the risk of an order for costs.

7. The correspondence was handed up to me by Mr Morshead. This showed that the matter had been raised by Bindmans on 30 June 2023. In a phone call and an email dated 3 July, Eversheds Sutherland said that their clients would be unwilling to consent to an adjournment, pointing out that Collins Rice J had directed that the trial take place. No threat of an application for costs in the event of an adjournment was made. On 7 July, Bindmans confirmed that they were not instructed to apply to adjourn or to intervene in the matter.
8. I decided not to adjourn the trial. It had been listed, by Order of Collins Rice J, since 5 May 2023. There had expressly not been any application to adjourn. Nor had I been shown any evidence that submissions or evidence would have been put before the court by any Defendant or interested party were it not for the fear of an adverse costs order, still less given an indication of what those submissions or that evidence might be. The appropriate course was, in my view, to decide the Claim on the law as it currently stands but to make provision in any Order for a review shortly after the judgment of the Supreme Court is handed down. This, in my judgment, fairly addressed any risk of injustice caused by proceeding with the trial.
9. As far as service and notice of the trial are concerned, I had regard to section 12(2) of the Human Rights Act 1998 which, so far as is relevant for present purposes, provides that in cases where the court is considering whether to grant any relief which might affect the exercise by the respondent of the right to freedom of expression under Article 10 of the European Convention on Human Rights (“ECHR”), and the respondent is not present or represented, such relief must be refused unless the court is satisfied “(a) *that the applicant has taken all practicable steps to notify the respondent*”. Each of the judges who has dealt with this matter has considered this question and, in the case of Bennathan J and Collins Rice J, whether the alternative directions for service in the preceding order had been complied with. Each has been satisfied that they had been and that, accordingly, all practicable steps had been taken for the purposes of section 12(2)(a).
10. As far as the trial is concerned, Collins Rice J directed that service of her Order and any further documents would be effected on the First to Third Defendants by fixing copies in clear transparent containers at a minimum of 2 locations on the perimeter of each of the Sites, together with notices which stated that they could be obtained from the Claimants’ solicitors and viewed at a specified company website. Service was also to be effected by posting the documents on that company website and by sending an email to specified email addresses for Extinction Rebellion and Just Stop Oil, notifying them of the availability of the documents on that website.
11. Mr Nawaz Allybokus, who is one of the solicitors acting for the Claimants in these proceedings, gave evidence, in his 6th witness statement dated 24 May 2023, that the Order of Collins Rice J and the Notice of Trial were served in accordance with the directions of the Court on 12 May 2023. In his 8th witness statement, dated 4 July 2023, he gives evidence that the directions as to service of the evidence relied on by the Claimants for

the purposes of the trial were complied with in the third week in June 2023 and therefore in good time before the trial.

12. I was therefore satisfied that sufficient notice of the hearing had been given to the Defendants. They had also been provided with access to the materials on which the Claimants rely, and all practical steps had been taken to notify them for the purposes of section 12(2)(a) of the 1998 Act. I decided to proceed notwithstanding the absence of any Defendant but, bearing this in mind, to probe the Claimants' case appropriately.
13. Mr Morshead answered questions from the court about the identity of the parties and the scope of the relief which he was seeking. He had put in a skeleton argument dated 4 July 2023, and he developed some of the points in that document orally. At the invitation of the court there was a particular focus on the question whether it was appropriate to impose a final injunction in the light of the evidence about the risk of acts of trespass by protesters at the sites in question and the likelihood of harm as a result in the event that the injunction was refused.
14. I also gave Ms Pemberton an opportunity to make any points in reply which she wished to make. She did not specifically challenge what Mr Morshead had submitted about the risk of trespass in the future, or the potential risks if this were to happen, but she drew attention to the distinction between the official positions of Extinction Rebellion and Just Stop Oil in relation to direct action, the former having said in January 2023 that it was stepping back from direct action. She also emphasised the risk that a lack of clarity in any Order which I might make could have a chilling effect on the rights to freedom of expression and association. I have taken these points into account in coming to my decision.
15. Ms Pemberton also raised a concern that Mr Marston-Paterson had not received the full trial bundle. She told me that she had checked and had received a message from him during the hearing which confirmed this point. Whereas Mr Morshead was referring to a 708-page bundle, the bundle which had been forwarded to Mr Marston-Paterson by Extinction Rebellion by email dated 16 June 2023 ran to 413 pages. Mr Morshead said, in response, that his instructions were that the full bundle had been sent to Extinction Rebellion. At her request, I gave permission for Mr Marston-Paterson to put in evidence on this matter if he wished, and permission to the Claimants to reply within 24 hours.
16. I then reserved judgment and extended the interim injunction pending the handing down of my decision.
17. On the day after the trial, I received statements made by Ms Pemberton and Mr Allybokus, both dated 11 July 2023. Her statement covered new matters, reprised what had happened at the trial and provided more detail on points which she made to me. No doubt inadvertently, some aspects of her account of what happened at the trial were not accurate but, in any event, I was not prepared to admit further evidence other than in relation to the question of service of the trial bundles. Ms Pemberton had an opportunity to put in any evidence on which she wished to rely before the trial and, other than the extent which I had indicated, it was not in the interests of justice for her to be permitted to do so after it had concluded.

18. There was then a 10th witness statement submitted by Mr Allybokus on 12 July 2023 but, with respect to him, this did not add anything material.
19. The evidence shows that Mr Allybokus sent the correct trial bundles to the three email addresses identified in the Order of Collins Rice J on 16 June 2023. They were enclosed via Mimecast. The email said that copies of the trial bundles would be uploaded shortly onto the company website. Ms Pemberton says in her statement that she manages the relevant email address for Extinction Rebellion and therefore read Mr Allybokus' email on 16 June 2023. She did not access the documents via Mimecast for reasons which she does not explain in her statement. Instead, she went on the company website and downloaded the bundles from there on 16 and 18 June. The final versions had not yet been uploaded at this point: that took place on 20 June 2023.
20. I do not consider that this issue means that the trial was unfair and Ms Pemberton does not suggest that it does. The concern which she raised with me about Mr Marston-Paterson not having the full bundle, and him messaging her during the trial to confirm this, is not referred to in her statement. What she says is that she read the trial bundles which she had downloaded and that the purpose of her attendance at the hearing was to observe and take a note. She does not suggest that she is a party. She then became concerned because her version of volume 2 to the trial bundle did not contain documents to which Mr Morshead referred in his oral submissions.
21. From the section of volume 2 of the trial bundle which Ms Pemberton says she did not see, Mr Morshead referred me to the undertakings which were given by the Fourth and Fifth Defendants and two press reports in which Just Stop Oil made statements about their intention to carry on protesting until they achieved their objectives. The material parts of these statements were read out by him in open court and they are referred to by me below. This point was also covered in the witness statements, and the press statements were two examples amongst many. I have not taken any other document in volume 2 into account in coming to my conclusion. Nothing in Ms Pemberton's statement therefore causes me to think that it would be in accordance with the overriding objective for me to revisit my decision to proceed with the trial.

Factual background

22. The detail of the factual background is set out in the witness statements relied on by the Claimants for the purposes of the trial, in particular the witness statements of Mr Anthony Milne (Global Security Adviser at the First Claimant) dated 3 April 2022; Mr Stuart Wortley (Partner at Eversheds Sutherland) dated 4 April 2022; Mr Allybokus dated 22 April 2022, 20 March 2023 and 13 June 2023; and Mr Martin Pullman (European Midstream Manager at the First Claimant) dated 27 February and 6 June 2023. The facts which led to the interim injunctions are also helpfully summarised by Ellenbogen J in her judgment of 6 April 2022, neutral citation number [2022] EWHC 966 (QB) and therefore need not be rehearsed by me in detail.
23. In outline, the Claimants are well known oil, petroleum and petrochemical companies. The injunction which they seek would restrain certain forms of trespass on their sites at the Fawley Petrochemical Complex in Southampton, the Hythe Terminal in Hardley, the Avonmouth Terminal near Bristol, the Birmingham Terminal, the Purfleet Terminal, the

West London Terminal, the Hartland Park Logistics Hub near Farnborough and the Alton compound at Holybourne.

24. Ellenbogen J carefully considered whether the Claimants had a sufficient proprietary rights in each of these sites to bring a claim in trespass and concluded that they did: see [21] of her judgment. At [6]-[8] she found that the Fawley Petrochemical Complex comprises an oil refinery, a chemical plant, and a jetty. The First Claimant is the freehold owner of the refinery and the chemical plant, and the registered lessee of the jetty. The Second Claimant is the lessee of the chemical plant. This is the explanation for a separate category of persons unknown: the Second Defendant in the proceedings.
25. Fawley is the largest oil refinery in the United Kingdom. It provides twenty per cent of the country's refinery capacity and is classed as Tier 1 Critical National Infrastructure. The chemical plant has an annual capacity of 800,000 tonnes, is highly integrated with the operations of the refinery, and produces key components for a large number of finished products here and elsewhere in Europe.
26. Ellenbogen J found that the First Claimant is also the freehold owner of the oil terminals at Hythe (primarily serving the South and West of England); that part of Birmingham which is material to the application (primarily serving the Midlands); Purfleet (primarily serving London and the South East of England); and West London (serving a range of customers in Southern and Central England and supplying aviation fuel to Heathrow Airport). It is also the registered lessee of the Avonmouth Terminal (primarily serving the South West of England). Title to the Purfleet jetty is unregistered, although the First Claimant has occupied the jetty for approximately 100 years. These Terminals are large and they play an important role in supplying the national economy.
27. The First Claimant has an unregistered leasehold interest in Hartland Park which is a temporary logistics hub comprising project offices, welfare facilities and car parking for staff and contractors, together with storage for construction plant materials, machinery and equipment in connection with the construction of a replacement fuel pipeline between the Fawley Petrochemical Complex and the West London oil terminal. It is also the freehold owner of the Alton compound, comprising a pumping station and another compound at Holybourne used in connection with the replacement fuel pipe line.
28. Submissions on this subject were addressed to Bennathan J on 27 April 2022 by Counsel for the interested person but he rejected them: see his judgment at [2022] EWHC 1477 (QB) [27]. He said that he was fully satisfied that the Claimants had the necessary proprietary interests. No evidence has been put before me to question the decisions of Ellenbogen and Bennathan JJ on this point and I therefore accept and adopt their findings.
29. Extinction Rebellion and Just Stop Oil are well known campaigns on the issue of climate change. The latter is focussed on the fossil fuel sector, and the former on climate change more generally.
30. The evidence before Ellenbogen and Bennathan JJ was that Just Stop Oil and Extinction Rebellion were organising action against the fossil fuel industry in March and April 2022. The intention was that groups or teams would block or disrupt oil networks including refineries, storage units and adjacent roads. Individuals were also being encouraged to sign up to direct action which would lead to their arrest.

31. Ellenbogen J summarised the evidence before her that, between 1 and 4 April 2022, four of the Sites - West London, Hythe, Purfleet and Birmingham - were subject to direct action as part the wider campaign which was disrupting various oil terminals in the United Kingdom. The evidence was that both Extinction Rebellion and Just Stop Oil were claiming involvement in that action on social media and through logos and banners which were displayed during some of the incidents.
32. On 1st April 2022, the operations of each of these four sites had been disrupted. At Birmingham approximately 20 people blocked the entrance in the small hours of the morning, preventing the collection of fuel from the site. A tanker was stopped at the entrance and two individuals climbed onto it. Others sat in front of it. One person glued himself to the path outside the Terminal. Police attended and around six arrests were made. The protest was dispersed and the site reopened at 5.30 p.m. that day.
33. At around the same time, approximately 24 people blocked the entrance to the West London Terminal by attaching barrels to the gates to the entrance used by vehicles so as to weigh them down and prevent them from lifting. Tripods were also erected immediately outside the access gate so as to block access. At approximately 6.45 a.m., four people cut a hole in the access fence and scaled one of the fuel storage tanks. The First Claimant was obliged to initiate its emergency site procedures, including the temporary shutdown of the pumping of aviation and ground fuels from Fawley to the West London Terminal. The four, and approximately eight others, were arrested a few hours later. As a result, by around 3:00 p.m., those responsible for the direct action had left the site and it was reopened.
34. At around 5:00 a.m. on the same day, seven people blocked the access to the Hythe Terminal, using the Extinction Rebellion “pink boat” and preventing access to the site. The police attended, the boat was removed at around 11.45 a.m. and the protesters were moved away. The site reopened an hour later.
35. Also on 1 April 2022, at around 6:30 a.m., 20 people blocked the access road to the Purfleet Terminal. Six people climbed onto a lorry which was delivering additives to the site. The police attended. By 3:00 p.m., some individuals remained on the lorry, but others in attendance had been arrested, or had dispersed. The site opened to customers at approximately 5:00 p.m.
36. On 2 April 2022, at around 09:45 a.m., approximately 20 people blocked access to and from the Purfleet Terminal. Some locked themselves to the access gates, and others sat in the access road. The police made a number of arrests and removed the protestors. The site opened to customers at approximately 5:30 p.m. There were other protests at other terminals across the country, albeit not terminals owned by the First Claimant and it was reported in the Press that around 80 arrests had been made.
37. At around 5:00 a.m., on 3 April 2022, approximately 20 protestors blocked access to the Birmingham Terminal by sitting in the road. Some also climbed on to a Sainsbury's fuel tanker. One protestor cut through the security fence around the Terminal, scaled one of the fuel storage tanks and displayed a Just Stop Oil banner. The First Claimant therefore initiated its emergency site procedures, including the temporary shutdown of the pumping

of ground fuel from Fawley to the Terminal. The police attended and made a number of arrests. The site was reopened to customers at around 4:00 p.m.

38. At around 4.30 a.m. on 4 April 2022, approximately 20 protestors arrived at the West London Terminal and used a structure to obstruct access to and egress from the Site. That evening, a number of individuals were arrested whilst they were on their way to the Purfleet site.
39. At [14] Ellenbogen J also noted a number of earlier incidents, going back to August 2020, which she accepted were evidence of the risk of the disruption continuing. These incidents were similar in nature to the incidents at the beginning of April 2022, although they varied in seriousness. At least four of the incidents had included displaying Extinction Rebellion banners or other insignia, and Extinction Rebellion had also associated itself with a number of these activities in the Press and on social media. In an incident in October 2021 protestors had broken into the Fawley Petrochemical Complex using bolt cutters and had climbed to the top of two storage tanks. In December 2021 they had used the same method to break into the site at Alton and had caused extensive damage to buildings, plant, and equipment there.
40. According to the evidence of Mr Allybokus there were further incidents around the time of the Order made by Ellenbogen J which included the following:
 - a. On 6 April 2022, a group blocked a roundabout on the main route from the M25 to the Purfleet Terminal by jumping onto a tanker and gluing themselves onto the road. Another group blocked a roundabout on the main route to the West London Terminal by jumping onto lorries.
 - b. On 8 April 2022, around 30 individuals blocked a main route from the M25 to the Purfleet Terminal.
 - c. On 13 April 2022, a group blocked an access road near the Purfleet Terminal, and 3 people climbed on top of a tanker.
41. Mr Wortley also gives evidence of more than 500 arrests in March/April 2022 at the Kingsbury Terminal operated by Valero Energy Limited in Staffordshire, and of injunctions being granted in that case.
42. However, the evidence is that the interim injunctions which were granted in the present case have been complied with.
43. In relation to the risk of trespass should the claim for a final injunction be refused, Mr Morshead also relied on the evidence of Mr Pullman that Just Stop Oil protestors have targeted the First Claimant's Southampton to London pipeline (which does not comprise one of the Sites). This included digging and occupying a pit so as to obstruct specialist construction equipment, and it led to injunctions being granted by Eyre J on 16 August 2022 and then HHJ Lickley KC on 21 October 2022. There was also a committal of one person to prison for breach of Eyre J's Order. Another admitted that he had breached that Order but the Court accepted his undertaking not to do so again.

44. Protesters have organised a number of events in order to carry out direct action against various targets, all with some connection to the energy industry. They have also targeted the offices of the Claimants' solicitors including by a sit-down protest in November 2022 which obstructed the entrance and by throwing purple paint over the glass structure of the building.
45. Although, in January 2023, Extinction Rebellion announced that it was changing its tactics and moving away from public disruption as a primary tactic, Just Stop Oil has made clear its intention to continue with this approach. Mr Morshead showed me public statements by Just Stop Oil along the lines that the public should "expect us every day and anywhere" and that its supporters "will be returning – today, tomorrow and the next day – and the next day after that – and every day until our demand is met: no new oil and gas in the UK". This includes asking people to "Sign up for arrestable direct action...".
46. Mr Morshead also relied on evidence that, more generally, there has been no let-up in the activities of climate change protesters. For example, there was disruption of the Grand National and the World Snooker Championship in April 2023, as well as a sit-down protest at the Global Headquarters of Shell following a weekend of protest in central London organised by Extinction Rebellion. Since 24 April 2023 there has been a campaign of "slow marching" in London and Just Stop Oil protesters were arrested in or around Whitehall and Parliament in May 2023. There was also disruption of the Chelsea Flower Show and other sporting events including the Ashes test match and Wimbledon. Mr Pullman also gave evidence about extensive litigation in the civil and criminal courts arising out of protest activities with a number of injunctions being granted and/or extended, and various prosecutions and convictions in the Magistrates Court for public order offences.
47. As for the harm which would result from the acts of trespass which are sought to be restrained, disruption of the Claimants' operations is in itself harmful to their interests. The evidence is that such disruption has potential financial consequences for them, but it also has consequence for the wider economy given the impact on the businesses of wholesale and retail suppliers of fuel, and the effect on access to fuel for purposes including road, rail and air transport as well as heating. Indeed, in March/April 2022 Just Stop Oil and Extinction Rebellion were open about the fact that they were seeking to emulate the 2000 protests by haulage drivers, which disrupted supplies of oil to the country with severe economic consequences.
48. There is also evidence of the risk of serious physical harm resulting from acts of trespass by protesters. This refers not merely to the damage to property which results from them cutting through security fences and vandalising the Sites, but also to the risk of very serious accidents. The Claimants' sites are used for the production and storage of highly flammable and otherwise hazardous substances. As is obvious, this is a highly dangerous activity and for this reason there are stringent security and health and safety measures in operation at the Sites. Access is strictly controlled, and all of the Claimants' employees and contractors are trained in relation to the hazards which they might encounter and, where appropriate, provided with protective clothing and equipment.
49. Mr Milne and Mr Pulman give written evidence on this subject. The Petrochemical Complex at Fawley and each of the oil Terminals are regulated by the Health & Safety Executive under the Control of Major Accident Hazards Regulations 2015 (COMAH).

All of the Sites have fully licensed security personnel, security barriers at the point of vehicular access, closed circuit television infrastructure linked to an Access Control system and fenced areas where active operations are undertaken. The operational area of the Petrochemical Complex at Fawley is protected by 2 fences, one of which is electrified.

50. All authorised visitors to the Sites are required to watch an induction safety video which highlights both the hazards and the emergency safety procedures. Most of the Sites include higher risk areas which require additional safety precautions. Within these areas, authorised personnel are required to wear fire retardant clothing and the appropriate personal protective equipment (hard hats, safety glasses, fire retardant gloves, safety shoes).
51. In some areas, devices which measure hydrocarbon vapour levels in the air must be carried. One of the potential hazards inside these facilities is a vapour cloud, which can result from an unplanned release of hydrocarbon or biofuels. Such a release can be extremely hazardous. Potential ignition risks such as smoking, using mobile phones or cameras and wearing clothes which accumulate static electricity (e.g. nylon) are strictly prohibited within the higher risk areas.
52. Protesters will not be trained in relation to the risks on these sites, nor familiar with which areas are the more dangerous ones, and nor are they likely to be wearing appropriate protective clothing. As I have noted, in previous incidents in 2021 and 2022 protesters have used bolt cutters to cut through both security fences at the Fawley Petrochemical Complex, the security fence at the First Claimant's compound in Alton and the security fences at the West London and Birmingham Terminals. During the protests in 2022 some protesters broke into higher risk areas and were carrying iPhones, cameras, cigarette lighters and/or nylon sleeping bags, thus exposing themselves and others to the risk of death or serious injury.
53. Apart from the risk of an explosion or a fire, there are obvious risks in protesters climbing onto fuel tanks 20 metres above the ground without the necessary safety equipment, and in climbing onto fuel tankers as they have been. Moreover, blocking access to the Sites prevents evacuation and access for emergency vehicles in the event of an incident.

Jurisdiction

54. In *London Borough of Barking and Dagenham & Others v Persons Unknown* (supra) the Court of Appeal confirmed that the jurisdiction to grant both interim and final injunctions in this context is provided by section 37 Senior Courts Act 1981. This states, so far as material:

“(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.”

55. The Court of Appeal held that there is, therefore, jurisdiction to grant a final injunction against persons unknown who are “newcomers” i.e., persons who have not committed or

threatened to commit any tortious act against the applicant for the injunction and therefore have not been served with the proceedings and made subject to the jurisdiction of the court before the order was made. Provided such a person has been served with the order they will become a party to the proceedings if they knowingly breach the terms of the injunction. Any risk of injustice which arises from this position is mitigated by the fact that such a person may apply to vary the injunction or set it aside, and by the fact that the duration of the injunction can be limited by the court, and it can be subject to periodic review. As I have noted, an appeal was heard by the Supreme Court in February this year and judgment is awaited. However, at the time of writing the law is as stated by the Court of Appeal.

The Claimants' cause of action

56. The cause of action relied on by the Claimants is now limited to trespass, and the relief which they seek is limited to restraining protesters from entering the Sites in order to carry out their activities. This point is important because of the effect which it has on the balancing of rights under the ECHR.

57. As a general proposition “*seriously disrupting the activities of others is not at the core of*” the right to freedom of assembly and this is relevant to the assessment of proportionality: see Lords Hamblen and Stephens in *DPP v Ziegler* [2021] UKSC 23; [2022] AC 408 at [67]. As Leggatt LJ (as he then was) put it in *Cuadrilla Bowland Ltd & Others v Persons Unknown* [2020] EWCA Civ 9; [2020] 4 WLR 29 at [94]:

“... 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....;”

58. But, in addition to this, in *DPP v Cuciurean* [2022] EWHC 736 (Admin); [2022] 3 WLR 446 at [45] the Divisional Court held that there is no basis in the caselaw of the European Court of Human Rights:

“to support the ... 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. The Strasbourg court has ... consistently said that Articles 10 and 11 do not “bestow any freedom of forum” in the specific context of interference with property rights ... There is no right of entry to private property or to any publicly owned property. The furthest 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.”

59. This means that in the present case the injunction sought by the Claimants does not engage Articles 10 and 11 ECHR or, if they are engaged, it would be compatible with these provisions for it to be granted because restraining trespass would obviously be

proportionate. Section 12(3) of the Human Rights Act 1998 is not engaged because it applies to interim injunctions.

60. The tort of trespass to land consists of any unjustified intrusion, whether by a person or an object, by one person upon land in the possession of another. It may also include intrusion into the airspace above land. There is no requirement that the intrusion be intentional or negligent provided it was voluntary. Trespass is actionable without proof of damage and by a person who is in possession i.e., who occupies or has physical control of the land. Proof of ownership is prima facie proof of possession but tenants and licensees will have rights of possession and be entitled to claim in trespass in order to secure those rights. In broad terms, entry onto another's land may be justified by proving a legal or equitable right to do so, or necessity to do so in order to preserve life or property. Justification therefore does not arise in the present case. (Clerk & Lindsell on Torts 23rd Edition, chapter 18).

Is relief just and convenient in principle?

61. In *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch); [2019] 1 WLR 2 Marcus Smith J said this at [31(3)] in relation to final anticipatory injunctions:

“(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?”

62. He then went on to give guidance as to what may be relevant to the application of this approach in a given case.

63. With respect, I confess to some doubts about whether the two questions which he identified are part of a “test” or a “two stage” test. To my mind they are questions which the Court should consider in applying the test under section 37 Senior Courts Act 1981, namely what is “just and convenient” but they are not threshold tests. I also note that, even taking into account *Vastint*, the editors of *Gee on Commercial Injunctions* (7th Edition) say at 2-045:

“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, and the risk of wrongdoing 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.”

64. Where the court is being asked to grant an injunction in circumstances where no tort has been committed or completed it will naturally need to be persuaded that the risks and consequences of not making such an order are sufficiently compelling to grant relief. Where, as in the present case, tortious conduct has taken place but the identity of the tortfeasors is unknown, and relief is sought on a final basis against future tortfeasors who

are not a parties and are identified only by description, again the court will be cautious. But it would be surprising if, for example, a court which considered that there was a significant risk of further tortious conduct, but not a strong probability of such conduct, was compelled to refuse the injunction no matter how serious the damage if that conduct then took place.

65. However, Marcus Smith J analysed the authorities carefully, successive cases have adopted his test and the matter was hardly argued before me. I therefore do not propose to depart from what he said. Nor do I need to. Bennathan J was satisfied that the *Vastint* test was satisfied in this case, and so am I in the light of the evidence before me: I am also satisfied that, having regard to the risks in the event that relief is refused, it is just and convenient to grant relief.
66. As noted above, this was the issue on which I pressed Mr Morshead bearing in mind that only some of the incidents in 2021/2022 involved trespass and only on some of the Sites. There has been compliance with the injunctions ordered by Ellenbogen and Bennathan JJ. Extinction Rebellion announced a change of tactics in January 2023 and a good deal of the evidence about protest activities since April 2022 is about activities of a different nature to those which led to the injunctions in this case. Where protesters have been identified in these proceedings, they have been prepared to give undertakings not to trespass on the Sites. All of these considerations could be argued to show something less than a strong probability of further trespassing on the Sites.
67. Having considered the evidence in the round, however, I was satisfied that the first limb of the *Vastint* test is satisfied. 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. One is therefore left with the evidence relied on by the Claimants. This shows that they intend to continue to challenge the oil industry vigorously, including by causing disruption. As to the form that that disruption will take, it appears that the effect of the various injunctions which have been granted in this case and others has been to prevent or deter them from taking the steps prohibited by the orders of the court although, of course, not invariably so. If, therefore, an injunction is refused in the present case the overwhelming likelihood is that protests of the sort which were seen in 2021/2022 will resume, and that they will include acts of trespass of the sort to which I have referred.
68. As to the second limb of the *Vastint* test, I had little hesitation in holding that it is satisfied. Whatever the merits of the protesters' cause, and I make no comment on this, their activities in breaking into the Sites are highly disruptive and dangerous. These activities have significant financial and wider economic consequences which are unquantifiable in damages, and any award of damages would likely be unenforceable in any event. They also risk very serious damage to property and endanger the protesters and others.
69. I have considered Ms Pemberton's suggestion of a distinction between Extinction Rebellion and Just Stop Oil protesters but found this unconvincing in the absence of any assurance from Extinction Rebellion. As Mr Morshead pointed out, their strategy could change at any time. Given the risk posed by Just Stop Oil protesters, relief is appropriate and it would be naïve of the court to leave open the possibility of trespass on the Sites by protesters who said that they were acting under the Extinction Rebellion banner. If there

is no intention on the part of Extinction Rebellion protesters to trespass on the Sites, the injunction will not affect them anyway.

70. I have also considered whether relief should be limited to certain Sites and not others given that some had not been subjected to trespass but I agree with Ellenbogen J that the essence of anticipatory relief, where it is justified, is that the claimant need not wait until harm is suffered before claiming protection: see her judgment in these proceedings at [2022] EWHC 966 (KB) [29].

Canada Goose

71. Turning to the other considerations identified by the Court of Appeal in *Canada Goose UK Retail Limited v Persons Unknown* [2020] EWCA Civ 303; [2020] 1 WLR 2802 at [82], albeit in relation to interim injunctions:

- a. Those “persons unknown” (as defined) who can be identified have been and they have given assurances or undertakings. There were six of them. The four who gave assurances are therefore not named defendants. The Fourth and Fifth Defendants were joined to the proceedings by Order of Collins Rice J and have given separate undertakings and will be subject to a separate order ([82(1)] *Canada Goose*).
- b. The “persons unknown” are defined in the originating process and the Order by reference to their conduct which is alleged to be unlawful i.e. they are people who enter or remain on the Sites without the consent of the Claimants for the purposes of the Extinction Rebellion and the Just Stop Oil campaigns ([82(2) and (4)]). People who have not entered the Sites will not be parties to the proceedings or subject to the Order.
- c. I have addressed the question of anticipatory relief, above, in relation to final injunctions ([83(3)]);
- d. The acts prohibited by the injunction correspond to the threatened torts and do not include lawful conduct given that they are all acts which take place in the context of trespass i.e., on the Sites delineated in the plans attached to the Order ([82(5)]).
- e. The terms of the injunction are clear and precise so as to ensure that those affected know what they can and cannot do. ([82(6)]).
- f. The injunction has clear geographical and temporal limits. The geographical limits are indicated on the plans attached to the Order and the duration of the injunction will be five years subject to a review following the handing down of the judgement of the Supreme Court in the *Wolverhampton* case and annually in any event ([82(7)]). I note that a five year term with annual reviews was ordered, for example, by Eyre J in *Transport for London v Lee* [2023] EWHC 1201 (KB) at [57]. There is also provision for applications on notice to vary or discharge the Order.

Service of the Order

72. I approve the terms of the draft Order as to service. There is good reason to permit alternative methods of service (see CPR rules 6.15 and 6.27), namely that standard methods of service in accordance with CPR rule 6 are not practicable. The arrangements in the draft Order are those which have been approved by Ellenbogen, Bennathan and Collins Rice JJ.

Conclusion

73. For all of these reasons I am satisfied that it is just and convenient to grant the Order which I have made.

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 intention 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.

prohibitions directed at the world at large which operated as an exception to the normal rule that only parties to an action were bound by an injunction (post, paras 16–17, 19, 22, 42, 57, 147–148, 150–153, 238).

Venables v News Group Newspapers Ltd [2001] Fam 430 applied.

Dicta of Lord Mustill in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334, 360–361, HL(E) and of Lord Scott of Foscote in *Fourie v Le Roux* [2007] 1 WLR 320, para 25, HL(E) applied.

Secretary of State for the Environment, Food and Rural Affairs v Meier [2009] 1 WLR 2780, SC(E), *Cameron v Hussain* [2019] 1 WLR 1471, SC(E) and *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, CA considered.

South Cambridgeshire District Council v Gammell [2006] 1 WLR 658, CA and *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, CA not applied.

(2) That in principle it was such a legitimate extension of the court’s practice for it to allow both interim and final injunctions against “newcomers”, i.e persons who at the time of the grant of the injunction were neither defendants nor identifiable and were described in the injunction only as “persons unknown”; that an injunction against a newcomer, which was necessarily granted on a without notice application, would be effective to bind anyone who had notice of it while it remained 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; that, therefore, there was no immovable obstacle of jurisdiction or principle in the way of granting injunctions prohibiting unauthorised encampments by Gypsies or Travellers who were “newcomers” on an essentially without notice basis, regardless of whether in form interim or final; that, however, such an injunction was only likely to be justified as a novel exercise of the court’s equitable discretionary power if the applicant (i) demonstrated a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies (including statutory remedies), (ii) built into the application and the injunction sought procedural protection for the rights (including Convention rights) of those persons unknown who might be affected by it, (iii) complied in full with the disclosure duty which attached to the making of a without notice application and (iv) showed that, on the particular facts, it was just and convenient in all the circumstances that the injunction sought should be made; that, if so justified, any injunction made by the court had to (i) spell out clearly and in everyday terms the full extent of the acts it was prohibiting, corresponding as closely as possible to the actual or threatened unlawful conduct, (ii) extend no further than the minimum necessary to achieve the purpose for which it was granted, (iii) be subject to strict temporal and territorial limits, (iv) be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents and (v) include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the injunction; and that, accordingly, it followed that the challenge to the court’s power to grant the impugned injunctions at all failed (post, paras 142–146, 150, 167, 170, 186, 188, 222, 225, 230, 232, 238).

Per curiam. (i) The theoretical availability of byelaws or other measures or powers available to local authorities as a potential alternative remedy is no reason why newcomer injunctions should never be granted. The question whether byelaws or other such measures or powers represent a workable alternative is one which should be addressed on a case-by-case basis (post, paras 172, 216).

(i) To the extent that a particular person who has become the subject of a newcomer injunction wishes to raise particular circumstances applicable to them and relevant to a balancing of their article 8 Convention rights against the claim for an injunction, this can be done under the liberty to apply (post, para 183).

(iii) The emphasis in this appeal has been on newcomer injunctions in Gypsy and Traveller cases and nothing said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protesters who engage

- A in direct action. Such activity may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers (post, para 235).
Decision of the Court of Appeal sub nom *Barking and Dagenham London Borough Council v Persons Unknown* [2022] EWCA Civ 13; [2023] QB 295; [2022] 2 WLR 946; [2022] 4 All ER 51 affirmed on different grounds.
- B The following cases are referred to in the judgment of Lord Reed PSC, Lord Briggs JSC and Lord Kitchen:
A (A Protected Party) v Persons Unknown [2016] EWHC 3295 (Ch); [2017] EMLR 11
Abela v Baadarani [2013] UKSC 44; [2013] 1 WLR 2043; [2013] 4 All ER 119, SC(E)
Adair v The New River Co (1805) 11 Ves 429
- C *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55; [1976] 2 WLR 162; [1976] 1 All ER 779, CA
Ashworth Hospital Authority v MGN Ltd [2002] UKHL 29; [2002] 1 WLR 2033; [2002] 4 All ER 193, HL(E)
Attorney General v Chaudry [1971] 1 WLR 1614; [1971] 3 All ER 938, CA
Attorney General v Crosland [2021] UKSC 15; [2021] 4 WLR 103; [2021] UKSC 58; [2022] 1 WLR 367; [2022] 2 All ER 401, SC(E)
- D *Attorney General v Harris* [1961] 1 QB 74; [1960] 3 WLR 532; [1960] 3 All ER 207, CA
Attorney General v Leveller Magazine Ltd [1979] AC 440; [1979] 2 WLR 247; [1979] 1 All ER 745; 68 Cr App R 342, HL(E)
Attorney General v Newspaper Publishing plc [1988] Ch 333; [1987] 3 WLR 942; [1987] 3 All ER 276, CA
Attorney General v Punch Ltd [2002] UKHL 50; [2003] 1 AC 1046; [2003] 2 WLR 49; [2003] 1 All ER 289, HL(E)
- E *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191; [1991] 2 WLR 994; [1991] 2 All ER 398, HL(E)
Baden's Deed Trusts, In re [1971] AC 424; [1970] 2 WLR 1110; [1970] 2 All ER 228, HL(E)
Bankers Trust Co v Shapira [1980] 1 WLR 1274; [1980] 3 All ER 353, CA
Barton v Wright Hassall LLP [2018] UKSC 12; [2018] 1 WLR 1119; [2018] 3 All ER 487, SC(E)
- F *Birmingham City Council v Afsar* [2019] EWHC 1619 (QB)
Blain (Tony) Pty Ltd v Splain [1993] 3 NZLR 185
Bloomsbury Publishing Group plc v News Group Newspapers Ltd [2003] EWHC 1205 (Ch); [2003] 1 WLR 1633; [2003] 3 All ER 736
Brett Wilson LLP v Persons Unknown [2015] EWHC 2628 (QB); [2016] 4 WLR 69; [2016] 1 All ER 1006
- G *British Airways Board v Laker Airways Ltd* [1985] AC 58; [1984] 3 WLR 413; [1984] 3 All ER 39, HL(E)
Broadmoor Special Hospital Authority v Robinson [2000] QB 775; [2000] 1 WLR 1590; [2000] 2 All ER 727, CA
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
- H *CMOC Sales and Marketing Ltd v Person Unknown* [2018] EWHC 2230 (Comm); [2019] Lloyd's Rep FC 62
Cameron v Hussain [2019] UKSC 6; [2019] 1 WLR 1471; [2019] 3 All ER 1, SC(E)
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

- Cardile v LED Builders Pty Ltd* [1999] HCA 18; 198 CLR 380 A
- Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB)
- Cartier International AG v British Sky Broadcasting Ltd* [2014] EWHC 3354 (Ch);
[2015] Bus LR 298; [2015] 1 All ER 949; [2016] EWCA Civ 658; [2017] Bus LR
1; [2017] 1 All ER 700, CA; [2018] UKSC 28; [2018] 1 WLR 3259; [2018]
Bus LR 1417; [2018] 4 All ER 373, SC(E)
- Castanho v Brown & Root (UK) Ltd* [1981] AC 557; [1980] 3 WLR 991; [1981]
1 All ER 143, HL(E) B
- Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334;
[1993] 2 WLR 262; [1993] 1 All ER 664, HL(E)
- Chapman v United Kingdom* (Application No 27238/95) (2001) 33 EHRR 18,
ECtHR (GC)
- Commerce Commission v Unknown Defendants* [2019] NZHC 2609
- Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24; [2023] AC
389; [2022] 2 WLR 703; [2022] 1 All ER 289; [2022] 1 All ER (Comm) 633, PC C
- Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9; [2020] 4 WLR 29,
CA
- D v Persons Unknown* [2021] EWHC 157 (QB)
- 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
- EMI Records Ltd v Kudhail* [1985] FSR 36, CA
- ESPN Software India Pvt Ltd v Tudu Enterprise* (unreported) 18 February 2011, D
High Ct of Delhi
- Earthquake Commission v Unknown Defendants* [2013] NZHC 708
- Ernst & Young Ltd v Department of Immigration* 2015 (1) CILR 151
- F (or se A) (A Minor) (Publication of Information), In re* [1977] Fam 58; [1976]
3 WLR 813; [1977] 1 All ER 114, CA
- Financial Services Authority v Sinaloa Gold plc* [2013] UKSC 11; [2013] 2 AC 28;
[2013] 2 WLR 678; [2013] Bus LR 302; [2013] 2 All ER 339, SC(E) E
- Fourie v Le Roux* [2007] UKHL 1; [2007] 1 WLR 320; [2007] Bus LR 925; [2007]
1 All ER 1087, HL(E)
- Friern Barnet Urban District Council v Adams* [1927] 2 Ch 25, CA
- Guaranty Trust Co of New York v Hannay & Co* [1915] 2 KB 536, CA
- Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator
Site* [2003] EWHC 1738 (Ch); [2004] Env LR 9
- Harlow District Council v Stokes* [2015] EWHC 953 (QB) F
- Heathrow Airport Ltd v Garman* [2007] EWHC 1957 (QB)
- 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* [2019] EWCA Civ 515; [2019] 4 WLR 100;
[2019] 4 All ER 699, CA
- Iveson v Harris* (1802) 7 Ves 251
- Joel v Various John Does* (1980) 499 F Supp 791 G
- Kingston upon Thames Royal London Borough Council v Persons Unknown* [2019]
EWHC 1903 (QB)
- M and N (Minors) (Wardship: Publication of Information), In re* [1990] Fam 211;
[1989] 3 WLR 1136; [1990] 1 All ER 205, CA
- MacMillan Bloedel Ltd v Simpson* [1996] 2 SCR 1048
- McPhail v Persons, Names Unknown* [1973] Ch 447; [1973] 3 WLR 71; [1973] 3 All
ER 393, CA H
- Manchester Corpn v Connolly* [1970] Ch 420; [1970] 2 WLR 746; [1970] 1 All ER
961, CA
- Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406, HL(E)
- Mareva Cia Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509,
CA

- A *Maritime Union of Australia v Patrick Stevedores Operations Pty Ltd* [1998] 4 VR 143
Mercedes Benz AG v Leiduck [1996] AC 284; [1995] 3 WLR 718; [1995] 3 All ER 929, PC
Meux v Maltby (1818) 2 Swans 277
Michaels (M) (Furriers) Ltd v Askew [1983] Lexis Citation 198; The Times, 25 June 1983, CA
- B *Murphy v Murphy* [1999] 1 WLR 282; [1998] 3 All ER 1
News Group Newspapers Ltd v Society of Graphical and Allied Trades '82 (No 2) [1987] ICR 181
North London Railway Co v Great Northern Railway Co (1883) 11 QBD 30, CA
Norwich Pharmacal Co v Customs and Excise Comrs [1974] AC 133; [1973] 3 WLR 164; [1973] 2 All ER 943, HL(E)
OPQ v BJM [2011] EWHC 1059 (QB); [2011] EMLR 23
- C *Parkin v Thorold* (1852) 16 Beav 59
R v Lincolnshire County Council, Ex p Atkinson (1995) 8 Admin LR 529, DC
R (Wardship: Restrictions on Publication), In re [1994] Fam 254; [1994] 3 WLR 36; [1994] 3 All ER 658, CA
RWE Npower plc v Carrol [2007] EWHC 947 (QB)
RXG v Ministry of Justice [2019] EWHC 2026 (QB); [2020] QB 703; [2020] 2 WLR 635, DC
- D *Revenue and Customs Comrs v Egleton* [2006] EWHC 2313 (Ch); [2007] Bus LR 44; [2007] 1 All ER 606
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)
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)
Smith v Secretary of State for Housing, Communities and Local Government [2022] EWCA Civ 1391; [2023] PTSR 312, CA
- 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
South Cambridgeshire District Council v Persons Unknown [2004] EWCA Civ 1280; [2004] 4 PLR 88, CA
- F *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provinciën" NV* [1987] AC 24; [1986] 3 WLR 398; [1986] 3 All ER 487, HL(E)
Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] AC 754; [1984] 2 WLR 929; [1984] 2 All ER 332, HL(E)
TSB Private Bank International SA v Chabra [1992] 1 WLR 231; [1992] 2 All ER 245
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch); [2019] JPL 161
- G *United Kingdom Nirex Ltd v Barton* [1986] Lexis Citation 644; The Times, 14 October 1986
Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908
Winch, Persons formerly known as, In re [2021] EWHC 1328 (QB); [2021] EMLR 20, DC; [2021] EWHC 3284 (QB); [2022] ACD 22, DC
- H *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
X (A Minor) (Wardship: Injunction), In re [1984] 1 WLR 1422; [1985] 1 All ER 53
X (formerly Bell) v O'Brien [2003] EWHC 1101 (QB); [2003] EMLR 37
Z Ltd v A-Z and AA-LL [1982] QB 558; [1982] 2 WLR 288; [1982] 1 All ER 556, CA

The following additional cases were cited in argument:

- A v British Broadcasting Corp'n* [2014] UKSC 25; [2015] AC 588; [2014] 2 WLR 1243; [2014] 2 All ER 1037, SC(SC)
- Abortion Services (Safe Access Zones) (Northern Ireland) Bill, In re* [2022] UKSC 32; [2023] AC 505; [2023] 2 WLR 33; [2023] 2 All ER 209, SC(NI)
- Astellas Pharma Ltd v Stop Huntingdon Animal Cruelty* [2011] EWCA Civ 752; *The Times*, 11 July 2011, CA
- Birmingham City Council v Nagmadin* [2023] EWHC 56 (KB)
- Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] EWHC 1304 (QB); [2018] LLR 458
- Cameron v Liverpool Victoria Insurance Co Ltd (Motor Insurers' Bureau intervening)* [2019] UKSC 6; [2019] 1 WLR 1471; [2019] 3 All ER 1, SC(E)
- 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; [2022] 1 All ER (Comm) 239
- High Speed Two (HS2) Ltd v Persons Unknown* [2022] EWHC 2360 (KB)
- Hillingdon London Borough Council v Persons Unknown* [2020] EWHC 2153 (QB); [2020] PTSR 2179
- Kudrevičius v Lithuania* (Application No 37553/05) (2015) 62 EHRR 34, ECtHR (GC)
- MBR Acres Ltd v McGivern* [2022] EWHC 2072 (QB)
- Mid-Bedfordshire District Council v Brown* [2004] EWCA Civ 1709; [2005] 1 WLR 1460, CA
- Porter v Freudenberg* [1915] 1 KB 857, CA
- R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55; [2007] 2 AC 105; [2007] 2 WLR 46; [2007] 2 All ER 529, HL(E)
- R (M) v Secretary of State for Constitutional Affairs and Lord Chancellor* [2004] EWCA Civ 312; [2004] 1 WLR 2298; [2004] 2 All ER 531, CA
- Redbridge London Borough Council v Stokes* [2018] EWHC 4076 (QB)
- Secretary of State for Transport v Cuciurean* [2021] EWCA Civ 357, CA
- Winterstein v France* (Application No 27013/07) (unreported) 17 October 2013, ECtHR

APPEAL from the Court of Appeal

On 16 October 2020 Nicklin J, with the concurrence of Dame Victoria Sharp P and Stewart J (Judge in Charge of the Queen's Bench Civil List), ordered a number of local authorities which had been involved in 38 sets of proceedings each obtaining injunctions prohibiting "persons unknown" from making unauthorised encampments within their administrative areas, or on specified areas of land within those areas, to complete a questionnaire with a view to identifying those local authorities who wished to maintain such injunctions and those who wished to discontinue them. On 12 May 2021, after receipt of the questionnaires and a subsequent hearing to review the injunctions, Nicklin J [2021] EWHC 1201 (QB); [2022] JPL 43 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 and, by further order dated 24 May 2021, discharged a number of the injunctions on that ground.

By appellant's notices filed on or about 7 June 2021 and with permission of the judge, the following local authorities appealed: Barking and Dagenham London Borough Council; Havering London Borough Council; Redbridge London Borough Council; Basingstoke and Deane Borough Council and Hampshire County Council; Nuneaton and Bedworth Borough Council and Warwickshire County Council; Rochdale Metropolitan Borough Council;

- A Test Valley Borough Council; Thurrock Council; Hillingdon London Borough Council; Richmond upon Thames London Borough Council; Walsall Metropolitan Borough Council and Wolverhampton City Council. The following bodies were granted permission to intervene in the appeal: London Gypsies and Travellers; Friends, Families and Travellers; Derbyshire Gypsy Liaison Group; High Speed Two (HS2) Ltd and Basildon Borough Council. On 13 January 2022 the Court of Appeal (Sir Geoffrey Vos MR, B Lewison and Elisabeth Laing LJ) [2022] EWCA Civ 13; [2023] QB 295 allowed the appeals.

- C With permission granted by the Supreme Court on 25 October 2022 (Lord Hodge DPSC, Lord Hamblen and Lord Stephens JJSC) London Gypsies and Travellers, Friends, Families and Travellers and Derbyshire Gypsy Liaison Group appealed against the Court of Appeal's orders. The following local authorities participated in the appeal as respondents: (i) Wolverhampton City Council; (ii) Walsall Metropolitan Borough Council; (iii) Barking and Dagenham London Borough Council; (iv) Basingstoke and Deane Borough Council and Hampshire County Council; (v) Redbridge London Borough Council; (vi) Havering London Borough Council; (vii) Nuneaton and Bedworth Borough Council and Warwickshire County Council; (viii) D Rochdale Metropolitan Borough Council; (ix) Test Valley Borough Council and Hampshire County Council and (x) Thurrock Council. The following bodies were granted permission to intervene in the appeal: Friends of the Earth; Liberty, High Speed Two (HS2) Ltd and the Secretary of State for Transport.

- E The facts and the agreed issues for the court are stated in the judgment of Lord Reed PSC, Lord Briggs JSC and Lord Kitchin, post, paras 6–13.

Richard Drabble KC, Marc Willers KC, Tessa Buchanan and Owen Greenhall (instructed by *Community Law Partnership, Birmingham*) for the appellants.

- F The appellants are concerned about the detrimental consequences which the injunctions sought by the local authorities will have for the nomadic lifestyle of Gypsies and Travellers, including a chilling effect on those seeking to practise the traditional Gypsy way of life.

- G A court cannot exercise its statutory power under section 37 of the Senior Courts Act 1981 so as to grant an injunction which will bind “newcomers” (ie persons who at the time of the grant of the injunction are neither defendants to the application nor identifiable, and who were described in the injunction only as “persons unknown”) save on an interim basis or for the protection of Convention rights as an exercise of the jurisdiction first recognised in *Venables v News Group Newspapers Ltd* [2001] Fam 430.

- H The High Court's power to grant an injunction under section 37 neither expressly permits nor prohibits the making of orders against persons unknown and so does not on its own terms provide an answer to the question. Although it had previously been argued by some of the local authorities below that, regardless of any limitations which applied to section 37, the court had a separate power to grant injunctions against persons unknown by virtue of section 187B of the Town and Country Planning Act 1990 the Court of Appeal held that the procedural limitations under section 37 and section 187B were the same and that the latter did not bestow any

additional or more extensive jurisdiction on the court: see [2023] QB 295, paras 113–118. A

A final injunction operates only between the parties to the claim: see *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191. The act by which a person becomes a party is the service of the claim form: see *Cameron v Hussain* [2019] 1 WLR 1471. A person who is unknown and unidentifiable cannot be served with a claim form. He or she will thus not be a party and will not be bound by the final injunction. B

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 *Porter v Freudenberg* [1915] 1 KB 857, 883, 887–888, *Barton v Wright Hassall LLP* [2018] 1 WLR 1119, para 8 and *Cameron*, paras 17–18. C

Cameron, in particular, is determinative of the appeal. It dealt with—and the decision is therefore binding as to—the position of newcomers, albeit that the proposed defendant was someone who was said to have committed an unlawful act in the past, rather than a person who might commit an unlawful act in the future. Even if *Cameron*, because of that distinction, was not strictly concerned with newcomers, the application of the Supreme Court’s reasoning in that case leads inescapably to the conclusion that such persons cannot be sued. D

Newcomers are by their very nature anonymous. A person unknown may, if defined with sufficient particularity, be capable of being identified with a particular person. In the first instance decision in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417, para 150 Nicklin J suggested that some of the protesters “could readily be identified on . . . camera footage as alleged ‘wrongdoers’ and, if necessary, given a pseudonym (eg ‘. . . the man shown in the footage . . . holding the loudhailer’)”. The person in question will still be anonymous, but he or she is identifiable and whatever the practical difficulties in locating him or her, it is not conceptually impossible to effect service. By contrast, however, designations of the type used in the instant cases, which are intended to capture newcomers (“persons unknown”, “persons unknown occupying land”, “persons unknown depositing waste”, “persons unknown fly-tipping”) do not identify anyone. They do not “enable one to know whether any particular person is the one referred to”: see *Cameron*, para 16. E

The Court of Appeal wrongly held that *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 was authority for the proposition that a final injunction can bind newcomers. That case concerned an interim injunction. It was explained by the Supreme Court as an example of alternative service—not as authority for the proposition that final injunctions bind newcomers—and the Court of Appeal below erred in departing from that interpretation. The other cases relied on by the Court of Appeal below (in particular *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633, *Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site* [2004] Env LR 9 and *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100) provide no real support for the Court of Appeal’s decision. Those cases either (at best) simply accepted, without deciding the point, that final injunctions could F

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- A bind newcomers or, when properly understood, they undermine such a conclusion.

The reasoning in *Gammell* cannot properly be extended to cover final injunctions to bind newcomers. There is a qualitative distinction between interim and final injunctions. Parties must be identified before a final determination takes place so that they have an opportunity to present their case. The courts have long been willing to accept lower—or at least different—standards of fairness at the interim stage, in recognition of the fact that interim orders are temporary and designed to hold the ring (or limit damage) pending trial. Thus, for example, interim orders may be sought without notice to the defendant, or may control the way in which a defendant deals with his or her property in order to prevent the defendant frustrating any eventual judgment. Interim orders may indeed be more favourable to a claimant than any final order could be: see, for example, *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 224 (“*Spycatcher*”).

- C As Nicklin J recognised at first instance, the courts have recognised that this can create an incentive for a claimant to obtain an interim injunction and then fail to progress the case to trial: see [2021] EWHC 1201 (QB) at [89]. The answer to this has not been to expand the principle in *Spycatcher* to final orders: instead, the court will put in place directions to ensure that the matter is progressed to a final hearing: see Nicklin J, paras 91–93. Interim relief which binds newcomers can only properly be granted where it is to preserve the position pending trial.

- D Although in certain cases the court has granted injunctions on a contra mundum basis (see *In re X (A Minor) (Wardship: Injunction)* [1984] 1 WLR 1422, *Venables v News Group Newspapers Ltd* [2001] Fam 430, *X (formerly Bell) v O’Brien* [2003] EMLR 37, *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB), *OPQ v BJM* [2011] EMLR 23, *RXG v Ministry of Justice* [2020] QB 703 and *D v Persons Unknown* [2021] EWHC 157 (QB)), there is a principled distinction between that line of cases and injunctions prohibiting the unauthorised use or occupation of land.
- F Those cases were all concerned with the publication of personal information, such as the identity of offenders. Once in the public domain, the subject matter protected by the injunction is irretrievably lost. This court should confirm that an injunction contra mundum should only be granted where to do otherwise would defeat the purpose of the injunction. That principle will not apply in traveller injunction cases.

- G *Stephanie Harrison KC, Stephen Clark and Fatima Jichi* (instructed by *Hodge Jones & Allen LLP*) for Friends of the Earth, intervening.

“Persons unknown” injunctions, although said to be aimed at curtailing unlawful protest, also have a chilling effect on lawful campaigning and protest. They expose wide groups of citizens to the risk of prohibitively costly legal proceedings and punitive sanctions, including unlimited fines and imprisonment for contempt for up to two years. There are serious obstacles to contesting the claims and a significant inequality of arms when accessing justice with no costs protection.

H There is an increasingly widespread use of such injunctions, often on an industry and country-wide basis, with private companies in particular utilising private law proceedings as a default mechanism to address perceived

public order issues despite there being tailored statutory provisions and safeguards provided for by Parliament in the criminal law. A

The ruling of the Supreme Court in *Cameron v Hussain* [2019] 1 WLR 1471, paras 11–12 makes clear that it is not simply a matter of the court's wide discretion to entertain a claim if a person (who is not evading service) cannot be served and cannot reasonably be expected to have notice of the claim so that he may have an opportunity to defend it. Identification is necessary so that the court can be satisfied that a person is properly subject to its jurisdiction with the capacity to be a party to legal proceedings. However unjust the outcome for the claimant who may have been wronged (as in the case of the claimant in *Cameron*, who had been injured in a vehicle collision caused by the negligence of another driver of unknown identity), the claim has simply not been validly brought. B

One of the purposes of a persons unknown injunction is to deter such newcomers from coming into existence and if it is effective there will only ever have been one party to the claim, namely the claimant. This is not, therefore, properly to be described as a permissible claim against persons unknown in the *Bloomsbury Publishing* sense (see *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633). It is simultaneously a claim against nobody, but can only be effective if it is in principle binding on everybody. C D

Justice between parties to litigation is not only about a just outcome. That outcome must be arrived at pursuant to a fair and just process. In addition to being contrary to basic principles of procedural fairness and natural justice, in both the Gypsy and Traveller context and in the protest context, newcomer injunctions can have arbitrary and disproportionate adverse impacts on fundamental rights, including the Convention rights under articles 8, 10 and 11 and the common law protections for free speech and assembly. E

The notion that a person only becomes a party to proceedings by the acts that put them in breach of an order made in their absence and upon its enforcement against them is fundamentally at odds with such core principles. In contempt cases, the court's approach will not be concerned with whether the injunction should have been granted or the appropriateness of the terms which have led to the contempt. An order of the court has to be obeyed unless and until it has been set aside or varied by the court. F

Even if an injunction is subsequently varied or set aside, that is irrelevant to the liability in contempt of a person who breaches the injunction (although it may be relevant to sentence): see *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658, paras 33–34 and *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29, paras 76–77. Moreover, in *Secretary of State for Transport v Cuciurean* [2021] EWCA Civ 357 at [57]–[62] the Court of Appeal rejected the argument that liability for contempt for breach of a persons unknown injunction required knowledge of its terms. G H

In the protest context, the courts have recognised the injustice of the enforcement of orders against individuals without giving them an opportunity to be heard and without consideration of their individual circumstances even if bound by the order when made: see *Astellas Pharma*

- A *Ltd v Stop Huntingdon Animal Cruelty* [2011] EWCA Civ 752 and *RWE Npower plc v Carrol* [2007] EWHC 947 (QB).

The lack of procedural fairness and natural justice intrinsic to orders against newcomers means that they should not even be imposed at the interim stage. If such injunctions were to be allowed on an interim basis, they should be limited to cases where there is a danger of real and imminent unlawful action, with a view to holding the ring and allowing claimants time to identify unknown but existing defendants.

- B *Jude Bunting KC and Marlena Valles* (instructed by *Liberty*) for Liberty, intervening.

It is not open to the court to significantly expand the *contra mundum* jurisdiction so as to permit courts in Gypsy, Roma and Traveller (“GRT”) or protester cases to make persons unknown orders (interim or final) which bind newcomers. The Court of Appeal’s conclusion in this case demonstrates the serious limitations of seeking to solve complex questions of social policy by deploying a tool of civil law. A court cannot lawfully make a final injunction against newcomers when the injunction is likely to interfere with the human rights of newcomers and there has not been any assessment of the individual facts of their case.

- D Unlike established orders such as freezing orders, *Anton Piller* orders, or possession orders which are targeted at specific people, final persons unknown injunctions frequently involve severe interference with the rights of a large category of people, often extending to vast swathes of land, entire boroughs or the entirety of the strategic road network. They can cover entirely peaceful, lawful protest.

- E In both GRT cases (where article 8 rights are involved) and in protest cases (where articles 10 and 11 are involved) an individual assessment of proportionality is required. In the former context, there is a clear line of Strasbourg authority emphasising the strictness of the proportionality test when imposing measures which affect the GRT community, such as injunctions to prevent encampments. A potential breach of planning authorisation, for example, will not be enough: see *Winterstein v France*

- F (Application No 27013/07) (unreported) 17 October 2013. Consideration must be given to individualised matters such as the length of time of the encampment, the consequences of removal and the risk of becoming homeless. Similar considerations apply in protester cases: see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417, para 136 and *Kudrevičius v Lithuania* (2015) 62 EHRR 34, paras 145, 155. This applies not just to Convention rights, but to fundamental common law rights such as the right to a home, to respect for one’s ethnic identity and to freedom of expression.

- G The serious impact of persons unknown injunctions is graphically illustrated by the way in which some claimants have aggressively sought committal of persons who have breached persons unknown injunctions, even in circumstances where the breaches were “trivial and wholly technical” as in *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (QB). In that case a solicitor was prosecuted by a private company for attending a protest site in her professional capacity and was said to have breached the injunction by parking her car for an hour in an “exclusion zone”. The committal proceedings lasted two days and were dismissed as “wholly frivolous”, but

necessitated the solicitor self-reporting to the Solicitors Regulation Authority and ceasing to work for her firm until authorised to return. A

General category measures involve complex issues of policy and are matters for the legislature, as in the measures considered in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] AC 505; see also *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2007] 2 AC 105, para 52. A court at first instance is singularly ill-equipped to make such a category assessment. B

Nigel Giffin KC and Simon Birks (instructed by *Walsall Metropolitan Borough Council Legal Services*) for the second respondent local authority.

The essential starting point for addressing these issues is section 37 of the Senior Courts Act 1981, because section 37 is the statutory power which is being exercised when the High Court grants an injunction in a case of this nature (unless it is acting under a specific statutory power). There are three important points to make about what Parliament has enacted in section 37(1). First, it is a statutory power which Parliament has elected to confer in terms of the greatest possible breadth. It is engaged whenever the court considers that the grant of an injunction would be “just and convenient”. Secondly, section 37(1) expressly applies both to interlocutory (interim) orders, and to final orders, without drawing any distinction between them whatsoever. Thirdly, the section 37 power is expressly exercisable in “all” cases where the grant of an injunction would be just and convenient. The appellants are therefore wrong to suggest that it is only exercisable in “some” cases, not including cases of the present nature. C D

The courts are well aware that, as with any other broad discretionary power conferred upon it, the section 37 power must be exercised on a principled basis. Thus it is axiomatic, for example, that the grant of injunctive relief in a particular form must represent a proportionate response to the factual situation with which the court is faced; that the court must so far as possible ensure fairness to all those affected by the injunction; and that the injunction is consistent with Convention rights. E

It is wrong to fetter the exercise of the section 37 power in advance, whether by inflexible judge-made rules, or through the division of cases into rigid and potentially artificial categories to which distinct rules apply. Rather, a broad and flexible approach is called for: see *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389. If the grant of an injunction would not be a fair or proportionate measure on particular facts, then it will not be granted. But if an injunction in a particular form would be the appropriate response to the actual or threatened commission of a legal wrong—and especially if such an injunction represents the only effective means of protecting legal rights and preventing significant harm—then the court should be slow to conclude that it is powerless to grant such relief. F G

Newcomer injunctions are just one sub-species of the “precautionary” (quia timet) injunction which is solidly established in English law, and for whose award the courts have long since established a framework of governing principles. The claimants in these proceedings manifestly have an interest which merits protection. H

Cameron v Hussain [2019] 1 WLR 1471 should be seen as a case about the need for the court to guard against exposing people to detrimental legal consequences without their having had an opportunity to be heard or

A otherwise to defend their interests. It did not lay down an absolute conceptual or jurisprudential bar to the grant of newcomer injunctions. Albeit stating that the general rule is that proceedings may not be brought against unnamed parties, Lord Sumption specifically endorsed the approach in *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 of granting injunctions against anonymous but identifiable defendants provided
B that the injunction is brought to the attention of the putative defendant (for example by posting copies of the documents in some prominent place near the land in question) and the defendant is afforded an opportunity to apply to set it aside

The practice endorsed in *Cameron* applies as much to final orders as it does to interim orders. There is no relevant conceptual difference between the two, and it would be paradoxical if the court's powers were less
C extensive when making a final order after trial. Nicklin J in the present case attempted to resolve this paradox by saying that interim injunctions could only be granted against persons unknown for a short period during which they were expected to be identifiable, but there is no sign of any such approach in existing authority, for example *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633 or *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100.
D

Newcomer injunctions are not intrinsically incompatible with natural justice. There are many situations in which courts make orders without having heard the persons who might be affected by them, usually because it is impractical, for one reason or another, to afford a hearing to those persons in advance of the making of the order. In such circumstances, fairness is
E secured by enabling any person affected to seek the recall of the order promptly at a hearing inter partes: see *R (M) v Secretary of State for Constitutional Affairs and Lord Chancellor* [2004] 1 WLR 2298, para 39 and *A v British Broadcasting Corp'n* [2015] AC 588, para 67.

Guidelines are already in place as to when newcomer injunctions should be granted and as to the safeguards which must be observed: see *Ineos* [2019] 4 WLR 100, *Cuadrilla Bowland Ltd v Persons Unknown* [2020]
F 4 WLR 29 and *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043. Those guidelines provide a fair balance. They would be otiose if the Supreme Court acceded to the appeal and the safeguards which they provide were to be replaced by a universal prohibition. For examples of the court applying the correct approach to particular facts, see *Hillingdon London Borough Council v Persons Unknown* [2020] PTSR 2179,
G paras 95–122, *Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] LLR 458, para 81 and *Birmingham City Council v Nagmadin* [2023] EWHC 56 (KB), at [34]–[37], [49]–[54], [59]–[60]. [Reference was also made to *Crédit Agricole Corporate and Investment Bank v Persons Having Interest in Goods Held by the Claimant* [2021] 1 WLR 3834.]

The operation of newcomer injunctions is not intrinsically incompatible with Convention principles of proportionality. It is accepted that, depending
H on the nature of the injunction in question, Convention rights of newcomers may well (though will not always) be engaged. But they have to be balanced against any competing common law or Convention rights of persons living in close proximity to the land in question who would otherwise be adversely affected by the prohibited acts. This is always a fact-sensitive exercise. The

court is well-equipped to carry out the necessary proportionality test even where the newcomers are not before the court, just as it is when granting injunctions which carry *Spycatcher*-type consequences for third parties: see *Attorney General v Punch Ltd* [2003] 1 AC 1046, paras 108, 113–114, 116, 122–123.

Mark Anderson KC and Michelle Caney (instructed by *Wolverhampton City Council Legal Services*) for the first respondent local authority.

Precautionary injunctions against persons unknown which bind newcomers form a species of injunction against the world, as the Court of Appeal correctly held in the present case: see [2023] QB 295, paras 119–121. The fact that they are exceptional orders that are only granted in narrow circumstances as a last resort (see *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, para 99 et seq and *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, paras 31–34) falsifies any “floodgates” argument.

Section 37 of the Senior Courts Act 1981 frames the question which the courts must ask: is it “just and convenient” to grant an injunction? The appellants’ argument would require the Supreme Court to pre-judge this question by holding in advance that it will never be just and convenient to grant an injunction to prevent future wrongs by persons who cannot be identified when the injunction is granted.

This would not only deny a remedy to the victims of unlawful encampments: it would prevent courts from granting injunctions to prevent a wide range of other wrongdoing, such as urban exploring and car cruising. To remove from the armoury of the courts the remedy which the courts have devised over the last 20 years would be to incentivise such wrongful conduct.

Moreover, if wrongdoers know that they cannot be subject to an injunction which does not name them, they will be provided with a perverse incentive to preserve their anonymity.

There is no fundamental distinction between interim and final injunctions. Section 37 includes the power to fashion an injunction which has some of the characteristics of both and such injunctions should be permitted where they are just and convenient. *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633 illustrates this.

The courts have laid down guidelines as to when such injunctions should be granted and as to the safeguards which must be observed. Those guidelines provide a fair balance. They would be otiose if the Supreme Court acceded to the appeal and the safeguards which they provide were replaced by a universal prohibition. This would offend principles of justice, most notably the principle that where there is a wrong, the law should provide a remedy: see *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780, para 25.

It makes no sense to say that such injunctions should only be granted to protect Convention rights. There is no authority that Convention rights must be in play before an injunction against the world can be issued. As the Court of Appeal correctly observed at paras 80 and 120, the fact that protester or encampment cases do not fall within the exceptional category with which *Venables v News Group Newspapers Ltd* [2001] Fam 430 was concerned does not mean that a species of injunction against the world is not also appropriate in protester or encampment cases.

A On the contrary, if it is right for the court to fashion an unconventional injunction, addressed to the whole world, in order to protect a claimant's Convention rights, it is unprincipled to conclude that it must never do so to protect non-Convention rights. The distinction between Convention rights and other rights is arbitrary and artificial.

B *Caroline Bolton and Natalie Pratt* (instructed by *Sharpe Pritchard LLP* and *Legal Services, Barking and Dagenham London Borough Council*) for the third to tenth respondent local authorities.

C Each of the third to tenth respondent local authorities' injunctions in these proceedings were sought and granted pursuant to section 187B of the Town and Country Planning Act 1990. Travellers injunctions under section 187B should be seen as a statutory exception to the "general" rule set out in *Cameron v Hussain* [2019] 1 WLR 1471, para 9 that proceedings may not be brought against unnamed parties.

D By section 187B(1) a local authority may seek an injunction to restrain "any actual or apprehended breach of planning control": hence the local authority only has to "apprehend" a breach in order to apply for an injunction. By subsection (2) the court "may" grant "such injunction as it thinks appropriate", thus giving it the same wide jurisdiction as under section 37 of the Senior Courts Act 1981. (The permissive "may" in subsection (2) applies not only to the *terms* of any injunction but also to the decision *whether* to grant an injunction: see *South Bucks District Council v Porter* [2003] 2 AC 558, para 28.) And by subsection (3), rules of court (currently to be found in CPR PD 49E) may provide for injunctions to be issued against persons whose identity is unknown. In unauthorised encampment cases the court may describe the persons targeted by reference to evidence of what might potentially happen on the land sought to be protected, in the same way that persons unknown in unauthorised development cases are often defined by reference to the evidence of what was happening on the land (for example the injunction directed at "persons unknown . . . causing or permitting hardcore to be deposited [and] caravans . . . stationed [on specified land]" in *South Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88).

F Section 187B does not confine itself to interim injunctions. Nor was the Court of Appeal in *South Cambridgeshire District Council v Gammell* [2006] 1 WLR 658 confining itself to interim injunctions, as may be seen from its reliance (at para 29) on *Mid-Bedfordshire District Council v Brown* [2005] 1 WLR 1460, which was a case about a final injunction (under section 187B) which bound newcomers as well as the named defendant. [Reference was also made to *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780, paras 1–4 and *Redbridge London Borough Council v Stokes* [2018] EWHC 4076 (QB) at [10]–[23].]

G *Richard Kimblin KC and Michael Fry* (instructed by *Treasury Solicitor*) for High Speed Two (HS2) Ltd and the Secretary of State, intervening.

H Although the appellants complain about the "chilling effect" of injunctions on the right to protest, consideration should also be given to the beneficial effect of injunctions to deter disruptive, unlawful conduct: see *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780, para 83. It is no part of the Secretary of State's or HS2's case that lawful

protest should be constrained. However, since 2021 there has been significant disruption to the strategic road network caused by the unlawful conduct of protesters seeking a change of government policy. Similarly, since 2017 there has been significant disruption to the construction of the HS2 rail link by the unlawful conduct of activists opposed to the project. Hence the need for the Secretary of State and HS2 to seek tailored “newcomer” injunctions (see, for example, *High Speed Two (HS2) Ltd v Persons Unknown* [2022] EWHC 2360 (KB)) to prevent activities which are not only unlawful but often risk injury to contractors and/or members of the public.

Any person affected by such injunctions will have liberty to apply at any time to vary or discharge the injunction and anyone who successfully discharges an order would in principle be entitled to their costs. Further, claimants are normally required to give a cross-undertaking in damages that, should it later be determined that the interim injunction should not have been granted, they must compensate for any loss caused by the injunction.

Although the term “contra mundum” is frequently used—the ultimate in catch-all terms—it is necessary to consider what it actually means on the particular facts of each case. It is obtuse to consider the appropriateness of a contra mundum order on the basis that everybody is affected: it is not, for example, the whole world which wishes to climb gantries on the M25. Rather, the court should (and does as a matter of practice) take a view about who, in the particular circumstances, might be affected. It will be a cautious view. It is a matter of degree and a judgement which is not difficult to make.

Drabble KC replied.

The court took time for consideration.

29 November 2023. LORD REED PSC, LORD BRIGGS JSC and LORD KITCHIN (with whom LORD HODGE DPSC and LORD LLOYD-JONES JSC agreed) handed down the following judgment.

1. Introduction

(1) The problem

1 This appeal concerns a number of conjoined cases in which injunctions were sought by local authorities to prevent unauthorised encampments by Gypsies and Travellers. Since the members of a group of Gypsies or Travellers who might in future camp in a particular place cannot generally be identified in advance, few if any of the defendants to the proceedings were identifiable at the time when the injunctions were sought and granted. Instead, the defendants were described in the claim forms as “persons unknown”, and the injunctions similarly enjoined “persons unknown”. In some cases, there was no further description of the defendants in the claim form, and the court’s order contained no further information about the persons enjoined. In other cases, the defendants were described in the claim form by reference to the conduct which the claimants sought to have prohibited, and the injunctions were addressed to persons who behaved in the manner from which they were ordered to refrain.

2 In these circumstances, the appeal raises 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

A 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: “newcomers”, as they have been described in these proceedings.

3 Although the appeal arises in the context of unlawful encampments by Gypsies and Travellers, the issues raised have a wider significance.
 B The availability of injunctions against newcomers has become an increasingly important issue in many contexts, including industrial picketing, environmental and other protests, breaches of confidence, breaches of intellectual property rights, and a wide variety of unlawful activities related to social media. The issue is liable to arise whenever there is a potential conflict between the maintenance of private or public rights and the future behaviour of individuals who cannot be identified in advance. Recent years
 C have seen a marked increase in the incidence of applications for injunctions of this kind. The advent of the internet, enabling wrongdoers to violate private or public rights behind a veil of anonymity, has also made the availability of injunctions against unidentified persons an increasingly significant question. If injunctions are available only against identifiable individuals, then the anonymity of wrongdoers operating online risks conferring upon them an
 D immunity from the operation of the law.

4 Reflecting the wide significance of the issues in the appeal, the court has heard submissions not only from the appellants, who are bodies representing the interests of Gypsies and Travellers, and the respondents, who are local authorities, but also from interveners with a particular interest in the law relating to protests: Friends of the Earth, Liberty, and (acting jointly) the Secretary of State for Transport and High Speed Two (HS2) Ltd.

E 5 The appeal arises from judgments given by Nicklin J and the Court of Appeal on what were in substance preliminary issues of law. The appeal is accordingly concerned with matters of legal principle, rather than with whether it was or was not appropriate for injunctions to be granted in particular circumstances. It is, however, necessary to give a brief account of the factual and procedural background.

F (2) *The factual and procedural background*

6 Between 2015 and 2020, 38 different local authorities or groups of local authorities sought injunctions against unidentified and unknown persons, which in broad terms prohibited unauthorised encampments within their administrative areas or on specified areas of land within those areas.
 G The claims were brought under the procedure laid down in Part 8 of the Civil Procedure Rules 1998 (“CPR”), 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). The claimants relied upon a number of statutory provisions, including section 187B of the Town and Country Planning Act 1990, under which the court can grant an injunction
 H to restrain an actual or apprehended breach of planning control, and in some cases also upon common law causes of action, including trespass to land.

7 The claim forms fell into two broad categories. First, there were claims directed against defendants described simply as “persons unknown”, either alone or together with named defendants. Secondly, there were claims against unnamed defendants who were described, in almost all cases, by

reference to the future activities which the claimant sought to prevent, either alone or together with named defendants. Examples included “persons unknown forming unauthorised encampments within the Borough of Nuneaton and Bedworth”, “persons unknown entering or remaining without planning consent on those parcels of land coloured in Schedule 2 of the draft order”, and “persons unknown who enter and/or occupy any of the locations listed in this order for residential purposes (whether temporary or otherwise) including siting caravans, mobile homes, associated vehicles and domestic paraphernalia”.

8 In most cases, the local authorities obtained an order for service of the claim forms by alternative means under CPR r 6.15, usually by fixing copies in a prominent location at each site, or by fixing there a copy of the injunction with a notice that the claim form could be obtained from the claimant’s offices. Injunctions were obtained, invariably on without notice applications where the defendants were unnamed, and were similarly displayed. They contained a variety of provisions concerning review or liberty to apply. Some injunctions were of fixed duration. Others had no specified end date. Some were expressed to be interim injunctions. Others were agreed or held by Nicklin J to be final injunctions. Some had a power of arrest attached, meaning that any person who acted contrary to the injunction was liable to immediate arrest.

9 As we have explained, the injunctions were addressed in some cases simply to “persons unknown”, and in other cases to persons described by reference to the activities from which they were required to refrain: for example, “persons unknown occupying the sites listed in this order”. The respondents were among the local authorities who obtained such injunctions.

10 From around mid-2020, applications were made in some of the claims to extend or vary injunctions of fixed duration which were nearing their end. After a hearing in one such case, Nicklin J decided, with the concurrence of the President of the Queen’s Bench Division and the Judge in Charge of the Queen’s Bench Civil List, that there was a need for review of all such injunctions. After case management, in the course of which many of the claims were discontinued, there remained 16 local authorities (or groups of local authorities) actively pursuing claims. The appellants were given permission to intervene. A hearing was then fixed at which four issues of principle were to be determined. Following the hearing, Nicklin J determined those issues: *Barking and Dagenham London Borough Council v Persons Unknown* [2022] JPL 43.

11 Putting the matter broadly at this stage, Nicklin J concluded, in the light particularly of the decision of the Court of Appeal in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (“*Canada Goose*”), that interim injunctions could be granted against persons unknown, but that final injunctions could be granted only against parties who had been identified and had had an opportunity to contest the final order sought. If the relevant local authority could identify anyone in the category of “persons unknown” at the time the final order was granted, then the final injunction bound each person who could be identified. If not, then the final injunction granted against “persons unknown” bound no-one. In the light of that conclusion, Nicklin J

A discharged the final injunctions either in full or in so far as they were addressed to any person falling within the definition of “persons unknown” who was not a party to the proceedings at the date when the final order was granted.

B 12 Twelve of the claimants appealed to the Court of Appeal. In its decision, set out in a judgment given by Sir Geoffrey Vos MR with which Lewison and Elisabeth Laing LJ agreed, the court held 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, from occupying and trespassing on land”: *Barking and Dagenham London Borough Council v Persons Unknown* [2023] QB 295, para 7. The appellants appeal to this court against that decision.

C 13 The issues in the appeal have been summarised by the parties as follows:

(1) Is it wrong in principle and/or not open to a court for it to exercise its statutory power under section 37 of the Senior Courts Act 1981 (“the 1981 Act”) so as to grant an injunction which will bind “newcomers”, that is to say, persons who were not parties to the claim when the injunction was granted, other than (i) on an interim basis or (ii) for the protection of Convention rights (ie rights which are protected under the Human Rights Act 1998)?

D (2) If it is wrong in principle and/or not open to a court to grant such an injunction, then—

(i) Does it follow that (other than for the protection of Convention rights) such an injunction may likewise not properly be granted on an interim basis, except where that is required for the purpose of restraining wrongful actions by persons who are identifiable (even if not yet identified) and who have already committed or threatened to commit a relevant wrongful act?

E (ii) Was Nicklin J right to hold that the protection of Convention rights could never justify the grant of a Traveller injunction, defined as an injunction prohibiting the unauthorised occupation or use of land?

F 2. *The legal background*

14 Before considering the development of “newcomer” injunctions—that is to say, injunctions designed to bind persons who are not identifiable as parties to the proceedings at the time when the injunction is granted—it may be helpful to identify some of the issues of principle which are raised by such injunctions. They can be summarised as follows:

G (1) Are newcomers parties to the proceedings at the time when the injunction is granted? If not, is it possible to obtain an injunction against a non-party? If they are not parties at that point, when (if ever) and how do they become parties?

(2) Does the claimant have a cause of action against newcomers at the time when the injunction is granted? If not, is it possible to obtain an injunction without having an existing cause of action against the person enjoined?

H (3) Can a claim form properly describe the defendants as persons unknown, with or without a description referring to the conduct sought to be enjoined? Can an injunction properly be addressed to persons so described? If the description refers to the conduct which is prohibited, can the defendants properly be described, and can an injunction properly be

issued, in terms which mean that persons do not become bound by the injunction until they infringe it? A

(4) How, if at all, can such a claim form be served?

15 This is not the stage at which to consider these questions, but it may be helpful to explain the legal context in which they arise, before turning to the authorities through which the law relating to newcomer injunctions has developed in recent times. We will explain at this stage the legal background, prior to the recent authorities, in relation to (1) the jurisdiction to grant injunctions, (2) injunctions against non-parties, (3) injunctions in the absence of a cause of action, (4) the commencement of proceedings against unidentified defendants, and (5) the service of proceedings on unidentified defendants. B

(1) *The jurisdiction to grant injunctions* C

16 As Lord Scott of Foscote commented in *Fourie v Le Roux* [2007] 1 WLR 320, para 25, in a speech with which the other Law Lords agreed, jurisdiction is a word of some ambiguity. Lord Scott cited with approval Pickford LJ's remark in *Guaranty Trust Co of New York v Hannay & Co* [1915] 2 KB 536, 563 that "the only really correct sense of the expression that the court has no jurisdiction is that it has no power to deal with and decide the dispute as to the subject matter before it, no matter in what form or by whom it is raised". However, as Pickford LJ went on to observe, the word is often used in another sense: "that although the court has power to decide the question it will not according to its settled practice do so except in a certain way and under certain circumstances". In order to avoid confusion, it is necessary to distinguish between these two senses of the word: between the power to decide—in this context, the power to grant an injunction—and the principles and practice governing the exercise of that power. D E

17 The injunction is equitable in origin, and remains so despite its statutory confirmation. The power of courts with equitable jurisdiction to grant injunctions is, subject to any relevant statutory restrictions, unlimited: Spry, *Equitable Remedies*, 9th ed (2014) ("Spry"), p 333, cited with approval in, among other authorities, *Broadmoor Special Hospital Authority v Robinson* [2000] QB 775, paras 20–21 and *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1, para 47 (both citing the equivalent passage in the 5th ed (1997)), and *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389 ("Broad Idea"), para 57. The breadth of the court's power is reflected in the terms of section 37(1) of the 1981 Act, which states that: "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." As Lord Scott explained in *Fourie v Le Roux* (ibid), that provision, like its statutory predecessors, merely confirms and restates the power of the courts to grant injunctions which existed before the Supreme Court of Judicature Act 1873 (36 & 37 Vict c 66) ("the 1873 Act") and still exists. That power was transferred to the High Court by section 16 of the 1873 Act and has been preserved by section 18(2) of the Supreme Court of Judicature (Consolidation) Act 1925 and section 19(2)(b) of the 1981 Act. F G H

A 18 It is also relevant in the context of this appeal to note that, as a court of inherent jurisdiction, the High Court possesses the power, and bears the responsibility, to act so as to maintain the rule of law.

B 19 Like any judicial power, the power to grant an injunction must be exercised in accordance with principle and any restrictions established by judicial precedent and rules of court. Accordingly, as Lord Mustill observed in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334, 360–361:

“Although the words of section 37(1) [of the 1981 Act] and its forebears are very wide it is firmly established by a long history of judicial self-denial that they are not to be taken at their face value and that their application is subject to severe constraints.”

C Nevertheless, the principles and practice governing the exercise of the power to grant injunctions need to and do evolve over time as circumstances change. As Lord Scott observed in *Fourie v Le Roux* at para 30, practice has not stood still and is unrecognisable from the practice which existed before the 1873 Act.

D 20 The point is illustrated by the development in recent times of several new kinds of injunction in response to the emergence of particular problems: for example, the *Mareva* or freezing injunction, named after one of the early cases in which such an order was made (*Mareva Cia Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd’s Rep 509); the search order or *Anton Piller* order, again named after one of the early cases in which such an order was made (*Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55); the *Norwich Pharmacal* order, also known as the third party disclosure order, which takes its name from the case in which the basis for such an order was authoritatively established (*Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133); the *Bankers Trust* order, which is an injunction of the kind granted in *Bankers Trust Co v Shapira* [1980] 1 WLR 1274; the internet blocking order, upheld in *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 (para 17 above), and approved by this court in the same case, on an appeal on the question of costs: *Cartier International AG v British Telecommunications plc* [2018] 1 WLR 3259, para 15; the anti-suit injunction (and its offspring, the anti-anti-suit injunction), which has become an important remedy as globalisation has resulted in parties seeking tactical advantages in different jurisdictions; and the related injunction to restrain the presentation or advertisement of a winding-up petition.

G 21 It has often been recognised that the width and flexibility of the equitable jurisdiction to issue injunctions are not to be cut down by categorisations based on previous practice. In *Castanho v Brown & Root (UK) Ltd* [1981] AC 557, for example, Lord Scarman stated at p 573, in a speech with which the other Law Lords agreed, that “the width and flexibility of equity are not to be undermined by categorisation”. To similar effect, in *South Carolina Insurance Co v Assurantie Maatschappij “De Zeven Provinciën” NV* [1987] AC 24, Lord Goff of Chieveley, with whom Lord Mackay of Clashfern agreed, stated at p 44:

“I am reluctant to accept the proposition that the power of the court to grant injunctions is restricted to certain exclusive categories. That power

is unfettered by statute; and it is impossible for us now to foresee every circumstance in which it may be thought right to make the remedy available.”

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In *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334 (para 19 above), Lord Browne-Wilkinson, with whose speech Lord Keith of Kinkell and Lord Goff agreed, expressed his agreement at p 343 with Lord Goff’s observations in the *South Carolina* case. In *Mercedes Benz AG v Leiduck* [1996] AC 284, 308, Lord Nicholls of Birkenhead referred to these dicta in the course of his illuminating albeit dissenting judgment, and stated:

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“As circumstances in the world change, so must the situations in which the courts may properly exercise their jurisdiction to grant injunctions. The exercise of the jurisdiction must be principled, but the criterion is injustice. Injustice is to be viewed and decided in the light of today’s conditions and standards, not those of yester-year.”

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22 These dicta are borne out by the recent developments in the law of injunctions which we have briefly described. They illustrate the continuing ability of equity to innovate both in respect of orders designed to protect and enhance the administration of justice, such as freezing injunctions, *Anton Piller* orders, *Norwich Pharmacal* orders and *Bankers Trust* orders, and also, more significantly for present purposes, in respect of orders designed to protect substantive rights, such as internet blocking orders. That is not to undermine the importance of precedent, or to suggest that established categories of injunction are unimportant. But the developments which have taken place over the past half-century demonstrate the continuing flexibility of equitable powers, and are a reminder that injunctions may be issued in new circumstances when the principles underlying the existing law so require.

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(2) *Injunctions against non-parties*

23 It is common ground in this appeal that newcomers are not parties to the proceedings at the time when the injunctions are granted, and the judgments below proceeded on that basis. However, it is worth taking a moment to consider the question.

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24 Where the defendants are described in a claim form, or an injunction describes the persons enjoined, simply as persons unknown, the entire world falls within the description. But the entire human race cannot be regarded as being parties to the proceedings: they are not before the court, so that they are subject to its powers. It is only when individuals are served with the claim form that they ordinarily become parties in that sense, although it is also possible for persons to apply to become parties in the absence of service. As will appear, service can be problematical where the identities of the intended defendants are unknown. Furthermore, as a general rule, for any injunction to be enforceable, the persons whom it enjoins, if unnamed, must be described with sufficient clarity to identify those included and those excluded.

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25 Where, as in most newcomer injunctions, the persons enjoined are described by reference to the conduct prohibited, particular individuals do not fall within that description until they behave in that way. The result is

- A that the injunction is in substance addressed to the entire world, since anyone in the world may potentially fall within the description of the persons enjoined. But persons may be affected by the injunction in ways which potentially have different legal consequences. For example, an injunction designed to deter Travellers from camping at a particular location may be addressed to persons unknown camping there (notwithstanding that
- B no-one is currently doing so) and may restrain them from camping there. If Travellers elsewhere learn about the injunction, they may consequently decide not to go to the site. Other Travellers, unaware of the injunction, may arrive at the site, and then become aware of the claim form and the injunction by virtue of their being displayed in a prominent position. Some of them may then proceed to camp on the site in breach of the injunction.
- C Others may obey the injunction and go elsewhere. At what point, if any, do Travellers in each of these categories become parties to the proceedings? At what point, if any, are they enjoined? At what point, if any, are they served (if the displaying of the documents is authorised as alternative service)? It will be necessary to return to these questions. However these questions are answered, although each of these groups of Travellers is affected by the injunction, none of them can be regarded as being party to the proceedings at
- D the time when the injunction is granted, as they do not then answer to the description of the persons enjoined and nothing has happened to bring them within the jurisdiction of the court.

26 If, then, newcomers are not parties to the proceedings at the time when the injunctions are granted, it follows that newcomer injunctions depart from the court's usual practice. The ordinary rule is that "you cannot

E have an injunction except against a party to the suit": *Iveson v Harris* (1802) 7 Ves 251, 257. That is not, however, an absolute rule: Lord Eldon LC was speaking at a time when the scope of injunctions was more closely circumscribed than it is today. In addition to the undoubted jurisdiction to grant interim injunctions prior to the service (or even the issue) of proceedings, a number of other exceptions have been created in response to

F the requirements of justice. Each of these should be briefly described, as it will be necessary at a later point to consider whether newcomer injunctions fall into any of these established categories, or display analogous features.

(i) Representative proceedings

- 27 The general rule of practice in England and Wales used to be that the defendants to proceedings must be named, and that even a description of
- G them would not suffice: *Friern Barnet Urban District Council v Adams* [1927] 2 Ch 25; *In re Wykeham Terrace, Brighton, Sussex, Ex p Territorial Auxiliary and Volunteer Reserve Association for the South East* [1971] Ch 204. The only exception in the Rules of the Supreme Court ("RSC") concerned summary proceedings for the possession of land: RSC Ord 113.

- 28 However, it has long been established that in appropriate
- H circumstances relief can be sought against representative defendants, with other unnamed persons being described in the order in general terms. Although formerly recognised by RSC Ord 15, r 12, and currently the subject of rule 19.8 of the CPR, this form of procedure has existed for several centuries and was developed by the Court of Chancery. Its rationale was

explained by Sir Thomas Plumer MR in *Meux v Maltby* (1818) 2 Swans 277, 281–282: A

“The general rule, which requires the Plaintiff to bring before the Court all the parties interested in the subject in question, admits of exceptions. The liberality of this Court has long held, that there is of necessity an exception to the general rule, when a failure of justice would ensue from its enforcement.” B

Those who are represented need not be individually named or identified. Nor need they be served. They are not parties to the proceedings: CPR r 19.8(4)(b). Nevertheless, an injunction can be granted against the whole class of defendants, named and unnamed, and the unnamed defendants are bound in equity by any order made: *Adair v The New River Co* (1805) 11 Ves 429, 445; CPR r 19.8(4)(a). C

29 A representative action may in some circumstances be a suitable means of restraining wrongdoing by individuals who cannot be identified. It can therefore, in such circumstances, provide an alternative remedy to an injunction against “persons unknown”: see, for example, *M Michaels (Furriers) Ltd v Askew* [1983] Lexis Citation 198, concerned with picketing; *EMI Records Ltd v Kudhail* [1985] FSR 36, concerned with copyright infringement; and *Heathrow Airport Ltd v Garman* [2007] EWHC 1957 (QB), concerned with environmental protesters. D

30 However, there are a number of principles which restrict the circumstances in which relief can be obtained by means of a representative action. In the first place, the claimant has to be able to identify at least one individual against whom a claim can be brought as a representative of all others likely to interfere with his or her rights. Secondly, the named defendant and those represented must have the same interest. In practice, compliance with that requirement has proved to be difficult where those sought to be represented are not a homogeneous group: see, for example, *News Group Newspapers Ltd v Society of Graphical and Allied Trades ’82 (No 2)* [1987] ICR 181, concerned with industrial action, and *United Kingdom Nirex Ltd v Barton* [1986] Lexis Citation 644, concerned with protests. In addition, since those represented are not party to the proceedings, an injunction cannot be enforced against them without the permission of the court (CPR r 19.8(4)(b)): something which, it has been held, cannot be granted before the individuals in question have been identified and have had an opportunity to make representations: see, for example, *RWE Npower plc v Carrol* [2007] EWHC 947 (QB). E
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(ii) Wardship proceedings

31 Another situation where orders have been made against non-parties is where the court has been exercising its wardship jurisdiction. In *In re X (A Minor) (Wardship: Injunction)* [1984] 1 WLR 1422 the court protected the welfare of a ward of court (the daughter of an individual who had been convicted of manslaughter as a child) by making an order prohibiting any publication of the present identity of the ward or her parents. The order bound everyone, whether a party to the proceedings or not: in other words, it was an order contra mundum. Similar orders have been made in subsequent cases: see, for example, *In re M and N (Minors) (Wardship:* G
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- A *Publication of Information* [1990] Fam 211 and *In re R (Wardship: Restrictions on Publication)* [1994] Fam 254.

(iii) Injunctions to protect human rights

- B 32 It has been clear since the case of *Venables v News Group Newspapers Ltd* [2001] Fam 430 (“*Venables*”) that the court can grant an injunction contra mundum in order to enforce rights protected by the Human Rights Act 1998. The case concerned the protection of the new identities of individuals who had committed notorious crimes as children, and whose safety would be jeopardised if their new identities became publicly known. An injunction preventing the publication of information about the claimants had been granted at the time of their trial, when they remained children. The matter returned to the court after they attained the age of majority and applied for the ban on publication to be continued, on the basis that the information in question was confidential. The injunction was granted against named newspaper publishers and, expressly, against all the world. It was therefore an injunction granted, as against all potential targets other than the named newspaper publishers, on a without notice application.
- D 33 Dame Elizabeth Butler-Sloss P held that the jurisdiction to grant an injunction in the circumstances of the case lay in equity, in order to restrain a breach of confidence. She recognised that by granting an injunction against all the world she would be departing from the general principle, referred to at para 26 above, that “you cannot have an injunction except against a party to the suit” (para 98). But she relied (at para 29) upon the passage in *Spry* (in an earlier edition) which we cited at para 17 above as the source of the necessary equitable jurisdiction, and she felt compelled to make the order against all the world because of the extreme danger that disclosure of confidential information would risk infringing the human rights of the claimants, particularly the right to life, which the court as a public authority was duty-bound to protect from the criminal acts of others: see
- E paras 98–100. Furthermore, an order against only a few named newspaper publishers which left the rest of the media free to report the prohibited information would be positively unfair to them, having regard to their own
- F Convention rights to freedom of speech.

(iv) Reporting restrictions

- G 34 Reporting restrictions are prohibitions on the publication of information about court proceedings, directed at the world at large. They are not injunctions in the same sense as the orders which are our primary concern, but they are relevant as further examples of orders granted by courts restraining conduct by the world at large. Such orders may be made under common law powers or may have a statutory basis. They generally prohibit the publication of information about the proceedings in which they are made (eg as to the identity of a witness). A person will commit a contempt of court if, knowing of the order, he frustrates its purpose by publishing the information in question: see, for example, *In re F (or se A) (A Minor) (Publication of Information)* [1977] Fam 58 and *Attorney General v Leveller Magazine Ltd* [1979] AC 440.
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(v) Embargoes on draft judgments

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35 It is the practice of some courts to circulate copies of their draft judgments to the parties' legal representatives, subject to a prohibition on further, unauthorised, disclosure. The order therefore applies directly to non-parties to the proceedings: see, for example, *Attorney General v Crosland* [2021] 4 WLR 103 and [2022] 1 WLR 367. Like reporting restrictions, such orders are not equitable injunctions, but they are relevant as further examples of orders directed against non-parties.

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(vi) The effect of injunctions on non-parties

36 We have focused thus far on the question whether an injunction can be granted against a non-party. As we shall explain, it is also relevant to consider the effect which injunctions against parties can have upon non-parties.

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37 If non-parties are not enjoined by the order, it follows that they are not bound to obey it. They can nevertheless be held in contempt of court if they knowingly act in the manner prohibited by the injunction, even if they have not aided or abetted any breach by the defendant. As it was put by Lord Oliver of Aylmerton in *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 223, there is contempt where a non-party "frustrates, thwarts, or subverts the purpose of the court's order and thereby interferes with the due administration of justice in the particular action" (emphasis in original).

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38 One of the arguments advanced before the House of Lords in *Attorney General v Times Newspapers Ltd* was that to invoke the jurisdiction in contempt against a person who was neither a party nor an aider or abettor of a breach of the order by the defendant, but who had done what the defendant in the action was forbidden by the order to do was, in effect, to make the order operate in rem or contra mundum. That, it was argued, was a purpose which the court could not legitimately achieve, since its orders were only properly made inter partes.

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39 The argument was rejected. Lord Oliver acknowledged at p 224 that "Equity, in general, acts in personam and there are respectable authorities for the proposition that injunctions, whether mandatory or prohibitory, operate inter partes and should be so expressed (see *Iveson v Harris*; *Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406)". Nevertheless, the appellants' argument confused two different things: the scope of an order inter partes, and the proper administration of justice (pp 224–225):

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"Once it is accepted, as it seems to me the authorities compel, that contempt (to use Lord Russell of Killowen's words [in *Attorney General v Leveller Magazine Ltd* at p 468]) 'need not involve disobedience to an order binding upon the alleged contemnor' the potential effect of the order contra mundum is an inevitable consequence."

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40 In answer to the objection that the non-party who learns of the order has not been heard by the court and has therefore not had the opportunity to put forward any arguments which he may have, Lord Oliver responded at p 224 that he was at liberty to apply to the court:

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"The Sunday Times' in the instant case was perfectly at liberty, before publishing, either to inform the respondent and so give him the

A opportunity to object or to approach the court and to argue that it should be free to publish where the defendants were not, just as a person affected by notice of, for example, a *Mareva* injunction is able to, and frequently does, apply to the court for directions as to the disposition of assets in his hands which may or may not be subject to the terms of the order.”

B The non-party’s right to apply to the court is now reflected in CPR r 40.9, which 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.” A non-party can also apply to become a defendant in accordance with CPR r 19.4.

C 41 There is accordingly a distinction in legal principle between being bound by an injunction as a party to the action and therefore being in contempt of court for disobeying it and being in contempt of court as a non-party who, by knowingly acting contrary to the order, subverts the court’s purpose and thereby interferes with the administration of justice. Nevertheless, cases such as *Attorney General v Times Newspapers Ltd* and *Attorney General v Punch Ltd* [2003] 1 AC 1046, and the daily impact of freezing injunctions on non-party financial institutions (following *Z Ltd v A-Z and AA-LL* [1982] QB 558), indicate that the differences in the legal analysis can be of limited practical significance. Indeed, since non-parties D can be found in contempt of court for acting contrary to an injunction, it has been recognised that it can be appropriate to refer to non-parties in an injunction in order to indicate the breadth of its binding effect: see, for example, *Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406, 407; *Attorney General v Newspaper Publishing plc* [1988] Ch 333, 387–388.

E 42 Prior to the developments discussed below, it can therefore be seen that while the courts had generally affirmed the position that only parties to an action were bound by an injunction, a number of exceptions to that principle had been recognised. Some of the examples given also demonstrate that the court can, in appropriate circumstances, make orders which prohibit the world at large from behaving in a specified manner. It is also F relevant in the present context to bear in mind that even where an injunction enjoins a named individual, the public at large are bound not knowingly to subvert it.

(3) *Injunctions in the absence of a cause of action*

G 43 An injunction against newcomers purports to restrain the conduct of persons against whom there is no existing cause of action at the time when the order is granted: it is addressed to persons who may not at that time have formed any intention to act in the manner prohibited, let alone threatened to take or taken any steps towards doing so. That might be thought to conflict with the principle that an injunction must be founded on an existing cause of action against the person enjoined, as stated, for example, by Lord Diplock in *Owners of cargo lately laden on board the Siskina v Distos Cia Naviera SA* [1979] AC 210 (“*The Siskina*”), at p 256. There has been a gradual but growing reaction against that reasoning (which Lord Diplock himself H recognised was too narrowly stated: *British Airways Board v Laker Airways Ltd* [1985] AC 58, 81) over the past 40 years, culminating in the recent decision in *Broad Idea* [2023] AC 389, cited in para 17 above, where the

Judicial Committee of the Privy Council rejected such a rigid doctrine and asserted the court's governance of its own practice. It is now well established that the grant of injunctive relief is not always conditional on the existence of a cause of action. Again, it is relevant to consider some established categories of injunction against "no cause of action defendants" (as they are sometimes described) in order to see whether newcomer injunctions fall into an existing legitimate class, or, if not, whether they display analogous features.

44 One long-established exception is an injunction granted on the application of the Attorney General, acting either ex officio or through another person known as a relator, so as to ensure that the defendant obeys the law (*Attorney General v Harris* [1961] 1 QB 74; *Attorney General v Chaudry* [1971] 1 WLR 1614).

45 The statutory provisions relied on by the local authorities in the present case similarly enable them to seek injunctions in the public interest. All the respondent local authorities rely on section 222 of the Local Government Act 1972, which confers on local authorities the power to bring proceedings to enforce obedience to public law, without the involvement of the Attorney General: *Stoke-on-Trent City Council v B & Q (Retail) Ltd* [1984] AC 754. Where an injunction is granted in proceedings under section 222, a power of arrest may be attached under section 27 of the Police and Justice Act 2006, provided certain conditions are met. Most of the respondents also rely on section 187B of the Town and Country Planning Act 1990, which enables a local authority to apply for an injunction to restrain any actual or apprehended breach of planning control. Some of the respondents have also relied on section 1 of the Anti-social Behaviour, Crime and Policing Act 2014, which enables the court to grant an injunction (on the application of, inter alia, a local authority: see section 2) for the purpose of preventing the respondent from engaging in anti-social behaviour. Again, a power of arrest can be attached: see section 4. One of the respondents also relies on section 130 of the Highways Act 1980, which enables a local authority to institute legal proceedings for the purpose of protecting the rights of the public to the use and enjoyment of highways.

46 Another exception, of great importance in modern commercial practice, is the *Mareva* or freezing injunction. In its basic form, this type of order restrains the defendant from disposing of his assets. However, since assets are commonly held by banks and other financial institutions, the principal effect of the injunction in practice is generally to bind non-parties, as explained earlier. The order is ordinarily made on a without notice application. It differs from a traditional interim injunction: its purpose is not to prevent the commission of a wrong which is the subject of a cause of action, but to facilitate the enforcement of an actual or prospective judgment or other order. Since it can also be issued to assist the enforcement of a decree arbitral, or the judgment of a foreign court, or an order for costs, it need not be ancillary to a cause of action in relation to which the court making the order has jurisdiction to grant substantive relief, or indeed ancillary to a cause of action at all (as where it is granted in support of an order for costs). Even where the claimant has a cause of action against one defendant, a freezing injunction can in certain limited circumstances be granted against another defendant, such as a bank, against which the

A claimant does not assert a cause of action (*TSB Private Bank International SA v Chabra* [1992] 1 WLR 231; *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380 and *Revenue and Customs Comrs v Egleton* [2007] Bus LR 44).

B 47 Another exception is the *Norwich Pharmacal* order, which is available where a third party gets mixed up in the wrongful acts of others, even innocently, and may be ordered to provide relevant information in its possession which the applicant needs in order to seek redress. The order is not based on the existence of any substantive cause of action against the defendant. Indeed, it is not a precondition of the exercise of the jurisdiction that the applicant should have brought, or be intending to bring, legal proceedings against the alleged wrongdoer. It is sufficient that the applicant intends to seek some form of lawful redress for which the information is needed: see *Ashworth Hospital Authority v MGN Ltd* [2002] 1 WLR 2033.

C 48 Another type of injunction which can be issued against a defendant in the absence of a cause of action is a *Bankers Trust* order. In the case from which the order derives its name, *Bankers Trust Co v Shapira* [1980] 1 WLR 1274 (para 20 above), an order was granted requiring an innocent third party to disclose documents and information which might assist the claimant in locating assets to which the claimant had a proprietary claim. D The claimant asserted no cause of action against the defendant. Later cases have emphasised the width and flexibility of the equitable jurisdiction to make such orders: see, for example, *Murphy v Murphy* [1999] 1 WLR 282, 292.

E 49 Another example of an injunction granted in the absence of a cause of action against the defendant is the internet blocking order. This is a new type of injunction developed to address the problems arising from the infringement of intellectual property rights via the internet. In the leading case of *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 and [2018] 1 WLR 3259, cited at paras 17 and 20 above, the Court of Appeal upheld the grant of injunctions ordering internet service providers F (“ISPs”) to block websites selling counterfeit goods. The ISPs had not invaded, or threatened to invade, any independently identifiable legal or equitable right of the claimants. Nor had the claimants brought or indicated any intention to bring proceedings against any of the infringers. It was nevertheless held that there was power to grant the injunctions, and a principled basis for doing so, in order to compel the ISPs to prevent their facilities from being used to commit or facilitate a wrong. On an appeal to G this court on the question of costs, Lord Sumption JSC (with whom the other Justices agreed) analysed the nature and basis of the orders made and concluded that they were justified on ordinary principles of equity. That was so although the claimants had no cause of action against the respondent ISPs, who were themselves innocent of any wrongdoing.

H (4) *The commencement and service of proceedings against unidentified defendants*

50 Bringing proceedings against persons who cannot be identified raises issues relating to the commencement and service of proceedings. It is necessary at this stage to explain the general background.

51 The commencement of proceedings is an essentially formal step, normally involving the issue of a claim form in an appropriate court. The forms prescribed in the CPR include a space in which to designate the claimant and the defendant. As was observed in *Cameron v Hussain* [2019] 1 WLR 1471 (“*Cameron*”), para 12, that is a format equally consistent with their being designated by name or by description. As was explained earlier, the claims in the present case were brought under Part 8 of the CPR. CPR r 8.2A(1) provides that a practice direction “may set out circumstances in which a claim form may be issued under this Part without naming a defendant”. A number of practice directions set out such circumstances, including Practice Direction 49E, paras 21.1–21.10 of which concern applications under certain statutory provisions. They include section 187B of the Town and Country Planning Act 1990, which concerns proceedings for an injunction to restrain “any actual or apprehended breach of planning control”. As explained in para 45 above, section 187B was relied on in most of the present cases. CPR r 55.3(4) also permits a claim for possession of property to be brought against “persons unknown” where the names of the trespassers are unknown.

52 The only requirement for a name is contained in paragraph 4.1 of Practice Direction 7A, which states that a claim form should state the full name of each party. In *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 1 WLR 1633 (“*Bloomsbury*”), it was said that the words “should state” in paragraph 4.1 were not mandatory but imported a discretion to depart from the practice in appropriate cases. However, the point is not of critical importance. As was stated in *Cameron*, para 12, a practice direction is no more than guidance on matters of practice issued under the authority of the heads of division. It has no statutory force and cannot alter the general law.

53 As we have explained at paras 27–33 above, there are undoubtedly circumstances in which proceedings may be validly commenced although the defendant is not named in the claim form, in addition to those mentioned in the rules and practice directions mentioned above. All of those examples—representative defendants, the wardship jurisdiction, and the principle established in the *Venables* case [2001] Fam 430—might however be said to be special in some way, and to depend on a principle which is not of broader application.

54 A wider scope for proceedings against unnamed defendants emerged in *Bloomsbury*, where it was held that there is no requirement that the defendant must be named. The overriding objective of the CPR is to enable the court to deal with cases justly and at proportionate cost. Since this objective is inconsistent with an undue reliance on form over substance, the joinder of a defendant by description was held to be permissible, provided that the description was “sufficiently certain as to identify both those who are included and those who are not” (para 21). It will be necessary to return to that case, and also to consider more recent decisions concerned with proceedings brought against unnamed persons.

55 Service of the claim form is a matter of greater significance. Although the court may exceptionally dispense with service, as explained below, and may if necessary grant interlocutory relief, such as interim injunctions, before service, as a general rule service of originating process is

A the act by which the defendant is subjected to the court's jurisdiction, in the sense of its power to make orders against him or her (*Dresser UK Ltd v Falcongate Freight Management Ltd* [1992] QB 502, 523; *Barton v Wright Hassall LLP* [2018] 1 WLR 1119). Service is significant for many reasons. One of the most important is that it is a general requirement of justice that proceedings should be brought to the notice of parties whose interests are affected before any order is made against them (other than in an emergency), so that they have an opportunity to be heard. Service of the claim form on the defendant is the means by which such notice is normally given. It is also normally by means of service of the order that an injunction is brought to the notice of the defendant, so that he or she is bound to comply with it. But it is generally sufficient that the defendant is aware of the injunction at the time of the alleged breach of it.

C 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.

D 3. *The development of newcomer injunctions to restrain unauthorised occupation and use of land—the impact of Cameron and Canada Goose*

E 57 The years from 2003 saw a rapid development of the practice of granting injunctions purporting to prohibit persons, described as persons unknown, who were not parties to the proceedings when the order was made, from engaging in specified activities including, of most direct relevance to this appeal, occupying and using land without the appropriate consent. This is just one of the areas in which the court has demonstrated a preparedness to grant an injunction, subject to appropriate safeguards, against persons who could not be identified, had not been served and were not party to the proceedings at the date of the order.

F (1) *Bloomsbury*

G 58 One of the earliest injunctions of this kind was granted in the context of the protection of intellectual property rights in connection with the forthcoming publication of a novel. The *Bloomsbury* case [2003] 1 WLR 1633, cited at para 52 above, is one of two decisions of Sir Andrew Morritt V-C in 2003 which bear on this appeal. There had been a theft of several pre-publication copies of a new Harry Potter novel, some of which had been offered to national newspapers ahead of the launch date. By the time of the hearing of a much adjourned interim application most but not all of the thieves had been arrested, but the claimant publisher wished to have continued injunctions, until the date a month later when the book was due to be published, against unnamed further persons, described as the person or persons who had offered a copy of the book to the three named newspapers and the person or persons in physical possession of the book without the consent of the claimants.

H 59 The Vice-Chancellor acknowledged that it would under the old RSC and relevant authority in relation to them have been improper to seek to

identify intended defendants in that way (see para 27 above). He noted (para 11) the anomalous consequence: A

“A claimant could obtain an injunction against all infringers by description so long as he could identify one of them by name [as a representative defendant: see paras 27–30 above], but, by contrast, if he could not name one of them then he could not get an injunction against any of them.” B

He regarded the problem as essentially procedural, and as having been cured by the introduction of the CPR. He concluded, at para 21:

“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.” C

(2) *Hampshire Waste Services*

60 Later that same year, Sir Andrew Morritt V-C made another order against persons unknown, this time in a protester case, *Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site* [2004] Env LR 9 (“*Hampshire Waste Services*”). The claimants, operators of a number of waste incinerator sites which fed power to the national grid, sought an injunction to restrain protesters from entering any of various named sites in connection with a “Global Day of Action against Incinerators” some six days later. Previous actions of this kind presented a danger to the protesters and to others and had resulted in the plants having to be shut down. The police were, it seemed, largely powerless to prevent these threatened activities. The Vice-Chancellor, having referred to *Bloomsbury*, had no doubt the order was justified save for one important matter: the claimants were unable to identify any of the protesters to whom the order would be directed or upon whom proceedings could be served. Nevertheless, the Vice-Chancellor was satisfied that, in circumstances such as these, joinder by description was permissible, that the intended defendants should be described as “persons entering or remaining without the consent of the claimants, or any of them, on any of the incinerator sites at [specified addresses] in connection with the ‘Global Day of Action Against Incinerators’ (or similarly described event) on or around 14 July 2003”, and that posting notices around the sites would amount to effective substituted service. The court should not refuse an application simply because difficulties in enforcement were envisaged. It was, however, necessary that any person who wished to do so should be able promptly to apply for the order to be discharged, and that was allowed for. That being so, there was no need for a formal return date. D E F G

61 Whereas in *Bloomsbury* the injunction was directed against a small number of individuals who were at least theoretically capable of being identified, the injunction granted in *Hampshire Waste Services* was effectively made against the world: anyone might potentially have entered or remained on any of the sites in question on or around the specified date. This H

- A is a common if not invariable feature of newcomer injunctions. Although the number of persons likely to engage in the prohibited conduct will plainly depend on the circumstances, and will usually be relatively small, such orders bear upon, and enjoin, anyone in the world who does so.

(3) *Gammell*

- B 62 The *Bloomsbury* decision has been seen as opening up a wide jurisdiction. Indeed, Lord Sumption observed in *Cameron*, para 11, that it had regularly been invoked in the years which followed in a variety of different contexts, mainly concerning the abuse of the internet, and trespasses and other torts committed by protesters, demonstrators and paparazzi. Cases in the former context concerned defamation, theft of information by hacking, blackmail and theft of funds. But it is upon cases and newcomer injunctions in the second context that we must now focus, for they include cases involving protesters, such as *Hampshire Waste Services*, and also those involving Gypsies and Travellers, and therefore have a particular bearing on these appeals and the issues to which they give rise.

- D 63 Some of these issues were considered by the Court of Appeal only a short time later in two appeals concerning Gypsy caravans brought onto land at a time when planning permission had not been granted for that use: *South Cambridgeshire District Council v Gammell*; *Bromley London Borough Council v Maughan* [2006] 1 WLR 658 (“*Gammell*”).

- E 64 The material aspects of the two cases are substantially similar, and it will suffice for present purposes to focus on the *South Cambridgeshire* case. The Court of Appeal (Brooke and Clarke LJ) had earlier granted an injunction under section 187B of the Town and Country Planning Act 1990 against persons described as “persons unknown . . . causing or permitting hardcore to be deposited . . . caravans, mobile homes or other forms of residential accommodation to be stationed . . . or existing caravans, mobile homes or other forms of residential accommodation . . . to be occupied” on land adjacent to a Gypsy encampment in rural Cambridgeshire: *South Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88 (“*South Cambs*”). The order restrained the persons so described from behaving in the manner set out in that description. Service of the claim form and the injunction was effected by placing them in clear plastic envelopes in a prominent position on the relevant land.

- G 65 Several months later, Ms Gammell, without securing or applying for the necessary planning permission or making an application to set the injunction aside or vary its terms, proceeded to station her caravans on the land. She was therefore a newcomer within the meaning of that word as used in this appeal, since she was neither a defendant nor on notice of the application for the injunction nor on the site when the injunction was granted. She was served with the injunction and its effect was explained to her, but she continued to station the caravans on the land. On an application for committal by the local authority she was found at first instance to have been in contempt. Sentencing was adjourned to enable her to appeal against the judge’s refusal to permit her to be added as a defendant to the proceedings, for the purpose of enabling her to argue that the injunction should not have the effect of placing her in contempt until a

proportionality exercise had been undertaken to balance her particular human rights against the grant of an injunction against her, in accordance with *South Bucks District Council v Porter* [2003] 2 AC 558.

66 The Court of Appeal dismissed her appeal. In his judgment, Sir Anthony Clarke MR, with whom Rix and Moore-Bick LJ agreed, stated that each of the appellants became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case. Ms Gammell had therefore already become a defendant when she stationed her caravan on the site. Her proper course (and that of any newcomer in the same situation) was to make a prompt application to vary or discharge the injunction as against her (which she had not done) and, in the meantime, to comply with the injunction. The individualised proportionality exercise could then be carried out with regard to her particular circumstances on the hearing of the application to vary or discharge, and might in any event be relevant to sanction. This reasoning, and in particular the notion that a newcomer becomes a defendant by committing a breach of the injunction, has been subject to detailed and sustained criticism by the appellants in the course of this appeal, and this is a matter to which we will return.

(4) *Meier*

67 We should also mention a decision of this court from about the same time concerning Travellers who had set up an unauthorised encampment in wooded areas managed by the Forestry Commission and owned by the Secretary of State for the Environment, Food and Rural Affairs: *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780 (“*Meier*”). This was in one sense a conventional case: the Secretary of State issued proceedings alleging trespass by the occupying Travellers and sought an order for possession of the occupied sites. More unusual (and ultimately unsuccessful) was the application for an order for possession against the Travellers in respect of other land which was wholly detached from the land they were occupying. This was wrong in principle for it was simply not possible (even on a precautionary basis) to make an order requiring persons to give immediate possession of woodland of which they were *not* in occupation, and which was wholly detached from the woodland of which they *were* in occupation (as Lord Neuberger of Abbotsbury MR explained at para 75). But that did not mean the courts were powerless to frame a remedy. The court upheld an injunction granted by the Court of Appeal against the defendants, including “persons names unknown”, restraining them from entering the woodland which they had not yet occupied. Since it was not argued that the injunction was defective, we do not attach great significance to Lord Neuberger MR’s conclusion at para 84 that it had not been established that there was an error of principle which led to its grant. Nevertheless, it is notable that Lord Rodger of Earlsferry JSC expressed the view that the injunction had been rightly granted, and cited the decisions of Sir Andrew Morritt V-C in *Bloomsbury* and *Hampshire Waste Services*, and the grant of the injunction in the *South Cambs* case, without disapproval (at paras 2–3).

A (5) *Later cases concerning Traveller injunctions*

68 Injunctions in the Traveller and Gypsy context were targeted first at actual trespass on land. Typically, the local authorities would name as actual or intended defendants the particular individuals they had been able to identify, and then would seek additional relief against “persons unknown”, these being persons who were alleged to be unlawfully occupying the land but who could not at that stage be identified by name, although often they could be identified by some form of description. But before long, many local authorities began to take a bolder line and claims were brought simply against “persons unknown”.

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D 69 A further important development was the grant of Traveller injunctions, not just against those who were in unauthorised occupation of the land, whether they could be identified or not, but against persons on the basis only of their potential rather than actual occupation. Typically, these injunctions were granted for three years, sometimes more. In this way Traveller injunctions were transformed from injunctions against wrongdoers and those who at the date of the injunction were threatening to commit a wrong, to injunctions primarily or at least significantly directed against newcomers, that is to say persons who were not parties to the claim when the injunction was granted, who were not at that time doing anything unlawful in relation to the land of that authority, or even intending or overtly threatening to do so, but who might in the future form that intention.

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G 70 One of the first of these injunctions was granted by Patterson J in *Harlow District Council v Stokes* [2015] EWHC 953 (QB). The claimants sought and were granted an interim injunction under section 222 of the Local Government Act 1972 and section 187B of the Town and Country Planning Act 1990 in existing proceedings against over thirty known defendants and, importantly, other “persons unknown” in respect of encampments on a mix of public and private land. The pattern had been for these persons to establish themselves in one encampment, for the local authority and the police to take action against them and move them on, and for the encampment then to disperse but later reappear in another part of the district, and so the process would start all over again, just as Lord Rodger JSC had anticipated in *Meier*. Over the months preceding the application numerous attempts had been made using other powers (such as the Criminal Justice and Public Order Act 1994 (“CJPOA”)) to move the families on, but all attempts had failed. None of the encampments had planning permission and none had been the subject of any application for planning permission.

H 71 It is to be noted, however, that appropriate steps had been taken to draw the proceedings to the attention of all those in occupation (see para 15). None had attended court. Further, the relevant authorities and councils accepted that they were required to make provision for Gypsy and Traveller accommodation and gave evidence of how they were working to provide additional and appropriate sites for the Gypsy and Traveller communities. They also gave evidence of the extensive damage and pollution caused by the unlawful encampments, and the local tensions they generated, and the judge summarised the effects of this in graphic detail (at paras 10 and 11).

72 Following the decision in *Harlow District Council v Stokes* and an assessment of the efficacy of the orders made, a large number of other local authorities applied for and were granted similar injunctions over the period from 2017–2019, with the result that by 2020 there were in excess of 35 such injunctions in existence. By way of example, in *Kingston upon Thames Royal London Borough Council v Persons Unknown* [2019] EWHC 1903 (QB), the injunction did not identify any named defendants.

73 All of these injunctions had features of relevance to the issues raised by this appeal. Sometimes the order identified the persons to whom it was directed by reference to a particular activity, such as “persons unknown occupying land” or “persons unknown depositing waste”. In many of the cases, injunctions were granted against persons identified only as those who might in future commit the acts which the injunction prohibited (eg *UK Oil and Gas Investments plc v Persons Unknown* [2019] JPL 161). In other cases, the defendants were referred to only as “persons unknown”. The injunctions remained in place for a considerable period of time and, on occasion, for years. Further, the geographical reach of the injunctions was extensive, indeed often borough-wide. They were usually granted without the court hearing any adversarial argument, and without provision for an early return date.

74 It is important also to have in mind that these injunctions undoubtedly had a significant impact on the communities of Travellers and Gypsies to whom they were directed, for they had the effect of forcing many members of these communities out of the boroughs which had obtained and enforced them. They also imposed a greater strain on the resources of the boroughs and councils which had not yet obtained an order. This combination of features highlighted another important consideration, and it was one of which the judges faced with these applications have been acutely conscious: a nomadic lifestyle has for very many years been a part of the tradition and culture of many Traveller and Gypsy communities, and the importance of this lifestyle to the Gypsy and Traveller identity has been recognised by the European Court of Human Rights in a series of decisions including *Chapman v United Kingdom* (2001) 33 EHRR 18.

75 As the Master of the Rolls explained in the present case, at paras 105 and 106, any individual Traveller who is affected by a newcomer injunction can rely on a private and family life claim to pursue a nomadic lifestyle. This right must be respected, but the right to that respect must be balanced against the public interest. The court will also take into account any other relevant legal considerations such as the duties imposed by the Equality Act 2010.

76 These considerations are all the more significant given what from these relatively early days was acknowledged by many to be a central and recurring set of problems in these cases (and it is one to which we must return in considering appropriate guidelines in cases of this kind): the Gypsies and Travellers to whom they were primarily directed had a lifestyle which made it difficult for them to access conventional sources of housing provision; their attempts to obtain planning permission almost always met with failure; and at least historically, the capacity of sites authorised for their occupation had fallen well short of that needed to accommodate those seeking space on which to station their caravans. The sobering statistics

A were referred to by Lord Bingham of Cornhill in *South Bucks District Council v Porter* [2003] 2 AC 558 (para 65 above), para 13.

77 The conflict to which these issues gave rise was recognised at the highest level as early as 2000 and emphasised in a housing research summary, *Local Authority Powers for Managing Unauthorised Camping* (Office of the Deputy Prime Minister, No 90, 1998, updated 4 December 2000):

B “The basic conflict underlying the ‘problem’ of unauthorised camping is between [Gypsies]/Travellers who want to stay in an area for a period but have nowhere they can legally camp, and the settled community who, by and large, do not want [Gypsies]/Travellers camped in their midst. The local authority is stuck between the two parties, trying to balance the conflicting needs and often satisfying no one.”

C 78 For many years there has also been a good deal of publicly available guidance on the issue of unauthorised encampments, much of which embodies obvious good sense and has been considered by the judges dealing with these applications. So, for example, materials considered in the authorities to which we will come have included a Department for the Environment Circular 18/94, *Gypsy Sites Policy and Unauthorised Camping* (November 1994), which stated that “it is a matter for local discretion whether it is appropriate to evict an unauthorised [Gypsy] encampment”. Matters to be taken into account were said to include whether there were authorised sites; and, if not, whether the unauthorised encampment was causing a nuisance and whether services could be provided to it. Authorities were also urged to try to identify possible emergency stopping places as close as possible to the transit routes so that Travellers could rest there for short periods; and were advised that where Gypsies were unlawfully encamped, it was for the local authority to take necessary steps to ensure that any such encampment did not constitute a threat to public health. Local authorities were also urged not to use their powers to evict Gypsies needlessly, and to use those powers in a humane and compassionate way. In 2004 the Office of the Deputy Prime Minister issued *Guidance on Managing Unauthorised Camping*, which recommended that local authorities and other public bodies distinguish between unauthorised encampment locations which were unacceptable, for instance because they involved traffic hazards or public health risks, and those which were acceptable, and stated that each encampment location must be considered on its merits. It also indicated that specified welfare inquiries should be undertaken in relation to the Travellers and their families before any decision was made as to whether to bring proceedings to evict them. Similar guidance was to be found in the Home Office *Guide to Effective Use of Enforcement Powers (Part 1; Unauthorised Encampments)*, published in February 2006, in which it was emphasised that local authorities have an obligation to carry out welfare assessments on unauthorised campers to identify any issue that needs to be addressed before enforcement action is taken against them. It also urged authorities to consider whether enforcement was absolutely necessary.

H 79 The fact that Travellers and Gypsies have almost invariably chosen not to appear in these proceedings (and have not been represented) has left judges with the challenging task of carrying out a proportionality assessment

which has inevitably involved weighing all of these considerations, including the relevance of the breadth of the injunctions sought and the fact that the injunctions were directed against “persons unknown”, in deciding whether they should be granted and, if so, for how long; and whether they should be made subject to particular conditions and safeguards and, if so, what those conditions and safeguards should be.

(6) Cameron

80 The decision of the Supreme Court in *Cameron* [2019] 1 WLR 1471 (para 51 above) highlighted further and more fundamental considerations for this developing jurisprudence, and it is a decision to which we must return for it forms an important element of the case developed before us on behalf of the appellants. At this stage it is sufficient to explain that the claimant suffered personal injuries and damage to her car in a collision with another vehicle. The driver of that vehicle failed to stop and fled the scene. The claimant then brought an action for damages against the registered keeper, but it transpired that that person had not been driving the vehicle at the time of the accident. In addition, although there was an insurance policy in force in respect of the vehicle, the insured person was fictitious. The claimant could not sue the insurers, as the relevant legislation required that the driver was a person insured under the policy. The claimant could have sought compensation from the Motor Insurers’ Bureau, which compensates the victims of uninsured motorists, but for reasons which were unclear she applied instead to amend her claim to substitute for the registered keeper the person unknown who was driving the car at the time of the collision, so as to obtain a judgment on which the insurer would be liable under section 151 of the Road Traffic Act 1988 (“the 1988 Act”). The judge refused the application.

81 The Court of Appeal allowed the claimant’s appeal. In the Court of Appeal’s view, it would be consistent with the CPR and the policy of the 1988 Act for proceedings to be brought and pursued against the unnamed driver, suitably identified by an appropriate description, in order that the insurer could be made liable under section 151 of the 1988 Act for any judgment obtained against that driver.

82 A further appeal by the insurer to the Supreme Court was allowed unanimously. Lord Sumption considered in some detail the extent of any right in English law to sue unnamed persons. He referred to the decision in *Bloomsbury* and the cases which followed, many of which we have already mentioned. Then, at para 13, he distinguished between two kinds of case in which the defendant could not be named, and to which different considerations applied. The first comprised anonymous defendants who were identifiable but whose names were unknown. Squatters occupying a property were, for example, identifiable by their location though they could not be named. The second comprised defendants, such as most hit and run drivers, who were not only anonymous but could not be identified.

83 Lord Sumption proceeded to explain that permissible modes of service had been broadened considerably over time but that the object of all of these modes of service was the same, namely to enable the court to be satisfied that one or other of the methods used had either put the defendant in a position to ascertain the contents of the claim or was reasonably likely to

A enable him to do so within an appropriate period of time. The purpose of service (and substituted service) was to inform the defendant of the contents of the claim and the nature of the claimant's case against him; to give him notice that the court, being a court of competent jurisdiction, would in due course proceed to decide the merits of that claim; and to give him an opportunity to be heard and to present his case before the court. It followed
B that it was not possible 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.

84 In the *Cameron* case there was no basis for inferring that the offending driver was aware of the proceedings. Service on the insurer did not and would not without more constitute service on that offending driver (nor was the insurer directly liable); alternative service on the insurer could
C not be expected to reach the driver; and it could not be said that the driver was trying to evade service for it had not been shown that he even knew that proceedings had been or were likely to be brought against him. Further, it had not been established that this was an appropriate case in which to dispense with service altogether for any other reason. It followed that the driver could not be sued under the description relied upon by the claimant.

D 85 This important decision was followed in a relatively short space of time by a series of five appeals to and decisions of the Court of Appeal concerning the way in which and the extent to which proceedings for injunctive relief against persons unknown, including newcomers, could be used to restrict trespass by constantly changing communities of Travellers, Gypsies and protesters. It is convenient to deal with them in broadly
E chronological order.

(7) *Ineos*

86 In *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, the claimants, a group of companies and individuals connected with the business of shale and gas exploration by fracking, sought interim injunctions to restrain what they contended were threatened and potentially unlawful
F acts of protest, including trespass, nuisance and harassment, before they occurred. The judge was satisfied on the evidence that there was a real and imminent threat of unlawful activity if he did not make an order pending trial and it was likely that a similar order would be made at trial. He therefore made the orders sought by the claimants, save in relation to harassment.

G 87 On appeal to the Court of Appeal it was argued, among other things, that the judge was wrong to grant injunctions against persons unknown and that he had failed properly to consider whether the claimants were likely to obtain the relief they sought at trial and whether it was appropriate to grant an injunction against persons unknown, including newcomers, before they had had an opportunity to be heard.

H 88 These arguments were addressed head on by Longmore LJ, with whom the other members of the court agreed. He rejected the submission that a claimant could never sue persons unknown unless they were identifiable at the time the claim form was issued. He also rejected, as too absolutist, the submission that an injunction could not be granted to restrain newcomers from engaging in the offending activity, that is to say persons who might only

form the intention to engage in the activity at some later date. Lord Sumption's categorisation of persons who might properly be sued was not intended to exclude newcomers. To the contrary, Longmore LJ continued, Lord Sumption appeared rather to approve the decision in *Bloomsbury* and he had expressed no disapproval of the decision in *Hampshire Waste Services*.

89 Longmore LJ went on tentatively to frame the requirements of an injunction against unknown persons, including newcomers, in a characteristically helpful and practical way. He did so in these terms (at para 34): (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.

(8) *Bromley*

90 The issue of unauthorised encampments by Gypsies and Travellers was considered by the Court of Appeal a short time later in *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043. This was an appeal against the refusal by the High Court to grant a five-year de facto borough-wide prohibition of encampment and entry or occupation of accessible public spaces in Bromley except cemeteries and highways. The final injunction sought was directed at "persons unknown" but it was common ground that it was aimed squarely at the Gypsy and Traveller communities.

91 Important aspects of the background were that some Gypsy and Traveller communities had a particular association with Bromley; the borough had a history of unauthorised encampments; there were no or no sufficient transit sites to cater for the needs of these communities; the grant of these injunctions in ever increasing numbers had the effect of forcing Gypsies and Travellers out of the boroughs which had obtained them, thereby imposing a greater strain on the resources of those which had not yet applied for such orders; there was a strong possibility that unless restrained by the injunction those targeted by these proceedings would act in breach of the rights of the relevant local authority; and although aspects of the resulting damage could be repaired, there would nevertheless be significant irreparable damage too. The judge was satisfied that all the necessary ingredients for a quia timet injunction were in place and so it was necessary to carry out an assessment of whether it was proportionate to grant the injunction sought in all the circumstances of the case. She concluded that it was not proportionate to grant the injunction to restrain entry and encampments but that it was proportionate to grant an injunction against fly-tipping and the disposal of waste.

92 The particular questions giving rise to the appeal were relatively narrow (namely whether the judge had fallen into error in finding the order sought was disproportionate, in setting too high a threshold for assessment of the harm caused by trespass and in concluding that the local authority had

A failed to discharge its public sector equality duty); but the Court of Appeal was also invited and proceeded to give guidance on the broader question of how local authorities ought properly to address the issues raised by applications for such injunctions in the future. The decision is also important because it was the first case involving an injunction in which the Gypsy and Traveller communities were represented before the High Court, and as a result of their success in securing the discharge of the injunction, it was the first case of this kind properly to be argued out at appellate level on the issues of procedural fairness and proportionality. It must also be borne in mind that the decision of the Supreme Court in *Cameron* was not cited to the Court of Appeal; nor did the Court of Appeal consider the appropriateness as a matter of principle of granting such injunctions. Conversely, there is nothing in *Bromley* to suggest that final injunctions against unidentified newcomers cannot or should never be granted.

93 As it was, the Court of Appeal dismissed the appeal. Coulson LJ, with whom Ryder and Haddon-Cave LJJs agreed, endorsed what he described as the elegant synthesis by Longmore LJ in *Ineos* (at para 34) of certain essential requirements for the grant of an injunction against persons unknown in a protester case (paras 29–30). He considered it appropriate to add in the present context (that of Travellers and Gypsies), first, that procedural fairness required that a court should be cautious when considering whether to grant an injunction against persons unknown, including Gypsies and Travellers, particularly on a final basis, in circumstances where they were not there to put their side of the case (paras 31–34); and secondly, that the judge had adopted the correct approach in requiring the claimant to show that there was a strong probability of irreparable harm (para 35).

94 The Court of Appeal was also satisfied that in assessing proportionality the judge had properly taken into account seven factors: (a) the wide extent of the relief sought; (b) the fact that the injunction was not aimed specifically at prohibiting anti-social or criminal behaviour, but just entry and occupation; (c) the lack of availability of alternative sites; (d) the cumulative effect of other injunctions; (e) various specific failures on the part of the authority in respect of its duties under the Human Rights Act and the public sector equality duty; (f) the length of time, that is to say five years, the proposed injunction would be in force; and (g) whether the order sought took proper account of permitted development rights arising by operation of the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596), that is to say the grant of “deemed planning permission” for, by way of example, the stationing of a single caravan on land for not more than two nights, which had not been addressed in a satisfactory way. Overall, the authority had failed to satisfy the judge that it was appropriate to grant the injunction sought, and the Court of Appeal decided there was no basis for interfering with the conclusion to which she had come.

95 Coulson LJ went on (at paras 99–109) to give the wider guidance to which we have referred, and this is a matter to which we will return a little later in this judgment for it has a particular relevance to the principles to which newcomer injunctions in Gypsy and Traveller cases should be subject. Aspects of that guidance are controversial; but other aspects about which

there can be no real dispute are that local authorities should engage in a process of dialogue and communication with travelling communities; should undertake, where appropriate, welfare and impact assessments; and should respect, appropriately, the culture, traditions and practices of the communities. Similarly, injunctions against unauthorised encampments should be limited in time, perhaps to a year, before review.

(9) *Cuadrilla*

96 The third of these appeals, *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29, concerned an injunction to restrain four named persons and “persons unknown” from trespassing on the claimants’ land, unlawfully interfering with their rights of passage to and from that land, and unlawfully interfering with the supply chain of the first claimant, which was involved, like *Ineos*, in the business of shale and gas exploration by fracking. The Court of Appeal was specifically concerned here with a challenge to an order for the committal of a number of persons for breach of this injunction, but, at para 48 and subject to two points, summarised the effect of *Ineos* as being that there was no conceptual or legal prohibition against suing persons unknown who were not currently in existence but would come into existence if and when they committed a threatened tort. Nonetheless, it continued, a court should be inherently cautious about granting such an injunction against unknown persons since the reach of such an injunction was necessarily difficult to assess in advance.

(10) *Canada Goose*

97 Only a few months later, in *Canada Goose* [2020] 1 WLR 2802 (para 11 above), the Court of Appeal was called upon to consider once again the way in which, and the extent to which, civil proceedings for injunctive relief against persons unknown could be used to restrict public protests. The first claimant, Canada Goose, was the UK trading arm of an international retailing business selling clothing containing animal fur and down. It opened a store in London but was faced with what it considered to be a campaign of harassment, nuisance and trespass by protesters against the manufacture and sale of such clothing. Accordingly, with the manager of the store, it issued proceedings and decided to seek an injunction against the protesters.

98 Specifically, the claimants sought and obtained a without notice interim injunction against “persons unknown” who were described as “persons unknown who are protestors against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at [the claimants’ store]”. The injunction restrained them from, among other things, assaulting or threatening staff and customers, entering or damaging the store and engaging in particular acts of demonstration within particular zones in the vicinity of the store. The terms of the order did not require the claimants to serve the claim form on any “persons unknown” but permitted service of the interim injunction by handing or attempting to hand it to any person demonstrating at or in the vicinity of the store or by email to either of two stated email addresses, that of an activist group and that of People for the Ethical Treatment of Animals (PETA) Foundation (“PETA”), a charitable company dedicated to the protection of the rights of

A animals. PETA was subsequently added to the proceedings as second defendant at its own request.

99 The claimants served many copies of the interim injunction on persons in the vicinity of the store, including over 100 identifiable individuals, but did not attempt to join any of them as parties to the claim. As for the claim form, this was sent by email to the two addresses specified for service of the interim injunction, and to one other individual who had requested a copy.

100 In these circumstances, an application by the claimants for summary judgment and a final injunction was unsuccessful. The judge held that the claim form had not been served on any defendant to the proceedings; that it was not appropriate to permit service by alternative means (under CPR r 6.15) or to dispense with service (under CPR r 6.16); and that the interim injunction would be discharged. He also considered that the description of the persons unknown was too broad, as it was capable of including protesters who might never intend to visit the store, and that the injunction was capable of affecting persons who did not carry out any activities which were otherwise unlawful. In addition, he considered that the proposed final injunction was defective in that it would capture future protesters who were not parties to the proceedings at the time when the injunction was granted. He refused to grant a final injunction.

101 The Court of Appeal dismissed the claimants' appeal. It held, first, that service of proceedings is important in the delivery of justice. The general rule is that service of the originating process is the act by which the defendant is subjected to the court's jurisdiction—and that a person cannot be made subject to the jurisdiction without having such notice of the proceedings as will enable him to be heard. Here there was no satisfactory evidence that the steps taken by the claimants were such as could reasonably be expected to have drawn the proceedings to the attention of the respondent unknown persons; the claimants had never sought an order for alternative service under CPR r 6.15 and there was never any proper basis for an order under CPR r 6.16 dispensing with service.

102 Secondly, the Court of Appeal held that the court may grant an interim injunction before proceedings have been served (or even issued) against persons who wish to join an ongoing protest, and that it is also, in principle, open to the court in appropriate circumstances to limit even lawful activity where there is no other proportionate means of protecting the claimants' rights, as for example in *Hubbard v Pitt* [1976] QB 142 (protesting outside an estate agency), and *Burris v Azadani* [1995] 1 WLR 1372 (entering a modest exclusion zone around the claimant's home), and to this extent the requirements for a newcomer injunction explained in *Ineos* required qualification. But in this case, the description of the "persons unknown" was impermissibly wide; the prohibited acts were not confined to unlawful acts; and the interim injunction failed to provide for a method of alternative service which was likely to bring the order to the attention of the persons unknown. The court was therefore justified in discharging the interim injunction.

103 Thirdly, the Court of Appeal held (para 89) that a final injunction could not be granted 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. As authority for that proposition, the court cited *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191 per Lord Oliver at p 224 (quoted at para 39 above). That, the court said, was consistent with the fundamental principle in *Cameron* [2019] 1 WLR 1471 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. It followed, in the court's view, that a final injunction could not be granted against newcomers who had not by that time committed the prohibited acts, since they did not fall within the description of "persons unknown" and had not been served with the claim form. This was not one of the very limited cases, such as *Venables* [2001] Fam 430, in which a final injunction could be granted against the whole world. Nor was it a case where there was scope for making persons unknown subject to a final order. That was only possible (and perfectly legitimate) provided the persons unknown were confined to those in the first category of unknown persons in *Cameron*—that is to say anonymous defendants who were nonetheless identifiable in some other way (para 91). In the Court of Appeal's view, the claimants' problem was that they were seeking to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters (para 93).

104 This reasoning reveals the marked difference in approach and outcome from that of the Court of Appeal in the proceedings now before this court and highlights the importance of the issues to which it gives rise and to which we referred at the outset. Indeed, the correctness and potential breadth of the reasoning of the Court of Appeal in *Canada Goose*, and how that reasoning differs from the approach taken by the Court of Appeal in these proceedings, lie at the heart of these appeals.

(11) *The present case*

105 The circumstances of the present appeals were summarised at paras 6–12 above. In the light of the foregoing discussion, it will be apparent that, in holding that interim injunctions could be granted against persons unknown, but that final injunctions could be granted only against parties who had been identified and had had an opportunity to contest the final order sought, Nicklin J applied the reasoning of the Court of Appeal in *Canada Goose* [2020] 1 WLR 2802. The Court of Appeal, however, departed from that reasoning, on the basis that it had failed to have proper regard to *Gammell* [2006] 1 WLR 658, which was binding on it.

106 The Court of Appeal's approach in the present case, as set out in the judgment of Sir Geoffrey Vos MR, with which the other members of the court agreed, was based primarily on the decision in *Gammell*. It proceeded, therefore, on the basis that the persons to whom an injunction is addressed can be described by reference to the behaviour prohibited by the injunction, and that those persons will then become parties to the action in the event that they breach the injunction. As we will explain, we do not regard that as a satisfactory approach, essentially because it is based on the premise that the injunction will be breached and leaves out of account the persons affected by the injunction who decide to obey it. It also involves the logical paradox that a person becomes bound by an injunction only as a result of

- A infringing it. However, even leaving *Gammell* to one side, the Court of Appeal subjected the reasoning in *Canada Goose* to cogent criticism.

107 Among the points made by the Master of the Rolls, the following should be highlighted. No meaningful distinction could be drawn between interim and final injunctions in this context (para 77). No such distinction had been drawn in the earlier case law concerned with newcomer injunctions.

- B It was unrealistic at least in the context of cases concerned with protesters or Travellers, since such cases rarely if ever resulted in trials. In addition, in the case of an injunction (unlike a damages action such as *Cameron*) there was no possibility of a default judgment: the grant of an injunction was always in the discretion of the court. Nor was a default judgment available under Part 8 procedure. Furthermore, as the facts of the earlier cases demonstrated and *Bromley* [2020] PTSR 1043 explained, the court needed to keep injunctions
- C against persons unknown under review even if they were final in character. In that regard, the Master of the Rolls made the point that, for as long as the court is concerned with the enforcement of an order, the action is not at an end.

4. A new type of injunction?

- D 108 It is convenient to begin the analysis by considering certain strands in the arguments which have been put forward in support of the grant of newcomer injunctions, initially outside the context of proceedings against Travellers. They may each be labelled with the names of the leading cases from which the arguments have been derived, and we will address them broadly chronologically.

- E 109 The earliest in time is *Venables* [2001] Fam 430 discussed at paras 32–33 above. The case is important as possibly the first contra mundum equitable injunction granted in recent times, and in our view correctly explains why the objections to the grant of newcomer injunctions against Travellers go to matters of established principle rather than jurisdiction in the strict sense: i.e. not to the power of the court, as was later confirmed by Lord Scott of Foscote in *Fourie v Le Roux* [2007] 1 WLR 320
- F at para 25 (cited at para 16 above). In that respect the *Venables* injunction went even further than the typical Traveller injunction, where the newcomers are at least confined to a class of those who might wish to camp on the relevant prohibited sites. Nevertheless, for the reasons we explained at paras 25 and 61 above, and which we develop further at paras 155–159 below, newcomer injunctions can be regarded as being analogous to other
- G injunctions or orders which have a binding effect upon the public at large. Like wardship orders contra mundum (para 31 above), *Venables*-type injunctions (paras 32–33 above), reporting restrictions (para 34 above), and embargoes on the publication of draft judgments (para 35 above), they are not limited in their effects to particular individuals, but can potentially affect anyone in the world.

- H 110 *Venables* has been followed in a number of later cases at first instance, where there was convincing evidence that an injunction contra mundum was necessary to protect a person from serious injury or death: see *X (formerly Bell) v O'Brien* [2003] EMLR 37; *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB); *A (A Protected Party) v Persons Unknown* [2017] EMLR 11; *RXG v Ministry of Justice* [2020] QB 703;

In re Persons formerly known as Winch [2021] EMLR 20 and [2021] EWHC 3284 (QB); [2022] ACD 22; and *D v Persons Unknown* [2021] EWHC 157 (QB). An injunction contra mundum has also been granted where there was a danger of a serious violation of another Convention right, the right to respect for private life: see *OPQ v BJM* [2011] EMLR 23. The approach adopted in these cases has generally been based on the Human Rights Act rather than on principles of wider application. They take the issue raised in the present case little further on the question of principle. The facts of the cases were extreme in imposing real compulsion on the court to do something effective. Above all, 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. There is no real parallel between the facts in those cases and the facts of a typical Traveller case. The local authority has no Convention rights to protect, and such Convention rights of the public in its locality as a newcomer injunction might protect are of an altogether lower order.

III The next in time is the *Bloomsbury* case [2003] 1 WLR 1633, the facts and reasoning in which were summarised in paras 58–59 above. The case was analysed by Lord Sumption in *Cameron* [2019] 1 WLR 1471 by reference to the distinction which he drew at para 13, as explained earlier, between cases concerned with anonymous defendants who were identifiable but whose names were unknown, such as squatters occupying a property, and cases concerned with defendants, such as most hit and run drivers, who were not only anonymous but could not be identified. The distinction was of critical importance, in Lord Sumption's view, because a defendant in the first category of case could be served with the claim form or other originating process, whereas a defendant in the second category could not, and consequently could not be given such notice of the proceedings as would enable him to be heard, as justice required.

II12 Lord Sumption added at para 15 that where an interim injunction was granted and could 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 would sometimes be enough to bring the proceedings to the defendant's attention. He cited *Bloomsbury* as an example, stating:

“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.”

II13 Lord Sumption categorised *Cameron* itself as a case in the second category, stating at para 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 KGo3 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.”

A Nor was there any specific interim relief, such as an injunction, which could be enforced in a way that would bring the proceedings to the unknown person's attention. The impossibility of service in such a case was, Lord Sumption said, "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" (ibid). The alternative service approved by the Court of Appeal—service on the insurer—could not be expected to reach the driver, and would be tantamount to no service at all. Addressing what, if the case had proceeded differently, might have been the heart of the matter, Lord Sumption added that although it might be appropriate to dispense with service if the defendant had concealed his identity in order to evade service, no submission had been made that the court should treat the case as one of evasion of service, and there were no findings which would enable it to do so.

C 114 We do not question the decision in *Cameron*. Nor do we question its essential reasoning: that proceedings should be brought to the notice of a person against whom damages are sought (unless, exceptionally, service can be dispensed with), so that he or she has an opportunity to be heard; that service is the means by which that is effected; and that, in circumstances in which service of the amended claim on the substituted defendant would be impossible (even alternative service being tantamount to no service at all), the judge had accordingly been right to refuse permission to amend.

D 115 That said, with the benefit of the further scrutiny that the point has received on this appeal, we have, with respect, some difficulties with other aspects of Lord Sumption's analysis. In the first place, we agree that it is generally necessary that a defendant should have such notice of the proceedings as will enable him to be heard before any final relief is ordered. However, there are exceptions to that general rule, as in the case of injunctions granted *contra mundum*, where there is in reality no defendant in the sense which Lord Sumption had in mind. It is also necessary to bear in mind that it is possible for a person affected by an injunction to be heard after a final order has been made, as was explained at para 40 above. Furthermore, notification, by means of service, and the consequent ability to be heard, is an essentially practical matter. As this court explained in *Abela v Baadarani* [2013] 1 WLR 2043, para 37, service has a number of purposes, but the most important is to ensure that the contents of the document served come to the attention of the defendant. Whether they have done so is a question of fact. If the focus is on whether service can in practice be effected, as we think it should be, then it is unnecessary to carry out the preliminary exercise of classifying cases as falling into either the first or the second of Lord Sumption's categories.

G 116 We also have reservations about the theory that it is necessary, in order for service to be effective, that the defendant should be identifiable. For example, Lord Sumption cited with approval the case of *Brett Wilson LLP v Persons Unknown* [2016] 4 WLR 69, as illustrating circumstances in which alternative service was legitimate because "it is possible to locate or communicate with the defendant and to identify him as the person described in the claim form" (para 15). That was a case concerned with online defamation. The defendants were described as persons unknown, responsible for the operation of the website on which the defamatory statements were published. Alternative service was effected by sending the claim form to

email addresses used by the website owners, who were providers of a proxy registration service (ie they were registered as the owners of the domain name and licensed its operation by third parties, so that those third parties could not be identified from the publicly accessible database of domain owners). Yet the identities of the defendants were just as unknown as that of the driver in *Cameron*, and remained so after service had been effected: it remained impossible to identify any individuals as the persons described in the claim form. The alternative service was acceptable not because the defendants could be identified, but because, as the judge stated (para 16), it was reasonable to infer that emails sent to the addresses in question had come to their attention.

117 We also have difficulty in fitting the unnamed defendants in *Bloomsbury* [2003] 1 WLR 1633 within Lord Sumption's class of identifiable persons who in due course could be served. It is true that they would have had to identify themselves as the persons referred to if they had sought to do the prohibited act. But if they learned of the injunction and decided to obey it, they would be no more likely to be identified for service than the hit and run driver in *Cameron*. The *Bloomsbury* case also illustrates the somewhat unstable nature of Lord Sumption's distinction between anonymous and unidentifiable defendants. Since the unnamed defendants in *Bloomsbury* were unidentifiable at the time when the claim was commenced and the injunction was granted, one would have thought that the case fell into Lord Sumption's second category. But the fact that the unnamed defendants would have had to identify themselves as the persons in possession of the book if (but only if) they disobeyed the injunction seems to have moved the case into the first category. This implies that 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. For these reasons also, it seems to us that the classification of cases as falling into one or other of Lord Sumption's categories (or into a third category, as suggested by the Court of Appeal in *Canada Goose*, para 63, and in the present case, para 35) may be a distraction from the fundamental question of whether service on the defendant can in practice be effected so as to bring the proceedings to his or her notice.

118 We also note that Lord Sumption's description of *Bloomsbury* and *Gammell* as cases concerned with interim injunctions was influential in the later case of *Canada Goose*. It is true that the order made in *Bloomsbury* was not, in form, a final order, but it was in substance equivalent to a final order: it bound those unknown persons for the entirety of the only relevant period, which was the period leading up to the publication of the book. As for *Gammell*, the reasoning did not depend on whether the injunctions were interim or final in nature. The order in Ms Gammell's case was interim ("until trial or further order"), but the point is less clear in relation to the order made in the accompanying case of Ms Maughan, which stated that "this order shall remain in force until further order".

119 More importantly, we are not comfortable with an analysis of *Bloomsbury* which treats its legitimacy as depending upon its being categorised as falling within a class of case where unnamed defendants may be assumed to become identifiable, and therefore capable of being served in due course, as we shall explain in more detail in relation to the supposed

- A *Gammell* solution, notably included by Lord Sumption in the same class alongside *Bloomsbury*, at para 15 in *Cameron*.

120 We also observe that *Cameron* was not concerned with equitable remedies or equitable principles. Nor was it concerned with newcomers. Understandably, given that the case was an action for damages, Lord Sumption's focus was particularly on the practice of the common law courts and on cases concerned with common law remedies (eg at paras 8 and 18–19). Proceedings in which injunctive relief is sought raise different considerations, partly because an injunction has to be brought to the notice of the defendant before it can be enforced against him or her. In some cases, furthermore, the real target of the injunctive relief is not the unidentified defendant, but the “no cause of action defendants” against whom freezing injunctions, *Norwich Pharmacal* orders, *Bankers Trust* orders and internet blocking orders may be obtained. The result of the orders made against those defendants may be to enable the unnamed defendant then to be identified and served, and effective relief obtained: see, for example, *CMOC Sales and Marketing Ltd v Person Unknown* [2019] Lloyd's Rep FC 62. In other words, the identification of the unknown defendant can depend upon the availability of injunctions which are granted at a stage when that defendant remains unidentifiable. Furthermore, injunctions and other orders which operate contra mundum, to which (as we have already observed) newcomer injunctions can be regarded as analogous, raise issues lying beyond the scope of Lord Sumption's judgment in *Cameron*.

121 It also needs to be borne in mind that the unnamed defendants in *Bloomsbury* formed a tiny class of thieves who might be supposed to be likely to reveal their identity to a media outlet during the very short period when their stolen copy of the book was an item of special value. The main purpose of seeking to continue the injunction against them was not to act as a deterrent to the thieves or even to enable them to be apprehended or committed for contempt, but rather to discourage any media publisher from dealing with them and thereby incurring liability for contempt as an aider and abetter: see *Cameron*, para 10; *Bloomsbury*, para 20. As we have explained (paras 41 and 46 above), it is not unusual in modern practice for an injunction issued against defendants, including persons unknown, to be designed primarily to affect the conduct of non-parties.

122 In that regard, it is to be noted that Lord Sumption's reason for regarding the injunction in *Bloomsbury* as legitimate was not the reason given by the Vice-Chancellor. His justification lay not in the ability to serve persons who identified themselves by breach, but in the absence of any injustice in framing an injunction against a class of unnamed persons provided that the class was sufficiently precisely defined that it could be said of any particular person whether they fell inside or outside the class of persons restrained. That justification may be said to have substantial equitable foundations. It is the same test which defines the validity of a class of discretionary beneficiaries under a trust: see *In re Baden's Deed Trusts* [1971] AC 424, 456. The trust in favour of the class is valid if it can be said of any given postulant whether they are or are not a member of the class.

123 That justification addresses what the Vice-Chancellor may have perceived to be one of the main objections to the joinder of (or the grant of injunctions against) unnamed persons, namely that it is too vague a way of

doing so: see para 7. But it does not seek directly to address the potential for injustice in restraining persons who are not just unnamed, but genuine newcomers: e g in the present context persons who have not at the time when the injunction was granted formed any desire or intention to camp at the prohibited site. The facts of the *Bloomsbury* case make that unsurprising. The unnamed defendants had already stolen copies of the book at the time when the injunction was granted, and it was a fair assumption at the time of the hearing before the Vice-Chancellor that they had formed the intention to make an illicit profit from its disclosure to the media before the launch date. Three had already tried to do so, been identified and arrested. The further injunction was just to catch the one or two (if any) who remained in the shadows and to prevent any publication facilitated by them in the meantime.

124 There is therefore a broad contextual difference between the injunction granted in *Bloomsbury* and the typical newcomer injunction against Travellers. The former was directed against a small group of existing criminals, who could not sensibly be classed as newcomers other than in a purely technical sense, where the risk of loss to the claimants lay within a tight timeframe before the launch date. The typical newcomer injunction against Travellers, on the other hand, is intended to restrain Travellers generally, for as long a period as the court can be persuaded to grant an injunction, and regardless of whether particular Travellers have yet become aware of the prohibited site as a potential camp site. The Vice-Chancellor's analysis does not seek to render joinder as a defendant unnecessary, whereas (as will be explained) the newcomer injunction does. But the case certainly does stand as a precedent for the grant of relief otherwise than on an emergency basis against defendants who, although joined, have yet to be served.

125 We turn next to the supposed *Gammell* [2006] 1 WLR 658 solution, and its apparent approval in *Cameron* as a juridically sound means of joining unnamed defendants by their self-identification in the course of disobeying the relevant injunction. It has the merit of being specifically addressed to newcomer injunctions in the context of Travellers, but in our view it is really no solution at all.

126 The circumstances and reasoning in *Gammell* were explained in paras 63–66 above. For present purposes it is the court's reasons for concluding that Ms Gammell became a defendant when she stationed her caravans on the site which matter. At para 32 Sir Anthony Clarke MR said this:

“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 . . . In the case of KG 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.”

The Master of the Rolls' analysis was not directed to a submission that injunctions could not or should not be granted at all against newcomers, as is now advanced on this appeal. No such submission was made. Furthermore, he was concerned only with the circumstances of a person who had both been served with and (by oral explanation) notified of the terms of the

A injunction and who had then continued to disobey it. He was not concerned with the position of a newcomer, wishing to camp on a prohibited site who, after learning of the injunction, simply decided to obey it and move on to another site. Such a person would not, on his analysis, become a defendant at all, even though constrained by the injunction as to their conduct. Service of the proceedings (as opposed to the injunction) was not raised as an issue in that case as the necessary basis for in personam jurisdiction, other than merely for holding the ring. Neither *Cameron* nor *Fourie v Le Roux* had been decided. The real point, unsuccessfully argued, was that the injunction should not have the effect against any particular newcomer of placing them in contempt until a personalised proportionality exercise had been undertaken. The need for a personalised proportionality exercise is also pursued on this appeal as a reason why newcomer injunctions should never be granted against Travellers, and we address it later in this judgment.

C 127 The concept of a newcomer automatically becoming (or self-identifying as) a defendant by disobeying the injunction might therefore be described, in 2005, as a solution looking for a problem. But it became a supposed solution to the problem addressed in this appeal when prayed in aid, first briefly and perhaps tentatively by Lord Sumption in *Cameron* at para 15 and secondly by Sir Geoffrey Vos MR in great detail in the present case, at paras 28, 30–31, 37, 39, 82, 85, 91–92, 94 and 96 and concluding at 99 of the judgment. It may fairly be described as lying at the heart of his reasoning for allowing the appeals, and departing from the reasoning of the Court of Appeal in *Canada Goose*.

D 128 This court is not of course bound to consider the matter, as was the Master of the Rolls, as a question of potentially binding precedent. We have the refreshing liberty of being able to look at the question anew, albeit constrained (although not bound) by the ratio of relevant earlier decisions of this court and of its predecessor. We conduct that analysis in the following paragraphs. While we have no reason to doubt the efficacy of the concept of self-identification as a defendant as a means of dealing with disobedience by a newcomer with an injunction, the propriety of which is not itself under challenge (as it was not in *Gammell*), we are not persuaded that self-identification as a defendant solves the basic problems inherent in granting injunctions against newcomers in the first place.

E 129 The *Gammell* solution, as we have called it, suffers from a number of problems. The most fundamental is that the effect of an injunction against newcomers should be addressed by reference to the paradigm example of the newcomer who can be expected to obey it rather than to act in disobedience to it. As Lord Bingham observed in *South Bucks District Council v Porter* [2003] 2 AC 558 (cited at para 65 above) at para 32, in connection with a possible injunction against Gypsies living in caravans in breach of planning controls, “When granting an injunction the court does not contemplate that it will be disobeyed”. Lord Rodger JSC cited this with approval (at para 17) in the *Meier* case [2009] 1 WLR 2780 (para 67 above). Similarly, Baroness Hale of Richmond JSC stated in the same case at para 39, in relation to an injunction against trespass by persons unknown, “We should assume that people will obey the law, and in particular the targeted orders of the court, rather than that they will not.”

130 A further problem with the *Gammell* solution is that where the defendants are defined by reference to the future act of infringement, a person who breaches the order will, by that very act, become bound by it. The Court of Appeal of Victoria remarked, in relation to similar reasoning in the New Zealand case of *Tony Blain Pty Ltd v Splain* [1993] 3 NZLR 185, that an order of that kind “had the novel feature—which would have appealed to Lewis Carroll—that it became binding upon a person only because that person was already in breach of it”: *Maritime Union of Australia v Patrick Stevedores Operations Pty Ltd* [1998] 4 VR 143, 161.

131 Nevertheless, a satisfactory solution, which respects the procedural rights of all those whose behaviour is constrained by newcomer injunctions, including those who obey them, should if possible be found. The practical need for such injunctions has been demonstrated both in this jurisdiction and elsewhere: see, for example, the Canadian case of *MacMillan Bloedel Ltd v Simpson* [1996] 2 SCR 1048 (where reliance was placed at para 26 on *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191 as establishing the contra mundum effect even of injunctions inter partes), American cases such as *Joel v Various John Does* (1980) 499 F Supp 791, New Zealand cases such as *Tony Blain Pty Ltd v Splain* (para 130 above), *Earthquake Commission v Unknown Defendants* [2013] NZHC 708 and *Commerce Commission v Unknown Defendants* [2019] NZHC 2609, the Cayman Islands case of *Ernst & Young Ltd v Department of Immigration* 2015 (1) CILR 151, and Indian cases such as *ESPN Software India Pvt Ltd v Tudu Enterprise* (unreported) 18 February 2011.

132 As it seems to us, the difficulty which has been experienced in the English cases, and to which *Gammell* has hitherto been regarded as providing a solution, arises from treating newcomer injunctions as a particular type of conventional injunction inter partes, subject to the usual requirements as to service. The logic of that approach has led to the conclusion that persons affected by the injunction only become parties, and are only enjoined, in the event that they breach the injunction. An alternative approach would begin by accepting that newcomer injunctions are analogous to injunctions and other orders which operate contra mundum, as noted in para 109 above and explained further at paras 155–159 below. 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. Viewed in that way, if newcomer injunctions operate in the same way as the orders and injunctions to which they are analogous, then anyone who knowingly breaches the injunction is liable to be held in contempt, whether or not they have been served with the proceedings. Anyone affected by the injunction can apply to have it varied or discharged, and can apply to be made a defendant, whether they have obeyed it or disobeyed it, as explained in para 40 above. Although not strictly necessary, those safeguards might also be reflected in provisions of the order: for example, in relation to liberty to apply. We shall return below to the question whether this alternative approach is permissible as a matter of legal principle.

133 As we have explained, the *Gammell* solution was adopted by the Court of Appeal in the present case as a means of overcoming the difficulties arising in relation to final injunctions against newcomers which had been

A identified in *Canada Goose* [2020] 1 WLR 2802. Where, then, does our rejection of the *Gammell* solution leave the reasoning in *Canada Goose*?

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.

B 135 First, the court's starting point in *Canada Goose* was that there were "some very limited circumstances", such as in *Venables*, in which a final injunction could be granted contra mundum, but that protester actions did not fall within "that exceptional category". Accordingly, "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" (para 89). The problem with that approach is that it assumes that the availability of a final injunction against newcomers depends on fitting such injunctions within an existing exclusive category. Such an approach is mistaken in principle, as explained in para 21 above.

D 136 The court buttressed its adoption of the "usual principle" with the observation that it was "consistent with the fundamental principle in *Cameron* . . . 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" (*ibid*). As we have explained, however, there are means of enabling a person who is affected by a final injunction to be heard after the order has been made, as was discussed in *Bromley* and recognised by the Master of the Rolls in the present case.

E 137 The court also observed at para 92 that "An interim injunction is temporary relief intended to hold the position until trial", and that "Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end". That is an unrealistic view of proceedings of the kind in which newcomer injunctions are generally sought, and an unduly narrow view of the scope of interlocutory injunctions in the modern law, as explained at paras 43–49 above. As we have explained (e.g. at paras 60 and 73 above), there is scarcely ever a trial in proceedings of the present kind, or even adversarial argument; injunctions, even if expressed as being interim or until further order, remain in place for considerable periods of time, sometimes for years; and the proceedings are not at an end until the injunction is discharged.

G 138 We are also unpersuaded by the court's observation that private law remedies are unsuitable "as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters" (para 93). If that were so, where claimants face the prospect of continuing unlawful disruption of their activities by groups of individuals whose composition changes from time to time, then it seems that the only practical means of obtaining the relief required to vindicate their legal rights would be for them to adopt a rolling programme of applications for interim orders, resulting in litigation without end. That would prioritise formalism over substance, contrary to a basic principle of equity (para 151 below). As we shall explain, there is no overriding reason why the courts cannot devise procedures which enable injunctions to be granted which

prohibit unidentified persons from behaving unlawfully, and which enable such persons subsequently to become parties to the proceedings and to seek to have the injunctions varied or discharged.

139 The developing arguments about the propriety of granting injunctions against newcomers, set against the established principles re-emphasised in *Fourie v Le Roux* and *Cameron*, and then applied in *Canada Goose*, have displayed a tendency to place such injunctions in one or other of two silos: interim and final. This has followed through into the framing of the issues for determination in this appeal and has, perhaps in consequence, permeated the parties' submissions. Thus, it is said by the appellants that the long-established principle that an injunction should be confined to defendants served with the proceedings applies only to final injunctions, which should not therefore be granted against newcomers. Then it is said that since an interim injunction is designed only to hold the ring, pending trial between the parties who have by then been served with the proceedings, its use against newcomers for any other purpose would fall outside the principles which regulate the grant of interim injunctions. Then the respondents (like the Court of Appeal) rely upon the *Gammell* solution (that a newcomer becomes a defendant by acting in breach of the interim injunction) as solving both problems, because it makes them parties to the proceedings leading to the final injunction (even if they then take no part in them) and justifies the interim injunction against newcomers as a way of smoking them out before trial. 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 (i.e. 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.

140 More to the point, the injunction typically operates against a particular newcomer before (if ever) the newcomer becomes a party to the proceedings, as we have explained at paras 129–132 above. An ordinarily law-abiding newcomer, once notified of the existence of the injunction (e.g. by seeing a copy of the order at the relevant site or by reading it on the internet), may be expected to comply with the injunction rather than act in breach of it. At the point of compliance that person will not be a defendant, if the defendants are defined as persons who behave in the manner restrained. Unless they apply to do so they will never become a defendant. If the person is a Traveller, they will simply pass by the prohibited site rather than camp there. They will not identify themselves to the claimant or to the court by any conspicuous breach, nor trigger the *Gammell* process by which, under the current orthodoxy, they are deemed then to become a defendant by self-identification. Even if the order was granted at a formally interim stage, the compliant Traveller will not ever become a party to the

A proceedings. They will probably never become aware of any later order in final form, unless by pure coincidence they pass by the same site again looking for somewhere to camp. Even if they do, and are again dissuaded, this time by the final injunction, they will not have been a party to the proceedings when the final order was made, unless they breached it at the interim stage.

B **141** In considering whether injunctions of this type comply with the standards of procedural and substantive fairness and justice by which the courts direct themselves, it is the compliant (law-abiding) newcomer, not the contemptuous breaker of the injunction, who ought to be regarded as the paradigm in any process of evaluation. Courts grant injunctions on the assumption that they will generally be obeyed, not as stage one in a process intended to lead to committal for contempt: see para 129 above, and the cases there cited, with which we agree. Furthermore 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 by the injunction is a person so regardless of the law that they will commit a breach of it, even if the grant necessarily assumes a real risk that they (or a significant number of them) would, but for the injunction, invade the claimant's rights, or the rights (including the planning regime) of those for whose protection the claimant local authority seeks the injunction. That is the essence of the justification for such an injunction.

E **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.

F **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.

G (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.

H (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 para 143(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. As Mr Drabble KC for the appellants tellingly submitted, it is not even that closely related to the established *quia timet* injunction, which depends upon proof that a named defendant has threatened to invade the claimant's rights. Why, he asked, should it be assumed that, just because one group of Travellers have misbehaved on the subject site while camping there temporarily, the next group to camp there will be other than model campers?

145 Faced with the development by the lower courts of what really is in substance a new type of injunction, and with disagreement among them

A about whether there is any jurisdiction or principled basis for granting it, it behoves this court to go back to first principles about the means by which the court navigates such uncharted water. Much emphasis was placed in this context upon the wide generality of the words of section 37 of the 1981 Act. This was cited in para 17 above, but it is convenient to recall its terms:

B “(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.”

C This or a very similar formulation has provided the statutory basis for the grant of injunctions since 1873. But in our view a submission that section 37 tells you all you need to know proves both too much and too little. Too much because, as we have already observed, it is certainly not the case that judges can grant or withhold injunctions purely on their own subjective perception of the justice and convenience of doing so in a particular case. Too little because the statutory formula tells you nothing about the principles which the courts have developed over many years, even centuries, to inform the judge and the parties as to what is likely to be just or convenient.

D **146** Prior to 1873 both the jurisdiction to grant injunctions and the principles regulating their grant lay in the common law, and specifically in that part of it called equity. It was an equitable remedy. From 1873 onwards the jurisdiction to grant injunctions has been confirmed and restated by statute, but the principles upon which they are granted (or withheld) have remained equitable: see *Fourie v Le Roux* [2007] 1 WLR 320 (paras 16 and 17 above) per Lord Scott of Foscote at para 25. Those principles continue to tell the judge what is just and convenient in any particular case. Furthermore, equitable principles generally provide the answer to the question whether settled principles or practice about the general limits or conditions within which injunctions are granted may properly be adjusted over time. The equitable origin of these principles is beyond doubt, and their continuing vitality as an analytical tool may be seen at work from time to time when changes or developments in the scope of injunctive relief are reviewed: see e.g. *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 (para 21 above).

F **147** The expression of the readiness of equity to change and adapt its principles for the grant of equitable relief which has best stood the test of time lies in the following well-known passage from *Spry* (para 17 above) at p 333:

H “The powers of courts with equitable jurisdiction to grant injunctions are, subject to any relevant statutory restrictions, unlimited. Injunctions are granted only when to do so accords with equitable principles, but this restriction involves, not a defect of powers, but an adoption of doctrines and practices that change in their application from time to time. Unfortunately there have sometimes been made observations by judges that tend to confuse questions of jurisdiction or of powers with questions of discretions or of practice. The preferable analysis involves a recognition of the great width of equitable powers, an historical appraisal of the

categories of injunctions that have been established and an acceptance that pursuant to general equitable principles injunctions may issue in new categories when this course appears appropriate.”

148 In *Broad Idea* [2023] AC 389 (para 17 above) at paras 57–58 Lord Leggatt JSC (giving the opinion of the majority of the Board) explained how, via *Broadmoor Special Health Authority v Robinson* [2000] QB 775 and *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 and [2018] 1 WLR 3259, that summary in *Spry* has come to be embedded in English law. The majority opinion in *Broad Idea* also explains why what some considered to be the apparent assumption in *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30, 39–40 that the relevant equitable principles became set in stone in 1873 was, and has over time been conclusively proved to be, wrong.

149 The basic general principle by reference to which equity provides a discretionary remedy is that it intervenes to put right defects or inadequacies in the common law. That is frequently because equity perceives that the strict pursuit of a common law right would be contrary to conscience. That underlies, for example, rectification, undue influence and equitable estoppel. But that conscience-based aspect of the principle has no persuasive application in the present context.

150 Of greater relevance is the deep-rooted trigger for the intervention of equity, where it perceives that available common law remedies are inadequate to protect or enforce the claimant’s rights. The equitable remedy of specific performance of a contractual obligation is in substance a form of injunction, and its availability critically depends upon damages being an inadequate remedy for the breach. Closer to home, the inadequacy of the common law remedy of a possession order against squatters under CPR Pt 55 as a remedy for trespass by a fluctuating body of frequently unidentifiable Travellers on different parts of the claimant’s land was treated in *Meier* [2009] 1 WLR 2780 (para 67 above) as a good reason for the grant of an injunction in relation to nearby land which, because it was not yet in the occupation of the defendant Travellers, could not be made the subject of an order for possession. Although the case was not about injunctions against newcomers, and although she was thinking primarily of the better tailoring of the common law remedy, the following observation of Baroness Hale JSC at para 25 is resonant:

“The underlying principle is *ubi ius, ibi remedium*: where there is a right, there should be a remedy to fit the right. The fact that ‘this has never been done before’ is no deterrent to the principled development of the remedy to fit the right, provided that there is proper procedural protection for those against whom the remedy may be granted.”

To the same effect is the dictum of Anderson J (in New Zealand) in *Tony Blain Pty Ltd v Splain* [1993] 3 NZLR 185 (para 130 above) at p 187, cited by Sir Andrew Morritt V-C in *Bloomsbury* [2003] 1 WLR 1633 at para 14.

151 The second relevant general equitable principle is that equity looks to the substance rather than the form. As Lord Romilly MR stated in *Parkin v Thorold* (1852) 16 Beav 59, 66–67:

“Courts of Equity make a distinction in all cases between that which is matter of substance and that which is matter of form; and if it find, that by

- A insisting on the form, the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form, and thereby defeat the substance.”

That principle assists in the present context for two reasons. The first (discussed above) is that it illuminates the debate about the type of injunction with which the court is concerned, here enabling an escape from the twin silos of final and interim and recognising that injunctions against newcomers are all in substance without notice injunctions. The second is that it enables the court to assess the most suitable means of ensuring that a newcomer has a proper opportunity to be heard without being shackled to any particular procedural means of doing so, such as service of the proceedings.

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- C 152 The third general equitable principle is equity’s essential flexibility, as explained at paras 19–22 above. Not only is an injunction always discretionary, but its precise form, and the terms and conditions which may be attached to an injunction (recognised by section 37(2) of the 1981 Act), are highly flexible. This may be illustrated by the lengthy and painstaking development of the search order, from its original form in *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55 to the much more sophisticated current form annexed to Practice Direction 25A supplementing CPR Pt 25 and which may be modified as necessary. To a lesser extent a similar process of careful, incremental design accompanied the development of the freezing injunction. The standard form now sanctioned by the CPR is a much more sophisticated version than the original used in *Mareva Cia Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd’s Rep 509. Of course, this flexibility enables not merely incremental development of a new type of injunction over time in the light of experience, but also the detailed moulding of any standard form to suit the justice and convenience of any particular case.
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- E

- F 153 Fourthly, there is no supposed limiting rule or principle apart from justice and convenience which equity has regarded as sacrosanct over time. This is best illustrated by the history of the supposed limiting principle (or even jurisdictional constraint) affecting all injunctions apparently laid down by Lord Diplock in *The Siskina* [1979] AC 210 (para 43 above) that an injunction could only be granted in, or as ancillary to, proceedings for substantive relief in respect of a cause of action in the same jurisdiction. The lengthy process whereby that supposed fundamental principle has been broken down over time until its recent express rejection is described in detail in the *Broad Idea* case [2023] AC 389 and needs no repetition. But it is to be noted the number of types of injunctive or quasi-injunctive relief which quietly by-passed this supposed condition, as explained at paras 44–49 above, including *Norwich Pharmacal* and *Bankers Trust* orders and culminating in internet blocking orders, in none of which was it asserted that the respondent had invaded, or even threatened to invade, some legal right of the applicant.
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- H 154 It should not be supposed that all relevant general equitable principles favour the granting of injunctions against newcomers. Of those that might not, much the most important is the well-known principle that equity acts in personam rather than either in rem or (which may be much the same thing in substance) contra mundum. A main plank in the appellants’

submissions is that injunctions against newcomers are by their nature a form of prohibition aimed, potentially at least, at anyone tempted to trespass or camp (depending upon the drafting of the order) on the relevant land, so that they operate as a form of local law regulating how that land may be used by anyone other than its owner. Furthermore, such an injunction is said in substance to criminalise conduct by anyone in relation to that land which would otherwise only attract civil remedies, because of the essentially penal nature of the sanctions for contempt of court. Not only is it submitted that this offends against the in personam principle, but it also amounts in substance to the imposition of a regime which ought to be the preserve of legislation or at least of byelaws.

155 It will be necessary to take careful account of this objection at various stages of the analysis which follows. At this stage it is necessary to note the following. First, equity has not been blind, or reluctant, to recognise that its injunctions may in substance have a coercive effect which, however labelled, extends well beyond the persons named as defendants (or named as subject to the injunction) in the relevant order. Very occasionally, orders have already been made in something approaching a contra mundum form, as in the *Venables* case already mentioned. More frequently the court has expressly recognised, after full argument, that an injunction against named persons may involve third parties in contempt for conduct in breach of it, where for example that conduct amounts to a contemptuous abuse of the court's process or frustrates the outcome which the court is seeking to achieve: see the *Bloomsbury* case [2003] 1 WLR 1633 and *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, discussed at paras 37–41, 61–62 and 121–124 above. In all those examples the court was seeking to preserve confidentiality in, or the intellectual property rights in relation to, specified information, and framed its injunction in a way which would bind anyone into whose hands that information subsequently came.

156 A more widespread example is the way in which a *Mareva* injunction is relied upon by claimants as giving protection against asset dissipation by the defendant. This is not merely (or even mainly) because of its likely effect upon the conduct of the defendant, who may well be a rogue with no scruples about disobeying court orders, but rather its binding effect (once notified to them) upon the defendant's bankers and other reputable custodians of his assets: see *Z Ltd v A-Z and AA-LL* [1982] QB 558 (para 41 above).

157 Courts quietly make orders affecting third parties almost daily, in the form of the embargo upon publication or other disclosure of draft judgments, pending hand-down in public: see para 35 above. It cannot be doubted that if a draft judgment with an embargo in this form came into the hands of someone (such as a journalist) other than the parties or their legal advisors it would be a contempt for that person to publish or disclose it further. Such persons would plainly be newcomers, in the sense in which that term is here being used.

158 It may be said, correctly, that orders of this kind are usually made so as to protect the integrity of the court's process from abuse. Nonetheless they have the effect of attaching to a species of intangible property a legal regime giving rise to a liability, if infringed, which sounds in contempt, regardless of the identity of the infringer. In conceptual terms, and shorn of

- A the purpose of preventing abuse, they work in rem or contra mundum in much the same way as an anti-trespass injunction directed at newcomers pinned to a post on the relevant land. The only difference is that the property protected by the former is intangible, whereas in the latter it is land. In relation to any such newcomer (such as the journalist) the embargo is made without notice.
- B **159** It is fair comment that a major difference between those types of order and the anti-trespass order is that the latter is expressly made against newcomers as “persons unknown” whereas the former (apart from the exceptional *Venables* type) are not. But if the consequences of breach are the same, and equity looks to the substance rather than to the form, that distinction may be of limited weight.
- C **160** Protection of the court’s process from abuse, or preservation of the utility of its future orders, may fairly be said to be the bedrock of many of equity’s forays into new forms of injunction. Thus freezing injunctions are designed to make more effective the enforcement of any ultimate money judgment: see *Broad Idea* [2023] AC 389 at paras 11–21. This is what Lord Leggatt JSC there called the enforcement principle. Search orders are designed to prevent dishonest defendants from destroying relevant documents in advance of the formal process of disclosure.
- D *Norwich Pharmacal* orders are a form of advance third party disclosure designed to enable a claimant to identify and then sue the wrongdoer. Anti-suit injunctions preserve the integrity of the appropriate forum from forum shopping by parties preferring without justification to litigate elsewhere.
- E **161** But internet blocking orders (para 49 above) stand in a different category. The applicant intellectual property owner does not seek assistance from internet service providers (“ISPs”) to enable it to identify and then sue the wrongdoers. It seeks an injunction against the ISP because it is a much more efficient way of protecting its intellectual property rights than suing the numerous wrongdoers, even though it is no part of its case against the ISP that it is, or has even threatened to be, itself a wrongdoer. The injunction is based upon the application of “ordinary principles of equity”: see *Cartier* [2018] 1 WLR 3259 (para 20 above) per Lord Sumption JSC at para 15. Specifically, the principle is that, once notified of the selling of infringing goods through its network, the ISP comes under a duty, but only if so requested by the court, to prevent the use of its facilities to facilitate a wrong by the sellers. The proceedings against the ISP may be the only proceedings which the intellectual property owner intends to take. Proceedings directly against the wrongdoers are usually impracticable, because of difficulty in identifying the operators of the infringing websites, their number and their location, typically in places outside the jurisdiction of the court: see per Arnold J at first instance in *Cartier* [2015] Bus LR 298, para 198.
- G **162** The effect of an internet blocking order, or the cumulative effect of such orders against ISPs which share most of the relevant market, is therefore to hinder the wrongdoers from pursuing their infringing sales on the internet, without them ever being named or joined as defendants in the proceedings or otherwise given a procedural opportunity to advance any defence, other than by way of liberty to apply to vary or discharge the order: see again per Arnold J at para 262.
- H

163 Although therefore internet blocking orders are not in form A
injunctions against persons unknown, they do in substance share many of
the supposedly objectionable features of newcomer injunctions, if viewed
from the perspective of those (the infringers) whose wrongdoings are in
substance sought to be restrained. They are, quoad the wrongdoers, made
without notice. They are not granted to hold the ring pending joinder of the
wrongdoers and a subsequent interim hearing on notice, still less a trial. The
proceedings in which they are made are, albeit in a sense indirectly, a form of
enforcement of rights which are not seriously in dispute, rather than a means
of dispute resolution. They have the effect, when made against the ISPs who
control almost the whole market, of preventing the infringers carrying on
their business from any location in the world on the primary digital platform
through which they seek to market their infringing goods. The infringers
whose activities are impeded by the injunctions are usually beyond the
territorial jurisdiction of the English court. Indeed that is a principal
justification for the grant of an injunction against the ISPs.

164 Viewed in that way, internet blocking orders are in substance more
of a precedent or jumping-off point for the development of newcomer
injunctions than might at first sight appear. They demonstrate the imaginative
way in which equity has provided an effective remedy for the protection and
enforcement of civil rights, where conventional means of proceeding against
the wrongdoers are impracticable or ineffective, where the objective of
protecting the integrity or effectiveness of related court process is absent,
and where the risk of injustice of a without notice order as against alleged
wrongdoers is regarded as sufficiently met by the preservation of liberty to
them to apply to have the order discharged.

165 We have considered but rejected summary possession orders
against squatters as an informative precedent. This summary procedure
(avoiding any interim order followed by final order after trial) was originally
provided for by RSC Ord 113, and is now to be found in CPR Pt 55. It is
commonly obtained against persons unknown, and has effect against
newcomers in the sense that in executing the order the bailiff will remove not
merely squatters present when the order was made, but also squatters who
arrived on the relevant land thereafter, unless they apply to be joined as
defendants to assert a right of their own to remain.

166 Tempting though the superficial similarities may be as between
possession orders against squatters and injunctions against newcomers, they
afford no relevant precedent for the following reasons. First, they are the
creature of the common law rather than equity, being a modern form of the
old action in ejectment which is at its heart an action in rem rather than in
personam: see *Manchester Corp'n v Connolly* [1970] Ch 420, 428–429 per
Lord Diplock, *McPhail v Persons, Names Unknown* [1973] Ch 447, 457 per
Lord Denning MR and more recently *Meier* [2009] 1 WLR 2780,
paras 33–36 per Baroness Hale JSC. Secondly, possession orders of this kind
are not truly injunctions. They authorise a court official to remove persons
from land, but disobedience to the bailiff does not sound in contempt.
Thirdly, the possession order works once and for all by a form of execution
which puts the owner of the land back in possession, but it has no ongoing
effect in prohibiting entry by newcomers wishing to camp upon it after the
order has been executed. Its shortcomings in the Traveller context are one of

A the reasons prayed in aid by local authorities seeking injunctions against newcomers as the only practicable solution to their difficulties.

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:

C (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.

D (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.

F (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.

G (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.

H 168 The issues in this appeal have been formulated in such a way that the appellants have the burden of showing that the balancing exercise involved in weighing those competing considerations can never come down in favour of granting such an injunction. We have not been persuaded that this is so. We will address the main objections canvassed by the appellants and, in the next section of this judgment, set out in a little more detail how we conceive that the necessary protection for newcomers' rights should

generally be built into the process for the application for, grant and subsequent monitoring of this type of injunction. A

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. B

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, ie 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. C
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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. This was a matter which received only cursory examination during the hearing of this appeal. Mr Anderson KC for Wolverhampton submitted (on instructions quickly taken by telephone during the short adjournment) that, in summary, byelaws took too long to obtain (requiring two stages of negotiation with central government), would need to be separately made in relation to each site, would be too inflexible to address changes in the use of the relevant sites (particularly if subject to development) and would unduly criminalise the process of enforcing civil rights. The appellants did not engage with the detail of any of these points, their objection being more a matter of principle. E
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172 We have not been able to reach any conclusions about the issue of practicality, either generally or on the particular facts about the cases before the court. In our view the theoretical availability of byelaws or other measures or powers available to local authorities as a potential alternative remedy is not shown to be a reason why newcomer injunctions should never be granted against Travellers. Rather, the question whether byelaws or other such measures or powers represent a workable alternative is one which should be addressed on a case by case basis. We say more about that in the next section of this judgment. H

A 173 A second main objection in principle was lack of procedural fairness, for which Lord Sumption's observations in *Cameron* were prayed in aid. It may be said that recognition that injunctions against newcomers are in substance without notice injunctions makes this objection all the more stark, because the newcomer does not even know that an injunction is being sought against them when the order is made, so that their inability to attend to oppose is hard-wired into the process regardless of the particular facts.

B 174 This is an objection which applies to all forms of without notice injunction, and explains why they are generally only granted when there is truly no alternative means of achieving the relevant objective, and only for a short time, pending an early return day at which the merits can be argued out between the parties. The usual reason is extreme urgency, but even then it is customary to give informal notice of the hearing of the application to the persons against whom the relief is sought. Such an application used then to be called "ex parte on notice", a partly Latin phrase which captured the point that an application which had not been formally served on persons joined as defendants so as to enable them to attend and oppose it did not in an appropriate case mean that it had to be heard in their absence, or while they were ignorant that it was being made. In the modern world of the CPR, where "ex parte" has been replaced with "without notice", the phrase "ex parte on notice" admits no translation short of a simple oxymoron. But it demonstrates that giving informal notice of a without notice application is a well-recognised way of minimising the potential for procedural unfairness inherent in such applications. But sometimes even the most informal notice is self-defeating, as in the case of a freezing injunction, where notice may provoke the respondent into doing exactly that which the injunction is designed to prohibit, and a search order, where notice of any kind is feared to be likely to trigger the bonfire of documents (or disposal of laptops) the prevention of which is the very reason for the application.

E 175 In the present context notice of the application would not risk defeating its purpose, and there would usually be no such urgency as would justify applying without notice. The absence of notice is simply inherent in an application for this type of injunction because, quoad newcomers, the applicant has no idea who they might turn out to be. A practice requirement to advertise the intended application, by notices on the relevant sites or on suitable websites, might bring notice of the application to intended newcomers before it came to be made, but this would be largely a matter of happenstance. It would for example not necessarily come to the attention of a Traveller who had been camping a hundred miles away and who alighted for the first time on the prohibited site some time after the application had been granted.

G 176 But advertisement in advance might well alert bodies with a mission to protect Travellers' interests, such as the appellants, and enable them to intervene to address the court on the local authority's application with focused submissions as to why no injunction should be granted in the particular case. There is an (imperfect) analogy here with representative proceedings (paras 27–30 above). There may also be a useful analogy with the long-settled rule in insolvency proceedings which requires that a creditors' winding up petition be advertised before it is heard, in order to give advance notice to stakeholders in the company (such as other creditors)

and the opportunity to oppose the petition, without needing to be joined as defendants. We say more about this and how advance notice of an application for a newcomer injunction might be given to newcomers and persons and bodies representing their interests in the next section of this judgment.

177 It might be thought that the obvious antidote to the procedural unfairness of a without notice injunction would be the inclusion of a liberal right of anyone affected to apply to vary or discharge the injunction, either in its entirety or as against them, with express provision that the applicant need show no change of circumstances, and is free to advance any reason why the injunction should either never have been granted or, as the case may be, should be discharged or varied. Such a right is generally included in orders made on without notice applications, but Mr Drabble KC submitted that it was unsatisfactory for a number of reasons.

178 The first was that, if the injunction was final rather than interim, it would be decisive of the legal merits, and be incapable of being challenged thereafter by raising a defence. We regard this submission as one of the unfortunate consequences of the splitting of the debate into interim and final injunctions. We consider it plain that a without notice injunction against newcomers would not have that effect, regardless of whether it was in interim or final form. An applicant to vary or discharge would be at liberty to advance any reasons which could have been advanced in opposition to the grant of the injunction when it was first made. If that were not implicit in the reservation of liberty to apply (which we think it is), it could easily be made explicit as a matter of practice.

179 Mr Drabble KC's next objection to the utility of liberty to apply was more practical. Many or most Travellers, he said, would be seeking to fulfil their cultural practice of leading a peripatetic life, camping at any particular site for too short a period to make it worth going to court to contest an injunction affecting that site. Furthermore, unless they first camped on the prohibited site there would be no point in applying, but if they did camp there it would place them in breach of the injunction while applying to vary it. If they camped elsewhere so as to comply with the injunction, their rights (if any) would have been interfered with, in circumstances where there would be no point in having an expensive and risky legal argument about whether they should have been allowed to camp there in the first place.

180 There is some force in this point, but we are not persuaded that the general disinclination of Travellers to apply to court really flows from the newcomer injunctions having been granted on a without notice application. If for example a local authority waited for a group of Travellers to camp unlawfully before serving them with an application for an injunction, the Travellers might move to another site rather than raise a defence to the prevention of continued camping on the original site. By the time the application came to be heard, the identified group would have moved on, leaving the local authority to clear up, and might well have been replaced by another group, equally unidentifiable in advance of their arrival.

181 There are of course exceptions to this pattern of temporary camping as trespassers, as when Travellers buy a site for camping on, and are then proceeded against for breach of planning control rather than for

- A trespass: see eg the *Gammell* case and the appeal in *Bromley London Borough Council v Maughan* heard at the same time. In such a case the potential procedural injustice of a without notice injunction might well be sufficient to require the local authority to proceed against the owners of the site on notice, in the usual way, not least because there would be known targets capable of being served with the proceedings, and any interim application made on notice. But the issue on this appeal is not whether
- B newcomer injunctions against Travellers are always justified, but rather whether the objections are such that they never are.

- 182 The next logical objection (although little was made of it on this appeal) is that an injunction of this type made on the application of a local authority doing its duty in the public interest is not generally accompanied by a cross-undertaking in damages. There is of course a principled reason
- C why public bodies doing their public duty are relieved of this burden (see *Financial Services Authority v Sinaloa Gold plc* [2013] 2 AC 28), and that reasoning has generally been applied in newcomer injunction cases against Travellers where the applicant is a local authority. We address this issue further in the next section of this judgment (at para 234) and it would be wrong for us to express more definite views on it, in the absence of any
- D submissions about it. In any event, if this were otherwise a decisive reason why an injunction of this type should never be granted, it may be assumed that local authorities, or some of them, would prefer to offer a cross undertaking rather than be deprived of the injunction.

- 183 The appellants' final main point was that it would always be impossible when considering the grant of an injunction against newcomers to conduct an individualised proportionality analysis, because each potential
- E target Traveller would have their own particular circumstances relevant to a balancing of their article 8 rights against the applicant's claim for an injunction. If no injunction could ever be granted in the absence of an individualised proportionality analysis of the circumstances of every potential target, then it may well be that no newcomer injunction could ever be granted against Travellers. But we reject that premise. To the extent that a
- F particular Traveller who became the subject of a newcomer injunction wished to raise particular circumstances applicable to them and relevant to the proportionality analysis, this would better be done under the liberty to apply if, contrary to the general disinclination or inability of Travellers to go to court, they had the determination to do so.

- 184 We have already briefly mentioned Mr Drabble KC's point about the inappropriateness of an injunction against one group of Travellers based only upon the disorderly conduct of an earlier group. This is in our view just an
- G evidential point. A local authority that sought a borough-wide injunction based solely upon evidence of disorderly conduct by a single group of campers at a single site would probably fail the test in any event. It will no doubt be necessary to adduce evidence which justifies a real fear of widespread repetition. Beyond that, the point goes nowhere towards constituting a
- H reason why such injunctions should never be granted.

185 The point was made by Stephanie Harrison KC for Friends of the Earth (intervening because of the implications of this appeal for protesters) that the potential for a newcomer injunction to cause procedural injustice was not regulated by any procedure rules or practice statements under the

CPR. Save in relation to certain statutory applications referred to in para 51 above this is true at present, but it is not a good reason to inhibit equity's development of a new type of injunction. A review of the emergence of freezing injunctions and search orders shows how the necessary procedural checks and balances were first worked out over a period of development by judges in particular cases, then addressed by textbook writers and academics and then, at a late stage in the developmental process, reduced to rules and practice directions. This is as it should be. Rules and practice statements are appropriate once experience has taught judges and practitioners what are the risks of injustice that need to be taken care of by standard procedures, but their reduction to settled (and often hard to amend) standard form too early in the process of what is in essence judge-made law would be likely to inhibit rather than promote sound development. In the meantime, the courts have been actively reviewing what these procedural protections should be, as for example in the *Ineos* and *Bromley* cases (paras 86–95 above). We elaborate important aspects of the appropriate protections in the next section of this judgment.

186 Drawing all these threads together, we are satisfied that there is jurisdiction (in the sense of power) in the court to grant newcomer injunctions against Travellers, and that there are principled reasons why the exercise of that power may be an appropriate exercise of the court's equitable discretion, where the general conditions set out in para 167 above are satisfied. While some of the objections relied upon by the appellants may amount to good reasons why an injunction should not be granted in particular cases, those objections do not, separately or in the aggregate, amount to good reason why such an injunction should never be granted. That is the question raised by this appeal.

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.

(1) 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

A 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)).

B 189 This gives rise to three preliminary questions. The first is whether the local authority has complied with its obligations (such as they are) properly to consider and provide lawful stopping places for Gypsies and Travellers within the geographical areas for which it is responsible. The second is whether the authority has exhausted all reasonable alternatives to the grant of an injunction, including whether it has engaged in a dialogue with the Gypsy and Traveller communities to try to find a way to accommodate their nomadic way of life by giving them time and assistance to find alternative or transit sites, or more permanent accommodation. The third is whether the authority has taken appropriate steps to control or even prohibit unauthorised encampments and related activities by using the other measures and powers at its disposal. To some extent the issues raised by these questions will overlap. Nevertheless, their importance is such that they merit a degree of separate consideration, at least at this stage. A failure by the local authority in one or more of these respects may make it more difficult to satisfy a court that the relief it seeks is just and convenient.

D

(i) An obligation or duty to provide sites for Gypsies and Travellers

190 The extent of any obligation on local authorities in England to provide sufficient sites for Gypsies and Travellers in the areas for which they are responsible has changed over time.

E 191 The starting point is section 23 of the Caravan Sites and Control of Development Act 1960 (“CSCDA 1960”) which gave local authorities the power to close common land to Gypsies and Travellers. As Sedley J observed in *R v Lincolnshire County Council, Ex p Atkinson* (1995) 8 Admin LR 529, local authorities used this power with great energy. But they made little or no corresponding use of the related powers conferred on them by section 24 of the CSCDA 1960 to provide sites where caravans might be brought, whether for temporary purposes or for use as permanent residences, and in that way compensate for the closure of the commons. As a result, it became increasingly difficult for Travellers and Gypsies to pursue their nomadic way of life.

G 192 In the light of the problems caused by the CSCDA 1960, section 6 of the Caravan Sites Act 1968 (“CSA 1968”) imposed on local authorities a duty to exercise their powers under section 24 of the CSCDA 1960 to provide adequate accommodation for Gypsies and Travellers residing in or resorting to their areas. The appellants accept that in the years that followed many sites for Gypsies and Travellers were established, but they contend with some justification that these sites were not and have never been enough to meet all the needs of these communities.

H 193 Some 25 years later, the CJPOA repealed section 6 of the CSA 1968. But the *power* to provide sites for Travellers and Gypsies remained. This is important for it provides a way to give effect to the assessment by local authorities of the needs of these communities, and these are matters we address below.

194 The position in Wales is rather different. Any local authority applying for a newcomer injunction affecting Wales must consider the

impact of any legislation specifically affecting that jurisdiction including the Housing (Wales) Act 2014 (“H(W)A 2014”). Section 101(1) of the H(W)A 2014 imposes on the authority a duty to “carry out an assessment of the accommodation needs of Gypsies and Travellers residing in or resorting to its area”. If the assessment identifies that the provision of sites is inadequate to meet the accommodation needs of Gypsies and Travellers in its area and the assessment is approved by the Welsh Ministers, the authority has a *duty* to exercise its powers to meet those needs under section 103 of the H(W)A 2014.

(ii) General “needs” assessments

195 For many years there has been an obligation on local authorities to carry out an assessment of the accommodation needs of Gypsies and Travellers when carrying out their periodic review of housing needs under section 8 of the Housing Act 1985.

196 This obligation was first imposed by section 225 of the Housing Act 2004. This measure was repealed by section 124 of the Housing and Planning Act 2016. Instead, the duty of local housing authorities in England to carry out a periodic review of housing needs under section 8 of the Housing Act 1985 has since 2016 included (at section 8(3)) a duty to consider the needs of people residing in or resorting to their district with respect to the provision of sites on which caravans can be stationed.

(iii) Planning policy

197 Since about 1994, and with the repeal of the statutory duty to provide sites, the general issue of Traveller site provision has come increasingly within the scope of planning policy, just as the government anticipated.

198 Indeed, in 1994, the government published planning advice on the provision of sites for Gypsies and Travellers in the form of Department of the Environment Circular 1/94 entitled *Gypsy Sites and Planning*. This explained that the repeal of the statutory duty to provide sites was expected to lead to more applications for planning permission for sites. Local planning authorities (“LPAs”) were advised to assess the needs of Gypsies and Travellers within their areas and to produce a plan which identified suitable *locations* for sites (location-based policies) and if this could not be done, to explain the *criteria* for the selection of appropriate locations (criteria-based policies). Unfortunately, despite this advice, most attempts to secure permission for Gypsy and Traveller sites were refused and so the capacity of the relatively few sites authorised for occupation by these nomadic communities continued to fall well short of that needed, as Lord Bingham explained in *South Bucks District Council v Porter* [2003] 2 AC 558, at para 13.

199 The system for local development planning in England is now established by the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) and the regulations made under it. Part 2 of the PCPA 2004 deals with local development and stipulates that the LPA is to prepare a development scheme and plan; that this must set out the authority’s policies; that in preparing the local development plan, the authority must have regard to national policy; that each plan must be sent to the Secretary of State for

A independent examination and that the purpose of this examination is, among other things, to assess its soundness and that will itself involve an assessment whether it is consistent with national policy.

200 Meantime, the advice in Circular 1/94 having failed to achieve its purpose, the government has from time to time issued new planning advice on the provision of sites for Gypsies and Travellers in England, and that advice may be taken to reflect national policy.

B 201 More specifically, in 2006 advice was issued in the form of the Office of the Deputy Prime Minister Circular 1/06 *Planning for Gypsy and Traveller Caravan Sites*. The 2006 guidance was replaced in March 2012 by *Planning Policy for Traveller Sites* (“PPTS 2012”). In August 2015, a revised version of PPTS 2012 was issued (“PPTS 2015”) and this is to be read with the National Planning Policy Framework. There has recently been a challenge to a decision refusing planning permission on the basis that one aspect of PPTS 2015 amounts to indirect discrimination and has no proper justification: *Smith v Secretary of State for Housing, Communities and Local Government* [2023] PTSR 312. But for present purposes it is sufficient to say (and it remains the case) that there is in these policy documents clear advice that LPAs should, when producing their local plans, identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of sites against their locally set targets to address the needs of Gypsies and Travellers for permanent and transit sites. They should also identify a supply of specific, developable sites or broad locations for growth for years 6–10 and even, where possible, years 11–15. The advice is extensive and includes matters to which LPAs must have regard including, among other things, the presumption in favour of sustainable development; the possibility of cross-authority co-operation; the surrounding population’s size and density; the protection of local amenities and the environment; the need for appropriate land supply allocations and to respect the interests of the settled communities; the need to ensure that Traveller sites are sustainable and promote peaceful and integrated co-existence with the local communities; and the need to promote access to appropriate health services and schools. The LPAs are also advised to consider the need to avoid placing undue pressure on local infrastructure and services, and to provide a settled base that reduces the need for long distance travelling and possible environmental damage caused by unauthorised encampments.

F 202 The availability of transit sites (and information as to where they may be found) is also important in providing short-term or temporary accommodation for Gypsies and Travellers moving through a local authority area, and 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.

(iv) Consultation and co-operation

H 203 This is another matter of considerable importance, and it is one with which all local authorities should willingly engage. We have no doubt that local authorities, other responsible bodies and representatives of the Gypsy and Traveller communities would benefit from a dialogue and co-operation to understand their respective needs; the concerns of the local authorities, local charities, business and community groups and members

of the public; and the resources available to the local authorities for deployment to meet the needs of these nomadic communities having regard to the wider obligations which the authorities must also discharge. In this way a deeper level of trust may be established and so facilitate and encourage a constructive approach to the implementation of proportionate solutions to the problems the nomadic communities continue to present, without immediate and expensive recourse to applications for injunctive relief or enforcement action.

(v) Public spaces protection orders

204 The Anti-social Behaviour, Crime and Policing Act 2014 confers on local authorities the power to make public spaces protection orders (“PSPOs”) to prohibit encampments on specific land. PSPOs are in some respects similar to byelaws and are directed at behaviour and activities carried on in a public place which, for example, have a detrimental effect on the quality of life of those in the area, are or are likely to be persistent or continuing, and are or are likely to be such as to make the activities unreasonable. Further, PSPOs are in general easier to make than byelaws because they do not require the involvement of central government or extensive consultation. Breach of a PSPO without reasonable excuse is a criminal offence and can be enforced by a fixed penalty notice or prosecution with a maximum fine of level three on the standard scale. But any PSPO must be reasonable and necessary to prevent the conduct and detrimental effects at which it is targeted. A PSPO takes precedence over any byelaw in so far as there is any overlap.

(vi) Criminal Justice and Public Order Act 1994

205 The CJPOA empowers local authorities to deal with unauthorised encampments that are causing damage or disruption or involve vehicles, and it creates a series of related offences. It is not necessary to set out full details of all of them. The following summary gives an idea of their range and scope.

206 Section 61 of the CJPOA confers powers on the police to deal with two or more persons who they reasonably believe are trespassing on land with the purpose of residing there. The police can direct these trespassers to leave (and to remove any vehicles) if the occupier has taken reasonable steps to ask them to leave and they have caused damage, disruption or distress as those concepts are elucidated in section 61(10). Failure to leave within a reasonable time or, if they do leave, a return within three months is an offence punishable by imprisonment or a fine. A defence of reasonable excuse may be available in particular cases.

207 Following amendment in 2003, section 62A of the CJPOA confers on the police a power to direct trespassers with vehicles to leave land at the occupier’s request, and that is so even if the trespassers have not caused damage or used threatening behaviour. Where trespassers have at least one vehicle between them and are there with the common purpose of residing there, the police, (if so requested by the occupier) have the power to direct a trespasser to leave and to remove any vehicle or property, subject to this proviso: if they have caravans that (after consultation with the relevant local

A authorities) there is a suitable pitch available on a site managed by the authority or social housing provider in that area.

208 Focusing more directly on local authorities, section 77 of the CJPOA confers on the local authority a power to direct campers to leave open-air land where it appears to the authority that they are residing in a vehicle within its area, whether on a highway, on unoccupied land or on occupied land without the consent of the occupier. There is no need to establish that these activities have caused damage or disruption. The direction must be served on each person to whom it applies, and that may be achieved by directing it to all occupants of vehicles on the land; and failing other effective service, it may be affixed to the vehicles in a prominent place. Relevant documents should also be displayed on the land in question. It is an offence for persons who know that such an order has been made against them to fail to comply with it.

(vii) Byelaws

209 There is a measure of agreement by all parties before us that the power to make and enforce byelaws may also have a bearing on the issues before us in this appeal. Byelaws are a form of delegated legislation made by local authorities under an enabling power. They commonly require something to be done or refrained from in a particular area or location. Once implemented, byelaws have the force of law within the areas to which they apply.

210 There is a wide range of powers to make byelaws. By way of example, a general power to make byelaws for good rule and government and for the prevention and suppression of nuisances in their areas is conferred on district councils in England and London borough councils by section 235(1) of the Local Government Act 1972 (“the LGA 1972”). The general confirming authority in relation to byelaws made under this section is the Secretary of State.

211 We would also draw attention to section 15 of the Open Spaces Act 1906 which empowers local authorities in England to make byelaws for the regulation of open spaces, for the imposition of a penalty for breach and for the removal of a person infringing the byelaw by an officer of the local authority or a police constable. Notable too is section 164 of the Public Health Act 1875 (38 & 39 Vict c 55) which confers a power on the local authority to make byelaws for the regulation of public walks and pleasure grounds and for the removal of any person infringing any such byelaw, and under section 183, to impose penalties for breach.

212 Other powers to make byelaws and to impose penalties for breach are conferred on authorities in relation to commons by, for example, the Commons Act 1899 (62 & 63 Vict c 30).

213 Appropriate authorities are also given powers to make byelaws in relation to nature reserves by the National Parks and Access to the Countryside Act 1949 (12, 13 & 14 Geo 6, c 97) (as amended by the Natural Environment and Rural Communities Act 2006); in relation to National Parks and areas of outstanding natural beauty under sections 90 and 91 of the 1949 Act (as amended); concerning the protection of country parks under section 41 of the Countryside Act 1968; and for the protection and

preservation of other open country under section 17 of the Countryside and Rights of Way Act 2000. A

214 We recognise that byelaws are sometimes subjected to detailed and appropriate scrutiny by the courts in assessing whether they are reasonable, certain in their terms and consistent with the general law, and whether the local authority had the power to make them. It is an aspect of the third of these four elements that generally byelaws may only be made if provision for the same purpose is not made under any other enactment. Similarly, a byelaw may be invalidated if repugnant to some basic principle of the common law. Further, as we have seen, the usual method of enforcement of byelaws is a fine although powers to seize and retain property may also be included (see, for example, section 237ZA of the LGA 1972), as may powers to direct removal. B

215 The opportunity to make and enforce appropriate elements of this battery of potential byelaws, depending on the nature of the land in issue and the form of the intrusion, may seem at first sight to provide an important and focused way of dealing with unauthorised encampments, and it is a rather striking feature of these proceedings that byelaws have received very little attention from local authorities. Indeed, Wolverhampton City Council has accepted, through counsel, that byelaws were not considered as a means of addressing unauthorised encampments in the areas for which it is responsible. It maintains they are unlikely to be sufficient and effective in the light of (a) the existence of legislation which may render the byelaws inappropriate; (b) the potential effect of criminalising behaviour; (c) the issue of identification of newcomers; and (d) the modest size of any penalty for breach which is unlikely to be an effective deterrent. C

216 We readily appreciate that the nature of travelling communities and the respondents to newcomer injunctions may not lend themselves to control by or yield readily to enforcement of these various powers and measures, including byelaws, alone, but we are not persuaded that the use of byelaws or other enforcement action of the kinds we have described can be summarily dismissed. Plainly, we cannot decide in this appeal whether the reaction of Wolverhampton City Council to the use of all of these powers and measures including byelaws is sound or not. We have no doubt, however, that this is a matter that ought to be the subject of careful consideration on the next review of the injunctions in these cases or on the next application for an injunction against persons unknown, including newcomers. D

(viii) A need for review E

217 Various aspects of this discussion merit emphasis at this stage. Local authorities have a range of measures and powers available to them to deal with unlawful encampments. Some but not all involve the enactment and enforcement of byelaws. Many of the offences are punishable with fixed or limited penalties, and some are the subject of specified defences. It may be said that these form part of a comprehensive suite of measures and powers and associated penalties and safeguards which the legislature has considered appropriate to deal with the threat of unauthorised encampments by Gypsies and Travellers. We rather doubt that is so, particularly when dealing with communities of unidentified trespassers including newcomers. F

- A But these are undoubtedly matters that must be explored upon the review of these orders.

(2) *Evidence of threat of abusive trespass or planning breach*

- B 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.

- C 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.

E 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.

- F (3) *Identification or other definition of the intended respondents to the application*

- G 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

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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.

B

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.

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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.

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(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.

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(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

A 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.

B 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.

C 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.

D 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

F 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).

G 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

H 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;

- A 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.

(12) *Conclusion*

- B 237 There is nothing in this consideration which calls into question the development of newcomer injunctions as a matter of principle, and we are satisfied they have been and remain a valuable and proportionate remedy in appropriate cases. But we also have no doubt that the various matters to which we have referred must be given full consideration in the particular proceedings the subject of these appeals, if necessary at an appropriate and early review.
- C

6. *Outcome*

- 238 For the reasons given above we would dismiss this appeal. Those reasons differ significantly from those given by the Court of Appeal, but we consider that the orders which they made were correct. There follows a short summary of our conclusions:
- D

(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.

- E (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.

- F (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.

- G (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.

These principles may be discerned in action in the remarkable development of the injunction as a remedy during the last 50 years.

- H (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.

Appeal dismissed.

COLIN BERESFORD, Barrister

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 September 2024

Before :

HHJ Emma Kelly sitting as a Judge of the High Court

Between :

**NORTH WARWICKSHIRE BOROUGH
COUNCIL**

Claimant

- and -

**THE DEFENDANTS LISTED AT SCHEDULE A
TO THIS JUDGMENT**

Defendants

Mr Jonathan Manning and Ms Charlotte Crocombe (instructed by North Warwickshire Borough Council, Legal Services) for the **Claimant**.

Ms Alison Lee (8th Defendant), **Ms Joanna Hindley** (78th Defendant) and **Ms Chloe Naldrett** (115th Defendant) in person and who participated in the hearing.

Mr Timothy Hewes (4th Defendant), **Mr Stephen Pritchard** (9th Defendant), **Mr Paul Raithby** (11th Defendant), **Mr Marcus Bailie** (25th Defendant), **Mr David Robert Barkshire** (32nd Defendant), **Ms Molly Berry** (33rd Defendant), **Ms Kate Bramfitt** (37th Defendant), **Ms Zoe Cohen** (49th Defendant), **Ms Ruth Jarman** (84th Defendant), **Mr Charles Laurie** (91st Defendant), **Ms Victoria Lindsell** (93rd Defendant), **Mr Christian Murray-Leslie** (113th Defendant), **Ms Stephanie Pride** (125th Defendant), **Ms Vivienne Shah** (135th Defendant), **Ms Sarah Webb** (150th Defendant) in person but who observed the hearing only.

Ms Caroline Cattermole (46th Defendant), **Ms Diana Martin** (98th Defendant), **Mr Nicolas Onley** (121st Defendant) and **Mr Daniel Shaw** (137th Defendant) in person by remote link but who observed the hearing only.

Hearing dates: 11-12 June 2024.
Judgment handed down: 6 September 2024

APPROVED JUDGMENT

HHJ Emma Kelly:

Introduction

1. This is a claim for an injunction to restrict protests inside and in the locality of an inland oil terminal known as Kingsbury Oil Terminal (“the Terminal”) in Kingsbury, Warwickshire. The claim is brought by North Warwickshire Borough Council (“the Council”). The Terminal is situated within the geographical area for which the Council has responsibility.
2. The claim arises from protest activities undertaken at and around the Terminal by individuals associated with the action group known as Just Stop Oil. Just Stop Oil is a civil resistance group whose aims are to end all new licensing and consents for the exploration, development and production of fossil fuels in the United Kingdom. The named defendants are individuals said to have engaged in protest activities at the Terminal. The Council also pursues four categories of persons unknown defendants.

Background

3. From around 31 March 2022 to 10 April 2022 there were a series of protests at the Terminal by individuals associated with Just Stop Oil. I shall address the details of those protests in due course but they included both trespass onto the Terminal site and protests on land adjacent to the Terminal, including on the public highway.
4. In response to the protests, on 13 April 2022 the Council issued an application for a without notice interim injunction and power of arrest against 18 named defendants who had been arrested at a protest at the Terminal and a further unnamed defendant defined as “Persons Unknown who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels, in the locality of the site known as Kingsbury Oil Terminal, Tamworth, B78 2HA.”
5. By order dated 14 April 2022 Sweeting J granted a without notice interim injunction. In summary, the order prohibited any protest against the production or use of fossil fuels at the Terminal within an area demarcated on a plan attached to the injunction or within a ‘buffer zone’ of five metres of those boundaries. The order further prohibited certain types of conduct in connection with any such protest taking place anywhere within the wider ‘locality’ of the Terminal. The prohibited conduct was detailed in eleven sub-paragraphs and included activities such as obstructing the entrance of the Terminal, climbing onto or otherwise damaging or interfering with vehicles or objects, damaging pipes and equipment, and tunnelling under land. A power of arrest was attached to the order.
6. Following the grant of the interim order, there was further protest activity at the Terminal and the police exercised the power of arrest against various individuals said to fall within the definition of the persons unknown defendant. Again, I will revert to the detail of those ongoing protests in due course.

7. On 5 May 2022 Sweeting J heard the on notice return date of the interim injunction and an application by a Mr Jake Handling (73rd defendant and a protestor arrested for alleged breach of the interim order) and a Ms Jessica Branch (claiming to be an interested party) to discharge the interim injunction. The Council sought continuation of the interim injunction to trial but no longer required a five metre buffer zone around the perimeter of the Terminal. Sweeting J continued the interim injunction in an amended form and the power of arrest until the hearing of the claim. He gave reasons for his decision in a judgment handed down on 14 July 2023: [2023] EWHC 1719 (KB). The terms of the amended interim injunction are as follows:

“The Defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):

(a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels, at Kingsbury Oil Terminal (the “Terminal”), taking place within the areas the boundaries of which are edged in red on the Map attached to this Order at Schedule 1.

(b) in connection with any such protest anywhere in the locality of the Terminal perform any of the following acts:

(i) entering or attempting to enter the Terminal

(ii) congregating or encouraging or arranging for another person to congregate at any entrance to the Terminal

(iii) obstructing any entrance to the Terminal

(iv) climbing on to or otherwise damaging or interfering with any vehicle, or any object on land (including buildings, structures, caravans, trees and rocks)

(v) damaging any land including (but not limited to) roads, buildings, structures or trees on that land, or any pipes or equipment serving the Terminal on or beneath that land

(vi) affixing themselves to any other person or object or land (including roads, structures, buildings, caravans, trees or rocks)

(vii) erecting any structure

(viii) abandoning any vehicle which blocks any road or impedes the passage any other vehicle on a road or access to the Terminal

(ix) digging any holes in or tunnelling under (or using or occupying existing tunnels under) land, including roads;

(x) abseiling from bridges or from any other building, structure or tree on land

or

(xi) instructing, assisting, or encouraging any other person to do any act prohibited by paragraphs (b)(i)-(x) of this Order.”

8. Protest activity continued. Between April 2022 and September 2022 the police exercised the power of arrest attached to the interim order on a large number of occasions. In that period findings of contempt were made against some 72 individuals, including some who were found to have breached the injunction on two, three or four occasions.
9. By order dated 31 March 2023 Sweeting J granted the Council’s application to add a further 139 named defendants to the claim, being individuals who had been arrested at or in the locality of the Terminal in relation to protest activity after the interim injunction was granted and whose identities were now known. Case management directions were given to trial. The trial of the claim was due to take place in July 2023 but was adjourned on several occasions to await the decision of the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47 (“*Wolverhampton*”).
10. By order dated 6 December 2023 Soole J extended the time for any defendant, or person who wished to be heard at the final hearing, to file and serve an acknowledgment of service to 4pm on 27 December 2023. His order provided that any defendant or person failing to comply with the same would not be permitted to defend or take any further role in these proceedings without further order of the court. No defendant or any other person filed an acknowledgment of service whether by 27 December 2023 or otherwise.
11. As the claim has progressed, a number of the defendants offered undertakings that were acceptable to the Council. At a hearing before Mould J on 22 May 2024, the Court accepted those undertakings and the interim injunction and power of arrest were discharged against those defendants. A further defendant, Mr Alex White (152nd defendant) was not able to attend the hearing on 22 May to proffer his undertaking but did so on 11 June 2024 and the interim relief against him was similarly discharged. A number of other defendants offered undertakings but the Council declined to accept them, largely on the basis that such individuals had been arrested at the Terminal after the interim injunction was granted on 14 April 2022 and the lack of ability to attach a power of arrest to an undertaking troubled the Council. As a result of the various undertakings, the number of defendants against whom the claim proceeds has reduced. Schedule A to this judgment sets out the defendants against whom there remains a live claim.
12. On the first day of the trial on 11 June 2024, a number of unrepresented defendants attended the hearing. Of those attending, the majority simply wanted to observe the proceedings. However three defendants, Ms Alison Lee (8th defendant), Ms Joanna Hindley (78th defendant) and Ms Chloe Naldrett (115th

defendant) wished to address the court. I explained the effect of the order of Soole J and indicated that any defendant wishing to apply to participate in the hearing would be required to file an application for relief from sanctions. Each of the three defendants filed written applications for relief from sanctions, which I heard on the afternoon of the first day of trial. The three defendants did not seek to cross-examine the Council's witnesses or call any evidence of their own. They simply wanted a short opportunity to address the court by way of closing submissions. I granted each of their applications for relief from sanctions limited to permitting each to address the court in closing for 10 minutes on condition of serving a short document setting out the bullet point issues they wished to cover. Each defendant complied with those directions.

13. At the start of the trial, the Council applied to amend the definition of the persons unknown defendant to address concerns expressed by Sweeting J in his judgment on the interim order that the current definition did not provide sufficient particularity as to the conduct alleged to be unlawful. The Council's primary position was that, following the decision of the Supreme Court in *Wolverhampton*, there was no longer a need to amend the definition. If however the Court disagreed, the Council sought to amend the definition to include particulars of conduct in four new categories of persons unknown. For the reasons given in an ex tempore judgment on 11 June 2024, I concluded that the definition remained inadequate but granted permission for the Council to amend the claim to include what have become defendants 19A, 19B, 19C and 19D. The detail of those descriptions appears in Schedule A to this judgment.

The evidence

14. The factual evidence relied on by the Council was unchallenged. The only witness to give oral evidence was Mr Steven Maxey, the Council's Chief Executive. Mr Maxey adopted the contents of five witness statements he had made during the course of the proceedings and dated 13 April 2022, 3 May 2022, 18 January 2024, 20 February 2024 and 5 June 2024.
15. In addition, the Council relied on written evidence from the following individuals who were not called to give oral evidence:
 - i) Mr David Smith, Temporary Assistant Chief Constable for Warwickshire Police, dated 10 April 2022.
 - ii) Mr Jeff Morris, Delivery Lead for Warwickshire County Council County Highway Services, dated 12 April 2022.
 - iii) Mr Stephen Brown, Distribution Operations Manager for Shell International Petroleum Company Limited, dated 13 April 2022.
16. The Council concluded it was not proportionate to call the aforementioned three witnesses in circumstances where no defendant had elected to acknowledge service and defend the claim. Mr Smith's witness statement has been prepared in a form that complies with s.9 of the Criminal Justice Act 1967 rather than containing a statement of truth in the wording required by Civil Procedure Rule Practice Direction 22 para. 2.2. Mr Smith exhibits to his statement a number of

statements from various police officers involved in policing protests at the Terminal in April 2022. Those statements are also in s.9 form and have signed declarations as to the truth of the contents of the statements. The lack of statements of truth in a CPR PD 22 compliant form does not, in my judgment, detract from the cogency of the written evidence in light of the otherwise formal manner in which the statements have been prepared with signed declarations of truth.

17. The Council’s evidence provides a detailed picture of the Terminal and protest activity that has occurred both within and in the locality of the Terminal. The salient points of the evidence are set out below.

The Terminal

18. The Terminal is a series of inland oil terminals with 50 storage tanks and storage capacity for around 405 million litres of flammable liquids. It comprises four separate but neighbouring oil terminal sites which are located on the edge of the village of Kingsbury. The sites comprising the Terminal are operated by Shell UK Ltd, United Kingdom Oil Pipelines Ltd, Warwickshire Oil Storage Ltd and Valero Energy Ltd. Those companies have formed the Kingsbury Common User Group which enables the management of specific shared assets such as fire-fighting systems and allows operators to discuss common issues.
19. The Terminal is an ‘Upper Tier’ site for the purposes of the Control of Major Accident Hazards Regulations 2015 (“COMAHR”) by virtue of the large quantities of dangerous substances that are present on site. It is said to be one of the largest oil terminals in the country.
20. The Terminal is a multi-fuel site, storing and distributing petrol and diesel (both standard and V-power), heating oils and aviation fuel. Most of the fuel, save for additives or biofuels which are imported by road, is fed into the Terminal by pipeline from the United Kingdom Oil Pipeline system. The products are then distributed from the Terminal using road tankers. Hundreds of vehicles enter and exit the Terminal each day. The Terminal is described as a critically important supply point for the Midlands. In addition to distributing fuel to petrol station forecourts, it supplies major airports in the region including Birmingham International and East Midlands airports.
21. There are various security measures at the Terminal. For example, the part of the Terminal operated by Shell UK Ltd is surrounded by six foot high palisade fencing or six foot high chain link fencing. Pedestrian access is via turn-style gates and vehicular access via locked gates. Only visitors or employees with a designated pass can gain access. All vehicles entering the site have to be registered on Shell UK Ltd’s internal system and have vehicle and driver accreditations. There is a 24 hour, 7 day a week security presence with high-definition CCTV and security guards working day and night. Operational plans for the Terminal include a requirement that “all controlled items (mobile phones, cigarettes, lighters, paging units, matches etc) should be handed over at the Terminal Control Room...due to potential presence of explosive atmospheres.”

The surrounding area

22. The Terminal lies to the east of the village of Kingsbury and to the south-west of the smaller village of Piccadilly. The villages of Kingsbury and Piccadilly have approximately 8000 residents with some of the residential areas being no more than a few hundred metres from the Terminal. A railway line abuts parts of the Terminal on the Kingsbury side of the site and other nearby land is used by the Ministry of Defence as rifle ranges. The area is well connected to the motorway network with a junction of the M42 being nearby.
23. Kingsbury lies on the River Tame which has a catchment area spanning Birmingham, Solihull, Sandwell, Walsall, Tamworth, Nuneaton and Hinckley. Locally there are 8 sites of special scientific interest, 7 local nature reserves and 27 non-statutory sites of local importance.

The protest activity

24. On 31 March 2022 to 1 April 2022 around 40 protestors attended the Terminal in possession of glue and devices to lock themselves onto objects. Some of the protestors stopped and then climbed onto oil tankers which were trying to access or egress the Terminal. Other protestors glued themselves to the road and sat in the roadway to the main entrance to the Terminal. The police stopped a Ford Transit van which contained a large quantity of timber, climbing ropes, food stuffs and devices for locking on. The occupants of the van freely admitted that the contents of the van were for building a tree house and encampment. Distribution operations at the Terminal were suspended and the police made 42 arrests.
25. At around 1930 hrs on 2 April 2022 approximately 40 protestors attended the Terminal and blocked the main entrance to the Terminal. Some glued themselves to the carriageway and others appeared to be using a long tube to chain themselves together. Others climbed on top of oil tankers. The activity continued throughout the night and into 3 April. Operations at the Terminal were suspended. It partially reopened at 1730hrs with protesters remaining on site until midnight. The police made various arrests throughout the day and, taken with the arrests of the previous day, the total number of arrests increased to 68.
26. At around 0730 hrs on 5 April 2022 around 20 protesters attended the Terminal and again blocked the main entrance, locking onto each other and gluing themselves to the carriageway. Two others climbed on top of an oil tanker holding a 'save the oil' sign. Their presence prevented the tanker from moving. Operations at the Terminal were again suspended, only resuming at around 1100hrs. However, at around 1130 hrs a second group of protesters targeted motorway junctions 9 and 10 of the M42, climbing onto oil tankers servicing the Terminal as those vehicles moved slowly off the slip roads. Operations at the Terminal were again suspended and traffic built up onto the motorway. The protesters were removed and the roads reopened at 1430hrs.
27. At around 0030 hrs on 7 April 2022 protesters approached the main entrance to the Terminal and attempted to glue themselves to the carriageway. As the police

were attending to those individuals, another group of around 40 protesters approached the rear of the Terminal across fields. They sawed through an exterior gate and scaled a fence to gain access to the Terminal. Once within the perimeter fencing, the protesters dispersed to a number of different locations. Some climbed on top of three large fuel storage tanks containing unleaded petrol, diesel and fuel additives. Two others entered insecure cabs of fuel tankers and secured themselves inside using a lock on device. Others climbed on top of two fuel tankers, onto the floating roof of a large fuel storage tank and into a half-constructed fuel storage tank. The protestors used a variety of lock on devices to secure themselves to those structures. A complex police operation was initiated, utilising a variety of specialist teams, who worked alongside staff from the Terminal and fire service. The Terminal was not cleared of protesters until approximately 1700 hrs.

28. On 9 April 2022 further protest activity took place. At around 1050 hrs four protesters arrived at the main entrance to the Terminal and attempted to glue themselves to the carriageway. A short time later another protester was arrested trying to abseil from a road bridge over Trinity Road to the north of the Terminal. At around 1530 hrs a caravan was deposited at the side of the road on Piccadilly Way to the south of the Terminal. Some 20 protesters glued themselves to the sides and top of the caravan. It was later discovered that occupants within the caravan were attempting to dig, via a false caravan floor, a tunnel under the road. The police entered the caravan at around 0200 hrs on 10 April 2022 and the six occupants were arrested. Activity continued into 10 April with protestors scaling oil tankers and gluing themselves to the carriageway.
29. Between the 31 March and 10 April 2022 the police made approximately 180 arrests at or in the locality of the Terminal in relation to protest related activity. A common feature of many of the arrests is that the detainees were passively resistant, going limp and thus requiring the police officers to carry the individual into custody. Much of the protest activity was publicised on Just Stop Oil's website, which included videos and photographs of the protest activity. A video clip featuring an individual identified as John 'aka' Sean Jordan shows Mr Jordan on top of the caravan stating "...I am here with Just Stop Oil, we are currently on the tenth day of our campaign having started on 1st April..." The protests commonly featured orange Just Stop Oil livery on placards or banners and protestors wearing orange high-viz vests. On 12 April 2022 Just Stop Oil published a press release on their website stating: "We find ourselves, as others have done through history, having to do what is unpopular, to break the law to prevent a much greater harm taking place ... While Just Stop Oil supporters have their liberty the disruption will continue."
30. Following the granting of the without notice interim injunction on 14 April 2022 the protest activity at the Terminal reduced but did not cease. Between the 14 April and 14 September 2022 there were a further 14 protests resulting in over 120 arrests. The Council brought successful contempt applications against 72 protestors for 109 separate breaches of the interim injunction. In the various contempt proceedings, none of those arrested sought to challenge the claimant's

factual case that the protests were in relation to the production and/or use of fossil fuels.

31. At just before 0800 hrs on 26 April 2022 16 individuals gathered on a grass verge outside the main entrance to the Terminal. A peaceful protest, with various signs and banners, lasted for approximately two hours. By around 1000 hrs a number of the protesters spread out across the carriageway and sat down obstructing access to and egress from the Terminal. The protestors were arrested for breaching the interim injunction.
32. At just after 1600 hrs on 27 April 2022 a group of 10 individuals gathered on a grass verge to the side of the main entrance to the Terminal to protest against the production and use of fossil fuels. The protest was peaceful but inside the five metre buffer zone imposed by the original without notice injunction. The protesters were arrested and successful contempt proceedings followed.
33. At around 1135 hrs on 28 April 2022 a group of eight protesters, including some of those arrested on 27 April, engaged in a further peaceful protest adjacent to the external fencing to the terminal within the five metre buffer zone. The protesters were arrested
34. At approximately 1400 hrs on 4 May 2022 a group of 11 protestors attended the Terminal. They stood on a grass verge to the side of the entrance to the Terminal with placards and banners before moving to walking across the road outside the Terminal. The protest was peaceful but again inside the buffer zone. Some of those attending the protest on 4 May 2022 did so in defiance of a court order requiring them to attend court that day to face contempt proceedings in respect of events on 27 April. The protesters on 4 May 2022 were arrested and successful contempt proceedings followed.
35. At around 1400 hrs on 12 May 2022 a group of eight protestors attended the Terminal. A number of group sat down in the middle of the access road to the Terminal entrance blocking access.
36. On 24 August 2022 three protesters occupied a tunnel that had been dug alongside and under Piccadilly Way, some 400 metres from the Terminal. The incident was publicised by Just Stop Oil on its social media platforms, which posted details of the protestors' support of Just Stop Oil's aims together with video footage and video stills taken inside the tunnel. Contempt proceedings against two of the protesters failed for want of service of the interim injunction and the proceedings against the third succeeded only in respect of his occupation of the tunnel for a limited period of time following service of the order after entry into the tunnel. The existence of the tunnel and its occupation in conjunction with a protest in the locality of the Terminal nonetheless occurred.
37. At approximately 1130 hrs on 14 September 2022, 51 protesters were arrested in connection with a protest on the private access road to the entrance to the Terminal. The protest was peaceful but its location blocked access and egress to the Terminal with many of the protestors sitting across the carriageway. Some held Just Stop Oil banners and others wore orange high viz vests featuring the Just Stop Oil logo.

38. There have been no protests at the Terminal since September 2022. Mr Maxey's evidence is however that the Council has since been targeted by protestors associated with Just Stop Oil.
- i) In August and September 2023 various councillors received emails from named defendants including Sarah Webb, Catherine Rennie-Nash, Bill White, Karen Wildin and Clare Walters. Each defendant was critical of the Council's action in pursuing this claim.
 - ii) On 21 September 2023 protestors attended the Council's offices with banners and positioned themselves near to one of the entrances.
 - iii) On 27 September 2023 protestors interrupted a Council meeting, refused the Mayor's request for order and refused to leave the Council chamber causing the meeting to be suspended. The matter was only resolved following intervention by the police.
 - iv) Mr Maxey subsequently met with some of the protestors to hear their complaints. He states that the protestors informed him that they took the view that the Council should not have obtained the interim injunction as it was preventing their protests from causing the disruption which they thought was necessary given their concerns about climate change.

The impact of the protest activity

39. The protests caused significant disruption to the operation of the Terminal, at times causing operations to be suspended. The disruption impacted on the companies operating from the Terminal, individual staff members working at the Terminal and others, such as tanker drivers, who were required to visit the Terminal as part of their work.
40. There is also evidence of the protests causing more widespread harm and risk of harm. Mr Smith, Temporary Assistant Chief Constable for Warwickshire Police, provides evidence as to the impact of the protests on police resources. He describes the policing operation as being one of the most significant he has experienced in his career. Large numbers of officers were deployed from across the force to the Terminal day and night. This caused non-emergency policing services to be reduced and, although core policing services were maintained, the protests impacted on the quality and level of policing available during that period. Officers who would otherwise have been policing communities, roads or supporting victims of crime were taken away from those duties to police the protests. The scale and sophistication of the protests meant that Warwickshire Police had to bring in additional police officers from other regional forces, in addition to specialist policing teams such as the working at heights teams and protest removal teams. Mr Smith reports this coming at significant additional financial cost to the police force.
41. The protests had an impact on the local community and beyond. A number of public highways around the Terminal had to be closed causing inconvenience to members of the public. The protest activity extended to disruption on the M42 motorway. Mr Smith considers that the significant police presence during the

protests created a level of fear and anxiety in the local community. He acknowledged the community had been disturbed by the large policing operation which had extended into unsociable hours and occasioned regular essential overnight use of the noisy police helicopter. The impact of the protests extended beyond the immediate community and across the wider West Midlands region, with fuel shortages occurring at some petrol station forecourts.

42. The protests also impacted Warwickshire County Council. Mr Morris, of County Highways Service, explains that the digging of the tunnel under the road on 9 and 10 April 2022 resulted in County Highways Engineers attending out of hours, a manual operative attending from Balfour Beatty, the emergency closing of the road and remedial works being required. He understands the cost to the taxpayer of his department's involvement to be in the region of £3189.95.
43. A number of the Council's witnesses comment on their concerns for public safety should protest activity at the Terminal cause a fire or explosion. Mr Smith considers the same would likely have catastrophic implications for the local community including the risk of widespread pollution to the ground, waterways and air. He notes that the protesters had no regard to the extremely hazardous nature of the site or for the safety of either themselves or others when using mobile phones at the Terminal, scaling and locking themselves onto very volatile fuel storage tanks, tunnelling in close proximity to high-pressure fuel pipelines and causing the forced stopping and scaling of fuel tankers on the public highway. Mr Smith states that such actions not only cause unacceptable levels of risk to the protestors themselves but also to the public and members of the emergency services attending any incidents.

The parties' positions

44. The Council seeks a final injunction in broadly the same terms as the interim order as amended at the hearing on 5 May 2022. The Council has set out the detail of its position in its skeleton argument of 5 June 2024 and in closing submissions. I shall return to the detail of those submissions in due course.
45. No defendant has filed an acknowledgment of service, defence or any witness evidence in response to the claim. Three of the defendants only have made closing submissions, each opposing the granting of an injunction notwithstanding that none of them have filed an acknowledgment of service or defence. Each of the three defendants stated that they had no intention of breaking any injunction in respect the Terminal in the future.
46. Ms Lee (8th defendant) submitted that no injunction is required in circumstances where, since the making of the interim injunction, wider powers now exist under the criminal law providing a deterrent to protestors, as well as making it easier for the police to act in the event of a protest. She referred to the increased maximum sentence for the offence of wilful obstruction of the highway, increased in May 2022 to a 6-month term of imprisonment by virtue of the Police, Crime, Sentencing and Courts Act 2022. She also relied on a variety of new offences under the Public Order Act 2023, which introduced offences relating to protest activity of 'locking on', tunnelling, obstructing major transport works and interfering with major infrastructure. Ms Lee submitted that

the threat to the Terminal no longer exists as Just Stop Oil's tactics have changed and they have since turned their attention to more 'media friendly' protests. She argued that the proposed injunction is not a deterrent and amounts to an unlawful restriction of the rights of environmental defenders to protest.

47. Ms Hindley (78th defendant) told the court of her stress and worry since being named as a defendant following her arrest on three occasions in connection with the protests at the Terminal in 2022. She does not believe an injunction is proportionate and expressed concern that the Council is passing on the cost of the litigation to local residents. Ms Hindley submitted that the court should take into account what she described as malice and racism that she said prioritised local interests over the environmental devastation of the livelihoods of vulnerable brown and black people across the world.
48. Ms Naldrett (115th defendant) told the court that she was dismayed to discover that the conclusion of the contempt proceedings did not absolve those involved from remaining as named defendants to the claim for an injunction. She told the court she had no intention of returning to the Terminal and risking triggering her suspended sentence. She submitted that the claim for an injunction was not a good use of the court's time and that no injunction was required in light of the increased criminal powers under the Public Order Act 2023. She asked the court to prioritise the rights of ordinary people over those of oil companies.

The issues

49. It is useful at this juncture to summarise the key issues that require determination:
 - (1) Does the Council have the standing to bring these proceedings and, if so, can it establish the causes of action relied upon?
 - (2) Do the facts of this case justify restriction of the Article 10 and 11 rights of the protesters and, if so, to what extent?
 - (3) If it is appropriate to grant relief to restrict protest activity, is it appropriate to grant injunctive relief against (a) the named defendants and/or (b) 'newcomer' persons unknown taking into account the requirements outlined in *Wolverhampton*?
 - (4) If an injunction is to be granted, what are the appropriate terms thereof, and should a power of arrest be attached?

The Legal Framework

Standing of a local authority to bring proceedings and the underlying causes of action

50. The Council seeks to rely on a number of statutory provisions as bases for bringing the claim for injunctive relief. The principal power relied on is s.222(1) of the Local Government Act 1972 which states:

“(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 ...”

51. Whether it is ‘expedient’ for the purposes of s.222 to bring legal proceedings is for the local authority to decide subject to such decision being compatible with usual principles of judicial review. In *Stoke on Trent Council v B & Q Ltd* [1984] 1 Ch 1 Lawton LJ at 23A held as follows:

“...[The local authority] must safeguard their resources and avoid the waste of their ratepayers money. It is in everyone’s interest, and particular so in urban areas, that a local authority should do what it can within its powers to establish and maintain an ambiance of a law abiding community; and what should be done for this purpose is for the local authority to decide.”

52. The Council puts its case on the basis that that the granting of an injunction “is appropriate and expedient for the promotion or protection of the interests of the inhabitants of their area, and in the exercise of the Court’s discretion, that the defendants be restrained, by way of injunction, from committing tortious and criminal acts and, in particular acts amounting to a public nuisance and to breaches of the criminal law that the criminal law is unable to prevent.” [Para. 56 of the Council’s skeleton argument dated 5 June 2024.]

53. Subject to meeting the ‘expediency’ requirement, s.222 empowers local authorities to bring actions for injunctive relief to restrain public nuisance and criminal offending. In *Nottingham City Council v Zain* [2001] EWCA Civ 1248 the local authority sought to restrain a defendant alleged to have been involved in drug dealing on the grounds that his actions constituted a public nuisance. Schiemann LJ, at para. 8-13, held:

“8. ... The following passage from the judgement of Romer L.J. in *Attorney-General v PYA Quarries Ltd.*[1957] Q.B. 169 at 184 has generally been accepted as authoritative.

“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.”

9. Not everyone however is entitled to sue in respect of a public nuisance. Private individuals can only do so if they have been caused special damage. Traditionally the action has been brought by the Attorney General, either of his own motion, or, as was the situation in the *PYA* case, on the relation of someone else such as a local authority. In *Solihull Council v Maxfern Ltd* [1977] 127, Oliver J. considered the history of the legislative predecessors of s.222 and concluded that the effect of section 222 is to enable a local authority, if it thinks it expedient for the promotion or protection of the interests of the inhabitants of their area, to do that which previously it could not do, namely, to sue in its own name without invoking the assistance of the Attorney General, to prevent a public nuisance. I recognise that in that case the Local Authority was not suing in nuisance but rather was enforcing the criminal law in an area for which it had been given express responsibility, namely the enforcement of the Sunday trading provisions of the Shops Act 1950. Nonetheless I respectfully agree with Oliver J.'s conclusion in relation to suing in nuisance...

13. ...In my judgement it is within the proper sphere of a local authority's activities to try and put an end to all public nuisances in its area provided always that it considers that it is expedient for the promotion or protection of the interests of the inhabitants of its area to do so in a particular case. Certainly my experience over the last 40 years tells me that authorities regularly do this and so far as I know this has never attracted adverse judicial comment. I consider that an authority would not be acting beyond its powers if it spent time and money in trying to persuade those who were creating a public nuisance to desist. Thus in my judgement the County Council in *PYA* was not acting beyond its powers in seeking the Attorney General's fiat in trying to put a stop to the nuisance by dust in that case and thus exposing itself to potential liability in costs. It follows that, provided that an authority considers it expedient for the promotion and protection of the interests of the inhabitants of its area, it can institute proceedings in its own name with a view to putting a stop to public nuisance.”

54. Keene LJ, agreeing with the judgment of Schiemann LJ, added the following observations at para. 27:

“... Where a local authority seeks an injunction in its own name to restrain a use or activity which is a breach of the criminal law but not a public nuisance, it may have to demonstrate that it has some particular responsibility for enforcement of that branch of the law. But where it seeks by injunction to restrain a public nuisance, it may do so in its own name so long as it “considers it expedient for the promotion or protection of the interests of the inhabitants” of its area (section 222(1)). That is so even though it is seeking to prevent a

breach of the criminal law, public nuisance being a criminal offence...”

55. As Sweeting J observed when considering the application for an interim injunction in this case ([2023] EWHC 1719 (KB) at para. 78), the terms of an injunction can extend to prohibiting lawful as well as unlawful conduct.

“78. The purpose of the injunction was to prohibit conduct which if unchecked would amount to, or lead to, a public nuisance. It was the threat of significant harm, constituting a public nuisance, which led the Council to act and to seek restrictions which it regarded as necessary to afford effective protection to the public. Whilst the terms of an injunction should in so far as possible prohibit unlawful behaviour it is not the law that an injunction may only prohibit a tortious act; even lawful conduct may be prohibited if there is no other proportionate means of protecting rights. In the context of a threatened public nuisance of this nature and the form that protest had taken is not at all clear how injunctive relief could otherwise be framed effectively.”

56. Sweeting J, at para. 81 of his judgment, noted that the previous common law criminal offence of public nuisance has been abolished and replaced by a statutory offence of public nuisance under s.78 of the Police, Crime, Sentencing and Courts Act 2022 in the following terms:

“78 Intentionally or recklessly causing public nuisance

(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.

(5) In relation to an offence committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (increase in magistrates' court power to impose imprisonment) the reference in subsection (4)(a) to [the general limit in a magistrates' court][1](#) is to be read as a reference to 6 months.

(6) The common law offence of public nuisance is abolished.

...

(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).”

57. In addition to s.222, the Council also relies on powers under the Localism Act 2011 and under the Highways Act 1980.

i) Section 1(1) of the Localism Act 2011 confers on a local authority the “power to do anything that individuals [of full capacity] may generally do.” By section 1(5): “the generality of the power conferred by subsection (1) (“the general power”) is not limited by the existence of any other power the authority which (to any extent) overlaps the general power.”

ii) By section 130(2) of the Highways Act 1980 “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.” By section 130(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.”

58. The court has the ability to attach a power of arrest to an injunction in the circumstances provided by section 27 of the Police and Justice Act 2006:

“(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...

(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.”

The applicability of the Human Rights Act 1998

59. The Council accepts that this claim engages s.12 of the Human Rights Act 1998 and Articles 10 and 11 of the European Convention on Human Rights.

60. Article 10, freedom of expression, 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...

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.”

61. Article 11, freedom of assembly and association, 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...”

62. The engagement of Article 10 requires consideration of s.12 of the Human Rights Act 1998. The relevant parts of that Act are as follows:

“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.

...

(4) The court must have particular regard to the importance of the Convention right to freedom of expression ...”

63. Articles 10 and 11 are qualified rights and thus can be restricted in the circumstances set out in paragraph 2 of each article. The approach to determining a whether a restriction of those rights is lawful was considered by Warby J (as he then was) in *Birmingham City Council v Afsar and others* [2019] EWHC 3217 (QB) in the context of a claim for injunctive relief by a local education authority to prevent protest activity within an exclusion zone around a school. At para. 102 Warby J held as follows:

“102. The jurisprudence shows that Article 10 protects speech which causes irritation or annoyance, and information or ideas that "offend, shock or disturb" can fall within its scope: see, eg, *Sánchez v Spain* (2012) 54 EHRR 24 [53], *Couderc v France* [2016] EMLR 19 [88]. ... Article 11 "protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote": *Lashmankin* [145]. But the rights engaged in this case have outer limits. ... Article 11(1) does not protect violent or disorderly protest; the primary right is one of "peaceful" assembly. Further,

whilst the right to education is unqualified, the rights guaranteed by Articles 8, 9, 10 and 11 are all qualified. Paragraph (2) of each Article makes clear that interference with the primary right may be legitimate if (but only if) two conditions are satisfied. It must be not only in accordance with or prescribed by law (a matter I have dealt with above) but also "necessary in a democratic society" in pursuit of one or more legitimate aims. Paragraph (2) of each Article identifies "the interests of ... public safety or the protection of the rights and freedoms of others." Another legitimate aim identified in each Article is "the prevention of public disorder" or, in the case of Article 9(2), "the protection of public order", which would appear to be synonymous."

64. The application of Articles 10 and 11 in relation to criminal proceedings brought for wilful obstruction of the highway arising from protest activity was considered by the Supreme Court in *DPP v Ziegler* [2021] UKSC 23. At para. 16 the Supreme Court adopted the explanation given by the Divisional Court in the same case as to the enquiry that needs to be undertaken under the Human Rights Act 1998.

"63...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?

65. The Council accepts that when determining whether a restriction on any Article 10 or 11 right is justified, “it is not enough to assert that the decision was taken was a reasonable one” and “a close and penetrating examination of the factual justification for the restriction is needed.” [*R (Gaunt) v Office of Communications (Liberty Intervening)* [2011] EWCA Civ 692 at para. 33.]

Injunctions against persons unknown

66. During the period in which the final hearing in this matter was adjourned, the Supreme Court handed down judgment in *Wolverhampton*. That case concerned applications for injunctions to prevent travellers from establishing unauthorised encampments in local authority areas. The Supreme Court reviewed the development of the law in relation to injunctions against ‘newcomer’ persons unknown, namely persons who, at the time of the grant of the injunction, are not identifiable and who cannot be shown to have committed any conduct which is sought to be prohibited or indeed to have any intention to do so in the future. At para. 167 the Supreme Court held:

“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.”

67. The Supreme Court recognised, at para 171, 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...” When considering question (i), namely whether there is a compelling need for the remedy, the Supreme Court considered the availability of alternative powers available to the local authority by means such as public spaces protection orders, criminal offences and byelaws. [Paras. 204-216 of the judgment.]

68. At para. 235 of the judgment, the Supreme Court recognised the relevance of newcomer injunctions to protestor cases and noted:

“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.”

Discussion

Does the Council have standing to bring proceedings for injunctive relief and, if so, can it establish the causes of action relied upon?

69. The effect of decisions such as *Nottingham City Council v Zain* is that it is settled law that a local authority can rely on s.222 of the Local Government Act 1972 to bring proceedings to restrain actual or threatened public nuisance or

breach of the criminal law where the local authority considers “it expedient for the promotion or protection of the interests of the inhabitants of the area.”

70. The Council argues that it is expedient to bring these proceedings for the promotion and protection of the interests of the inhabitants of North Warwickshire when one takes into account the desirability of establishing and maintaining a law-abiding community; the need to protect inhabitants and visitors of North Warwickshire from serious threats to their safety, health, property and peaceful existence; the need to ensure that businesses of North Warwickshire can go about their lawful operations without disruption, and the need to protect emergency service staff and resources.
71. When considering whether it is expedient to act under s.222, the Council has to take into account any particular responsibilities it has. In this case, s.17 of the Crime and Disorder Act 1998 imposes a duty on the Council “to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and ...(c) re-offending in its area...” The Council also has the ability as a non-highway authority council under s.130(2) of the Highways Act 1980 to “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...”
72. The Council relies on underlying causes of action in public nuisance and breach or threatened breach of the criminal law. This is not one of those claims, as discussed by Keene LJ at para. 27 of *Zain*, where the injunction is brought to restrain only breaches of the criminal law such that a local authority may have to demonstrate it has some particular responsibility. As it happens, on the facts of this case, the Council does in any event have such a responsibility by virtue of s.17 of the Crime and Disorder Act 1998.
73. The Council’s decision as to whether it was expedient to bring proceedings to promote or protect the interests of its inhabitants took into account multiple factors including the aforementioned statutory responsibilities, the high risks associated with storing very large volumes of flammable products at an ‘Upper Tier’ site adjacent to residential areas, and the significant scale and extent of disruption caused by protest activity occurring both inside and in the locality of the Terminal. In my judgment, those matters clearly justify the Council utilising its power under s.222.
74. The unchallenged evidence relied on by the Council establishes the commission of the tort of public nuisance and the threat of further such torts being committed. The actions of the protestors materially affected the reasonable comfort and convenience of those trying to go about their lives in North Warwickshire and the wider Midlands. Those affected included locals unable to use roads closed due to protest activity; businesses based at and those associated with the Terminal unable to operate fully due to operations at the Terminal being suspended; oil tanker drivers unable to go about their work when their vehicles were requisitioned by protestors; vehicle users finding they could not obtain fuel from forecourts suffering fuel shortages; local residents inconvenienced by the

scale and noise of required police operations, and individuals affected by the disruption to usual policing caused by additional police resources being diverted to policing the protests. Furthermore, the evidence demonstrates a risk of substantial public nuisance should an explosion or fire occur. The evidence of widespread use of mobile phones by the protesters in close proximity to highly flammable fuels, and the digging of tunnels without regard to the location of underground oil pipework, clearly creates a very significant risk to life, property and the environment. It was more by good luck rather than good judgement that the actions of some of the protesters did not result in a fire or explosion.

75. In light of my finding that the Council has established the commission of the tort of public nuisance, it is unnecessary to consider whether the same facts gave rise to any criminal offences that were in force at that time. The existence of the criminal law as a possible alternative remedy will however be relevant when considering whether it is appropriate for the court to exercise its discretion to grant injunctive relief.

The restriction of Article 10 and 11 rights

76. The Council accepts that the claim engages s.12 of the Human Rights Act 1998 given that the relief sought may affect the protestors' rights to freedom of expression. Some of the named defendants, and necessarily the persons unknown defendants, were neither present nor represented at the trial. By s.12(2) no relief is to be granted unless the court is satisfied that the Council has taken all practicable steps to notify the defendants. The question of service of the order of Soole J dated 6 December 2023 and of the Notice of Hearing was the subject of consideration at the start of the hearing on 11 June 2024. For the reasons given in an ex tempore judgment that day, and as embodied in my order of 12 June 2024, I was satisfied that proper notice had been given to the defendants that have chosen not to acknowledge or defend the claim or attend the trial.
77. It is not in dispute that Articles 10 and 11 are engaged. The issue is whether it is appropriate to interfere with those qualified rights. The Council encourages the court to adopt the approach adopted by *Sweeting J* at para. 133-136 of his judgment granting the interim injunction in this case. Whilst many of the considerations will be the same, in my judgment it is important to reconsider the appropriate framework of questions posed by the Supreme Court in *Ziegler* afresh, having now heard the evidence and the submissions of the three defendants.
78. The answers to the first four questions posed at para. 63 of *Ziegler* can be answered in fairly short order.
- (1) The protesters actions in gathering with others to protest against the granting of licences for the production and use of fossil fuels was an exercise of their Article 10 and 11 rights.
 - (2) The Council's seeking of an injunction to restrict the rights to protest clearly interferes with the protestors' Article 10 and 11 rights as it would prevent much of the activity that has previously occurred.

- (3) The interference is however prescribed by law in that the court has a discretion to grant an injunction under s.37 of the Senior Courts Act 1981 and the Council has the standing to bring a claim for injunctive relief pursuant to s.222 of the Local Government Act 1972.
 - (4) The interference is in pursuit of a legitimate aim namely the prevention of disorder or crime, the protection of health and the protection of rights of others.
79. The more complex question is that posed at para. 63(5) of *Ziegler* namely whether the interference is 'necessary in a democratic society' to achieve that legitimate aim? That involves consideration of the four further questions identified by the Supreme Court in para. 64(1) – (4).
 80. The Council's primary concern is to protect the local community and environment from the risks associated with extreme forms of protesting in close proximity to highly flammable fuels. Given the potential ramifications of any fire or explosion at or in the locality of the Terminal, the stated aims to prevent crime and disorder, protect the health of the community and the rights of others are sufficiently important to justify interference with the Article 10 and 11 rights. The Council can therefore satisfy the question posed by para. 64(1).
 81. The terms of the proposed injunction seek to prohibit protests inside the Terminal (ie on private land to which the defendants have no right to enter anyway) and to restrict certain specified acts in the locality of the Terminal. The Council does not seek to prohibit all protest activity in the locality of the Terminal but only more extreme form of protest activity, such as blocking entrances, climbing on structures, locking on, digging or tunnelling and abseiling. For the purposes of the question posed by para. 64(2), there is thus a rational connection between the terms of the injunction sought and the aims of preventing crime and disorder and protecting the health of the community and rights of others.
 82. It is then necessary to consider whether there are less restrictive means available to achieve the Council's aims. (Para. 64(3) of *Ziegler*.) The defendants' submissions to the effect that an injunction is unnecessary in light of expanded criminal law powers can be viewed as a request that the court adopt a less restrictive approach and allow the position to be governed by existing laws.
 83. The main alternative remedies to be considered as potential means of achieving the Council's aims are (a) a Public Spaces Protection Order ('PSPO'), (b) byelaws and (c) the existing criminal law. The evidence of Mr Maxey (witness statement 5 June 2024 at paras. 7-9) sets out his views on the suitability of a PSPO and byelaws. Mr Smith (witness statement 10 April 2022 at page 4) comments on the attempted use of criminal law to control the protest activity.
 84. The Supreme Court in *Wolverhampton* (at para. 204) discussed the availability of PSPOs in the context of considering whether there was a compelling justification for a newcomer injunction against persons unknown. It was noted that a PSPO is directed at behaviour and activities carried on or in a public place which have a detrimental effect on the quality of life of those in the area. A

number of the disadvantages of a PSPO identified by Mr Maxey are valid concerns. The level of protection provided by a PSPO is restricted by virtue of the Council not having jurisdiction to impose such an order on private land. Any order could not therefore extend to the Terminal itself and would be limited to any public land adjacent thereto. The evidence in this case is that some of the protest activity, including some of the more extreme activity in locking onto fuel tanks, occurred inside the perimeter fencing. A PSPO would not therefore address the aim of protecting the local community from the health implications of a fire or explosion caused by a protest within the Terminal. Furthermore, the maximum sanction for breach of a PSPO is a level 3 fine (up to £1000) giving rise to concern that such an order would not have the same deterrent effect as an injunction, breach of which gives rise to a maximum penalty for contempt of two years' imprisonment. Additionally, breach of a PSPO is not an arrestable offence meaning that the police would not be able to remove with immediate effect a protester whose actions were putting at risk the local community. That limits the utility of a PSPO. In my judgement, a PSPO is not a viable less restrictive means of achieving the Council's aims.

85. Byelaws suffer many of the same shortfalls as seen with PSPOs. Breach of a byelaw gives rise to a maximum fine of £500 and is not an arrestable offence. The Council cannot unilaterally make a byelaw and the process requires assessment, consultation, application and approval of the scheme by the Secretary of State and further consultation. It is not therefore an agile solution either in terms of speed of implementation or in terms of the ability to vary the byelaw should circumstances change. It is not therefore a viable less restrictive means of achieving the Council's aims.
86. Since the making of the interim order by Sweeting J in May 2022, the range and seriousness of criminal offences relevant to protest activity have increased. From 12 May 2022, the sentence for the offence of wilful obstruction of the highway has increased from a fine to a maximum of 6 months' imprisonment. (s.80 of the Police, Crime, Sentencing and Courts Act 2022 amending s.137 of the Highways Act 1980.) The Public Order Act 2023 ("the 2023 Act") introduced a range of new offences with effect from 3 May 2023. Those offences include an offence of locking on (s.1), being equipped for locking on (s.2), causing serious disruption by tunnelling (s.3), causing serious disruption by being present in a tunnel (s.4), being equipped for tunnelling (s.5) and interfering with the use or operation of key national infrastructure including downstream oil infrastructure (s.7). There are differing maximum sentences for each of those offences but, other than the 'being equipped' offences which attract fines, the remainder can attract sentences of imprisonment. Section 10 and 11 of the 2023 Act extend police powers of stop and search to a number of the offences. The prosecution can apply for a serious disruption prevention order (s.20) subject to various conditions being met. Those conditions include a requirement that a defendant has committed another protest -related offence or a protest -related breach of an injunction within the five years ending on the day of conviction for the current offence. Certain individuals, such as the chief constable, can apply for a serious disruption prevention order on application (s.21). A local authority such as the Council does not however have standing to make such an application.

87. Ms Lee's submission is that the enhanced criminal powers provide a deterrent to protesters and give increased powers of arrest to the police such that an injunction is no longer required. The Council does not accept the increased criminal powers obviate the need for an injunction. Mr Manning submits that the object of the proceedings is defeated if the local community has to wait until criminal offences occur before action is taken. He submits that the evidence from the police suggests that the criminal justice system is not well equipped to prevent protesters returning to the site because individuals arrested are not typically remanded in custody and offences take time to progress through the criminal courts. It is said that it can also be a matter of circumstance whether an individual protester is prosecuted as that is subject to the view taken by the prosecuting authorities rather than the Council. Mr Manning submits that there is no evidence of the deterrent effect of the increased criminal penalties and new offences in circumstances where public nuisance was already a common law offence in 2022 and did not deter the protestors from acting. In short, the Council submits that the criminal law does not provide a systematic means of protecting the local area from the harm that the authorities are concerned about.
88. It is not helpful that the police evidence relied on by the Council has not been updated to reflect any effects of the introduction of new criminal offences and increased sentencing powers. However, the existence of relevant criminal offences does not, of itself, mean it is inappropriate to grant an injunction to restrain public nuisance nor, particularly in cases where a local authority has a particular responsibility for enforcement, to restrain breaches of acts which would amount to other criminal offences. Indeed, in *Zain*, serious criminal offences existed in respect of the alleged illegal drug activity but it was nonetheless appropriate to grant injunctive relief. The criminal justice system does not, in my judgment, achieve the Council's aims in as comprehensive a manner as injunctive relief could. Firstly, I am not persuaded that new criminal offences and increased sentencing powers have the same deterrent effect as an injunction and power of arrest. The common law offence of public nuisance existed when the protests occurred in 2022 and, as a common law offence, technically had a maximum sentence of life imprisonment. That did nothing to deter the protesters. The increased sentence for wilful obstruction of the highway and many of the offences under the 2023 Act have lower maximum sentences than the 2 years' maximum imprisonment for contempt of court. Secondly, the mechanism by which a protester is brought before the civil courts following arrest is expeditious in that it requires production before a court within 24 hours. It therefore provides both a significant deterrent to a would-be unlawful protester who risks immediate incarceration, and immediate respite to the local community. Thirdly, an injunction hands control of the pursuit of contempt proceedings against protestors to the local authority. By contrast, with criminal proceedings it is for the criminal prosecuting authority to determine whether to pursue a matter. The Council is likely better placed to assess whether contempt proceedings further the Council's aims in preventing crime and disorder in its area and protecting the health of its residents. Moreover, the Council has a positive duty under s.17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area (including anti-social and other behaviour adversely

affecting the local environment) and to prevent re-offending. Permitting the Council rather than prosecuting authorities to take action to prevent unlawful protest activity is consistent with the Council's obligation to do all it reasonably can to prevent crime and disorder. Fourthly, an injunction is designed to be preventative in nature as opposed to the criminal law which reacts to events that have already occurred. In seeking to prevent crime and disorder and protecting the health and rights of others, it is little comfort that the criminal law will swing into action only after the damage has been done. I do not therefore conclude that reliance on the existing criminal law is an adequate less restrictive means of achieving the Council's aims.

89. The final question in determining whether an interference with a qualified convention right is proportionate requires consideration of whether there is a fair balance between the rights of the individual and the general interest of the community, including the rights of others. (Para. 64(4) of *Ziegler*.) The proposed injunction does not prohibit all protests in the locality of the Terminal but only those which involve more extreme forms of protest activity which put the community at risk. By permitting some protest activity, the proposed injunction strikes a fair balance between the rights of the protestors and the general interest of the local community.

Is it appropriate to grant injunctive relief against the named defendants?

90. In *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303 the Court of Appeal guidance at para. 82(1) was to the effect that if an individual is "known and has been identified, they must be joined as individual defendants to the proceedings." The decision in *Wolverhampton* does not affect that proposition. Of named defendants appearing at Schedule A to the judgment, those numbered up to and including the 17th defendant were the original named defendants to the claim having been arrested at or in the locality of the Terminal in relation to protest activity taking place between 31 March and 10 April 2022. The defendants numbered 20th onwards were added as named defendants following their arrest at or in the locality of the Terminal in relation to protest activity after the initial interim injunction was granted on 14 April 2022.
91. Mr Maxey recognises in his evidence that "the Council has no means of knowing definitively whether every one of the named defendants has continued to be involved in this type of protesting, as we do not have access to the records of the criminal courts or the police national computer...It seems to me that the only realistic course that the Council can therefore take is to proceed on the basis that the defendants may well still participate in such conduct." [Para. 16(iii) of his statement of 5 June 2024.]
92. In my judgment it is appropriate to grant injunctive relief in principle against each of the named defendants appearing in in Schedule A. None of the defendants have filed a defence and thus have not sought to challenge the claimant's case that each defendant has been arrested for relevant protest activity at the Terminal and is affiliated with Just Stop Oil and its aims. Indeed, when making their submissions the 8th, 78th and 115th defendants did not seek to dispute their involvement in protest activity at the Terminal nor seek to disavow their support of the aims of Just Stop Oil. Whilst there has been no

protest activity at the Terminal since September 2022, the evidence establishes that Just Stop Oil has continued in disruptive protest activity in other locations. [Para. 8(c) of the statement of Mr Maxey dated 18 January 2024.] In her submissions, the 8th defendant acknowledged an ongoing intention of Just Stop Oil to protest but with a focus on more ‘media friendly’ opportunities. By that she was referring to protest activity that prompts maximum media attention. The opportunity for headline-making is only too obvious if a fire or explosion occurred at the Terminal. The behaviour of a number of the defendants during the various contempt proceedings also evidences the defendants’ collective intention to cause disruption in aid of their cause. Such conduct included many defendants refusing to accept the jurisdiction of the court and some variously telling the court they would not attend future hearings if bailed, refusing to come out of cells to attend court, climbing on dock furniture, gluing body parts to the dock, and removing their clothes when in the dock. There is a clearly a risk that unless restrained the named defendants may engage in future protest activity at or in the locality of the Terminal that endangers the local community.

Is it appropriate to grant injunctive relief against ‘newcomer’ persons unknown taking into account the requirements outlined in *Wolverhampton*?

93. Any newcomer injunction is a form of without notice injunction and, as recognised by the Supreme Court in *Wolverhampton* at para. 167, only likely to be justified as “a novel exercise of discretionary power” if certain conditions are met.

Compelling need not adequately met by any other measures

94. There is however a compelling need for injunctive relief to protect the inhabitants of North Warwickshire and those who work in or travel through or otherwise visit the area from the more extreme types of protest activity at and in the locality of the Terminal that amount to public nuisance and/or criminal offences. For the reasons discussed in paragraphs 82 to 88 of this judgment, the required protection cannot be met by other measures available to the Council. The ongoing nature of Just Stop Oil’s protest activity is such that there is a real risk of future incidences of public nuisance occurring and/or of criminal offences being committed at or in the locality of the Terminal.

Procedural protections

95. Any newcomer injunction must ensure that there are sufficient procedural protections to safeguard the newcomers against draconian nature of a without notice order. The persons unknown defendants have been given notice of this claim, the interim injunctions and the progression of the proceedings to the trial dates by various methods of alternative service. Those steps have included physical signage at the Terminal, use of the Council’s website and social media accounts, and direct communications with Just Stop Oil through their email addresses and social media accounts. Persons unknown have therefore already had ample opportunity to participate in these proceedings but have elected not to. Any final injunction against newcomers can also be the subject of stringent alternative service provisions to ensure persons potentially affected are given full information as to the terms and scope of the order, any power of arrest and

the trial papers before the court. The Council has provided details of the steps it proposes to take to publicise an order, power of arrest and documents contained in the trial bundles. Those steps involve making use of signage along the boundary of and at the entrances to the Terminal, posting documents on its website, publicising through the Council's social media, asking local police to publicise through their social media and communicating directly with Just Stop Oil through known email addresses and social media. Such an approach will ensure effective notice can be given to newcomers. Mindful of its obligations to ensure procedural fairness, the Council concedes that any order should have a generous liberty to apply provision enabling any person served with the order or affected by it to apply to the court to vary or discharge the order on 48 hours' notice to the Council. This will ensure any newcomer has the ability to raise any objection even though they have not participated in the trial.

Disclosure duty

96. The Council acknowledges its obligation to comply with its disclosure duty on seeking a remedy against newcomer persons unknown. The Council's skeleton argument, at paragraphs 68 to 73, addresses the Council's duty and considers what arguments defendants might wish to pursue. It has also ensured that the court has before it the interim injunction judgment of Sweeting J at [2023] EWHC 1719 (KB) which discusses the arguments raised by the 73rd defendant and Ms Hardy at the interim hearing. Mr Manning's closing submissions included taking the court through the various new criminal offences introduced by the 2023 Act, and the increased sentencing powers for wilful obstruction of the highway, to ensure full consideration could be given to possible less restrictive alternative measures. I am therefore persuaded that the Council is both alive to its disclosure duty and has complied with the same in putting its case and counter-arguments as fairly as possible.

Territorial and temporal limits

97. The terms of the draft order limit the geographical scope of the injunction to two areas. The first area is defined in paragraph 1 of the draft order as covering the Terminal itself. That area is privately owned land upon which the defendants have no right to access without the permission of the land owner. The land is identifiable in the draft order by reference to boundaries edged in red on a colour plan attached to the order. The plan is drawn to a scale of 1:5000. The geographical limit is thus clear to see. The second area is defined in paragraph 2 of the draft order as being "anywhere in the locality of the Terminal..." The Council acknowledges that the term "locality" is a flexible concept but submits it is one which has the necessary clarity having been endorsed as appropriate for use in injunctive orders by the Court of Appeal in *Manchester City Council v Lawler* [1998] 31 HLR 119. Butler-Sloss LJ (as she then was) noted that "in the locality" was a term adopted by parliament and considered it would be "a question of fact for the judge whether the place in which the conduct occurred was or was not within the locality." I considered the construction of the term in contempt proceedings within this claim (*NWBC v Aylett, Goode & Jordan* [2022] EWHC 2458 (KB) at para. 94-100). I maintain my conclusion that the expression is not unreasonably vague such that it may be susceptible to more than one interpretation. It is an expression adopted by parliament and endorsed

for use in injunctions by the Court of Appeal. Furthermore, a defendant facing contempt proceedings has the additional procedural safeguard arising from the requirement on the Council to establish to the criminal standard of proof that a given place is "within the locality."

98. Any newcomer injunction must also be subject to strict temporal limits. The Council seeks an injunction for a period of three years from trial with annual hearings to review its operation. The interim injunction has itself been in force for over two years, which is longer than anticipated when the claim was first issued. In the context of gypsy or traveller newcomer injunctions, the Supreme Court in *Wolverhampton* (at para. 225) took the view that such injunctions "ought to come to an end (subject to any order of the judge), by effluxion of time in all cases after no more than one year unless an application is made for their renewal." Slightly different considerations apply where an injunction limits only certain types of protest behaviour as the consequences of an order are less draconian than for a gypsy or traveller being deprived of somewhere to site the vehicle in which they live. In *Valero Energy Ltd & others v Persons Unknown* [2024] EWHC 134 (KB) ("*Valero Energy*") Ritchie J granted a newcomer injunction against protestors for a period of five years subject to annual reviews. The claimants in *Valero* owned or had a right to possession of eight oil refinery or oil terminal sites in England and Wales which had been targeted by protest groups including Just Stop Oil. Whilst an annual review is essential to ensure ongoing consideration of the appropriateness of an injunction remaining in force, a term of three years is within appropriate temporal limits. The sustained duration of protest activity between March and September 2022 and the regular ongoing protest activity of Just Stop Oil at other locations demonstrates the need for the term of any order to extend to three years.

Just and convenient

99. The Council seek to protect their inhabitants from unlawful activity in the form of public nuisance and/or the commission of criminal offences. The highly flammable nature of the products stored on and transported to and from the Terminal means that some of the protest activity seen at this location has risked fire or explosion. The balance of convenience falls in favour of granting injunctive relief to protect the local population whilst still permitting the defendants to engage in protest activity in the locality of the Terminal.
100. The terms of the final injunction in *Valero Energy* already provides some protection to the local community as it covers part of the Terminal that is within the control of one of the four operators of the Terminal. I do not take the view that the *Valero Energy* order renders it inappropriate to grant the Council relief. Firstly, the Council does not hold the benefit of that order and would not be able to enforce it. Secondly, the claimants to the *Valero Energy* claim are not local authorities and thus could not rely on s. 27 of the Police and Justice Act 2006 so as to seek a power of arrest. Thirdly, the order does not cover the Terminal as a whole nor the locality of the Terminal.
101. I am therefore persuaded it is appropriate for the court to exercise its discretion to grant injunctive relief against the newcomer defendants.

The terms of the injunction and whether a power of arrest should be attached.

102. For the reasons aforementioned, it is appropriate for an injunction to be granted against all the defendants listed in schedule A for a term of three years from the trial with annual review hearings. The substance of the draft order will be adopted but the court will hear submissions on the detail of the required order after the judgment has been handed down.
103. The Council seeks that a power of arrest be attached to the injunction pursuant to s.27 of the Police and Justice Act 2006. The application of s.27 to the facts of this case was considered by Sweeting J when granting the interim injunction: [2023] EWHC 1719 (KB) at paras. 108 to 115. That analysis is still applicable following the hearing of the evidence. The decision in *Wolverhampton* does not undermine the ability of the court to attach a power of arrest to an injunction against persons unknown. The substance of the injunction will prohibit conduct which is capable of causing nuisance or annoyance to the inhabitants of the Council's area. It remains the case that there is a significant risk of harm for the purposes of s.27(3)(b) given the extreme forms of protest seen at the Terminal, the ongoing protest activity of Just Stop Oil generally and the implications of a fire or explosion at the Terminal. I am therefore satisfied that the Council meets the threshold test imposed by s.27(2) and (3). Whether to then attach a power of arrest becomes an exercise of discretion. As was the position at the interim stage of this case, there remain cogent reasons why a power of arrest is appropriate, indeed an imperative. Firstly, a power of arrest will enable the police to immediately remove a protestor from the scene and thereby reduce or extinguish the risk to others. Secondly, a power of arrest ensures that the Council can take effective enforcement action. A protestor would be arrested, detained, identified and brought before a court within 24 hours. Without such a power, the Council would find it impossible or at least extremely difficult in many cases to ascertain the names and addresses of the perpetrators so as to bring a paper contempt application. That in turn would diminish the desired deterrent effect of the injunction. A power of arrest will therefore be attached to the order.

Required form of order

104. I will hear submissions on the detail of the required order on the handing down of judgment but make the following provisional comments on the latest version of the draft order as supplied by the Council at trial:
- i) The description of the protests covered should be extended to mirror the definition adopted in the description of defendants 19A to 19D, namely a protest "against the production of fossil fuels and/or the use of fossil fuels and/or the grant of licences to extract fossil fuels."
 - ii) The order will cover the Terminal and the locality of the Terminal.
 - iii) The order will prohibit all protest activity within the Terminal itself but, in respect of the locality of the Terminal, the prohibited activity will be limited to defined actions as particularised in draft paragraph 1(b)(i) to (xi).

- iv) The alternative service provisions in Schedule 3 in respect of the persons unknown defendants and those defendants for whom the Council has no contact details requires amendment to ensure that (a) it is clear that all alternative service steps must be undertaken, (b) the relevant documents are publicised widely including signposting from the Council's website landing page and (c) there is no ambiguity as to the size and number of physical signs that will be required.
- v) Further case management directions need to be made in respect of the first review hearing.

HHJ Emma Kelly

SCHEDULE A

SCHEDULE OF DEFENDANTS

(2) THOMAS BARBER
(3) MICHELLE CADET-ROSE
(4) TIMOTHY HEWES
(5) JOHN HOWLETT
(6) JOHN JORDAN
(7) CARMEN LEAN
(8) ALYSON LEE
(9) AMY PRITCHARD
(10) STEPHEN PRITCHARD
(11) PAUL RAITHBY
(14) JOHN SMITH
(15) BEN TAYLOR
(17) ANTHONY WHITEHOUSE
(19A) PERSONS UNKNOWN WHO, OR WHO INTEND TO, PARTICIPATE IN PROTESTS WITHIN THE SITE KNOWN AS KINGSBURY OIL TERMINAL, TAMWORTH B78 2HA (THE “TERMINAL”) AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS, AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS;
(19B) PERSONS UNKNOWN WHO, OR WHO INTEND TO, PARTICIPATE IN PROTESTS IN THE LOCALITY OF THE TERMINAL, AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS, AND WHO, IN CONNECTION WITH ANY SUCH PROTEST, DO, OR INTEND TO DO, OR INSTRUCT ASSIST OR ENCOURAGE ANY OTHER PERSON TO DO, ANY OF THE FOLLOWING: (A) ENTER OR ATTEMPT TO ENTER THE TERMINAL; (B) CONGREGATE AT ANY ENTRANCE TO THE TERMINAL; (C) OBSTRUCT ANY ENTRANCE TO THE TERMINAL; (D) CLIMB ON TO OR OTHERWISE DAMAGE OR INTERFERE WITH ANY VEHICLE OR ANY OBJECT ON LAND (INCLUDING BUILDINGS, STRUCTURES, CARAVANS, TREES AND ROCKS);

(E) DAMAGE ANY LAND INCLUDING (BUT NOT LIMITED TO) ROADS, BUILDINGS, STRUCTURES OR TREES ON THAT LAND, OR ANY PIPES OR EQUIPMENT SERVING THE TERMINAL ON OR BENEATH THAT LAND;

(F) AFFIX THEMSELVES TO ANY OTHER PERSON OR OBJECT OR LAND (INCLUDING ROADS, STRUCTURES, BUILDINGS, CARAVANS, TREES OR ROCKS);

(G) ERECT ANY STRUCTURE;

(H) ABANDON ANY VEHICLE WHICH BLOCKS ANY ROAD OR IMPEDES THE PASSAGE OF ANY OTHER VEHICLE ON A ROAD OR ACCESS TO THE TERMINAL;

(I) DIG ANY HOLES IN OR TUNNEL UNDER (OR USE OR OCCUPY EXISTING HOLES IN OR TUNNELS UNDER) LAND, INCLUDING ROADS; OR

(J) ABSEIL FROM BRIDGES OR FROM ANY OTHER BUILDING, STRUCTURE OR TREE ON LAND.

(19C) PERSONS UNKNOWN WHO, OR WHO INTEND TO, ORGANISE, PUBLICISE OR PROMOTE ANY PROTEST WITHIN THE TERMINAL AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS.

(19D) PERSONS UNKNOWN WHO, OR WHO INTEND TO, ORGANISE, PUBLICISE OR PROMOTE ANY PROTEST IN THE LOCALITY OF THE TERMINAL, AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS, AT WHICH PROTEST THEY INTEND OR FORESEE OR OUGHT TO FORESEE THAT ANY OF THE ACTS DESCRIBED AS PART OF THE DESCRIPTION OF DEFENDANT 19B WILL BE CARRIED OUT.

(20) JOHN JORDAN

(22) MARY ADAMS

(23) COLLIN ARIES

(24) STEPHANIE AYLETT

(25) MARCUS BAILIE

(28) PAUL BELL

(29) PAUL BELL

(30) SARAH BENN

(31) RYAN BENTLEY

(32) DAVID ROBERT BARKSHIRE

(33) MOLLY BERRY

(34) GILLIAN BIRD
(36) PAUL BOWERS
(37) KATE BRAMFITT
(38) SCOTT BREEN
(40) EMILY BROCKLEBANK
(42) TEZ BURNS
(43) GEORGE BURROW
(44) JADE CALLAND
(46) CAROLINE CATTERMOLLE
(48) MICHELLE CHARLESWORTH
(49) ZOE COHEN
(50) JONATHAN COLEMAN
(53) JEANINIE DONALD-MCKIM
(55) JANINE EAGLING
(56) STEPHEN EECKELAERS
(58) HOLLY JUNE EXLEY
(59) CAMERON FORD
(60) WILLIAM THOMAS GARRATT-WRIGHT
(61) ELIZABETH GARRATT-WRIGHT
(62) ALASDAIR GIBSON
(64) STEPHEN GINGELL
(65) CALLUM GOODE
(68) JOANNE GROUNDS
(69) ALAN GUTHRIE
(70) DAVID GWYNE
(71) SCOTT HADFIELD
(72) SUSAN HAMPTON
(73) JAKE HANDLING
(75) GWEN HARRISON
(76) DIANA HEKT
(77) ELI HILL
(78) JOANNA HINDLEY
(79) ANNA HOLLAND
(81) JOE HOWLETT

(82) ERIC HOYLAND
(83) REUBEN JAMES
(84) RUTH JARMAN
(85) STEPHEN JARVIS
(86) SAMUEL JOHNSON
(87) INEZ JONES
(88) CHARLOTTE KIRIN
(90) JERRARD MARK LATIMER
(91) CHARLES LAURIE
(92) PETER LAY
(93) VICTORIA LINDSELL
(94) EL LITTEN
(97) DAVID MANN
(98) DIANA MARTIN
(99) LARCH MAXEY
(100) ELIDH MCFADDEN
(101) LOUIS MCKECHNIE
(102) JULIA MERCER
(103) CRAIG MILLER
(104) SIMON MILNER-EDWARDS
(105) BARRY MITCHELL
(106) DARCY MITCHELL
(107) ERIC MOORE
(108) PETER MORGAN
(109) RICHARD MORGAN
(110) ORLA MURPHY
(111) JOANNE MURPHY
(112) GILBERT MURRAY
(113) CHRISTIAN MURRAY-LESLIE
(114) RAJAN NAIDU
(115) CHLOE NALDRETT
(117) DAVID NIXON
(118) THERESA NORTON
(119) RYAN O TOOLE

(120) GEORGE OAKENFOLD
(121) NICOLAS ONLAY
(122) EDWARD OSBOURNE
(123) RICHARD PAINTER
(124) DAVID POWTER
(125) STEPHANIE PRIDE
(127) SIMON REDING
(128) MARGARET REID
(129) CATHERINE RENNIE-NASH
(130) ISABEL ROCK
(131) CATERINE SCOTHORNE
(133) GREGORY SCULTHORPE
(135) VIVIENNE SHAH
(136) SHEILA SHATFORD
(137) DANIEL SHAW
(138) PAUL SHEEKY
(139) SUSAN SIDEY
(141) JOSHUA SMITH
(142) KAI SPRINGORUM
(145) HANNAH TORRANCE BRIGHT
(146) JANE TOUIL
(150) SARAH WEBB
(151) IAN WEBB
(153) WILLIAM WHITE
(155) LUCIA WHITTAKER-DE-ABREU
(156) EDRED WHITTINGHAM
(157) CAREN WILDEN
(158) MEREDITH WILLIAMS

Neutral Citation Number: [2024] EWHC 3549 (Ch)

Case No. PT-2022-000303

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
PROPERTY, TRUSTS & PROBATE LIST (ChD)

**The Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL**

20 November 2024

Before:

THE HONOURABLE MR JUSTICE MILES

B E T W E E N:

(1) UNITED KINGDOM OIL PIPELINES
(2) WEST LONDON PIPELINE AND STORAGE LIMITED
Claimants

-and-

PERSONS UNKNOWN
Defendants

Myriam Stacey KC and Yaaser Vanderman (instructed by Fieldfisher LLP)
appeared on behalf of the Claimants

No appearances by or on behalf of the Defendants

Hearing date: 20 November 2024

**APPROVED
JUDGMENT**

Mr Justice Miles:

Introduction

1. This is a review hearing in respect of a final injunction granted for five years by Mr Simon Gleeson sitting as a Deputy Judge of the Chancery Division on 6 October 2023 (“**the Gleeson order**”) following an application for summary judgment.
2. The Gleeson order provided for an annual review of the injunction and this is the first review hearing. There were previously interim injunctions made by Mr Peter Knox KC, sitting as a Deputy High Court Judge on 12 April 2022 and 21 April 2022. The interim injunction was reviewed by Mr Justice Rajah on 21 April 2023.
3. The original evidence before Mr Knox KC included statements from Mr John Armstrong. He has provided further statements in relation to the application before Mr Justice Rajah in April 2023 and the application for summary judgment made to Mr Gleeson in October 2023.
4. Mr Armstrong has now made a sixth witness statement dated 4 November 2024 which updates the position. There are also two witness statements made by Mr Anthony Phillips dated 23 November 2023 and 11 November 2024 which deal, respectively, with service of the Gleeson order and service of notice of this review hearing.
5. I was also provided with certificates of service dated 12 November 2024 and 15 November 2024 relating to the bundle for use at this hearing, and the claimants’ skeleton argument and authorities bundle, respectively.
6. I was also provided with copies of emails to relevant email addresses of Extinction Rebellion and Just Stop Oil, the two campaign groups affected by the Gleeson order, notifying them of the date and location of this review hearing. Nobody has acknowledged service or served any other documents in relation to these proceedings. There was no attendance by any person who might have made submissions on behalf of the defendants at the hearing before me.

Service/notice

7. I start with the question of service. Strictly speaking in relation to claims against persons unknown, service does not take place. Rather the question is whether they have been notified: see *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* [2023] UKSC 47. However, for convenience I shall refer to it as service.
8. I am satisfied on the basis of Mr Phillips’ second statement that the Gleeson order was served according to the alternative methods set out in paragraph 6 of the Gleeson order. I am satisfied by Mr Phillips’ third statement that the necessary documents, including the application notice filed in respect of this review hearing, were properly served.
9. I am also satisfied by the certificates of service and the emails mentioned above that the persons unknown, who might be affected by this review hearing, have been properly notified of the hearing and given access to the bundles for the hearing. To the extent that

the requirements of section 12 (2) of the Human Rights Act 1989 apply I am satisfied that they too have been satisfied.

Legal principles

10. Counsel for the claimants took me to certain authorities concerning the test to be applied in a review hearing of this kind. In *High Speed Two (HS2) Ltd & Anor v Persons Unknown & Ors* [2024] EWHC 1277 (KB) Mr Justice Ritchie explained the position at paragraphs 32 to 33. That case concerned an interim injunction, but there is no reason why it should not apply equally to a final injunction.
11. Mr Justice Ritchie explained that on a review hearing the Court does not start with a blank slate. The judge who has previously granted the injunction has made findings justifying the injunction and it is not the task of the Court on review to query or undermine those. On the other hand the Court must read and assimilate the findings to understand the basis of the injunction. It is then necessary to determine on the evidence whether anything material has changed. If it has not and the risk still exists, the extension may be granted as long as proper procedural steps have been followed. If, on the other hand, there are material changes in the circumstances the Court is required to analyse them based on the evidence before it and in the full light of the history to determine anew whether to grant an injunction.
12. That approach was approved by Mr Justice Julian Knowles in *Thurrock Council & Anor v Adams & Ors* [2024] EWHC 2576 (KB) at paragraph 30.
13. In *Arla Foods Ltd & Anor v Persons Unknown & Ors* [2024] EWHC 1952 (Ch) Jonathan Hilliard KC, sitting as a Deputy Judge of the High Court, said at paragraph 128 that the review process would allow a continued assessment of whether circumstances have changed so as to make a continuation of the injunction appropriate. He observed that the review should be of whether the position had developed since the last review.
14. A review hearing is not, however, a mere rubber stamping exercise: see *Exolum Pipeline Systems Limited v HSE* [2024] EWHC 1015 (KB) paragraph 28.
15. Since the Gleeson order was made the Supreme Court has given judgment in *Wolverhampton City Council & Ors v London Gypsies and Travellers*.
16. I am satisfied that this has not affected the relevant legal tests in any material respects albeit the various important procedural and substantive safeguards for persons unknown have been carefully formulated. These have been summarised in recent protest cases including *Valero Energy Ltd & Ors v Persons Unknown & Ors* [2024] EWHC 134 (KB). In that case Mr Justice Ritchie listed 15 questions which the court might consider it appropriate to address. I shall return to these below.

Factual background

17. The Gleeson order concerned two sites. Site one is the West London Buncefield Oil Terminal located on the edge of Hemel Hempstead. The site is one of the largest oil

product storage depots in the UK with a capacity of about 65 million litres of fuel. The primary activities undertaken on the site are storage of aviation kerosene for onwards transmission to Heathrow and Gatwick airports, transfer of fuel products to neighbouring terminals, road loading of aviation kerosene and storage of interface material (a mixture of fuels) created as part of the pipeline operations.

18. The title interests regarding the site were set out by Mr Davis in his first statement. There is a private access track on land adjoining site one leading from the public highway (the site one access route). A plan for site one and the site one access route were annexed to the Gleeson order.
19. Site two is part of the Kingsbury Oil Terminal and located north east of the village of Kingsbury in Warwickshire. The primary activities undertaken on site two are the transfer of fuel to neighbouring terminals from pipeline systems and the storage of pipeline interface material, the transfer of fuel from neighbouring terminals to the pipeline system for onward transportation and acting as a central control centre for monitoring and control of the claimants pipeline and storage network.
20. The private accessway on land adjoining site two leading to the public highway is referred to as the site two access route. Again, the site and the site two access route are shown as annexes to the Gleeson order.
21. The immediate reason for the first interim injunctions granted by Mr Knox KC was widespread direct action that occurred against energy companies in April 2022. Mr Armstrong gave evidence about those protests in his first and second statements.
22. The two campaign groups which had organised that direct action were Extinction Rebellion and Just Stop Oil. The persons unknown, the first and second defendants in the Gleeson order, were defined in part by having a connection with or being affiliated to the Extinction Rebellion campaign or the Just Stop Oil campaign at the two sites.
23. The original evidence before Mr Knox KC showed that there had been direct action in respect of both site one and site two. In respect of site one there was evidence that the perimeter fence had been breached, and that persons unknown had been arrested within the site.
24. In respect of site one and site two there was also evidence of obstruction or interference with the site one access route and the site two access route. There was also evidence that there was a real and imminent risk of trespass to site two as well as the actual trespass that had taken place in respect of site one.
25. Mr Armstrong also gave detailed evidence of related incidents of direct action targeting other fuel terminals and associated energy infrastructure across the UK. He referred to the publicly available statements made by Extinction Rebellion about their determination to continue their campaigns. He also gave evidence about the significant risk of damage or injury to persons and property from any trespasses on the sites, including to the trespassers themselves. In that regard he explained that the sites are governed by extensive health and safety requirements and that there is potentially a very serious risk of injury in the event of trespass to the sites.

26. There have been numerous interim and final injunctions granted by the courts in relation to direct action threatened by environmental protest campaign groups, including those identified in the present orders. There have also been a number of subsequent reviews of those injunctions. Recent cases include *North Warwickshire BC v Persons Unknown* [2024] EWHC 2254 (KB), *Eso Petroleum Company Ltd v Persons Unknown* [2023] EWHC 1837 (KB) and a final injunction made in the *Valero Energy Ltd & Ors v Persons Unknown & Ors* case on 26 January 2024.

Assessment

27. The claimants rely on a number of factors to support their contention that there is a continuing threat of trespass and nuisance at the sites. They rely on the following in particular.
28. First, the direct action that occurred in and around the sites in April 2022. This is explained in the first and second statements of Mr Armstrong.
29. Second, since the grant of interim injunctions protecting the sites in April 2022 there have been further instances of direct action and protest in close proximity to site two. This was explained in Mr Armstrong's third statement.
30. Third, there has been continuing direct action carried out by organisations including Extinction Rebellion and Just Stop Oil aimed at the petroleum and gas sector more generally. Mr Armstrong addresses these at paragraphs 20 to 47. They include protests at the premises of various organisations including insurers of oil and gas infrastructure, at MPs' houses, and on a number of occasions, at prominent art galleries. It is clear from that evidence that Extinction Rebellion and Just Stop Oil are continuing their campaigns.
31. Fourth, the claimants rely on continuing statements, particularly in relation to Just Stop Oil, that they will be continuing their campaign of direct action.
32. Fifth, there has been a campaign, specifically, in relation to airports by Just Stop Oil in the summer of 2024 to seek to disrupt airports.
33. In a press release dated 3 March 2024 Just Stop Oil announced that in addition to disrupting high profile cultural events and continuing Stop Tory Oil campaign, it would commence a campaign of high level actions at sites of importance to the fossil fuel industry including airports. This led to many of the largest airports obtaining injunctions to prevent such direct action.
34. The claimants accept that the level of direct action has decreased in intensity since April 2022 and that the sites themselves have not been directly targeted. They submit that this is most likely because of the existence of the injunctions that have been granted by the courts. In this regard they rely on a tweet from JSO dated June 2023, and retweeted by Extinction Rebellion, which explained the consequences of breach of an injunction.
35. They also rely on a tweet dated 13 September 2023 where Just Stop Oil said, "in relation to protests in Portsmouth involving road blockages creates disruption is frustrating, but

we have no other choice. Fossil fuel companies have taken out private injunctions that make protests impossible at all refineries, oil depots and even petrol stations”.

36. More generally, there has been a series of injunctions granted by the courts concerning, among other places, oil depots and terminals. It is a reasonable inference, say the claimants, that the very existence of the injunctions has reduced the overall level of direct action at or against such sites.
37. I am satisfied on the evidence, which has not been contradicted, that there exists a continued threat of trespass and nuisance at the two sites such that if the injunction were now to be discharged there would be a real and serious risk of such trespass and nuisance taking place. I also am satisfied by the claimants evidence that the harm that would occur if there were to be such trespass or nuisance is potentially very grave. The direct action in respect of the sites would pose significant health and safety risks, in particular, including personal injury to the defendants and others at the sites. It goes without saying that these can be very dangerous sites for those who have not received the appropriate training.
38. I should next consider whether there has been a material change since the Gleeson order. I have already set out the factual position. It appears to me that there has been no material change since the date of the Gleeson order and there continues to be a threat of direct action at the sites for the reasons already set out above.
39. Neither Just Stop Oil nor Extension Rebellion has disclaimed any intent to carry out direct action at the sites and they have not offered any assurances that they would not carry out such direct action: compare *Esso Petroleum Company Ltd v Persons Unknown* at paragraph 67.
40. As I have already explained, I draw the inference that it is the existence of a blanket of injunctions that has led to the falling off of direct action at sites similar to those in issue in the present case. As Mr Justice Linden stated in *Esso Petroleum Company Ltd v Persons Unknown* at paragraph 67:

“It appears that the effect of the various injunctions which have been granted in this case and others has been to prevent or deter them from taking the steps prohibited by the orders of the court although, of course, not invariably so. If, therefore, an injunction is refused in the present case the overwhelming likelihood is that protests of the sort which were seen in 2021/2022 will resume”.

The same reasoning applies here.

41. There have been a number of recent cases which have considered the provisions of the Public Order Act 2023 which created further criminal offences including locking on (section 1), tunnelling (section 3) and interference with key national infrastructure (section 7). That gives rise to the question whether the threat of direct action has been diminished.

42. In the present case the relevant provisions of the 2023 Act were already in force at the time of the Gleeson order. However, the Judge did not specifically consider the potential impact of the 2023 Act. There are a number of points to make about the Act. The maximum sentence for offences under sections 1, 2 or 7 is 12 months and in some cases is only a fine. The maximum penalty for contempt for breach of a civil injunction is two years. Moreover in a case of an injunction in favour of a party which seeks to protect its own private land from trespass and nuisance the question whether to seek to enforce an injunction through a committal proceedings is placed in the hands of the claimant. The procedure is reasonably speedy, and the claimant is not required to leave the matter to prosecuting authorities. The fact that the claimant has sought and obtained a specific order concerning a specific parcel of land may well lead to a greater deterrent effect than the general criminal law.
43. Moreover, as counsel for the claimants observed, where an injunction of this kind has been obtained and sufficiently notified to defendants, as has happened in this case, the defendants will have it drawn to their attention that carrying out the prohibited acts will themselves carry the risk of sanctions and as she said they will know that an order has been made in relation to the specific land in question. That may be thought to have, in practical terms, a more targeted and specific deterrent effect than the general criminal law even if the provisions of the general law are known to the relevant person - which cannot safely be assumed.
44. It is also worth noting that aggravated trespass was already a criminal offence at the time of the original direct action in this case in April 2022 and that did not deter the direct action.
45. In short, the Court must properly take into account the provisions of the Public Order Act when deciding whether there is a compelling justification for the injunction to protect the claimant's civil rights as the Court must assess the cogency of the evidence that there is a real and serious risk of tortious conduct and harm to the claimant. However, the existence of the Act is not a bar to the grant of injunctions in cases of this kind. In this regard I refer to the recent decisions in *Drax Power Limited v Persons Unknown* [2024] EWHC 2224 (KB), *North Warwickshire BC v Persons Unknown* [2024] EWHC 2254 (KB) and *Shell UK Limited v Persons Unknown* [2024] EWHC 1546 (KB). For the reasons already given I do not think it is a bar to the continuation of the Gleeson order.
46. I have referred already to the various factors drawn from *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* by Mr Justice Ritchie in *Valero Energy Ltd & Ors v Persons Unknown & Ors*. These have been listed by him as 15 points. While it may not be necessary in all cases to go through them, they have been used in the present application as a useful set of criteria, and I shall consider them below.
47. First, a civil cause of action has been identified, namely trespass and nuisance.
48. Second, I am satisfied that the claimants have complied with their duty of full and frank disclosure.

49. Third, there was sufficient evidence to prove the claim to the summary judgment standard before Mr Gleeson. I have already addressed the evidence of a threat of further harm since the date of his order.
50. Fourth, I am satisfied that there was, and continues to be, no defence which has a realistic prospect of success.
51. Fifth, I am satisfied that there continues to be a compelling justification for the injunction to protect the claimants civil rights. I have already made findings about the threat and the potential for significant health and safety risks posed by trespassing on the sites. No justification has been advanced for the apprehended unlawful conduct.
52. Sixth, I am satisfied that the Court was not required to conduct the kind of balancing exercise required by articles 10 and 11 of the ECHR as those articles do not include or give the right to trespass on private property and, thereby, override the rights of private landowners.
53. Seventh, I am satisfied that damages would not have been an adequate remedy. Again, I refer to the health and safety risks posed by the defendants and their actions or over the amount of disruption likely to be caused and the fact that there were no named defendants to seek damages from shows that damages would not have been adequate. It seems to me that the threatened harm would have been grave and irreparable for these reasons. There are also obvious potential problems of identifying any defendants who may be able to meet a claim for damages.
54. Eighth, the persons unknown were clearly and plainly identified by reference to the conduct prohibited.
55. Ninth, the prohibition in the Gleeson order was set out in clear words and was not framed in legal technical terms. It does not prohibit any conduct which would be lawful viewed on its own.
56. Tenth, the prohibition in the Gleeson order mirrored the torts claimed in the claim form.
57. Eleventh, the prohibition in the Gleeson order was defined by clear geographic boundaries.
58. Twelfth, the Gleeson order granted a five year injunction with an annual review. This is similar to injunctions granted in other cases including *Valero Energy Ltd & Ors v Persons Unknown & Ors* and *Esso Petroleum Company Ltd v Breen & Anor*.
59. Thirteenth, persons unknown were notified of the claim documents, applications and orders through methods that have been sanctioned by the Court.
60. Fourteenth, the Gleeson order includes provision for any person to apply to set aside or vary the injunction on short notice.
61. Fifteenth, the Gleeson order will be reviewed annually.

62. In all these circumstances I am satisfied that it is appropriate for the injunction made in the Gleeson order to continue and the appropriate order is to make no order in relation to it.
63. The claimants have sought a minor amendment to the alternative service requirements that have been made in the earlier orders. The earlier orders included a number of methods of service or notification; 1) fixing documents and containers at a number of locations around the sites; 2) posting the documents on a website; 3) fixing large warning notices at locations around the sites and; 4) sending e-mails to certain e-mail addresses with information about where the documents could be found.
64. The claimants now seek to amend the first of these requirements so as to dispense with the requirement in the previous orders to provide copies of the relevant orders in clear transparent sealed containers at the site. They suggest instead that the claimants be permitted to affix copies of the Gleeson order at a minimum number of two prominent locations on the perimeter of each of the sites in close proximity to the large warning notices in clear envelopes. These will be attached to the fence or elsewhere where the large warning notices are affixed.
65. The evidence shows that under previous orders the documents were contained in transparent plastic containers and that these containers were affixed to perimeter fences at the sites. It does not seem to me that this was a particularly sensible way of drawing attention to the orders as a person would have had to see the box, to have read the notice in the lid of the box which explained that there were orders inside. That was fairly cumbersome and may not have been effective to notify potential trespassers.
66. It seems to me to make more sense that copies of the orders should be contained in see-through envelopes near the large warning notices. In the previous orders the requirement was that there be at least two transparent boxes. I am satisfied that it is appropriate to substitute for this the suggestion that the transparent envelopes be affixed at a minimum of two locations for each of the sites. For the avoidance of doubt I should make it clear that there is no requirement to include copies of any of the earlier orders so that this method of service or notification should apply only to the Gleeson order itself.

Conclusion

67. I am satisfied that the Gleeson order should continue.

End of judgment.

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291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

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record of the proceedings or part thereof

This transcript has been approved by the judge.

A

King's Bench Division

Shell UK Ltd v Persons Unknown**Shell International Petroleum Co Ltd v Persons Unknown**

B

Shell UK Oil Products Ltd v Persons Unknown and others

[2024] EWHC 3130 (KB)

2024 Oct 22, 23;
Dec 5

Dexter Dias J

C

Injunction — Trespass — Persons unknown — Oil and gas companies obtaining interim injunctions against environmental protesters to prohibit unlawful activities — Whether grant of final injunctions unnecessary and disproportionate interference with protesters' Convention rights — Whether injunctions in breach of Aarhus Convention — Applicability and legal relevance of Aarhus Convention in environmental protest injunctions — Senior Courts Act 1981 (c 54), s 37 — Human Rights Act 1998 (c 42), Sch 1, Pt I, arts 9, 10, 11 — Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998), art 3(8)

D

E

The claimants, three companies within a group of oil and gas companies, had been the subject of direct and deliberately disruptive actions targeting their business activities by environmental activists protesting against the companies' involvement in the fossil fuel industry and the consequential contribution to greenhouse gas emissions and climate change. The claimants brought claims for injunctions against environmental protesters to restrain future unlawful protest activities at an oil refinery, an office and various petrol stations, on the grounds that such actions would amount to trespass on their land, private and public nuisance and/or conspiracy to injure by unlawful means. Having obtained interim injunctions against a number of unnamed defendants as well as, in the case of the petrol station protests, a number of named defendants, the claimants sought final anticipatory injunctions on the basis that their rights had been violated and there was a real and imminent risk that the defendants would engage in future direct action protests that would breach the claimants' rights. Two of the named defendants filed defences, submitting inter alia that an injunction would constitute an unlawful, namely an unnecessary and disproportionate, interference with their rights under articles 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹, and that the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters² ("the Aarhus Convention") protected environmental defenders such as themselves from the excessive use of law. The issue arose whether the Aarhus Convention, in particular article 3(8), had any legal relevance and/or applicability when the court exercised its general

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¹ Human Rights Act 1998, Sch 1, Pt I, art 9: see post, para 116.
Art 10: see post, paras 118, 119.
Art 11: see post, paras 118, 120.

² Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, art 3(8): see post, para 149.

equitable discretionary power under section 37 of the Senior Courts Act 1981³ to grant an injunction, in the context of environmental protest, such that environmental defenders were protected from being penalised, persecuted or harassed for exercising their rights under the Aarhus Convention. A

On the claimants' applications—

Held, granting the applications, (1) that unincorporated international treaties, while not directly enforceable in domestic law, ought to be taken into account when considering and interpreting relevant rights and obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms; that the Aarhus Convention, being a relevant treaty in the sphere of environmental rights and protests about environmental issues, was relevant to the interpretation of substantive rights under the Human Rights Convention in such context, in particular the rights to freedom of thought or conscience, expression and peaceful assembly and association under articles 9, 10 and 11; that while the Aarhus Convention could not be determinative of claims arising from the exercise of rights under its articles, since such rights were not freestanding and independently justiciable, the substance of the Convention was relevant to the court's assessment of the necessity and proportionality of the interference with the environmental protesters' human rights; that it followed that the court had to have regard to the Aarhus Convention when exercising its equitable discretion to grant an injunction under section 37 of the Senior Courts Act 1981; that, in the present case, while environmental activists protesting against the fossil fuel industry were capable of falling within "public participation" in decision-making that would have a significant effect on the environment, and might therefore be protected from being penalised, persecuted or harassed under article 3(8) of the Aarhus Convention, such protection only applied to those exercising their rights in conformity with the provisions of the Convention; that there was no basis within the Aarhus Convention authorising environmental protesters to deliberately violate the national law or the lawful rights of others; and that, accordingly, the grant of final injunctions, which were directed exclusively at unlawful acts of the environmental protesters but not lawful protests, would not be in breach of the Aarhus Convention (post, paras 157, 158, 160–161, 163–168). B
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Demir v Turkey (2008) 48 EHRR 54, GC and R (*SG*) v *Secretary of State for Work and Pensions* [2015] PTSR 471, SC(E) applied. E

(2) That should the injunctions be discharged, a real and imminent risk would arise of direct action involving tortious interference with the claimants' rights by the defendants; that overall, in light of the potentially irreparable damage that could be caused by the unlawful protest activities, which might involve serious physical injury or death, there was a compelling need to prohibit future unlawful protests so as to prevent breaches of the claimants' lawful rights; that taking into account the Aarhus Convention and balancing the rights of the claimants and the protesters, and bearing in mind that lawful protests were not prohibited under the injunctions sought and the injunctions would be regularly reviewed with liberty to apply to vary, the grant of final injunctions was necessary and proportionate to prevent the claimants from being subject to the torts pleaded; that the balance of convenience favoured the grant of the final injunctions; and that, the court being satisfied that other factors for the exercise of the court's equitable discretionary power under section 37 of the 1981 Act were met, including inter alia that damages would not be adequate remedy and the terms of the injunction were sufficiently clear and precise, final injunctions would accordingly be granted (post, paras 70, 72, 74, 77–79, 100, 107, 110, 113, 169, 170, 174–176, 178, 180, 182, 185, 189, 192, 197–200, 201, 205, 208). F
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³ Senior Courts Act 1981, s 37: see post, para 43.

- A *Director of Public Prosecutions v Ziegler* [2022] AC 408, SC(E), *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983, SC(E) and *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB) applied.

The following cases are referred to in the judgment:

- A *v Secretary of State for the Home Department (No 2)* [2004] EWCA Civ 1123;
 B [2005] 1 WLR 414, CA
 B (*A Child*) (*Adequacy of Reasons*), *In re* [2022] EWCA Civ 407; [2022] 4 WLR 42; [2022] 2 FLR 936, CA
Bank Mellat v HM Treasury (No 2) [2013] UKSC 38; [2014] AC 700; [2013] 3 WLR 179; [2013] 4 All ER 495, SC(E)
Barking and Dagenham London Borough Council v Persons Unknown [2022] EWCA Civ 13; [2023] QB 295; [2022] 2 WLR 946; [2022] 4 All ER 51, CA;
 C sub nom *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47; [2024] AC 983; [2024] 2 WLR 45; [2014] 2 All ER 431, SC(E)
Bromley London Borough Council v Persons Unknown [2020] EWCA Civ 12; [2020] PTSR 1043; [2020] 4 All ER 114, CA
Canada Goose UK Retail Ltd v Persons Unknown [2020] EWCA Civ 303; [2020] 1 WLR 2802; [2020] 4 All ER 575, CA
Cuadrilla Bowland Ltd v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29, CA
 D *Demir v Turkey* (2008) 48 EHRR 54, GC
Director of Public Prosecutions v Cuciurean [2022] EWHC 736 (Admin); [2022] QB 888; [2022] 3 WLR 446; [2022] 4 All ER 1043; [2022] 2 Cr App R 8, DC
Director of Public Prosecutions v Ziegler [2021] UKSC 23; [2022] AC 408; [2021] 3 WLR 179; [2021] 4 All ER 985; [2021] 2 Cr App R 19, SC(E)
Dormeuil Frères SA v Nicolain International (Textiles) Ltd [1988] 1 WLR 1362; [1988] 3 All ER 197
 E *Esso Petroleum Co Ltd v Breen* [2023] EWHC 2013 (KB)
Esso Petroleum Co Ltd v Persons Unknown [2023] EWHC 1837 (KB)
Fourie v Le Roux [2007] UKHL 1; [2007] 1 WLR 320; [2007] Bus LR 925; [2007] 1 All ER 1087, HL(E)
High Speed Two (HS2) Ltd v Persons Unknown [2022] EWHC 2360 (KB)
Hooper v Rogers [1975] Ch 43; [1974] 3 WLR 329; [1974] 3 All ER 417, CA
 F *Ineos Upstream Ltd v Persons Unknown* [2019] EWCA Civ 515; [2019] 4 WLR 100; [2019] 4 All ER 699, CA
Monsanto plc v Tilly [2000] Env LR 313, CA
R (Finch) v Surrey County Council [2024] UKSC 20; [2024] PTSR 988; [2024] 4 All ER 717, SC(E)
R (SG) v Secretary of State for Work and Pensions [2015] UKSC 16; [2015] PTSR 471; [2015] 1 WLR 1449; [2015] 4 All ER 939, SC(E)
 G *Redmond-Bate v Director of Public Prosecutions* [2000] HRLR 249, DC
Secretary of State for Transport v Cuciurean [2020] EWHC 2614 (Ch); [2021] EWCA Civ 357, CA
Shell UK Ltd v Persons Unknown [2023] EWHC 1229 (KB); [2023] 1 WLR 4358; [2023] 4 All ER 1075
Shell UK Ltd v Persons Unknown [2024] EWHC 1546 (KB)
Shell UK Oil Products Ltd v Persons Unknown [2022] EWHC 1215 (QB)
 H *Thomas A Edison Ltd v Bullock* [1912] HCA 72; 15 CLR 679
Valero Energy Ltd v Persons Unknown [2024] EWHC 134 (KB)
Vastint Leeds BV v Persons Unknown [2018] EWHC 2456 (Ch); [2019] 4 WLR 2

The following additional cases were cited in argument or referred to in the skeleton arguments:

High Speed Two (HS2) Ltd v Persons Unknown [2024] EWHC 1277 (KB)

- Mayor of London v Hall* [2010] EWCA Civ 817; [2011] 1 WLR 504, CA A
National Highways Ltd v Persons Unknown [2023] EWCA Civ 182; [2023] 1 WLR 2088, CA
National Highways Ltd v Persons Unknown [2023] EWHC 1073 (KB)
North Warwickshire Borough Council v Baldwin [2023] EWHC 1719 (KB)
Sharif v Birmingham City Council [2020] EWCA Civ 1488; [2021] 1 WLR 685; [2021] 3 All ER 176, CA
Transport for London v Persons Unknown [2023] EWHC 1038 (KB) B
Transport for London v Persons Unknown [2023] EWHC 1201 (KB)

APPLICATIONS

Shell UK Ltd v Persons Unknown

By a claim form the claimant, Shell UK Ltd, the freehold owner of the Shell Haven Oil Refinery facility (“Haven”), applied for an injunction against persons unknown entering or remaining on Haven. The grounds of claim were that the actions of the defendants amounted to (i) trespass, (ii) public nuisance, and (iii) private nuisance in the form of interference with the claimant’s access from the public highway and interference with the claimant’s private right of way. C

On 5 May 2022 Bennathan J granted an interim injunction expiring on 2 May 2023 against persons unknown in respect of Haven. On 23 May 2023, Hill J granted an extension of the injunction for a further year until 12 May 2024. On 17 April 2024, Cotter J granted a further extension of the injunction until trial of the action. In the final hearing the claimant sought, inter alia, a final injunction to restrain the following acts: (i) entering or remaining upon any part of Haven without the claimant’s consent; (ii) blocking access to any of the gateways to Haven the locations of which were identified and marked on the plans appended to the draft order; (iii) causing damage to any part of Haven by (a) affixing themselves, or any object, or thing, to any part of Haven, or to any other person or object or thing on or at Haven, (b) erecting any structure in, on or against Haven, (c) spraying, painting, pouring, sticking or writing with any substance on or inside any part of Haven. D E F

The facts are stated in the judgment, post, paras 3–7, 10–21, 29–31, 35, 36, 39, 89–92.

Shell International Petroleum Co Ltd v Persons Unknown

By a claim form the claimant, Shell International Petroleum Co Ltd, the freehold owner of the Shell Centre Tower (“Tower”), applied for an injunction against persons unknown entering or remaining on Tower. The grounds of claim were that the actions of the defendants amounted to (i) trespass, (ii) public nuisance in the form of obstruction of the highway, (iii) private nuisance in the form of interference with access from the highway and with the claimant’s private right of way. G

On 5 May 2022 Bennathan J granted an interim injunction expiring on 2 May 2023 against persons unknown in respect of Tower. On 23 May 2023, Hill J granted an extension of the injunction for a further year until 12 May 2024. On 17 April 2024, Cotter J granted a further extension of the injunction until trial of the action. In the final hearing the claimant sought, inter alia, a final injunction to restrain the following acts: (i) entering or remaining upon any part of Tower without the claimant’s consent; H

- A (ii) blocking access to any of the gateways to Tower the locations of which were identified and marked on the plans appended to the draft order; (iii) causing damage to any part of Tower by (a) affixing themselves, or any object, or thing, to any part of Tower, or to any other person or object or thing on or at Tower, (b) erecting any structure in, on or against Tower, (c) spraying, painting, pouring, sticking or writing with any substance on or inside any part of Tower.

B The facts are stated in the judgment, post, paras 3–7, 10–20, 29, 30, 32, 35, 37, 39, 89–92.

Shell UK Oil Products Ltd v Persons Unknown and others

By a claim form the claimant, Shell UK Oil Products Ltd, applied for an injunction against persons unknown to restrain them from damaging and/or obstructing access to or damaging petrol stations owned by it or using its brand, by unlawful means. The ground of the claim was that the defendants' actions amounted to conspiracy to injure.

- C On 5 May 2022 McGowan J granted an injunction on an emergency basis against persons unknown without notice, restraining the defendants from undertaking certain activities including damaging petrol pumps and preventing motorists from entering petrol station forecourts to prevent the claimant from carrying on its business. On 20 May 2022 Johnson J granted an extension of the injunction for a period of up to a year until 12 May 2023. On 23 May 2023, Hill J granted a further extension of the injunction for a year until 12 May 2024. On 15 March 2024 Soole J ordered the joinder of 14 named defendants, including Emma Ireland, the seventh defendant, and Charles Philip Laurie, the eighth defendant, to the claim. On 17 April 2024
- D Cotter J granted a further extension of the injunction until trial of the action. In the final hearing the claimant sought a final injunction to restrain the following acts in relation to the disruption or interference with the supply or sale of fuel to those premises or outlets connected to the claimant: (i) directly blocking or impeding access to any pedestrian or vehicular entrance to a petrol station forecourt or to a building within the petrol station; (ii) causing damage to any part of a petrol station or to any equipment or infrastructure
- E upon it; (iii) operating or disabling any switch or other device in or on a petrol station so as to interrupt the supply of fuel from that petrol station, or from one of its fuel pumps, or so as to prevent the emergency interruption of the supply of fuel at the petrol station; and (iv) causing damage to any part of a petrol station, by (a) affixing or locking themselves, or any object or person, to any part of a petrol station, or to any other person or object
- F on or in a petrol station, (b) erecting any structure in, on or against any part of a petrol station, (c) spraying, painting, pouring, depositing or writing in any substance on to any part of a petrol station.

G The facts are stated in the judgment, post, paras 3–7, 10–20, 23, 24, 29, 30, 33, 34, 38, 39, 89–93.

- H *Myriam Stacey KC and Joel Semakula* (instructed by *Eversheds Sutherland (International) LLP*) for the claimants.

Two of the named defendants in the third claim, Emma Ireland and Charles Philip Laurie, in person.

The other defendants did not appear and were not represented.

The court took time for consideration.

5 December 2024. DEXTER DIAS J handed down the following judgment. A

1 This is the judgment of the court.
2 To assist the parties and the public to follow the court’s line of reasoning, the text is divided into 13 sections and four annexes as set out in the table below. B

Section	Contents	Paragraphs
I.	Introduction	3–9
II.	Four contexts: 1. The burning of fossil fuels 2. The Special Rapporteur’s mission 3. Abandonment of costs 4. The cautionary approach to persons unknown	10–19
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VIII.	Law 1. Statute 2. Common law	40–58
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X.	Aarhus Convention analysis	142–171
XI.	Analysis of the 15 factors: Part II (factors 7–15)	172–199
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XIII.	Disposal	208–210
Annex A	Defendants in Claim 3	
Annex B	Procedural history	
Annex C	Materials	
Annex D	Draft undertaking (Claim 3)	

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I. Introduction

3 Three claims are being heard together. The case overall is about whether the claimants, a number of companies in the Shell Group (“Shell”), should be granted final injunctions against persons unknown (“PUs”) and a number of named environmental protesters, who took direct and deliberately disruptive action against Shell during 2022. Two of these protesters, Emma Ireland and Charles Philip Laurie, appear in person and addressed the court at length, carefully explaining why they, and many other protesters, have directed protests against Shell. The protesters include supporters or affiliates of environmental campaigning and activism groups including Just Stop Oil (“JSO”), Extinction Rebellion (“XR”), Youth Climate Swarm and Scientists’ Rebellion. G

4 The protesters strongly object to Shell’s involvement in the extraction, distribution, supply and sale of fossil fuels, and thus Shell’s involvement H

A in the burning of the fuels. Such incineration releases carbon dioxide and greenhouse gases into the atmosphere through the process of hydrocarbon combustion. Indeed, the whole point of the complex supply chain created by the fossil fuel industry is the supply of such fuel for burning hydrocarbons. The three claims sharply raise, perhaps for the first time in these direct action environmental protest cases, the applicability and legal relevance of the Aarhus Convention (“Aarhus”) (full title: Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), an international convention that the United Kingdom is party to, having ratified the treaty almost 20 years ago in 2005 (analysed in detail in Section X. Aarhus Convention analysis). In particular, Ms Ireland and Mr Laurie rely on article 3(8) of Aarhus, which provides in so far as material: “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalised, persecuted or harassed in any way for their involvement.”

B 5 Their joint submission is that the grant of final injunctions would be “in breach of Aarhus” and “an excessive use of the law”. More generally, the environmental protest groups in these three claims maintain that burning fossil fuel is a major contributor to the environmental emergency they wish to bring to the urgent attention of the general public and the Government. They intend to pressurise the Government into ending investment in fossil fuels and halting the issuing of licences and consents for their exploration, development and production. In pursuit of this aim, from the spring until the autumn of 2022, environmental groups, including JSO, directed protests at the fossil fuel industry, including Shell. Their tactics have been variable and have explored new ways to manifest their rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) to freedom of expression and assembly and association. Some people support them; others share their concerns about climate change and the environment but disapprove of their protest methods. In this it is important to remind oneself of the words of Sedley LJ in *Redmond-Bate v Director of Public Prosecutions* [2000] HRLR 249, para 20:

F “Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.”

G Shell maintains that the acts of the protesters have gone beyond mere irritation, but damage or create the strong probability of damaging Shell’s substantive rights under the civil law. Various of the campaign groups have explicitly called for acts of “civil disobedience”, a term with a long and complex history. It was defined by Rawls in his landmark *A Theory of Justice* (1971) as a “public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government” (p 364).

H 6 A key issue the court has been invited to examine by the defendants is whether peaceful acts contrary to the law and the rights of others under the civil law are protected by the Aarhus Convention, and if so, in what way. Previously in these claims, when Shell sought to protect its commercial interests from what it said was unlawful protest activity, various judges of

this court granted interim injunctions against a shifting array of defendants to prohibit direct action protest which targeted three different parts of Shell’s broad business activities: A

(1) “**Haven**”: Shell’s Haven oil refinery in Stanford-le-Hope, Essex, a substantial fuel storage and distribution facility (“Claim 1”);

(2) “**Tower**”: Shell Centre Tower on London’s South Bank, an administrative centre for Shell’s UK operations (“Claim 2”); B

(3) “**Petrol Stations**”: petrol stations which are retail customers of Shell, buying Shell’s fuel and selling it on to the public and commercial customers via fuel pumps on petrol station forecourts (“Claim 3”).

7 This judgment must be read in conjunction with the previous judgments of this court. The relevant judgments are tabulated below for convenience and when mentioned will be referred to by the name of the judge (for example, “the Hill judgment” or “Johnson J at para XX”). In all of them, Shell succeeded in obtaining or renewing interim injunctions. C

Judgment date	Site(s)	Expiry	Judge	Citation	
5 May 2022	Haven Tower	2 May 2023	Bennathan J	Ex tempore (no transcript available)	D
20 May 2022	Petrol Stations	12 May 2023	Johnson J (hearing date: 13 May 2022)	[2022] EWHC 1215 (QB)	
23 May 2023	All three claims	12 May 2024	Hill J (hearing dates: 25–26 April 2023)	[2023] EWHC 1229 (KB) [2023] 1 WLR 4358	E
17 April 2024	All three claims	12 November 2024 or four weeks after final hearing (whichever later)	Cotter J	[2024] EWHC 1546 (KB)	F

8 Therefore, these are three separate but connected claims that have been managed together for administrative convenience and efficiency. I come to this case completely independently and have considered the claims afresh. Having received submissions for a day and a half, I reserved judgment and extended the interim injunctions pending the handing down of the court’s decision. This is that decision. G

9 Before turning to the specific details of the claims, there are four immediate contexts to the applications for final injunctive relief.

II. Four contexts

Context 1: The burning of fossil fuels H

10 It is a significant understatement to say that climate change and the existence or not of an environmental emergency are controversial, highly contested issues. There has been a mass of litigation in both civil and criminal courts as a result of this vital public debate. The most recent expression in the courts comes from our highest court, the Supreme Court, in *R (Finch)*

A *v Surrey County Council* [2024] PTSR 988. Neither party had provided the court with this authority, but the court drew it to their attention and ensured both parties had an opportunity to read its material passages and make submissions on it. Lord Leggatt JSC, delivering the unanimous judgment of the court, said at the very outset of the court’s judgment:

B “1. Anyone interested in the future of our planet is aware by now of the impact on its climate of burning fossil fuels—chiefly oil, coal and gas. When fossil fuels are burnt, they release carbon dioxide and other ‘greenhouse gases’—so called because they act like a greenhouse in the earth’s atmosphere, trapping the sun’s heat and causing global surface temperatures to rise. According to the United Nations Environment Programme (‘UNEP’) Production Gap Report 2023, p 3, close to 90% of global carbon dioxide emissions stem from burning fossil fuels.

C “2. The whole purpose of extracting fossil fuels is to make hydrocarbons available for combustion. It can therefore be said with virtual certainty that, once oil has been extracted from the ground, the carbon contained within it will sooner or later be released into the atmosphere as carbon dioxide and so will contribute to global warming.

D This is true even if only the net increase in greenhouse gas emissions is considered. Leaving oil in the ground in one place does not result in a corresponding increase in production elsewhere: see UNEP’s 2019 Production Gap Report, p 50, which reported, based on studies using elasticities of supply and demand from the economics literature, that each barrel of oil left undeveloped in one region will lead to 0.2 to 0.6 barrels not consumed globally over the longer term.”

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11 It is that “virtual certainty” noted by the Supreme Court that is of concern to the defendants in this case, objecting to Shell’s involvement in the fossil fuel business due to its damaging impact, they maintain, on climate change and the environmental emergency. Shell’s position is simple: its business is lawful. It has rights under the law. These rights have been

F violated by protesters and there is a real and imminent risk of future unlawful interference by direct action activists. This is Shell’s rationale for seeking, securing and continuing injunctive relief. Shell seeks the court’s legal protection against direct action which breaches its “civil rights” as the Supreme Court termed them in the recent seminal case of *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983, para 167 (“*Wolverhampton*”). The term “civil rights”, coming to prominence in the

G 1960s, here simply means Shell’s rights under the civil law. It is important to note that the draft orders sought by Shell do not seek to prevent lawful protest. Direct action is action that seeks to prevent, obstruct or interfere with other people’s ability to carry out their lawful activity. However, the two defendants who appeared and represented themselves in the case claim that their acts of protest are lawful (or not unlawful) because they are

H necessary and proportionate infringements of Shell’s rights. This is because their protests, and those of others, must be seen in the context of the damage they claim Shell is causing through its fossil fuel commercial activities. Indeed, Ms Ireland submits that if Shell properly understood the damage it is producing across the world, it would “consent” to the protests. Shell disputes this.

Context 2: The Special Rapporteur's mission

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12 The second context is the recent “mission” visit to the United Kingdom by the United Nations Special Rapporteur on Environmental Defenders. This office was established in October 2021 by a consensus of parties to the Aarhus Convention, including the United Kingdom, to provide “a rapid response mechanism for the protection of environmental defenders” (United Nations Economic Commission for Europe (“UNECE”) website unece.org; examined in detail later in section X). This international treaty played a significant role in the submissions before me, and I must deal with its status in domestic law and assess its significance for the discretionary decisions the court is being invited to make in these claims.

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13 The role of the Special Rapporteur is to “take measures to protect any person experiencing, or at imminent threat of experiencing, penalisation, persecution, or harassment for seeking to exercise their rights under the Aarhus Convention”. The Aarhus Convention protects not just individuals but non-governmental organisations seeking to safeguard the environment. The Special Rapporteur is “the first mechanism specifically safeguarding environmental defenders to be established within a legally-binding framework either under the United Nations system or other intergovernmental structure” (both quotes UNECE, *ibid*).

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14 The Special Rapporteur who visited the United Kingdom is Michel Forst. Mr Forst was elected at an extraordinary meeting of signatory parties in October 2022. He visited between 10–12 January 2024. I set out parts of his mission report since it is cited by and relied on by both Ms Ireland and Mr Laurie, who took part in direct action protests at Shell’s Cobham petrol station in August 2022 (Claim 3). They emphasise the significance of the mission report, coming as it does from an office holder appointed by the parties to this important international Convention that the United Kingdom has chosen to become party to. Mr Forst writes:

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“On 10–12 January 2024, I made my first visit to the United Kingdom since I was elected as UN Special Rapporteur on Environmental Defenders under the Aarhus Convention in June 2022. During my visit I met with government officials and with environmental defenders, including NGOs, climate activists and lawyers. I am issuing this statement in the light of the extremely worrying information I received in the course of these meetings regarding the increasingly severe crackdowns on environmental defenders in the United Kingdom, including in relation to the exercise of the right to peaceful protest.

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“These developments are a matter of concern for any member of the public in the UK who may wish to take action for the climate or environmental protection. The right to peaceful protest is a basic human right. It is also an essential part of a healthy democracy. Protests, which aim to express dissent and to draw attention to a particular issue, are by their nature disruptive. The fact that they cause disruption or involve civil disobedience do not mean they are not peaceful. As the UN Human Rights Committee has made clear, states have a duty to facilitate the right to protest, and private entities and broader society may be expected to accept some level of disruption as a result of the exercise of this right.

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“During my visit, however, I learned that, in the UK, peaceful protesters are being prosecuted and convicted under the Police, Crime,

A Sentencing and Courts Act 2022, for the criminal offence of ‘public nuisance’, which is punishable by up to ten years’ imprisonment. I was also informed that the Public Order Act 2023 is being used to further criminalise peaceful protest. In December 2023, a peaceful climate protester who took part for approximately 30 minutes in a slow march on a public road was sentenced to six months’ imprisonment under the 2023 law ...

B “In addition to the new criminal offences, I am deeply troubled at the use of civil injunctions to ban protest in certain areas, including on public roadways. Anyone who breaches these injunctions is liable for up to two years’ imprisonment and an unlimited fine. Even persons who have been named on one of these injunctions without first being informed about it—which, to date, has largely been the case—can be held liable for the legal costs incurred to obtain the injunction and face an unlimited fine and imprisonment for breaching it. The fact that a significant number of environmental defenders are currently facing both a criminal trial and civil injunction proceedings for their involvement in a climate protest on a UK public road or motorway, and hence are being punished twice for the same action, is also a matter of grave concern to me.

D “As a final note, during my visit, UK environmental defenders told me that, despite the personal risks they face, they will continue to protest for urgent and effective action to address climate change. For them, the threat of climate change and its devastating impacts are far too serious and significant not to continue raising their voice, even when faced with imprisonment. We are in the midst of a triple planetary crisis of climate change, biodiversity loss and pollution. Environmental defenders are acting for the benefit of us all. It is therefore imperative that we ensure that they are protected. While the gravity of the information I received during my visit leads me to issue the present statement to express my concerns without delay, I will continue to look more deeply into each of the issues raised during my visit and in the formal complaints submitted to my mandate. In this regard, I also look forward to engaging in a constructive dialogue with the Government of the United Kingdom in order to ensure that members of the public in the UK seeking to protect the environment are not subject to persecution, penalisation or harassment for doing so.

“23 January 2024”

G *Context 3: Abandonment of costs*

H 15 The third context is a development in court at the very end of legal submissions on the second listed day of the hearing. Shell announced through counsel that it would not be seeking costs against the named defendants in this claim. This was announced in open court without notice to the court or the two attending defendants, Ms Ireland and Mr Laurie. Shell’s change of position caused them to be overwhelmed by emotion, given the strain they have been under as litigants in person. They had feared being bankrupted through an award of Shell’s costs against them. The court directed that Shell’s new stance on costs be reduced to writing so there could be no future misunderstanding. The script ultimately filed is in these terms:

“1. In this particular case [Claim 3], [Shell UK Oil Products Ltd] has taken the decision not to seek costs against named defendants in the event that it secures the injunctive relief sought.

“2. That decision has been arrived at in the specific circumstances of these proceedings including by having regard to the fact that: (i) the court was addressed by unrepresented named defendants who acted in person and who had not breached the injunctions since they have been in place; (ii) substantive new issues of public importance were raised by those defendants namely the applicability of the Aarhus Convention as a consideration to the court’s discretion under section 37 of the Senior Courts Act 1981 in the context of environmental protest injunctions, which had not been previously considered by any court to date; and (iii) they conducted themselves throughout the proceedings in a respectful and constructive manner to everyone and were of assistance to the court.

“3. However, this is a bespoke decision which is limited to the present case and does not reflect Shell’s policy or its approach in any future case.

“4. In deciding not to pursue costs in this case, C3 is giving up its *in principle* entitlement to its reasonable and proportionate costs against those persons who have been joined pursuant to the obligations under [*Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802] and against whom a final injunction is secured on the application of the usual costs rules: CPR r 44.2(2)(a). Costs should follow the event and a successful party’s entitlement to such costs is necessary in a democratic society for the purposes of articles 10 and 11 of the ECHR. C3’s *in principle* entitlement is reinforced by the fact that: (i) that the named defendants were invited to sign undertakings in order to avoid potential costs consequences; (ii) the consequence of refusing to sign such undertakings was repeatedly explained to them; and (iii) the desire to make submissions is no justification for refusing to sign such undertakings, in circumstances where interested persons may address the court pursuant to CPR r 40.9 and/or the Cotter J Petrol Stations Order provide for any other person who ‘claims to be affected by the Order and wishes to vary or discharge it or to be heard at the final hearing’ (para 15).”

Context 4: The cautionary approach to PUs

16 Each of the three applications for final orders includes applications for injunctive relief against PUs. This is a serious step. It should not be underestimated or taken for granted as the senior courts have repeatedly observed. The Court of Appeal noted in *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 (“*Ineos*”), para 31: “A court should be inherently cautious about granting injunctions against unknown persons since the reach of such an injunction is necessarily difficult to assess in advance.”

17 This cautionary note was repeated by the court in *Bromley London Borough Council v Persons Unknown* [2020] PTSR 1043, para 34: “a court should always be cautious when considering granting injunctions against persons unknown ...”

18 This is because the precautionary prohibition may seriously impinge on the right to freedom of expression and the right to protest of very

A large numbers of members of the public. This is why such injunctions are sometimes called injunctions “against the world” (*contra mundum*). While such far-reaching scope is sometimes authorised in intellectual property and privacy cases, when it occurs in public protest situations, its seriousness attains a different complexion. It is not something that can or should go through as a matter of routine, and is an aspect of these claims I have anxiously considered.

B 19 I have taken the non-conventional step of providing these four contexts at the beginning of the judgment to illustrate how complex, important and multifaceted these claims are. To offer another crude measure: the papers provided to me exceeded 8,000 pages. Inevitably, this judgment, which must deal with all three claims, is lengthy. I have tried to simplify wherever possible. However, some of the complexity remains indispensable to an informed understanding of the court’s reasoning, and for that there can be no apology.

III. Parties

20 I now detail the parties to the claims. In all three claims the Shell corporate entity involved is represented by Ms Stacey KC and Mr Semakula. No defendant appeared in any of the claims save for Claim 3 (Petrol Stations), where Ms Ireland and Mr Laurie appeared in person. Both counsel and both litigants in person made submissions to the court, for which it is grateful. The court particularly wishes to note the thoughtful and respectful way in which Ms Ireland and Mr Laurie conducted themselves throughout. Further, the public gallery was invariably filled with their supporters, who also conducted themselves responsibly throughout. This demonstrates how this serious and contentious issue can be explored in public in a productive and constructive way.

Claim 1: Haven

F 21 In the first claim, the claimant is Shell UK Ltd. This company is the freeholder of the Shell Haven Oil Refinery facility, on the Thames Estuary, south of Basildon and between Tilbury and Southend-on-Sea. The defendants are PUs. The torts relied on are trespass, public nuisance, private nuisance (interference with access from the public highway) and private nuisance (interference with private right of way).

Claim 2: Tower

G 22 In the second claim, the claimant is Shell International Petroleum Co Ltd. This company is the freehold owner of the Shell Centre Tower, a large office building rising prominently on the South Bank’s Belvedere Road near to the London Eye. The defendants are PUs. The torts relied on are trespass, public nuisance in the form of obstruction of the highway, private nuisance in the form of interference with access from the highway, and private nuisance in the form of interference with private right of way.

Claim 3: Petrol Stations

23 In the third claim, the claimant is Shell UK Oil Products Ltd. This company supplies fuel to Shell-branded petrol stations across the country.

While Shell has a proprietary right in the land on which some petrol stations are situated, it does not in all the outlets it wishes to protect through injunctive relief. Therefore, rather than trespass or nuisance, the tort relied on is a conspiracy to injure. The claim, put very shortly, is that jointly conducted direct action at or on petrol station forecourts creates very real risk of significant harm and injury. The defendants are PUs and a number of named defendants. 14 identified individuals were joined to the claim by Soole J at a review and case management hearing on 15 March 2024. They had been arrested on suspicion of criminal damage and/or aggravated trespass and/or conspiracy to destroy or damage property and/or wilful obstruction of the highway and/or causing a public nuisance and/or being in possession of an offensive weapon at the petrol station sites in connection with certain environmental protest groups.

24 On 16 October 2023, Shell's solicitors wrote to 29 of the 30 protesters identified as being arrested at petrol stations protests at Cobham Services and Acton Vale in August 2022. One person had died in the interim. Shell invited the remaining 29 protesters to agree to undertakings not to engage in certain protest activities, the breach of such promise exposing them to fine, asset seizure or imprisonment for contempt of court. A further letter was sent on 16 November 2023. 14 people gave undertakings. That left 15 people. One person gave an undertaking on 5 March 2024. Therefore, when the matter came before Soole J on 15 March, the remaining 14 people were joined to the claim as named defendants. Of these named defendants, on 26 September 2024, the third named defendant gave an undertaking in the terms the claimant sought. That left 13 defendants, including Ms Ireland as the seventh defendant and Mr Laurie as the eighth.

IV. Issues

25 The issues before the court were:

(1) whether to grant final orders in respect of each of the three claims ("Issue 1");

(2) whether the duration of the final orders should be five years ("Issue 2");

(3) whether alternative service orders should be granted ("Issue 3");

(4) whether to grant the application to remove the third defendant from Claim 3 (Petrol Stations) and consequently amend the claim form and particulars of claim to reflect the strike out ("Issue 4").

26 I can deal with Issue 4 immediately. I have carefully reviewed the evidence and it is appropriate to grant the application to remove the third defendant in the Petrol Stations claim. She has given the undertaking sought. I need say no more about it. That leaves the three prime issues for the court to determine.

V. Approach to judgment

27 I make plain that my approach to the judgment text is heavily informed by the approach of the Court of Appeal in *In re B (A Child) (Adequacy of Reasons)* [2022] 4 WLR 42. The court stated at para 59: "a judgment is not a summing-up in which every possibly relevant piece of evidence must be mentioned ..."

- A 28 Therefore, I focus on what has been essential to my determinations in this case. Numerous side issues were thrown up. I do not need to resolve them all. The critical issues are clear. I focus on those as are necessary to determine the remaining three prime identified issues here. While I do not set out all the evidence the court received, and it is extensive, I emphasise that as part of my review I considered or reconsidered all the prime evidence.
- B I reserved judgment for precisely that reason.

VI. *The protests*

- C 29 The targeting of Shell in the first part of 2022 led to its seeking injunctive relief from the court. That said, Shell has repeatedly emphasised that it does not oppose lawful protest. The most recent evidential expression of this sentiment can be found in the statement of Paul Eilering, the interim cluster security manager for the Shell businesses' UK assets, in a statement filed on 1 July 2024 in support of the final injunctions:

- D "The claimants have not sought orders which stop protesters from undertaking peaceful protests whether near the Shell Sites or otherwise. That remains the case. The claimants' concern continues to be the need to reinforce its proprietary rights and to mitigate the serious health, safety and wellbeing risks (to the claimants' employees, contractors, visitors and indeed protesters themselves) posed by the kind of unlawful actions and activities which prompted the claimants to seek injunctive relief back in April 2022."

- E 30 Against this, the protesters maintain that Shell is in truth more concerned about its profits and brand reputation than the welfare of people or the planet. As Mr Laurie put it, Shell "just doesn't care" and "does not take the climate emergency seriously". As Ms Ireland says, if Shell did actually care, and understood the consequences of its actions, "it would consent to the protests". How have matters come to this? I now provide a
- F brief account of the protests.

Haven

- G 31 Mr Prichard-Gamble, a security manager with Shell, provided evidence that Shell became aware in early 2022 that environmental campaign groups, including XR and JSO, intended to target the fossil fuel industry, including Shell. XR called for a campaign of civil disobedience, which would include "testing the limits of the protest law", to end "the fossil fuel economy". One of Shell's distribution operations managers Ian Brown provided Bennathan J with a statement dated April 2022 detailing protest activity around Haven. This included a six-hour incident on 3 April 2022 whereby a group of protesters blocked the main access road to Haven, boarded tankers and blocked a tanker, requiring police attendance. Further, protesters tried to access the jetty at Haven; and similar incidents at fuel-related sites near to Haven caused concern that Haven was an imminent target. Deep anxiety arose because the Haven site is used for the storage and distribution of highly flammable hazardous products. Unauthorised access could cause a fire or explosion. Unauthorised access to the jetty could lead
- H

to a significant release of hydrocarbons into the Thames Estuary resulting in serious pollution and risk to health and the local environment. Thus Shell's stated concern was for the safety and well-being of Shell's staff and contractors, the protesters themselves and the local environment. A

Tower

32 On 6 April 2022, what appeared like paint was thrown on the walls and above one of the staff entrances to the Tower, resulting in black marks and substantial spattering. On 13 April 2022 approximately 500 protesters closed on the Tower, banging drums and carrying banners stating "Jump Ship" and "Shell=Death", clearly directed at Shell staff, several glued themselves to the reception area of the Tower and another Shell office nearby. On 15 April 2022, approximately 30 protesters with banners obstructed the road outside the Tower. On 20 April 2022, 11 protesters with banners, used a megaphone and ignited smoke flares. Protesters also inscribed the XR logo on the outside of the Tower. On several occasions the Tower was placed in security "lockdown". B C

Petrol Stations

33 Benjamin Austin is a health, safety and security manager with Shell. He provided a statement to Johnson J about protests directed at Petrol Stations. He narrated how on 28 April 2022, two petrol stations on the M25 were the targets of protest activity. Forecourt entrances were blocked and the displays of fuel pumps were either obscured with spray paint or smashed with hammers. Kiosks were interfered with "to stop the flow of petrol", while protesters glued themselves to one another or fuel pumps or the roof of a tanker. In total, 55 fuel pumps were damaged, including 35 out of the 36 pumps at Cobham. They became unsafe for use and the forecourt was closed. Johnson J noted at para 9 that the protesters were "committed to protesting in ways that are unlawful, short of physical violence to the person". The campaign websites referred to "civil disobedience", "direct action", and a willingness to risk "arrest" and "jail time". He continued at para 18: D E F

"18. 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 ... G

"19. The use of mobile telephones on the forecourt (outside a vehicle) is prohibited for that reason. The evidence shows that at the protests on 28 April 2022 protesters 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.' H

- A 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.”

- B 34 On 24 August 2022, there was another protest at the Cobham M25 petrol station. This was the direct action that Ms Ireland and Mr Laurie took part in. The forecourt was blocked by seated protesters. Two petrol pump screens were smashed. Ms Ireland did not do this. Mr Laurie had intended to smash petrol pump screens, but “changed course”, as he put it in his witness statement, when he saw police at the scene. He glued himself to the ground instead, blocking the forecourt. Both Ms Ireland and Mr Laurie were arrested. They stand trial at the Crown Court at Winchester in August 2025 and are on bail pending that hearing.

C VII. *Injunction terms*

- D 35 The future acts of protest that the claimants seek to restrain vary according to the site. The shared intention is to avoid interference with the claimants’ right under the civil law not to be subject to the torts specifically pleaded by Shell.

Claim 1: Haven

- E 36 In respect of Haven, the acts sought to be restrained are:
(a) entering or remaining upon any part of Haven without the consent of the claimant;
(b) blocking access to any of the gateways to Haven the locations of which are identified and marked blue on “Plan 1” and “Plan 2” which are appended to this order in the third schedule;
(c) causing damage to any part of Haven whether by: (i) affixing themselves, or any object, or thing, to any part of Haven, or to any other person or object or thing on or at Haven; (ii) erecting any structure in, on or against Haven; (iii) spraying, painting, pouring, sticking or writing with any substance on or inside any part of Haven; or (iv) otherwise.
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Claim 2: Tower

- 37 The Tower injunction is applied for in similar terms to Claim 1.

G *Claim 3: Petrol Stations*

- 38 In respect of Petrol Stations, the acts relate to the disruption or interference with the supply or sale of fuel (to those premises or outlets connected to Shell). They are specified as:
(a) directly blocking or impeding access to any pedestrian or vehicular entrance to a Petrol Station forecourt or to a building within the Petrol Station;
(b) causing damage to any part of a Petrol Station or to any equipment or infrastructure (including but not limited to fuel pumps) upon it;
(c) operating or disabling any switch or other device in or on a Petrol Station so as to interrupt the supply of fuel from that Petrol Station, or from
- H

one of its fuel pumps, or so as to prevent the emergency interruption of the supply of fuel at the Petrol Station; and A

(d) causing damage to any part of a Petrol Station, whether by: (i) affixing or locking themselves, or any object or person, to any part of a Petrol Station, or to any other person or object on or in a Petrol Station; (ii) erecting any structure in, on or against any part of a Petrol Station; (iii) spraying, painting, pouring, depositing or writing in any substance on to any part of a Petrol Station. B

39 Each draft order further specifies that the defendants must not do any of these acts by means of another person acting on his/her/their behalf, or acting on his/her/their instructions, or by another person acting with his/her/their encouragement.

VIII. Law C

40 Frequently in judgments, judges have the advantage of saying that the law is uncontroversial and can be stated shortly. I do not have that advantage. The law around protests and particularly injunctive relief against PUs—what is sometimes called “against the world”—has rapidly evolved in the last few years. Few areas of law in the recent past have undergone development of such rapidity accompanied by stringent scrutiny all the way to the Supreme Court. Therefore, the legal context for these claims is markedly different to that of a decade ago, or even five years previously, as the Court of Appeal noted in *Barking and Dagenham London Borough Council v Persons Unknown* [2023] QB 295 (“*Barking*”). D

41 This has, as Lord Reed PSC, Lord Briggs JSC and Lord Kitchin put it in *Wolverhampton* [2024] AC 983, para 22, “illustrate[d] the continuing ability of equity to innovate both in respect of orders designed to protect and enhance the administration of justice ... [and] in respect of orders designed to protect substantive rights”. E

42 I will set down the main features of this evolution, simplifying wherever possible, dealing first with the discretionary power confirmed by section 37 of the Senior Courts Act 1981 (“SCA 1981”) before reviewing the main features of the common law. I stress that I have considered and adopted the law as previously set down in the claims at the interlocutory stage by Johnson, Hill and Cotter JJ in the judgments tabulated above, and am grateful to them for it. F

1. Statute G

43 The authority to grant an injunction in the exercise of the court’s general “equitable discretionary power” (*Wolverhampton*, para 167) is set down in section 37 of the SCA 1981. It provides: “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” and “on such terms and conditions as the court thinks just”. H

44 Injunctions are equitable in origin and section 37 is a statutory “confirmation” of how decisions about them should be approached (*Wolverhampton*, para 17). Section 37, as explained by Lord Scott of Foscote in *Fourie v Le Roux* [2007] 1 WLR 320, simply confirms and restates the power of the courts to grant injunctions which existed before the Supreme Court of Judicature Act 1873 (36 & 37 Vict c 66) (“the 1873 Act”) and still

A exists. That power was transferred to the High Court by section 16 of the 1873 Act (see Spry, *Equitable Remedies*, 9th ed (2014), p 333). The power of courts with equitable jurisdiction to grant injunctions is, subject to any statutory limitations, unlimited.

2. Common law

B 45 Survey of the authorities involving recent protest cases reveals different formulations of the “test” (if that it is) to be applied. This is inevitable: the senior courts have repeatedly stated that there is no uniform and invariable test or standard. This was recognised as long ago as *Hooper v Rogers* [1975] Ch 43, where at p 50, Russell LJ, giving the judgment of the Court of Appeal said:

C “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.”

D 46 In this case, while recognising the existence of no “absolute standard” to definitively measure how to do justice between the parties, I adopt the approach of the Supreme Court in *Wolverhampton* [2024] AC 983 at para 218. The claimant:

E “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.”

F 47 For assistance, I add para 167(i) since it was referred to:

“if:

G “(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.”

H 48 Linden J was, to my mind, right to sound a note of caution in *Esso Petroleum Co Ltd v Persons Unknown* [2023] EWHC 1837 (KB) at [63] about reducing any formulation to an invariable test:

“With respect, I confess to some doubts about whether the two questions which he [Marcus Smith J in *Vastint Leeds BV v Persons*

Unknown [2019] 4 WLR 2] identified are part of a ‘test’ or a ‘two stage’ test. To my mind they are questions which the court should consider in applying the test under section 37 of the Senior Courts Act 1981, namely what is ‘just and convenient’ but they are not threshold tests.”

49 Linden J then went on to quote from *Gee on Commercial Injunctions*, 7th ed (2021), which says at para 2–045:

“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, and the risk of wrongdoing 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.”

50 This, it seems to me, must be right. This is precisely why the Supreme Court has identified questions of the probability of rights breach with attendant harm. The court will inevitably and rightly be concerned by the risk of very grave consequence and may be prepared to grant injunctive relief where the risk of occurrence is lower than a case where the harm is less severe. All these factors have to be weighed together. Therefore, *solely* for organisational purposes, and without suggesting the existence of a universal test, I examine the case approaching the relevant questions by separating out two vital factors that need to be assessed holistically:

(1) **consequences:** of conduct in terms of (a) breach of rights and (b) level of harm (“Limb 1”);

(2) **risk:** of the conduct’s future occurrence (“Limb 2”).

51 The approach to be adopted when granting a final injunction in the context of protests against PUs (including newcomers) is not materially altered by the decision of the Supreme Court in *Wolverhampton*. The Supreme Court confirmed that injunctions can be granted against PUs, including “newcomers” (para 167) and expressly stated at para 235 that:

“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.”

52 Therefore, the following seven “procedural guidelines” in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (“*Canada Goose*”), para 82 remain good law and must still be satisfied in claims for protest injunctions against PUs and have been applied in all subsequent protest injunction cases:

“(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

A 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’.

B “(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.

C “(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.

D “(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.

E “(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.”

G 53 Ritchie J said in *Valero Energy Ltd v Persons Unknown* (“Valero”) [2024] EWHC 134 (KB) at [57] that:

“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.”

54 The Supreme Court stated in *Director of Public Prosecutions v Ziegler* [2022] AC 408 (“Ziegler”) that if the PUs’ rights under the ECHR (for instance under articles 10(2) and 11(2)) are engaged and restricted by the

proposed injunction, a careful balancing exercise is required. The injunction must be necessary and proportionate to the need to protect the claimants' right. A

55 The situation is different with trespass to private land. A landowner whose title is not disputed is *prima facie* entitled to an injunction to restrain a threatened or apprehended trespass on her or his land (*Snell's Equity*, 34th ed (2019), para 18–012). Further, Convention rights under the ECHR do not confer a right to trespass onto private land. The basis for this conclusion is that the rights under articles 9, 10 and 11 are qualified rights. This matter has been explored by the courts at senior level. In *Secretary of State for Transport v Cuciurean* [2021] EWCA Civ 357, Warby LJ said: B

“9. The following general principles are well settled, and uncontroversial on this appeal. C

“(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 at [43] (Laws LJ) and *City of London Corp'n v Samede* [2012] PTSR 1624, reflecting the Strasbourg jurisprudence. D

“(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 articles 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.” (Emphasis added.) E F

56 In *Director of Public Prosecutions v Cuciurean* [2022] QB 888, an HS2 protest case before the Divisional Court, Lord Burnett of Maldon CJ said:

“45. We conclude that there is no basis in the Strasbourg jurisprudence to support the defendant'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. The Strasbourg court has not made any statement to that effect. 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 v United Kingdom* (2003) 37 EHRR 38] at paras 47 and 52). There is no right of entry to private property or to any publicly owned property. The furthest 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* G H

- A of those rights, then it would not exclude the possibility of a state being obliged to protect them by regulating property rights.
- B “46. The approach taken by the Strasbourg court should not come as any surprise. Articles 10, 11 and A1P1 are all qualified rights. The Convention does not give priority to any one of those provisions. We would expect the Convention to be read as a whole and harmoniously. Articles 10 and 11 are subject to limitations or restrictions which are prescribed by law and necessary in a democratic society. Those limitations and restrictions include the law of trespass, the object of which is to protect property rights in accordance with A1P1. On the other hand, property rights might have to yield to articles 10 and 11 if, for example, a law governing the exercise of those rights and use of land were to destroy the essence of the freedom to protest. That would be an extreme situation. It has never been suggested that it arises in the circumstances of the present case, nor more generally in relation to section 68 of the [Criminal Justice and Public Order Act 1994]. It would be fallacious to suggest that, unless a person is free to enter upon private land to stop or impede the carrying on of a lawful activity on that land by the landowner or occupier, the essence of the freedoms of expression and assembly would be destroyed. Legitimate protest can take many other forms.” (Emphasis in original.)
- C
- D

57 For these reasons, in *High Speed Two (HS2) Ltd v Persons Unknown* [2022] EWHC 2360 (KB), Julian Knowles J said at para 80:

- E “In relation to defences to trespass, genuine and bona fide concerns on the part of the protesters about HS2 or the proposed HS2 Scheme works do not amount to a defence, and the court should be slow to spend significant time entertaining these: *City of London Corpn v Samede* [2012] PTSR 1624, para 63.”

- F 58 In similar vein, in *Halsbury’s Laws of England*, 5th ed, vol 55 (2012), para 325, it is said that generally “it is no defence to show that although the act complained of is a nuisance with regard to the highway, it is in other respects beneficial to the public”.

IX. Analysis of the 15 factors: Part I

- G 59 To assist in the analysis, I reduce the “guidelines” Ritchie J identifies in *Valero* [2024] EWHC 134 (KB) to tabular form for ease of reference, remaining indebted to him for his analysis. I perceive these to amount to a series of 15 factors that together form a vital checklist. I use the term “factor” to underline that these are matters for the court to examine and then weigh in the overall equitable discretionary exercise under section 37 of the SCA 1981. Once the court has evaluated the factors globally and holistically, an accurate decision on whether it is “just and convenient” to exercise the section 37 discretion in favour of granting the injunction applied for is possible. Only then may terms be properly determined. The statutory working of section 37 is deliberately framed as “may” grant not “must”, and the court retains an overall equitable discretion whether to grant the injunction or not depending on the overall justice of the case. The court must exercise its necessarily wide
- H

discretion judicially. I take that to mean rationally, reasonably and based on the totality of evidence, fairly considered. A

Factor	Summary	
1.	Cause of action clearly identified	
2.	Full and frank disclosure by claimant	
3.	Sufficient evidence to prove claim	B
4.	No defence (or no realistic defence where no defence filed)	
5.	Balance of convenience/compelling justification or need	
6.	Proportionate interference with ECHR rights	
7.	Damages not adequate remedy	
8.	Clear identification of defendants: (a) Named defendants identified in claim form and injunction order by tortious acts prohibited (b) PUs capable of being identified and served	C
9.	Terms of injunction: (a) Sufficiently clear and precise (b) Only prohibiting lawful conduct where no other proportionate means to protect claimant's rights	
10.	Correspondence between terms of injunction and threatened tort	D
11.	Clear and justifiable geographical limit	
12.	Clear and justifiable temporal limit	
13.	Service: all reasonable steps taken to notify defendants	
14.	Right to set aside or vary	
15.	Review	E

60 I now examine each of the 15 factors in turn, comprising as they do a structured and essential checklist.

1. Cause of action clearly identified

61 The next table sets down the prime elements of each of the torts pleaded by the claimants. F

Trespass	(a) entry onto land in the possession of another (b) without justification or the other's consent	
Private nuisance	(a) substantial and unreasonable interference (b) with the land of another or the enjoyment of that land	G
Public nuisance	(a) wrongful acts or omissions on or near a highway (b) causing the public ("all the King's subjects") or all members of an identifiable class proximate to the acts' operation (c) to be hindered or prevented from freely, safely and conveniently passing along the highway (d) [and] possessors of land must demonstrate substantial inconvenience or damage to them	H
Conspiracy to injure by unlawful means	(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	

A *Haven and Tower*

62 These sites share a common feature: Shell has a proprietary right in the land. The torts relied on reflect that interest, being trespass to land and private nuisance. It is unarguable but that they have been clearly identified. As noted by Julian Knowles J in *High Speed Two (HS2) Ltd v Persons Unknown* [2022] EWHC 2360 (KB) at [85]:

B “Private nuisance is any continuous activity or state of affairs causing a substantial and unreasonable interference with a [claimant’s] land or his use or enjoyment of that land: *Bamford v Turnley* (1862) 3 B & S 66; *West v Sharp* (1999) 79 P & CR 327, 332: ‘Not every interference with an easement, such as a right of way, is actionable. There must be a substantial interference with the enjoyment of it. There is no actionable interference with a right of way if it can be substantially and practically exercised as conveniently after as before the occurrence of the alleged obstruction. Thus, the grant of a right of way in law in respect of every part of a defined area does not involve the proposition that the grantee can in fact object to anything done on any part of the area which would obstruct passage over that part. He can only object to such activities, including obstruction, as substantially interfere with the exercise of the defined right as for the time being is reasonably required by him.’”

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D
E 63 The unlawful interference with the claimant’s right of access to its land via the public highway, where a claimant’s land adjoins a public highway, can be a private nuisance (*Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29) (“*Cuadrilla*”). In *Cuadrilla* the Court of Appeal said at para 13:

F “The second type of wrong which the Injunction sought to prevent was unlawful interference with the claimants’ freedom to come and go to and from their land. An owner of land adjoining a public highway has a right of access to the highway and a person who interferes with this right commits the tort of private nuisance. In addition, it is a public nuisance to obstruct or hinder free passage along a public highway and an owner of land specially affected by such a nuisance can sue in respect of it, if the obstruction of the highway causes them inconvenience, delay or other damage which is substantial and appreciably greater in degree than any suffered by the general public: see *Clerk & Lindsell on Torts*, 22nd ed (2017), para 20–181.”

G *Petrol Stations*

H 64 The Petrol Stations claim sits in a different legal context as Shell does not possess proprietary rights or a sufficient degree of control over all the service station locations. For simplicity’s sake, Shell relies on the tort of conspiracy to injure by unlawful means. The claim is that Shell has been the target of a coordinated campaign of protest activity directed at and intended to harm it economically and commercially by disrupting its supply and sale of fuel, which is a lawful activity. The elements of the tort are set out in *Cuadrilla* by Leggatt LJ (as he then was) at para 18 and in the immediately preceding table. This tort was relied on by Julian Knowles J in *Esso Petroleum Co Ltd v Breen* [2023] EWHC 2013 (KB). It was also

examined and approved in connection with these claims by Johnson J in *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (QB) at [26].

65 On element (a), it is not necessary for the claimant to establish that the underlying conduct is actionable by itself. This was noted by Johnson J at para 29:

“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.”

66 On (b): the intention of the activities of the protesters is evident from their conduct and 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. That is a prime objective of their protests.

67 On (c): no one suggests that this was anything but a coordinated and agreed joint group protest.

68 On (d): there can be little debate about loss. The Petrol Stations were unable to sell fuel, with the forecourts being blockaded, petrol pumps damaged and the service station shut to the public. That was all part of the objective of the protest as a stepping stone to raising awareness about fossil fuels. There can be no doubt that the tort relied on by the claimant in the Petrol Stations claim has been clearly identified with evidence filed by the claimant going to each of the elements. This tort was considered in detail by Johnson J at para 30. He said:

“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.”

69 When the case came before Hill J for review (*Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358), powerful argument was advanced by

A Mr Simblet KC on behalf of one defendant that reliance on wide-ranging economic torts, such as conspiracy to injure through unlawful means, was discouraged by the Court of Appeal in *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100. The court discharged those parts of an order based on public nuisance and unlawful means conspiracy, leaving only those based on trespass and private nuisance. Hill J concluded at para 129:

B “in *Cuadrilla* [2020] 4 WLR 29, the prohibitions were made out on the facts from claims in private nuisance and at para 81 the court described the prohibition corresponding to unlawful means conspiracy as ‘a different matter’ on which *Cuadrilla* did not need to rely. However, as Ms Stacey highlighted, the discharge of the injunction based on conspiracy by the Court of Appeal in *Ineos* involved materially different facts, namely, a challenge to an injunction sought before any offending conduct had taken place; and terms which were impermissibly wide. In C *Cuadrilla* at para 47 the Court of Appeal noted that the fact that the injunction had been made before any alleged unlawful interference with the claimant’s activities had occurred was ‘important in understanding the decision’ and I agree. In contrast, the injunction granted by D Johnson J was based on past conduct having already occurred and was suitably narrow in focus.”

70 I find in respect of each of the three claims that this requirement has been met.

2. Full and frank disclosure

E 71 With regard to PUs, the injunctions sought are without notice, by definition. As such, the claimant must act fairly in all material respects, including “a duty to act in the utmost good faith and to disclose to the court all matters which are material to be taken into account by the court in deciding whether or not to grant relief without notice, and if so on what terms” (*Gee on Commercial Injunctions*, 7th ed (2021), at para 9–001 (footnotes omitted); there is nothing new in this: see *Thomas A Edison Ltd v Bullock* (1912) 15 CLR 679, 682, per Isaacs J; *Dormeuil Frères SA v Nicolain International (Textiles) Ltd* [1988] 1 WLR 1362, 1368).

F 72 In respect of named defendants, there remains a high duty of full and frank disclosure. Here Shell has filed and served many thousands of pages of evidence and background material. I detect no want of frankness as opposed G to extensive and candid disclosure. It is noticeable that this point was not taken by any named or appearing defendant. I find this requirement met.

3. Sufficient evidence to prove claim

H 73 The two-limbed approach outlined by the Supreme Court in *Wolverhampton* [2024] AC 983 is useful organisationally here.

Limb 1: strong probability

74 For the reasons given above, I am satisfied that should the acts that the claimants fear take place there is a “strong probability” of a breach of the claimants’ rights in civil law by committing a tort. In large measure the

rationale of the direct action as opposed to other forms of protest is avowedly to interrupt, interfere and disrupt. The defendants' case is not that there is no interference, but that it is justified, in the sense of proportionate to the damage they claim Shell is causing. A

Limb 2: real and imminent risk

75 As noted by Hill J, Mr Prichard-Gamble on behalf of Shell provided evidence of harm and risk (see Hill judgment at paras 38–40). He stated that (i) the incidents described demonstrate a clear nationwide targeting of members of the wider Shell group of companies and its business operations since April/May 2022; (ii) such demonstrations will continue for the foreseeable future; and (iii) the injunctions need to be extended as they provide a strong deterrent effect and mitigate against the risk of harm which unlawful activities at the sites would otherwise give rise to. Unlawful activity at the sites, he states, presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and other persons visiting them. In a recent statement, Mr Eilering states: B

“2.4 Each of the Injunction Orders have been carefully considered and drawn so as to ensure that they are not too wide and only prohibit activity which would be clearly unlawful.” D

“2.6 The Injunction Orders have been obeyed and have acted as an effective deterrent against unlawful protest activity. They continue to have that deterrent effect and ensure that damage and harm is avoided.”

76 Mr Prichard-Gamble has provided an updated witness statement emphasising that the risk of rights violation to Shell and risk of harm should it occur continues. Marcus Smith J addressed the question of future harm in his judgment in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 at para 31(5): E

“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.” F

77 In this case, Shell has filed evidence about grave concern that direct action protests could cause localised leaks and pollution through the release of highly toxic substances, serious or severe injury or death through combustion of dangerously flammable liquids, resulting in harm to employees, contractors, members of the public and protesters that cannot be or cannot be easily undone. G

78 That evidence is compelling. Indeed, in respect of damaging petrol pumps, Ms Ireland has circulated the information about the risk it produces H

A within protest “circles” and she now says that she would not endorse future protest action involving damage to petrol pumps due to the risk presented by it. Mr Laurie’s position is more nuanced. Coming from his engineering background, he told the court that risk is not “binary”. It exists along a spectrum and damaging petrol pumps “is not a straightforward situation”. There is a “gradient of risk we all exist on”. However, he recognised that “just because we think some form of protest is safe, that does not make it [objectively] safe”.

79 The court accepts the evidence that direct action that involves damaging petrol pumps plainly carries with it the risk of serious injury and Ms Ireland is right to recognise and change her stance in light of that risk. Protests that may release the highly toxic and flammable substances that Shell store and supply plainly carries with it the associated danger of serious harm.

C 80 I will deal with general risk first before turning to three categories of defendants (1) Ms Ireland and Mr Laurie; (2) named defendants in Claim 3 (see Annex A for details); (3) PUs generally. I examine Ms Ireland’s evidence before Mr Laurie simply because she precedes him in the list of named defendants and addressed the court first.

D *General risk*

81 In terms of general risk of future direct action against Shell, I begin by noting the observations of Cotter J in *Shell UK Ltd v Persons Unknown* [2024] EWHC 1546 (KB) at [41]:

E “There have been 63 separate protests at Shell Tower since the April renewal hearing. Apart from three incidents in June 2023 when protesters accessed the entrance to the Tower, these appear, I say no more, to have been lawful protests. I pause to observe that this is also of significance as it gives credence to the claimants’ repeated assertion that it does not seek to prevent protesters from undertaking lawful peaceful protests, whether or not such protests arise near to its premises. It also highlights how it is possible to protest against the use of fossil fuels without infringing the rights of the claimants or others.”

82 Cotter J added at para 43: “the Protest Groups had made comments reiterating that this is ‘an indefinite campaign of civil resistance’ and (in March 2024) that ‘non violent civil resistant to a harmful state will continue with co-ordinated radical actions’.”

G 83 In June 2024, JSO repeated its statements that supporters will continue to take action to “demand necessary change” that this UK Government “end the extraction and burning of oil, gas and coal by 2030” and will continue “the resistance” if the Government fails to “sign up to a legally binding treaty to phase out fossil fuels by 2030”. Student members of JSO have posted that “[this] November, hundreds of students are coming to London—this is going to be the biggest episode of civil disobedience this country has ever since. Be there, November 12”. As Linden J put it in *Esso Petroleum Co Ltd v Persons Unknown* [2023] EWHC 1837 (KB) (“*Esso Petroleum*”) at [67]:

“it appears that the effect of the various injunctions which have been granted in this case and others has been to prevent or deter them from taking the steps prohibited by the orders of the court although, of course,

not invariably so. If, therefore, an injunction is refused in the present case the overwhelming likelihood is that protests of the sort which were seen in 2021/2022 will resume.” A

84 Similarly, Ritchie J noted in *Valero* [2024] EWHC 134 (KB) at [64]:

“I find that the reduction or abolition of direct tortious activity against the claimants’ eight Sites was probably a consequence of the interim injunctions which were restraining the PUs connected with the four Organisations and that it is probable that without the injunctions direct tortious activity would quickly have recommenced and in future would quickly recommence.” B

85 I find that similar considerations apply to the direct action protests against Shell as at autumn 2024. In her careful analysis, Hill J [2023] 1 WLR 4358 noted at para 30 the ending of direct action protests at Haven following the injunction, but noted wider fossil fuel protests elsewhere: C

“30. There do not appear to have been any further unlawful protest incidents at the Haven. However, the evidence shows a significant number of incidents in relation to oil refinery sites between August 2022 and February 2023. These included protest action at a number of oil refineries located in Kingsbury. The main road used to access the site was closed as a result of protesters making the road unsafe, by digging and occupying a tunnel underneath it, access roads were also blocked by protesters performing a sit-down roadblock. Similar activity occurred at the Gray’s oil terminal in West Thurrock in August/September 2022. On 28 August 2022 eight people were arrested after protesters blocked an oil tanker in the vicinity of the Gray’s terminal, climbing on top of it and deflating its tyres. On 14 September 2022 around fifty protesters acted in breach of the North Warwickshire local authority injunction in relation to the Kingsbury site.” D E

86 Hill J then continued at para 39: F

“(i) the incidents described demonstrate a clear nationwide targeting of members of the wider Shell group of companies and its business operations since April/May 2022; (ii) such demonstrations will continue for the foreseeable future; and (iii) the injunctions need to be extended as they provide a strong deterrent effect and mitigate against the risk of harm which unlawful activities at the sites would otherwise give rise to. Unlawful activity at the sites presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and other persons visiting them.” G

87 In respect of Petrol Stations, Hill J noted:

“18. Johnson J was provided with witness statements from Benjamin Austin, the claimant’s health, safety and security manager, dated 3 and 10 May 2022. In his judgment, he explained that, on 28 April 2022, there were protests at two petrol stations (one of which was a Shell petrol station) on the M25, at Clacket Lane and Cobham. Entrances to the forecourts were blocked. The display screens of fuel pumps were H

A smashed with hammers and obscured with spray paint. The kiosks were ‘sabotaged ... to stop the flow of petrol’. Protesters variously glued themselves to the floor, a fuel pump, the roof of a fuel tanker or each other. 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: paras 12–13. Johnson J also referred to wider protests in April/early May 2022 at oil depots in Warwickshire and Glasgow: paras 14–15.

B “19. Johnson J explained that he had not been shown any evidence to suggest that XR, JSO or Insulate Britain had resorted to physical violence against others. He noted, however, that they are ‘committed to protesting in ways that are unlawful, short of physical violence to the person’. He observed that their websites demonstrate this, with references to ‘civil disobedience’, ‘direct action’, and a willingness to risk ‘arrest’ and ‘jail time’: para 9.

C “20. He summarised the various risks that arise from these types of protest, in addition to the physical damage and the direct financial impact on the claimant (from lost sales), as follows [quoting paras 18–19 in the Johnson J judgment quoted at this judgment’s para 33 ante, before continuing at para 21]: ‘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 Explosive Atmosphere Regulations 2002 (SI 2002/2776), 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 protesters 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.”

88 Hill J stated at para 21 that Johnson J:

“noted the evidence that the campaign orchestrated by the groups in question looked set to continue and cited JSO’s statement on its website that the disruption would continue ‘until the government makes a statement that it will end new oil and gas projects in the UK’: para 16.” A

89 In the exhibit to his statement in the core bundle, Mr Eilering on behalf of Shell appends the online report of Shell’s AGM. The report dated 21 May 2024 documents how protesters from “numerous” climate campaigning groups, including XR, disrupted the AGM by singing “Shell Kills”, while outside the hotel where the meeting took place, protesters unfurled a sign saying “SHELL PROFITS KILL”. Beyond this, Mr Eilering exhibits several hundred pages of articles and documents recording recent protest activity not only in the United Kingdom but internationally directed towards the fossil fuel industry. This documentation builds on the earlier filed statements by Mr Prichard-Gamble attesting to the ongoing threat to the business interests of Shell from those who object to their involvement in fossil fuel extraction and supply. B C

90 During the course of the hearing before me, the claimants provided the court with an updated 19-page chronology of protest activity from 1 July to 15 October 2024. As Mr Laurie points out, many of the incidents listed took place in other countries or were not directed at Shell. These included protests or results of court cases around protests with different targets, including JSO supporters spraying orange paint at departure boards at Heathrow Airport; JSO activists throwing soup at Van Gogh’s Sunflowers painting and stopping traffic in Parliament Square; and the occupation of the offices of Policy Exchange by XR activists. D

91 The filed chronology documents that no direct action protests have breached Shell’s rights. That said, there have been regular peaceful protests outside Shell Tower. These have involved small numbers of protesters usually in silent vigils with banners: E

3 and 10 July: Peaceful protest outside Shell Tower—one member of Christian Climate Action.

17 July: Similarly at Shell Tower, with two protesters. F

Same day in Manchester: Extinction Rebellion activists have protested at the National Cycling Centre in Manchester to call on the former policy adviser for British Cycling, Chris Boardman, to convince British Cycling to drop Shell as its sponsor of the Paris Olympics. Protesters held signs and placards carried messages like “Shell Lie, Cyclists Die” and “[Heart] Chris, Hate Shell”. G

24 July: One female protester from Christian Climate Action protested peacefully outside Shell Tower on Belvedere Road. Protester was carrying Placard that reads “I Pray Shell Stops Climate Chaos”. H

30 July: 12 XR protesters set up outside Shell Tower. The protesters held up large banners reading “REVEAL THE TRUTH” and “SHELL KILLS”. The protesters made speeches and sang a song.

31 July: Three protesters from Christian Climate protested peacefully outside Shell Tower.

1 August: Five protesters peacefully protested outside Shell Tower. They were carrying placards that read “Thousands of Children Killed by Oil Pollution in Niger Delta” and “Was It Worth It”. They took pictures of Shell Centre on Belvedere Road.

A 3 August: Climate activists from Shropshire cycle from London to the Paris Olympics to protest against Shell's sponsorship of British Cycling.

7 and 14 August: Two protesters from Christian Climate protested peacefully outside Shell Tower.

21 August: Two Christian Climate protesters protested peacefully outside Shell Tower.

B 28 August: One protester from Christian Climate Action peacefully protested outside Shell Tower. Protester was carrying placard that reads "To Ignore The Climate Science Is Insane" and a banner reading "We Are Crucifying our planet".

5 September: Two protesters from Christian Climate Action set up outside Shell Tower. Protesters were carrying a placard that read "To Ignore The Climate Science Is Insane" and a banner reading "We Are Crucifying Our Planet".

C 11 September: One male protester from Christian Climate Action set up outside Shell Tower carrying a placard reading "To Ignore The Climate Science Is Insane" and a banner reading "We Are Crucifying Our Planet".

12 September: Two male protesters from Asthma and Lung UK set up outside Shell Tower with two bicycles with large digital displays on the back stating:

"Toxic air stunts lung growth in children.

"Air pollution affects our health before we're born.

"99% of people in the UK breathe unsafe air.

"Toxic air causes up to 43,000 premature deaths in the UK every year."

E 18 September: One female protester from Christian Climate Action set up outside Shell Tower. A second protester then turned up with a placard reading "To Ignore The Climate Science Is Insane" and a banner reading "We Are Crucifying our Planet".

F 25 September: One male and one female protester from Christian Climate Action set up to protest outside Shell Tower. They carried a placard reading "To Ignore Climate Science Is Insane" and a banner reading "We Are Crucifying our Planet".

G 2 October: Two protesters from Christian Climate Action set up outside Shell Tower and sat next to planters. They were carrying placards that read "To Ignore The Climate Science Is Insane" and a banner reading "We Are Crucifying Our Planet".

8 October: Protesters stood outside the Royal Courts of Justice displaying placards and banners ahead of a key appeal case against Shell.

9 October: Two protesters from Christian Climate Action set up outside Shell Tower. They produced banners and a flag and knelt down to carry out their silent protest.

H 15 October: Shell's Chief Energy Adviser, Peter Wood, was giving a presentation at the World Energies Summit in London. While walking to the event he was questioned by a member of Fossil Free London who questioned him about Shell in the Niger Delta.

92 Further, there is evidence filed by Shell that senior executives have been "doorstepped" and subject to abusive and threatening messaging on social media.

Ms Ireland and Mr Laurie

A

Ms Ireland

93 Emma Ireland is currently “job free”, as she puts it, and lives in Bristol. She has a long track record of dedicating herself to others. Ms Ireland filed a skeleton argument and a witness statement dated 17 October 2024 with the court. To provide an overview of her defence, I extract and combine her submissions by combining both documents. She states:

B

“I trained as a social worker from 2009–2011. Since 2012 I have worked in mental health, sometimes as a support worker and other times at more senior levels, as a care coordinator. I am currently job free. I have recently been volunteering with FoodCycle, cooking three-course community meals with waste food. I have a work contract starting on 1 November working in a mental health setting, with people who have been street homeless for a long time. I care deeply for others and look for ways to support fellow human beings and the earth, be it in my paid work, with family and friends, neighbours, or volunteering. For three months of this year I have volunteered on organic farms in the UK.

C

D

“We do not agree that this injunction is necessary. We believe that Shell should not be protected from lawful protest. We have not yet faced criminal trial for the acts that led to our inclusion on this injunction, so it remains to be seen whether the protest will be judged as lawful. We believe our actions have to date, been entirely within the law as it stood on 24 August 2022. Since then the Government has, after much lobbying from fossil fuel companies, passed even stronger laws protecting companies such as Shell. For clarity, I am asking for the Shell Petrol Station injunction to be discontinued.

E

“Events of 24 August 2022

“On that day, I attended Cobham Service Station with other supporters of the Just Stop Oil campaign. I walked towards the entrance of the forecourt and sat down on the ground. There were five others who sat down too. There was a banner that read Just Stop Oil. The entrance to the forecourt was blocked. Cars continued to leave the petrol station via the exit road. When asked to move I continued to stay seated on the ground. I had my back to the petrol pumps. I am aware that there was damage caused to two petrol pump screens by one or two other people.

F

“I sat in the entrance of the Shell petrol station, as an act of protest, to demand that the government stop issuing new licences for the discovery, development and production of new oil and gas in the UK.

G

“I also took this action to get this message out to Shell and to the public, who were there on the day, and other members of the public and the government via the media. To raise the alarm that we are in a climate emergency and we have to act like it. I put my body on the line and two petrol pump screens were decommissioned, to temporarily pause the flow of new petrol into some cars for a limited time. By jolting the status quo, I hoped that this more embodied message, would get through to some more people. Because we all need to be doing more, every day, at all times, to reduce our harmful impact on the climate and to encourage others to do so as well.

H

A “I was arrested for causing a public nuisance, and was taken to Staines police station. I pleaded not guilty at the first appearance at the Crown Court at Guildford. I have been released on unconditional bail for this matter and the trial is currently listed for 11 August 2025 [now at the Crown Court at Winchester].

B “My spiritual faith, beliefs and views regarding climate change are set out in my witness statement. These views are sincerely held, reflecting those of many citizens who are concerned about climate change and the role of fossil fuels in perpetuating further man-made global warming.

“The health and safety concerns of potential future actions at Shell petrol stations has been discussed in evidence. I too take this point very seriously. I agree that a protest should not be allowed that causes physical harm to staff, customers, passers-by and protesters.

C “I hold the belief that if those that run Shell fully understood the part that they were playing in the climate crisis, in the deepest part of their heart and sole [sic], they would have consented to the damage having been caused the pumps and the disruption to the sale of their fuel.

D “Since the injunction was made the law relating to protest has changed significantly, offering greater protection to the fossil fuel industry. For instance, section 7 Public Order Act 2023 means that people can be arrested almost immediately after the protest begins and they will face up to a year in prison. I do not understand why there is any need for the injunction to continue to exist in addition to these draconian laws.

E “Shell requested the interim injunction when these new laws were not yet in force. I propose that the criminal laws of this country are protection enough for Shell to be able to continue to effectively and safely sell petrol to the public. Who can say whether it is the injunction, or the criminal laws, or something else that has meant that there have been no more actions by environmental groups on any petrol station of any brand in England and Wales since August 2022. The evidence since August 2022 given by the claimant talks about other types of actions on

F other sites in the UK, that are not petrol stations.
“[Analysis] from Carbon Majors Database, has proposed that just 57 oil, gas and cement producers are directly linked to 80% of the world’s global fossil fuel CO₂ emissions since the 2016 Paris Agreement. Shell has been named as one of these.

G “We are in a climate emergency. Let us not be a country that continues to use injunctions to create new laws that are overly harsh for environmental defenders and protect big oil companies.

H “The scientific consensus on the climate emergency could not be clearer. We are in a climate crisis, driven by rising temperatures and extreme weather. An average of over 1.5°C warming would be catastrophic for humanity. The International Panel for Climate Change (IPCC) reports state that we are already overshooting the targets of liveability. We cannot keep burning fossil fuels if we are to have any chance of a liveable future.

“I feel that it is my calling to do all I can to reduce the negative impact of climate change at this time. I feel that part of this is to invite others to question what they can do, within their sphere of influence. I understand that for each of us this may be different. In 2022 I became

a supporter of Just Stop Oil in order to demand that the government stop issuing licences for the exploration, discovery and development of new oil and gas projects in the UK. For me, this demand felt necessary, clear and reasonable.

“I feel so privileged to be saying this from a place where I have a home, enough food and I am well. The reality for many today, especially in the global south, is that their lives are being ripped apart due to fires, floods, famine caused by climate change. It is us in the global north who have played the biggest part in climate change. I feel it is our responsibility to do all we can as individuals, and to ask those, with different spheres of influence, to do what they can too. This is why I protested on that day, and why I am defending myself at this trial.

“Since that day I have been arrested a further five times, each time for participating in protests as a supporter of Just Stop Oil. The demand to the government, on each of these occasions was to stop issuing new oil and gas licences:

- On 26 August 2022 I was arrested for blocking the entrance to a petrol station forecourt in London.

- On 8 October 2022 I was arrested for sitting in a road in London, causing a disruption to traffic. For this I was charged, pleaded not guilty to wilful obstruction of the highway, and later the case was dropped.

- On 21 October 2022, I was arrested for sitting in a road in London, causing a disruption to traffic. For this I was found guilty of wilful obstruction of the highway. I was sentenced to £200 court costs, £26 surcharge and conditional discharge of 12 months.

- On 10 July 2023, I was arrested for continuing to walk slowly down a road in London, causing traffic to move more slowly. I was arrested for breaching section 12. I was later found guilty for breaching section 12. I was sentenced to £120 court costs and £120 fine. I was also given £120 fine for the above action, due to the conditional discharge.

- On 10 November 2023 I was arrested for walking slowly down a London road. I was later found guilty of wilful obstruction of the highway and sentenced to £348 costs, £200 fine, £80 surcharge.”

Conclusion on Ms Ireland

94 Ms Ireland has devoted her life to supporting and helping others. She sees her environmental activism as being connected to that life’s work. She is a person with an acute empathetic sensibility, and as she puts it, “I have always been able to feel the suffering of others”. It is commendable that in her career she has sought to assist vulnerable people because of that insight. She is committed to protecting the environment, has never owned a car, and indeed cycled to London for the court hearing all the way from Bristol over several days.

95 The claimant submits that the court should draw an inference against Ms Ireland from her declining to sign an undertaking. The inference is that her refusal makes it more likely that she would take unlawful direct action against Shell again in future should the injunction be discharged. I listened very carefully to Ms Ireland’s explanation for wishing to attend the court hearing and not signing the undertaking. It is true, as the claimant submits, that it would be possible for Ms Ireland to sign the undertaking and apply to attend the hearing as an interested party. However, Ms Ireland appears in

A person. I am not convinced that she has the confidence and legal wherewithal to take this more sophisticated legal course. Further, I am persuaded by the sincerity of her comments to the court that she wished to address it personally to explain the reasons for her protest activities and felt her ability to do so would be compromised by the undertaking. Therefore, I decline to make an inference against her. I turn to the other matters.

B 96 Two days after her protest in Cobham on 24 August 2022, Ms Ireland was arrested on the forecourt of another petrol station, this time in the Acton area of west London. In October of that year, she was arrested for disrupting the traffic in London, although no further action was ultimately taken. Later in October 2022, she disrupted the traffic and was found guilty of wilful obstruction of the highway. In July 2023, she again disrupted the traffic and was again found guilty. In November 2023, she again disrupted the London traffic. She was again found guilty of wilful obstruction of the highway. Therefore, Ms Ireland's commitment to environmental activism has continued following the Cobham protest. She has been convicted of criminal offences for it and that has not dampened her moral commitment.

D 97 That said, she submits to the court that "the criminal law might well be enough of a factor to deter future protests [rendering] an injunction unnecessary", pointing to the coming into force of the Public Order Act 2023. She supports this point with the fact that "there have been no further protests at petrol stations since August 2022".

E 98 I have no doubt whatsoever that Ms Ireland is a selfless and committed person. She feels the suffering of others acutely. That extends beyond those in her immediate circle whom she has helped and includes people who are partially sighted or without sight, and people living with mental health problems and trauma. That act of imaginative empathy extends to the many millions of people in the global south who she says are suffering because of climate change. It also extends, as she powerfully put it, to "the suffering of the earth". She does not think that Shell has changed since her action at Cobham in August 2022, except that it has resiled from its "green and sustainable commitments". Ms Ireland stated that 57 producers are responsible for 80% of global fossil fuel carbon dioxide emissions. Shell is one of them. Lives in the global south are being "ripped apart" by this climate emergency. This is why she feels the obligation to protest and "do all we can".

G 99 While she is committed to relieving the suffering of others "from a peaceful place", the court is left in little doubt that should the injunctions be discharged, such is the passion and strength of Ms Ireland's commitment to trying to effect change, there is a real and imminent risk of her engaging in direct action protests and breaching the claimant's rights and there is a strong probability that it would constitute a tort committed against Shell. I am not persuaded that the coming into force of the Public Order Act 2023 with the 12-month maximum sentence would be effective to deter Ms Ireland. It is unlikely that Ms Ireland would act alone, because as she told the court in terms, she is "still a supporter of JSO" and has circulated information to protest groups. The overwhelming probability is that her future direct action would again be joint and coordinated tortious action. This is because since her arrest at Cobham in August 2022, and despite it, she has risked arrest and repeated arrest and that has not deterred her from continuing to intervene.

100 Ms Ireland told the court that “to do nothing is not within my nature”. Therefore, I find that as against Ms Ireland the claimant has produced sufficient evidence to prove its claim on both limbs identified in *Wolverhampton* [2024] AC 983. A

Mr Laurie

101 Charles Phillip Laurie lives in Faversham, Kent. Mr Laurie is a retired civil engineer and Quaker, whose faith is immensely important to him and closely connected to his activism. He filed a skeleton argument and a witness statement with the court dated 16 October 2024. Once more, extracts from both are melded to provide an overview of Mr Laurie’s defence. He states: B

“We do not agree that this injunction is necessary. We believe that Shell should not be protected from lawful protest. C

“On 24 August 2022—Cobham Service Station—I was arrested for public nuisance and possession of articles with the intent to cause or damage property. On that day, I attended Cobham Service Station with other protesters from JSO group. Initially my plan was to cause damage to the petrol pumps of the service station with two other protesters, whilst five other protesters blocked the entrance to the station forecourt and glued themselves to the ground. D

“Whilst I was walking towards the petrol pumps, I changed my mind about causing damage to the petrol pumps and I changed course to join the other protesters at the entrance to the forecourt. I sat down with them and glued myself to the ground. I was arrested. E

“The interim injunction and its extension are immensely troubling for me because it curtails my right to peacefully protest outside petrochemical facilities, offices and retail facilities are which are owned and operated by Shell. E

“On 26 August 2022, Shell’s Petrol Stations at Acton Park and Acton Vale were subjected to action by protesters that went well beyond peaceful protest. As part of what Just Stop Oil described as a week-long ‘series of actions disrupting oil terminals and petrol stations in support of [Just Stop Oil’s] demand that the UK government end new oil and gas projects in the UK’, individuals once again blocked the entrance to the petrol station and caused damage to ten fuel pumps in total across the two Shell Petrol Stations. F

“I would ask that you consider if the cost is actually a big or small number. I am sure that the numbers are big for those Shell trading businesses actually impacted but at the highest level in terms of a business making 19.5 billion dollars profit in the past year, it is very, very small. Whether you want to regard it as being large or small is down to you. For me it is very small, and fits exactly for the requirement protest to be proportional. G

“All protests that gave rise to this injunction [were] at locations directly connected with the harm being caused by the ongoing operations of Shell. H

“There is no evidence that I will act in breach of the claimant’s rights in the future such that ‘imminent and real risk of harm test’ for an anticipatory injunction is met.

A “Another way to look at this might be that this injunction shields Shell from the consequences of public discontent at the decisions made at senior levels within the company.

B “I am a Quaker. I integrate my faith in everything I do in my life but particularly through my activism. Quakerism calls for Quakers to live by our values and actively participate in the upholding of these values where we see it is necessary. Activism is the practical side of my faith. It is interconnected. Quakerism is not about heaven or an afterlife, it is about the world we are in now. That’s why so many Quakers are involved in activism about climate change.

C “Human induced climate change is real. It is happening now. My environmental science degree tells me that there is cause and effect in the laws of physics. If you increase CO₂ in the atmosphere the temperature has to increase.

D “The products sold by fossil fuel companies such as Shell are one of the major causes of climate change. These companies know the risks their products pose. Their role is totally malign. They deny the impact, delay action, destroy lives and environments. They take no responsibility for the output of their products, at all times seeking to maximise their sales which is a death sentence to many people and the planet.

“In general, business is unable to see past profit. Generally, if they think taking action to reduce their impact on climate change will undermine their profits they prefer to continue with business as usual and where necessary green wash past any issues.

E “This is why it is important to me to protest; my faith requires me to take action to alert people to the dangers of climate change and put pressure on the Government and fossil fuel companies to change their ways, while the Government and big business are failing to do so.”

Conclusion on Mr Laurie

F 102 For similar reasons to Ms Ireland’s case, I refuse to draw an adverse inference against Mr Laurie that the claimant invites me to make. I judge that it is neither safe nor reasonable.

G 103 Mr Laurie engages in environmental activism and protest animated by his religious, spiritual and moral beliefs. His Quakerism compels him to take action against what he perceives to be a vast societal and global wrong, the climate emergency. He is entitled to hold these views. Some will agree with him; others will not. His right to hold that belief must be respected and protected by the law. The issue in this case is how he seeks to intervene in the public sphere in furtherance of that belief. His sincerely held Quaker views, and the moral imperative to take action that arises because of them, have not changed. He continues to believe that Shell and fossil fuel companies like it are “one of the major causes of climate change”. He maintains that the role of Shell is “totally malign”. Shell and others “destroy lives and environments”. He regards the impact of the protests on Shell to be “small” and “proportional”, given the vast resources at its disposal. I judge that the strength of Mr Laurie’s sincerely held religious and moral beliefs significantly outweigh any further deterrent effect that the operation of the Public Order Act 2023 might have. He has been willing to risk arrest previously. He had gone to the Cobham petrol station in August 2022 with the intention of causing criminal damage himself, such is the force of his conviction. He was

one of the protesters arrested outside the Crown Court at Inner London for holding placards, although it must be emphasised that the case against him for that protest was discontinued. The fact that at Cobham he did not damage any petrol pump is no real answer as the presence and deployment of the police caused him to alter his approach. Further, I found his comments about the risk that smashing petrol pumps may cause indicative of his belief, grounded in his scientific background and training, that such direct action is not as risk-laden as Shell's evidence maintains. That increases the risk that he would engage in future similar direct action. It is noteworthy that despite the presence of the police at Cobham, he was still prepared to protest and be arrested in the furtherance of his cause and moral concerns.

104 He spoke passionately and emotionally when addressing the court. He stated:

“Shell have abandoned all the promises that they were going to be become the greenest energy company in the world. Shell say they are going to drill a new gas field in the North Sea, so ‘how is that green ambition going?’.”

105 He continued, “I cannot make a promise that I will not protest again, but cannot say I will.” If the injunctions are discharged, he says he may resume the protests against Shell but tells the court he is unable to say he will or not. He provided a different analysis of the changes in the law and increased sentencing under section 7 of the Public Order Act 2023. He emphasises that:

“Maximum sentences are artificial as rarely used. Instead, the real change is the new police powers. The police only have to determine the action is ‘more than minor’ disruption [through obstruction] and they do that really quickly. The change enables the police to break up the protests more quickly and it is not the sentences that ‘protects Shell’.”

106 On Mr Laurie's analysis, then, the increased sentencing powers are not the material difference in deterring protests: it is rather the police's ability to break up protests far earlier. He concluded his submissions by telling the court:

“This is a very serious issue. But Shell is putting this CO₂ into the atmosphere causing thousands and millions of deaths, even hundreds of millions of deaths, not in the future, but in the next few years, probably in my lifetime and certainly the lifetime of my children. It is so serious we must look in the mirror and take action.”

107 It seems to me that the real and imminent risk remains that without a final and continuing injunction, Mr Laurie would in pursuit of his sincere beliefs take unlawful direct action again against Shell and there is a strong probability that this would result in a breach of Shell's rights under the civil law. Therefore, I find that as against Mr Laurie the claimant has produced sufficient evidence to prove its claim on both limbs of *Wolverhampton* [2024] AC 983.

Other named defendants

108 As to the risk or threat attaching to the other named defendants, I draw an adverse inference from their failure to sign the undertakings, enter

A a defence, attend the final hearing or otherwise engage in these proceedings. Cotter J noted (*Shell UK Ltd v Persons Unknown* [2024] EWHC 1546 (KB) at [45]):

B “I note the observations of Linden J in *Esso Petroleum* case: it would have been easy for the defendants to give assurances or evidence to the court that there was no intention to carry out direct action at the various sites, but a decision was taken not to do so. As I have indicated in other cases, this provides an insight into the mindset of those who would, unless restrained, engage in unlawful activities with the aim of halting the claimants’ business in fossil fuels.”

C PUs

109 In respect of PUs, I cannot draw an inference regarding undertakings.

D 110 However, in respect of the other named defendants and PUs, I find that the claimants have provided sufficient evidence to prove the claim and meet the two limbs of the *Wolverhampton* approach. The argument that direct action against Shell since the granting of the injunctions has significantly diminished must be seen in light of the observation of Cotter J at para 19 that injunctions are granted on the assumption that they will be obeyed and thus have a material effect. Indeed, the likely effectiveness of an injunction must be one of the factors in the section 37 discretionary assessment of whether to grant it at all. There have been, as set out in the claimant’s chronology, repeated unlawful acts directed at airports and universities.

E 111 It is significant that the series of recent protest injunction cases touching on various elements of the energy and fossil fuel sector, this court has found a continuing real and imminent risk of direct action resulting in tortious breach of the claimants’ rights. While it would be naïve to ignore that context of diverse and disparate targeting of the fossil fuel sector, I emphasise that I judge this case on the evidence before me. I note what Ritchie J said
F in *Valero* [2024] EWHC 134 (KB) at [64]:

G “I find that the reduction or abolition of direct tortious activity against the claimants’ eight Sites was probably a consequence of the interim injunctions which were restraining the PUs connected with the four Organisations and that it is probable that without the injunctions direct tortious activity would quickly have recommenced and in future would quickly recommence.”

112 Finally on this point, Hill J noted in *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358, para 36:

H “The claimants liaise regularly with the police, whose intelligence indicates that there continues to be an ongoing threat; that the protest campaign is not over; and that protest groups will continue to attempt to put pressure on the Government to halt new investment in fossil fuels. It is apparent that JSO continues to have the ability to draw on a large group of protesters who are willing to be arrested; that they take action using a variety of tactics and target locations across the UK; and that

they employ tactics that attract the media and public interest. Further, there is a high level of crossover between the individual protest groups, who appear to share disruptive tactics between them. His view was that activities of the sort described above would be likely to increase as a result of the Government's recent approval of the building of a new power station, the cost-of-living crisis and the likely increase in support for JSO given that environmental concerns affect the majority of the public."

A

B

113 Stepping back and assessing the totality of the evidence before me, I find that should the injunctions be discharged, a real and imminent risk arises of direct action tortious interference with the claimants' rights by the named defendants and PUs.

C

4. Defences

5. Balance of convenience/compelling need

6. Proportionate interference with ECHR rights

D

114 Only two defences have been filed, those of Ms Ireland and Mr Laurie. They share a common approach. The main lines of their defence can be reduced to three key features:

(1) An injunction amounts to an unlawful, that is unnecessary and disproportionate, interference with their articles 9, 10 and 11 Convention rights.

E

(2) The disruption caused and Shell's loss is "proportional" to the acts committed by Shell in pursuit of its business interests.

(3) The Aarhus Convention protects "environmental defenders" from the "excessive" use of law.

115 Since the analysis of these points engages questions of balance of convenience and compelling need and proportionality, I consider Factors 5 (balance of convenience) and 6 (proportionality) within this section. I examine the defences of Ms Ireland and Mr Laurie first, before considering the position of PUs.

F

Convention rights and proportionality

116 Article 9 of the ECHR provides:

G

"Article 9

"Freedom of thought, conscience and religion

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

H

"2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection

A of public order, health or morals, or for the protection of the rights and freedoms of others.”

117 I cannot see that the granting of anticipatory injunctions interferes with the defendants’ freedom of thought or conscience or indeed religion. They can adhere and continue to believe what they wish. Equally, I am not persuaded that the injunctions interfere with the right of defendants to “manifest” their beliefs. However, and in any event, any interference is subject to the proportionality analysis in respect of other Convention rights that follows and what is crucial to appreciate is that article 9 is a qualified right and explicitly limited to matters “prescribed by law” which are necessary “in a democratic society”. It is protection not just of public order and health (which must include bodily safety and integrity), but the protection of the rights and freedoms of others, which are capable of including rights under the civil law, such as those claimed by Shell.

118 I turn to articles 10 and 11, the rights to freedom of expression and freedom of peaceful assembly and association with others:

“Article 10

D “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 ...”

“Article 11

E “Freedom of assembly and association

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others ...”

119 The argument advanced by the defendants is a repeat of the argument that was fully developed by Mr Simblet before Hill J. Nevertheless, I reconsider it here. Both rights are once more qualified rights. Article 10 is qualified in this way:

“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.”

H 120 The qualification to article 11 is in these terms:

“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.”

121 The first point is that in respect of interferences with or entry onto the private property belonging to Shell, ECHR rights do not confer a right to enter onto private land (*Director of Public Prosecutions v Cuciurean* [2022] QB 888, paras 45 and 76–77; *Ineos* [2019] 4 WLR 100, para 36, per Longmore LJ). Johnson J in *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (QB) at [55]–[56] identified the four-part approach to issues of rights violation and proportionality taken by the Supreme Court in *Ziegler* [2022] AC 408:

“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 of the ECHR and may not therefore be granted (see sections 1 and 6 of the Human Rights Act 1998). Articles 10 and 11 of the 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) of the 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: *Director of Public Prosecutions v Ziegler* [2022] AC 408 per Lord Sales JSC at para 125.”

122 Of course, this is a familiar rubric and echoes the widely cited four-part proportionality test set down by Lord Sumption JSC in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700, para 74:

“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.”

123 I consider in turn each of the four *Ziegler* elements.

Ziegler (i): Legitimate aim

124 The legitimate aim of the proposed final injunction is the protection of the claimants’ right to carry on their business, which, despite falling under

A severe criticism as it does from the defendants, remains under the law a lawful business. I have received no argument identifying the illegality of Shell's core business under the law of England and Wales. The defendants argue that Shell contributes to the climate emergency, but that is distinct from identifying a clear basis in law that the sale of fuel from service stations in the United Kingdom, as but one example, is unlawful. On that point, I received no argument. It was, of course, open to the defendants or any of them to argue that there is no legitimate aim worthy of protection as the core business of fuel sale is illegal. That was not an argument advanced.

125 Instead, the focus was on the balance between the risk to global environmental factors created, it is said, by Shell and the far less intrusive infringements of Shell's rights by the protests. That is essentially an evaluative (balance) argument and not one about legitimate aim. However, Johnson J [2022] EWHC 1215 (QB) while touching on this point, focused on aim and *Ziegler* (i) at para 57:

“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 Corp'n v Samede* [2012] PTSR 1624 per Lord Neuberger of Abbotsbury MR at para 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 (Ch) per Morgan J at para 105 and *Cuadrilla* [2020] 4 WLR 29 per Leggatt LJ at paras 45 and 50.”

126 I find that the objectives of the injunctions do constitute a legitimate aim.

Ziegler (ii): Rational connection

127 As to rational connection, it is important to be clear what this means. I take it to mean that not only is there a clear and logical connection between the measure and the objective or legitimate aim sought and that the measure can be seen to be an effective means to further the aim—to achieve it. In this case, I judge that the injunctions sought clearly have the capacity to deter and protect the claimants' rights. Indeed, it is likely that they have materially contributed to achieving that aim since their granting on an interim basis. I find that that is a reasonable inference from the significant falling away of direct action breaches of Shell's civil law rights.

Ziegler (iii): Least intrusive measure

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128 It is essential that the measure is the least intrusive action consistent with achieving the legitimate aim. Both Johnson J and Hill J (and indeed Cotter J in the April 2024 review) so found. Indicative of the level of intrusion is that the injunctions as drafted, as before, in terms only prohibit future acts of unlawful protest. For similar reasons, the court finds that the injunctions are the least intrusive measure, being directed exclusively at unlawful rights breaches.

B

Ziegler (iv): Fair balance

129 As to the fourth element, Hill J considered the question of balance between the competing rights and concluded at [2023] 1 WLR 4358, paras 179–180:

C

“179. The injunctions therefore strike a fair balance between the defendants’ rights to assembly and expression and the claimants’ rights: they protect the claimants’ rights insofar as is necessary to do so but not further.

“180. ... the interferences with the defendants’ rights of free assembly and expression caused by the injunctions are necessary for and proportionate to the need to protect the claimants’ rights.”

D

130 Hill J’s conclusion was adopted by Cotter J ([2024] EWHC 1546 (KB) at [59]), when he held:

“As for interference with the defendants’ rights to free assembly and expression necessary for the proportionate need to protect the claimants’ rights under articles 10(2) and 11(2), read with section 6(1) of the Human Rights Act 1998, it is right to note that all three of the injunctions interfere with the defendants’ rights under articles 10(1) and 11(1). However, such interference can be justified when it is necessary and proportionate to protect the claimants’ rights. I adopt Hill J’s reasoning and conclusions at paras 179 to 180 in this regard.”

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131 To the extent that it is necessary to consider proportionality separately, and invoke the four-part *Bank Mellat* test enunciated by Lord Reed JSC, I reach the same conclusions as in the *Ziegler* analysis. As Ms Stacey put it with accuracy, in fact the point “overlaps”. However, before reaching my decision on “fair balance” and the infringement of the defendants’ rights, I must address the question of the Aarhus Convention. The court considers whether (1) it is relevant to the exercise of its discretion in granting an injunction; (2) if so, in what way and to what extent, whether as part of the *Ziegler* analysis or as a freestanding point.

G

132 Before I consider the Aarhus Convention, I reflect on the argument that was put before Cotter J that the creation of additional criminal offences relating to protesting and increased police powers represent a material change of circumstances since the granting of the injunctions in 2022 and 2023. Cotter J held from para 22:

H

“22. Mr Laurie’s submission is that the coming into force of the Public Order Act 2023 represents a material change, since the orders

A were made by Hill J, as sections 1, 2 and 7 create new offences. Sections 1 and 2 create the offences of locking-on and being equipped for locking-on; and section 7, interference with use or operation of key national infrastructure.”

B “25. Mr Laurie’s admirably brief submission was that in light of these new offences, the orders were no longer necessary. Put simply, fear of prosecution will prevent the unlawful activity which is prohibited by their terms. Where the criminal law provides that conduct will be an offence, with the potential for significant penalties, including imprisonment, the civil law does not need to provide additional protection.

C “26. No authorities have been cited to me in support of (or against) this proposition.”

133 Part of the Aarhus argument that I must turn to, and as noted at the start of the judgment as reported by the Special Rapporteur, is that the simultaneous use of criminal and civil proceedings is oppressive and “excessive” use of the law. I make three initial observations about this.

D 134 First, that I agree with Cotter J that the change in criminal law is potentially relevant as a material change in circumstances.

E 135 Second, however, what is essential is to assess the evidence about what the significance of that change is or is likely to be. As to the deterrent effect of increased criminal sanction and powers, the submission is advanced without any or any solid evidence. It is just as possible that the reduction in direct action unlawful protests targeting Shell is a result of the interim injunctions granted. It seems to me speculative to assign the change in pattern of protest to the coming into force of the Public Order Act 2023. Indeed, Mr Eilering notes in his statement at para 8.5.2 in relation to protests that postdate the coming into force of the new statute that:

F “both the fourth and tenth defendants in the Shell Petrol Station proceedings were recently arrested under the Public Order Act. P 304–306 of Exhibit PE1. I am also aware that the fifteenth defendant was arrested after spraying a University of Leeds building with orange paint.”

G 136 The ongoing nature of protests was noted by Ritchie J in *Valero* [2024] EWHC 134 (KB), where he reviewed the evidence filed on behalf of the claimant up to December 2023, and thus after the enactment of the new Public Order Act 2023 on 3 May 2023. He summarised the evidence of Ms Pinkerton in this way at para 41:

H “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 13 September 2023 Just Stop Oil stated they would be back on the streets from 29 October 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.” A

137 Third, and vitally, the argument confuses the focus of the criminal law and civil injunctive relief. It is certainly the case that one of the stated objectives of criminal sentencing is to deter as well as punish. As the Sentencing Act 2020 provides:

“57 *Purposes of sentencing: adults* B

“(1) This section applies where— (a) a court is dealing with an offender for an offence, and (b) the offender is aged 18 or over when convicted.

“(2) The court must have regard to the following purposes of sentencing— (a) the punishment of offenders, (b) the reduction of crime (including its reduction by deterrence), (c) the reform and rehabilitation of offenders, (d) the protection of the public, and (e) the making of reparation by offenders to persons affected by their offences.” (Emphasis added.) C

138 Thus deterrence is both a recognised and legitimate aim of criminal sanction and one shared by jurisdictions across the world. However, in any specific case one must carefully assess whether the evidence supports that the particular enactment has in fact attained the powerful (here additional) deterrent effect claimed. Indeed, Mr Laurie in oral submissions argued that the real impact of the Public Order Act 2023 was not the increased sentencing powers, empowering the court to impose sentences of imprisonment up to 12 months (section 7(3)(b)). Instead, he argues that it is the ability of the police to intervene earlier and when the levels of disruption through protest were lower. This is all a matter of debate and speculation. It is not a reliable or safe basis to make important discretionary judgments. D E

139 Another of the chief aims of criminal sentencing is to punish offenders, as the Sentencing Act 2020 made clear. That is looking, as Mr Semakula put it succinctly, at the past. By contrast, injunctive relief is looking towards the future and seeking to prevent future harm. This point was considered by Hill J at [2023] 1 WLR 4358, para 178: F

“178. On the other hand, as Johnson J observed at para 60, simply leaving it to the police to enforce the criminal law would not adequately protect the rights of the claimant in the petrol stations claim: such enforcement could only take place after the event, meaning inevitable loss to the claimant; and some of the activities that the injunction sought to restrain are not breaches of the criminal law and could not be enforced by the exercise of conventional policing functions. The same is true of the claimants’ rights at the Haven and Tower sites. Indeed the balance is even clearer in those respects given that the sites involve the claimants’ private property, as to which see *Cuciurean* [2020] 4 WLR 29, paras 45–46, 76 and the conclusion at para 77, that articles 10 and 11 ‘do not bestow any “freedom of forum” to justify trespass on private land or publicly owned land which is not accessible by the public’.” G H

140 Therefore, while I do accept that the enactment of the Public Order Act 2023 is a material change, it remains evidentially unclear what material impact it has on deterring future protest and to what extent it operates

A on the minds of those who would protest against Shell. Further, given that criminal and civil proceedings are directed at distinctly different objectives, the argument that the parallel proceedings are a form of, as Mr Laurie put it, “double punishment”, is misplaced. An anticipatory injunction is granted not to punish, but to prevent identifiable future harm. As the Supreme Court put it in *Wolverhampton* [2024] AC 983, para 141, an injunction is not granted “as stage one in a process intended to lead to committal for contempt” (per Lord Reed PSC, Lord Briggs JSC and Lord Kitchin). Punishment may result if there is contemptuous breach; punishment is not the objective of the injunction, preventing future harm is.

141 I break off the systematic analysis of the 15 factors to examine the substance of the Aarhus argument.

C *X. Aarhus Convention analysis*

142 There is a significant amount of analysis to undertake, so I divide it into four subsections and flag them as follows:

- (1) Short history and context;
- (2) Status of Special Rapporteur;
- (3) Status of the Aarhus Convention;
- (4) Discussion.

143 The significance of the Aarhus Convention (here “Aarhus” or “the Convention”) for this case is that both appearing defendants rely on it in their defence. Their common position is that Aarhus “protects environmental defenders from excessive use of the law” and the grant of final injunctions against them would “breach Aarhus” and particularly article 3(8).

144 The claimants submit that Aarhus is an unincorporated convention and thus is “not justiciable” in these courts. Only certain narrow, highly specific—and for these purposes irrelevant—exceptions have been incorporated into domestic law. These are irrelevant provisions about costs in judicial statutory review by dint of the CPR rr 46.24–28 (indeed, two of the historic referrals of the UK to the Convention’s Compliance Committee have concerned the high costs of legal challenge in environment matters: Aarhus Convention Compliance Committee’s *Findings and recommendations with regard to communication ACCC/C/2008/27 concerning compliance by the United Kingdom of Great Britain and Northern Ireland* (UN Doc ECE/MP.PP/C.1/2010/6/Add.2 (24 September 2010)); Aarhus Convention Compliance Committee’s *Findings and recommendations with regard to communication ACCC/C/2008/23 concerning compliance by the United Kingdom of Great Britain and Northern Ireland* (UN Doc ECE/MP.PP/C.1/2010/6/Add.1 (24 September 2010)). Thus, Mr Semakula, who very ably took the Aarhus issue on behalf of the claimants, submitted that “none of the circumstances for Aarhus to be taken into account apply here”. It should not factor in the court’s discretionary decision. However, even if it should be considered, there would be no breach of Aarhus by granting the proportionate injunctions sought by Shell.

(1) *Short history and context*

145 On 25 June 1998, the Aarhus Convention was adopted at the Fourth Environment for Europe Ministerial Conference in Aarhus, Denmark. The United Kingdom signed the treaty and had been involved in its evolution and

formulation. A series of meetings of the signatories took place, before in May 2005 the United Kingdom ratified Aarhus. Aarhus enshrines principle 10 of the 1992 Rio Declaration on Environment and Development: A

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” B

146 To achieve these objectives, the Convention is grounded in three foundational “pillars”: C

- (1) Access to information (articles 4–5);
- (2) Public participation (articles 6–8);
- (3) Access to justice (article 9).

147 The UNECE guide to the Convention states that the instrument is “unique” because it “explicitly links environmental rights with human rights” (while this connection is not made explicit in the text of the Convention, it has been frequently recognised by the Convention’s institutional bodies: see the rapid response mechanism decision, post at para 151). In making such connection, the UNECE emphasises the Convention’s confirmation that “you have a right to information about, to have a say in, and if necessary, seek justice regarding important decisions that affect you and your environment”. The “three pillars” act to provide a “mutually reinforcing mechanism to hold governments to decision-makers accountable”. Further: “progressive governments increasingly recognize and understand that environmental decisions will only be sustainable if reached through transparent, participatory and accountable process. The Aarhus Convention provides governments with standards to ensure that this happens.” And the Convention: “makes clear that we have an obligation to protect and improve the environment for the benefit of present and future generations.” D

148 The UNECE document emphasises that the Convention is “a living treaty” to be interpreted in “a dynamic way”. A further aspect of the history of the Convention is provided by Lord Leggatt JSC in *Finch* [2024] PTSR 988, paras 19–21: E

“19. ... The Aarhus Convention was itself partly based on Council Directive 85/337/EEC of 27 June 1985, which introduced the EIA procedure within the European Economic Community (as it was then called). That Directive was amended after the Aarhus Convention came into force by Directive 2003/35/EC to implement obligations arising under the Aarhus Convention and was later codified in [Directive 2011/92/EU (‘the EIA Directive’)]. Recital (18) to the EIA Directive refers to the Aarhus Convention and recital (19) records that: ‘Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters’ F

A in order to contribute to the protection of the right to live in an environment which is adequate for personal health and wellbeing.’

B “20. Obligations arising under the Aarhus Convention have been built into articles 6, 8 and 9 of the EIA Directive. Thus, article 6 imposes obligations on member states to inform the public early in the decision-making procedure of various matters, which include details of the arrangements made for public participation in the process; to make available to the public concerned the information gathered where an EIA is required; and to give the public concerned early and effective opportunities to express comments and opinions before the decision on the request for development consent is taken. The ‘public concerned’ is defined in article 1(2)(e) as ‘the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures’ required by the EIA Directive and specifically includes NGOs promoting environmental protection. Article 8 of the EIA Directive requires the results of such public consultation to be ‘duly taken into account’ in the decision-making procedure; and article 9(1) provides that the public must be promptly informed of the decision taken and of ‘the main reasons and considerations on which the decision is based, including information about the public participation process’.

D “21. The rationale underpinning these public participation requirements is expressed in recital (16) to the EIA Directive: ‘Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.’ Two important ideas are included within this rationale. First, public participation is necessary to increase the democratic legitimacy of decisions which affect the environment. Second, the public participation requirements serve an important educational function, contributing to public awareness of environmental issues. Guaranteeing rights of public participation in decision-making and promoting education of the public in environmental matters does not guarantee that greater priority will be given to protecting the environment. But the assumption is that it is likely to have that result, or at least that it is a prerequisite. You can only care about what you know about.”

G 149 This authoritative exposition by the Supreme Court identifies the focus of the Convention, and highlights how parts of it have been incorporated. The corollary of that is that large parts of the text of the Convention have quite deliberately not been incorporated into domestic law by the United Kingdom. I now deal with the most relevant parts of the Convention for this case, citing article 3(8) in full.

H

“Article 1

“OBJECTIVE

“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the

rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”

“Article 3”

“4. Each Party shall provide for appropriate recognition of and support to associations, organisations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.”

“8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalised, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.”

150 There has been growing international recognition of the importance of environmental human rights defenders and concern about the obstacles and threats they have faced (see UN General Assembly, resolution adopted by the Human Rights Council on 21 May 2019, *Recognising the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development* A/HRC/RES/40/11; among numerous UNECE records voicing such concerns, see “Information note on the situation regarding environmental defenders in Parties to the Aarhus Convention from 2017 to date”, 24th meeting of Working Group of the Parties, Geneva, 1–3 July 2020 AC/WGP-24/Inf.16).

151 Thereafter, there was a proposal for the creation of a “rapid response mechanism” for the protection of environmental defenders, resulting in a new mandate. The seventh session of the Meeting of the Parties to the Aarhus Convention in Geneva on 21 October 2021 adopted the rapid response proposal. At its third extraordinary session (Geneva, 23–24 June 2022), the Meeting of the Parties by consensus elected Mr Michel Forst as Special Rapporteur on Environmental Defenders under the Aarhus Convention (decision VII/9 of the Meeting of the Parties (“the Decision”) ECE/MP.PP/2021/CRP.8). The Special Rapporteur’s role is to take measures to protect any person experiencing or at imminent threat of penalisation, persecution, or harassment for seeking to exercise their rights under the Aarhus Convention. The terms of reference make plain how the mandate is closely linked to article 3(8). This is the first international mechanism specifically safeguarding environmental defenders to be established within a legally binding framework either under the United Nations system or other intergovernmental structure.

152 The Decision recognised in terms “the critical importance of establishing and maintaining a safe environment that enables members of the public to exercise their rights in conformity with the Convention” and to ensure “due protection of environmental defenders”.

153 The Decision expressed “alarm” at “the serious situation faced by environmental defenders, including, but not limited to, threats, violence, intimidation, surveillance, detention and even killings, as reported by States Members of the United Nations, and by intergovernmental and non-governmental organizations and other stakeholders”.

154 The Decision clarified the definition of environmental defenders which are “any person exercising his or her rights in conformity with

A the provisions of the Convention”. And the decision acknowledged “that the safety of environmental defenders is critical in achieving the entire 2030 Agenda for Sustainable Development, and in particular its Sustainable Development Goal 16”.

B 155 Therefore, the mandate of the Special Rapporteur is to monitor the treatment of environmental defenders and, where necessary, raise the issue with the relevant national government through a “letter of allegation”. Should the response not satisfy the Special Rapporteur, the matter can be referred on to the Convention’s Compliance Committee, which has a mandate operating in parallel to the Rapporteur’s. The Compliance Committee oversees the compliance of member states with their obligations under the Convention.

C (2) *Status of the Special Rapporteur*

D 156 Shell submits that Michel Forst’s statement is simply “an opinion” and “has little or no status in a domestic law claim”. While what he says is an opinion, this to my mind cannot reduce his detailed observations and concerns to insignificance. While it is true that what Mr Forst says is not the determination of a court of law, it is the assessment of the official with a mandate granted by the United Nations to monitor and safeguard the rights of those who express concern about pressing environmental issues that have the potential to affect us all. Out of respect to Mr Forst and indeed the United Nations, I have carefully read and considered what Mr Forst has said in his mission statement.

E (3) *Status of the Convention*

F 157 While the United Kingdom has withdrawn from the European Union, Brexit did not alter the United Kingdom’s ratification of Aarhus, and the UK remains a signatory and party. The question here is the Convention’s enduring status in domestic law. My focus is on the unincorporated parts of the treaty. There can be no argument but that due to their being unincorporated they cannot be directly applied in domestic law. But that is not an end to it. The question of the legal relevance of international treaties that are not incorporated was considered by the Supreme Court in *R (SG) v Secretary of State for Work and Pensions* [2015] PTSR 471 (“SG”). Put shortly, in considering Convention rights under the ECHR, regard may be had to international law conventions. Lord Reed JSC said:

G “82. As an unincorporated international treaty, the [United Nations Convention on the Rights of the Child] is not part of the law of the United Kingdom (nor, it is scarcely necessary to add, are the comments on it of the United Nations Committee on the Rights of the Child). ‘The spirit, if not the precise language’ of article 3.1 has been translated into our law in particular contexts through section 11(2) of the Children Act 2004 and section 55 of the Borders, Citizenship and Immigration Act 2009: *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166, para 23. The present case is not however concerned with such a context.

H “83. The UNCRC has also been taken into account by the European Court of Human Rights in the interpretation of the Convention, in

accordance with article 31 of the Vienna Convention on the Law of Treaties. As the Grand Chamber stated in *Demir v Turkey* (2008) 48 EHRR 1272 [*Demir*], para 69: ‘The precise obligations that the substantive obligations of the Convention impose on contracting states may be interpreted, first, in the light of relevant international treaties that are applicable in the particular sphere.’ It is not in dispute that the Convention rights protected in our domestic law by the Human Rights Act can also be interpreted in the light of international treaties, such as the UNCRC, that are applicable in the particular sphere.”

(4) *Discussion on Aarhus*

158 Relevance or applicability cannot amount to surreptitious incorporation. What cannot happen is for the common law to be used to incorporate otherwise unincorporated international conventions “through the back door” (*A v Secretary of State for the Home Department (No 2)* [2005] 1 WLR 414). That is because the court cannot do what Parliament declined to do: give direct effect to an international treaty that remains, in its relevant provisions for these purposes, unincorporated.

159 Upon enquiry by the court, the parties agree that Aarhus does not explicitly mention “excessive use of the law”. That phrase is the defendants’ characterisation of the essential thrust of the Convention read as a whole. In particular, they rely on article 3(8) and the obligations of signatory parties to protect environmental defenders from penalisation, persecution and harassment.

160 The United Kingdom has not incorporated article 3(8). However, in line with *SG* (Supreme Court), *Demir v Turkey* (2008) 48 EHRR 54 (Grand Chamber) and the Vienna Convention on the Law of Treaties (1969), I find that the Aarhus Convention:

(1) is a relevant treaty in the sphere of environmental rights and protest about environmental issues;

(2) is relevant to the interpretation of substantive rights under the ECHR, and particularly the rights under ECHR articles 9, 10 and 11.

161 While it is submitted by the claimants that the court’s focus should strictly remain on the ECHR as it is incorporated into domestic law by the Human Rights Act 1998, that misses the point of the Supreme Court’s observations about relevance of unincorporated international treaties. While the United Kingdom has not incorporated article 3(8), nor has it disowned it. This country continues to be a signatory to Aarhus. Thus, it must be taken to respect its terms and all of them save for any reservations. There is no reservation that has been brought to my attention in respect of article 3(8). There is, of course, an understandable and material overlap between articles 10 and 11 of the ECHR and article 3(8) of Aarhus. The rights enjoyed under the ECHR are meaningless if states decline to protect them. What article 3(8) of the Aarhus Convention achieves in the protection of the rights of protesters is to provide a poignant focus on the importance of ensuring that environmental defenders are not penalised, persecuted or harassed for exercising their rights in conformity with the Aarhus Convention. To repeat: the three pillars of Aarhus are (1) access to information (articles 4–5); (2) public participation (articles 6–8); and (3) access to justice (article 9) in relation to decision-making around environmental matters. It can be said that protest is part and parcel of public participation in a wider understanding of

- A decision-making that “may have a significant effect on the environment”, to borrow from article 6(1)(b). Article 6(1)(a) provides:

“Article 6

“PUBLIC PARTICIPATION IN
DECISIONS ON SPECIFIC ACTIVITIES

- B “1. Each Party: (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I ...”

162 Annex I then provides a list of relevant activities:

- C “Annex I

“LIST OF ACTIVITIES REFERRED
TO IN ARTICLE 6, PARAGRAPH 1(a)

- “1. Energy sector:
— Mineral oil and gas refineries;
— Installations for gasification and liquefaction ...”

- D 163 Stepping back to consider all this, people who protest about and wish to draw attention to the fossil fuel industry (Annex I) seem to me to be capable of falling within the “public participation” provisions of article 6, which in turn is connected to the article 3(8) protections. It should also be remembered that article 3(3) provides:

- E “3. Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.”

- F 164 While there is a focus on participation in decision-making, I recognise that the concept of environmental defender is capable of extending to those engaging in protests about environmental projects (see the communication of the Aarhus Convention Compliance Committee against Belarus about protests against a new nuclear plant: Aarhus Convention Compliance Committee’s *Findings and recommendations with regard to communication ACCC/C/2014/102 concerning compliance by Belarus* (UN Doc ECE/MP.PP/C.1/2017/19)).

- G 165 I accept that the terms of the Convention do not spell out a necessity for peaceful or non-violent action. This is a point made by Mr Forst in his UK mission report (“The fact that they cause disruption or involve civil disobedience do not mean they are not peaceful.”). That said, I can find no basis within Aarhus that authorises environmental defenders to deliberately break or flout the law or materially violate the lawful rights of others. This appears to extend to “civil disobedience”, should that be in deliberate breach of the law in the Rawlsian sense (*A Theory of Justice*, *ibid*, where what is being avowedly “disobeyed” is the law, for a claimed higher purpose, framed by those protesting often as the protection of human and environmental ecosystems, ecology and life). No Aarhus authorisation or exemption for unlawful acts has been brought to my attention, including for acts of civil

disobedience in violation of national law. Contrast that with the putative case of arrests and prosecutions or the granting of an injunction to prohibit entirely peaceful protesters such as those who have regularly gathered with placards near to Shell without infringing any of Shell's rights. Then it is strongly arguable that Aarhus would be engaged, with possible breaches of article 3(8). I do not rule on that scenario as I have not been invited to, the situation not arising here. However, in cases of Aarhus breach, the mechanism is for the Special Rapporteur to bring the concern to the attention of the national government through a letter of allegation, and if not satisfied with the response, or if none were forthcoming, to refer the matter to the Convention's Compliance Committee. On the question of acts of intentional or deliberate disobedience, I note what Leggatt LJ said in *Cuadrilla* [2020] 4 WLR 29 at para 94:

“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.” (Emphasis in original.)

166 What Aarhus is directed at explicitly in article 3 is imposing obligations on signatories (“Each Party”) to ensure that the exercise of rights under the Convention is not subject to penalisation, persecution and harassment. I cannot see how that would protect a protester who causes, for example, criminal damage and creates a significant hazard risk to health and the immediate environment by smashing the glass of petrol pumps. Each case, I emphasise, must be examined on its own facts and merits. However, I find nowhere in the Aarhus Convention an endorsement or authorisation of the right to break the law by committing crimes or unlawfully violating the rights of others or causing deliberate damage.

167 As to legal principle, the Aarhus Convention is not and cannot be determinative of these claims. However, I am persuaded, and find, that the substance of the Convention is relevant to the court's assessment of interferences with the Convention rights of protesters under the ECHR and proportionality analyses. It consequently has relevance for the court's equitable discretion confirmed by section 37 of the Senior Courts Act 1981. I must explain what relevance means in this context. It is a matter for the court to have regard to in making its discretionary decision rather than a freestanding and independently justiciable right, Aarhus not having been incorporated. It is relevant to recognise, and I do, that the United Kingdom remains a party to an international treaty that obliges member states to guarantee the rights of public participation in decision-making and access to justice in environmental matters in conformity with the provisions of Aarhus Convention and ensure that those who act in such conformity are not penalised, persecuted or harassed.

168 Having concluded the Aarhus analysis, I apply it to the overall questions of defences, balance of convenience and compelling need and proportionality under *Ziegler* [2022] AC 408. I have carefully considered

A whether the granting of the injunctive relief sought by Shell in this case exclusively directed at unlawful acts, while explicitly exempting lawful protest, would be, as the defendants maintain, contrary to article 3(8) of the Aarhus Convention. Given that there is nothing in Aarhus authorising, for example, committing criminal offences, and that lawful protest is not prohibited under the terms of the injunction, I cannot find a putative breach of Aarhus.

B 169 I therefore add the Aarhus analysis to the four-part *Ziegler* analysis. I include the recognition of the United Kingdom's unincorporated treaty obligations under Aarhus in the proportionality assessment overall. Having done so, I concur with Hill and Cotter JJ that the granting of the injunctive relief sought by Shell is necessary and proportionate, even including full Aarhus obligation recognition. The balance of convenience, which can be
C alternatively understood as the balance of prejudice, significantly favours the grant of injunctive relief as what is being prohibited in future is unlawful protest in breach of the lawful rights vested in the claimants where the potential damage caused by future unlawful breaches have the capacity to be irreversible, certainly should it involve serious physical injury or death. There is undoubtedly a compelling need to prohibit future unlawful protests
D in the way that the Supreme Court identified in *Wolverhampton* [2024] AC 983 at para 167, in other words, to prevent the claimants from being subject to the torts pleaded. The explicit inclusion of the lawful protest exemption within the orders strikes the right balance between the competing interests. Defendants can apply to vary or set aside the injunctions or any of them and they will be regularly reviewed. While breaches of the claimants' rights in civil law may not be capable of remedy, there is no evidence that the defendants
E would in any event be able to provide a remedy in damages. The damage may be "grave and irreparable" as Marcus Smith J put it in *Vastint* [2019] 4 WLR 2 at para 31(3)(b).

170 The question with regard to PUs is whether there is a realistic defence. The court has examined the filed defences of Ms Ireland and Mr Laurie in detail and concluded that they do not provide a defence to the claims. There
F is no logical basis to envisage that the position of PUs would be superior to the rejected defences of the appearing defendants.

171 Having analysed the relevance of the Aarhus Convention and completed the *Ziegler* analysis, including analysing balance of convenience and compelling need and proportionality, I return to my systematic analysis of the 15-part factor checklist and reach Factor 7.

G XI. Analysis of the 15 factors: Part II

7. Damages not adequate remedy

172 There is no evidence that either Ms Ireland or Mr Laurie would have the financial resources to compensate Shell for the damage caused by their protests, particularly if serious injury or the leaking of toxic substances
H resulted. I note that Ms Ireland has said in future she would not be prepared to participate in protests that damaged petrol pumps. However, presently Ms Ireland receives limited income. Mr Laurie was less clear about his future intentions about petrol pumps and spoke about the spectrum of risk in a way that suggested that he may indeed participate in such a protest in future should the injunctions be discharged. These are very specific examples, but

there is a wider picture about economic torts. There is no undertaking from any of the named defendants to pay damages or costs. Against this, Shell has offered cross-undertakings in damages. I am satisfied that this would be an adequate remedy for the defendants. Hill J summarised the position as it had evolved before the court in these claims at [2023] 1 WLR 4358, paras 133–137:

“133. The note of Bennathan J’s judgment indicates that he accepted that (i) the activities at the Haven and Tower sites would cause grave and irreparable harm; (ii) trespassing on the sites could lead to highly dangerous outcomes, especially given the presence on the sites of flammable liquids; and (iii) the blocking of entrances could lead to business interruption and large scale cost to the claimant’s businesses. He concluded that given the sorts of sums involved and the practicality of obtaining damages, the latter would not be an adequate remedy.

“134. Johnson J accepted at para 34 that the defendants’ conduct with respect to the petrol stations gives rise to potential health and safety risks and if those risks materialised they could not adequately be remedied by way of an award of damages. He took into account the fact that there is no evidence that the defendants have the financial means to satisfy an award of damages, such that it is ‘very possible that any award of damages would not, practically, be enforceable’.

“135. The evidence before me shows that all of these considerations remain valid.

“136. There is also an element to which the losses at the Haven and Tower sites may be impossible to quantify, though, like Johnson J at para 33, I do not find the claimants’ argument to similar effect with respect to the petrol stations persuasive.

“137. However, for the other reasons set out at paras 133–135 above I am satisfied that damages would not be an adequate remedy for the claimants.”

173 I have separately and independently assessed the situation in respect of damages. I accept the submission of Ms Stacey that essentially “nothing has changed”. I also note that Hill J’s analysis was adopted by Cotter J [2024] EWHC 1546 (KB) at [51].

174 I endorse the finding of Johnson J that the losses at Haven and Tower may be impossible to quantify, although I agree with Hill J that this is not the same for the Petrol Stations claim. That said, the potential harm through serious injury has the capacity to be irreversible. The cross-undertakings in damages offered by the claimants, I am satisfied, would be an adequate remedy for any future Convention breach caused by the operation of the injunctions. There is no doubt that the claimants have the resources to meet any award due.

175 Overall, I am satisfied that this requirement has been met.

8(a). Whether the defendants are identified in the claim forms and the injunctions by reference to their conduct

176 As to PUs, I am satisfied that the claim forms and the subsequent injunctions identify any person falling into that category with the requisite clarity and proportionality. Geographical boundaries, where relevant, have

A been identified. Evidence before the court about the efficacy of the identification process is gleaned from the fact that in the petrol stations claim a large number of named individuals were joined to the claim when the matter came before Soole J. I am satisfied that this requirement has been met.

8(b). Whether PUs are capable of being identified and served

B 177 As explained, this process has been successfully conducted on an interim basis. As Ms Oldfield points out in her statement, the claimants have been liaising with relevant police forces and individuals have previously been identified and served. Shell undertakes to continue this approach: if any PUs are identified, Shell will serve them and make an application to join them to the claim as soon as reasonably practicable. In the meantime, there are
C provisions in the draft order for alternative service, a connected requirement I will come to.

178 The court finds that requirement 8(b) is met.

9(a). Whether the terms of the injunctions are sufficiently clear and precise

D 179 The claimants seek final orders on terms that are substantially and materially identical to those previously sought by Shell and approved and granted by this court. That this was not a rote or routine approval process can be seen from the meticulous way in which Hill J examined the terms and directed changes to the geographical limits. Aside from that, she approved the terms of the injunctions at [2023] 1 WLR 4358, paras 154–156 in this way:

E “154. In my judgment, the wording of all three injunctions is in clear and simple language, save for two caveats with respect to the petrol stations injunction: (i) some wording should be inserted before clauses 3.4–3.6 to reflect that the acts are only prohibited if they cause damage (such wording being clear on the face of the Tower and Haven injunctions but not on the petrol stations one); and (ii) clause 3.7 should
F be removed as it duplicates paragraph 4.

“155. In respect of the petrol stations injunction, as Johnson J noted at para 46, it is usually desirable that such terms should, so far as possible, be based on objective conduct rather than subjective intention. However, for the reasons he gives, the 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’) is necessary because of the nature of
G the tort of conspiracy to injure and to avoid the language being wider than is necessary or proportionate (noting the sweet wrapper example he gave at para 21).

“156. I do not accept Mr Simblet’s contention that the ‘encouragement’ provisions are unduly vague: they are clearly defined as being linked with the underlying acts and are intended to ensure that the injunctions are effective. To the extent that they capture lawful activity
H they are proportionate, as explained under sub-issue (10) below.”

180 The terms of the injunctions were also approved by Cotter J [2024] EWHC 1546 (KB) at [55]. I have independently scrutinised each draft order and conclude that the terms bear the qualities of clarity and precision.

9(b). *Whether the injunctions only prohibit lawful conduct where no other proportionate means to protect claimant's rights* A

181 All three draft orders specify in terms that lawful protest is exempted. Hill J held at para 153:

“153. Each injunction contains an order making clear that it is not intended to prohibit behaviour which is otherwise lawful. To the extent that it does, the same is a proportionate means of protecting the claimant's rights for the reasons given under sub-issue (10) below.” B

182 I have considered the question of proportionality in the *Ziegler* analysis, and as part of the four-element analysis have considered whether the measure sought is the least interference with the Convention rights of the defendants consistent with achieving the legitimate aim of preventing future material breach of the claimants' civil law rights. I have found that this was the case. Overall, I find that requirement 9(b) is met. C

10. *Whether there is correspondence between terms of injunction and threatened tort*

183 I have carefully considered each of the torts relied upon and compared the terms of each injunction to them. To that end, I prepared a table of the prime elements of each of the torts that the claimants rely on and have compared those elements with the acts to be prohibited under the draft orders. There is a clear and mirroring correspondence between the torts and the injunction terms. This issue has been previously considered by the court, with Hill J finding the necessary correspondence at paras 151–153 and Cotter J endorsing that conclusion after his consideration at para 54. D E

184 The issue of whether the injunction sought in the petrol stations claim corresponds to the tort of conspiracy to injure was litigated before Hill J. She ruled at para 151:

“151. The acts prohibited in the petrol stations injunction necessarily amount to conduct that constitutes the tort of conspiracy to injure, provided that the injunction is read in full in the way described by Johnson J at para 26 above. This means that the concerns raised in Mr Simblet's submission to the effect that clause 3.4 ('affixing ... any object or person') would prohibit placing leaflets or signs on any objects on or in a Shell petrol station and his similar concerns about clauses 3.5 and 3.6 ('erecting any structure in, on or against any part of' or 'painting ... depositing or writing any substance on to any part of' a Shell petrol station) are to some degree mitigated by the fact that such activities are only prohibited by the injunction if they are (i) such that they damage the petrol station; (ii) done in agreement with others; and (iii) done with the intention of disrupting the sale or supply of fuel. These are similar to the 'sweet wrapper' example given by Johnson J at para 26 above: the prohibited acts in paragraph 3 need to be read in conjunction with the definition of defendants. When that is done, it can be seen that they mirror the torts underlying the overarching tort of conspiracy to injure.” F G H

185 Nothing has changed since this analysis and no point was taken before me. I find that requirement 10 is satisfied.

A 11. *Whether there is a clear and justifiable geographical limit*

186 This matter was reviewed by Cotter J [2024] EWHC 1546 (KB) at [56]:

B “56. As for geographical and temporal limits, the extent of the Haven and Tower injunctions are made clear by the plans appended to them. In respect of the petrol stations injunctions, this matter was revised by Hill J, and again I am satisfied that the form of order is appropriate.”

C 187 The geographical scope of the Haven and Tower injunctions are precisely set out in the plans attached to the draft orders. The extent of these protected areas makes evident sense and is plainly justifiable. For example, in respect of Tower, it does not—and critically has not—prevented ongoing and regular protests in the vicinity of the building complex as set out in the filed chronology.

D 188 As to Petrol Stations, as indicated, Hill J refined the geographical extent. The reason was that on objection from the defendants, the court agreed that there needed to be greater clarity about the scope of injunction not to impinge on the public highway. The terms endorsed by Hill J, were also approved by Cotter J at para 56. The finding of Hill J, endorsed by Cotter J, makes evident sense and is justifiable, being logically connected to and proportionate to the need to protect the sites. No point was taken about this factor or the draft orders, reflective of their necessity and proportionality.

189 I find that this requirement is met.

E 12. *Clear and justifiable temporal limit*

F 190 The application in respect of each injunction is for a duration of five years. I questioned Ms Stacey about why such a period was necessary, notwithstanding that it had been granted in other protest cases (such as by Ritchie J in *Valero* [2024] EWHC 134 (KB)), the court wanting to be independently satisfied. She made two submissions. First, that several environmental groups have made demands of the Government that the extraction of fossil fuels ends by 2030. Mr Eilering notes in his statement at paras 2.8–2.9:

G “2.8 it is clear to me that there is still a very real risk that without the protection of the Injunction Orders, protest activity would very likely return to the levels of unlawful activity previously experienced.

H “2.9 For example, I am aware of an article in which Just Stop Oil were quoted saying ‘whilst governments are allowing oil corporations to run amok destroying our communities, the actions of individuals mean very little. Failure to defend the people they represent will mean Just Stop Oil supporters, along with citizens from Austria, Canada, Norway, the Netherlands and Switzerland will join in resistance this summer, if their own governments do not take a meaningful action.’ Pages 279–286 of Exhibit PE1.”

191 He fears that their activist campaigns are highly likely to continue until the extraction of fossil fuels ends. Second, Ms Stacey points to the costs of refile and reissuing these claims. The Petrol Stations claim, for example, covers 1,000 petrol stations across the jurisdiction. It involves a

very significant undertaking to implement the necessary warning signs at the sites. In all these circumstances, it is proportionate to grant a five-year period in the order because of another vital consideration: there is built into the structure of the orders an annual review along with provision to vary or set aside. Should therefore there be a significant or material change, the grant of the injunctions or any of them can be actively and promptly revisited. I find myself in a position analogous to Ritchie J, who held at para 75:

“Temporal limits—duration

“75. I have carefully considered whether five 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 four 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 two years seven months’ time. I have seen no evidence suggesting that those connected with the four 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.”

192 It should be noted that the “four organisations” are JSO, XR, Youth Climate Swarm and Insulate Britain. I find that this requirement is satisfied.

13. Service

193 It is essential that all practical steps are taken to notify defendants and potential defendants. The Supreme Court addressed this point in *Wolverhampton* [2024] AC 983 from para 226:

“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 ...

A “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.

B “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.”

C 194 This is precisely what has happened in the claims before me. The court has original evidence and updating evidence from Ms Alison Oldfield on behalf of Shell to explain the numerous steps that have been taken (her tenth statement is dated 24 September 2024; the court has considered all of them). For example, in the draft order in respect of the Petrol Stations claim, it is stated that:

“Pursuant to CPR rr 6.15 and 6.27 and CPR r 81.4(c) and (d), service of this Order (with the addresses in the Third Schedule and the social media addresses redacted) shall be validly effected on the first defendant and any other non-parties as follows:

D “a. the claimant shall use all reasonable endeavours to arrange to affix and retain Warning Notices at each Shell Petrol Station by either Method A or Method B, as set out below:

“Method A

“Warning notices, no smaller than A4 in size, shall be affixed:

“(a) at each entrance onto each Shell Petrol Station

E “(b) on every upright steel structure forming part of the canopy infrastructure under which the fuel pumps are located within each Shell Petrol Station forecourt

“(c) at the entry door to every retail establishment within any Shell Petrol Station

“Method B

“Warning notices no smaller than A4 in size shall be affixed:

F “(a) at each entrance onto the forecourt of each Shell Petrol Station
“(b) at a prominent location on at least one stanchion (forming part of the steel canopy infrastructure) per set/row of fuel pumps (also known as an island) located within the forecourt of each Shell Petrol Station

“b. Procuring that a Warning Notice is uploaded to www.shell.co.uk;

G “c. Sending an email to each of the addresses set out in the Second Schedule of this Order providing a link to and, specifically notifying them that a copy of this Order is available at, <https://www.noticespublic.com/>

“d. Uploading a copy of this Order to <https://www.noticespublic.com/>

H “e. Sending a link to www.noticespublic.com data site where this Order is uploaded to any person or their solicitor who has previously requested a copy of documents in these proceedings from the claimant or its solicitors, either by post or email (as was requested by that person).”

195 CPR Pt 6 requires “good reason” to justify such alternative service steps. Where there are PUs, doing what can reasonably be done to publicise the prohibitions generally to potential future protesters is required. Similar efforts apply to the general public. It will not do if people are not given fair

warning. The point of alternative service methods is, as stated in *Canada Goose* [2020] 1 WLR 2802 at para 82, to take such steps as can be reasonably expected to bring the proceedings to the attention of people who may be affected by the restrictions in future. To that end, the claimants have filed evidence of the extensive steps they have taken to meet this requirement in the three claims. The efforts mirror what was approved by Johnson, Hill and Cotter JJ. As put by Hill J at [2023] 1 WLR 4358, paras 201–204:

“201. The alternative means of service proposed for the order in the Tower claim are (i) affixing warning notices to and around the Tower which (a) warn of the existence and general nature of the order and of the consequences of breaching it; (b) indicate when it was last reviewed and when it will be reviewed in the future; (c) indicate that any person affected by it may apply for it to be varied or discharged; (d) identify a point of contact and contact details from which copies of the order may be requested; and (e) identify <http://www.noticespublic.com/> as the website address at which copies of the order may be viewed and downloaded; (ii) uploading a copy of the notice to <http://www.noticespublic.com/>; (iii) e-mailing a copy of the notice to a series of e-mails relating to the main protest groups listed in the schedule of the order; and (iv) sending a copy of the notice to any person who has previously requested a copy of documents in the proceedings.

“202. The alternative means of service proposed for the order in the Haven claim are (i)–(iii) above.

“203. The alternative means of service proposed for the order in the petrol stations claim are (i)–(iv) above. The interim orders which I made on 28 April 2023 mirrored the terms of Johnson J’s order and provided for the notices to be affixed by use of conspicuous notices in prescribed locations in the petrol stations, or in alternative locations in the stations, depending on the physical layout and configuration of the stations.

“204. The alternative means of service proposed for the amended claim form and any ancillary documents in the petrol stations claim are (ii)–(iv) above.”

196 The alternative service methods previously used remain relevant and the court authorises their continued use. This includes service through notification through social media accounts where necessary. The claimants’ filed evidence on this point has not been disputed by the defendants and I accept it. The balance of fairness is maintained because any person committed for possible future breach can make the argument that the service provisions have operated in a way that was ineffective and unfair in her or his case (see *Secretary of State for Transport v Cuciurean* [2020] EWHC 2614 (Ch) at [63(9)]).

197 I find requirement 13 satisfied.

14. *Right to set aside or vary*

198 This right has been explicitly included in all draft orders and will form part of any final orders granted. I find this requirement met.

15. *Review*

199 The duty to keep an injunction under review is equally applicable to final injunctions as it is to interim injunctions (*Barking* [2023] QB 295 at

A para 77). Indeed, in *Barking* at para 108 the court stated that even where final orders are granted “it is good practice to provide for a periodic review”. As already indicated, an annual review is included in the draft orders and will form part of any final orders granted. I find this requirement met. In her evidence and updating evidence, Ms Oldfield explains how the claimants continue to keep the necessity for the injunctions under anxious review.

B I have no reason not to accept that evidence, nor was it disputed.

XII. Overall conclusion

200 I have carefully considered each of the three claims separately. The applications do not stand or fall together. They are, I emphasise, separate applications in separate claims being managed and heard together for administrative convenience. In each claim, the requirements (“the 15 factors”) identified in *Valero* [2024] EWHC 134 (KB), summarising *Canada Goose* [2020] 1 WLR 2802 and *Wolverhampton* [2024] AC 983, have been met and this is highly significant in the exercise of the court’s equitable discretion. In such matters, a court will grant injunctions on the assumption that they will be effective and obeyed. This point was made by the Supreme Court in *Wolverhampton* at para 141, where Lord Reed PSC, Lord

C

D Briggs JSC and Lord Kitchin said:

“In considering whether injunctions of this type comply with the standards of procedural and substantive fairness and justice by which the courts direct themselves, it is the compliant (law-abiding) newcomer, not the contemptuous breaker of the injunction, who ought to be regarded as the paradigm in any process of evaluation. Courts grant

E injunctions on the assumption that they will generally be obeyed, not as stage one in a process intended to lead to committal for contempt: see para 129 above, and the cases there cited, with which we agree.”

201 As to Mr Laurie’s concern that parallel proceedings in both the criminal courts and the civil jurisdiction “trap” him, it is vital to note that the distinct proceedings are directed at different matters. The Crown Court at Winchester, through the historic device of a jury of the defendants’ peers, will decide whether Ms Ireland and Mr Laurie broke the criminal law during their protest at the service station at Cobham in August 2022. About that important question, nothing determined in this judgment has any relevance. This court respects the sacrosanct province of the British jury and its right to make its own decision. The injunctions sought here are exclusively aimed

F

G at prohibiting future breaches of the lawful rights possessed by Shell. Justice must be blind; it does not have sides. It must respect the rights of all parties coming before the court, and the court’s duty where they clash is to strike the fair balance, ensuring that any necessary interference with the Convention rights of a defendant is proportionate. These final orders achieve that. They are anticipatory injunctions, with the objective of prohibiting future unlawful breaches of the claimants’ rights. The right and fair balance is struck by

H ensuring that lawful protest is not prohibited, and indeed I observe that such lawful protests have continued with great regularity near to the Shell Tower in London. The “way out” of the trap that Mr Laurie perceives himself to be in is, as Ms Stacey submits, to give the undertaking that other defendants have given, and thereby promise that he will not engage in the specified unlawful acts in future. He does not wish to do that. Neither does

Ms Ireland. That is their right. But nothing in these final injunctions prohibits their engaging in future protest that is lawful. A

202 Should they protest lawfully and in conformity with the Aarhus Convention, acts of penalisation, persecution or harassment would undoubtedly be matters of grave concern to the Special Rapporteur. In pursuance of the mandate, the Rapporteur is authorised to take “measures” such as public statements and raising the matter with the relevant government. If there were no satisfactory governmental response, the issue can be referred to the Aarhus Convention Compliance Committee. This is a mechanism now recognised on the international plane. The Compliance Committee can request the member state to submit a plan of (remedial) action. Should a domestic court be tasked with exercising its discretion confirmed by section 37 of the SCA 1981, recognition of United Kingdom’s Aarhus Convention obligations would plainly be relevant to the assessment of incorporated substantive rights such as those under the ECHR. I have little difficulty in reaching that conclusion in a similar way to the Supreme Court in SG [2015] PTSR 471. B C

203 In *Finch* [2024] PTSR 988, the Supreme Court set down in unsparing terms the “virtual certainty” that oil extracted from the ground “will sooner or later be released into the atmosphere as carbon dioxide and so will contribute to global warming”. These are unquestionably issues of generational and inter-generational significance. It is not part of this court’s function to quell, suppress or deter legitimate debate about these vital matters, nor to prohibit genuine and lawful protest lawfully conducted by genuinely concerned and sincere citizens. But the lawful rights of others which are recognised by the law cannot be ignored in this equation. This is the balance that the granting of these final orders strikes. The question of infringing the rights of others out of necessity was considered by the Court of Appeal in *Monsanto plc v Tilly* [2000] Env LR 313 (“*Monsanto*”; and see *Clerk & Lindsell on Torts*, 24th ed (2023), para 18–58). In *Monsanto*, Mummery LJ said at p 339: D E

“Public confidence in the legal system and in the rule of law would be undermined if the courts refused to enforce the law on the ground that defendants, who wished to establish the validity of beliefs sincerely and genuinely held, were entitled to rely on the public interest to justify wrongs to the property of others who did not share their point of view. It is extremely improbable that a reasonable man would regard the [necessity] defence proposed as an acceptable reason for the unauthorised presence of anyone, public official or fellow citizen, on his property or on the property of anyone else. F G

“On the other hand, the unavailability of public interest as a justification for trespass does not in any way curtail or prejudice the exercise by the defendants of their undoubted right in a democratic society to use to the full all lawful means at their disposal to achieve [their] aims and objects ... Supporters can peacefully and effectively pursue those aims and gain publicity and public support for them in many different ways without the need to commit unlawful acts of trespass ...” H

204 Here starkly is the issue posed by these protests and indeed these claims: what is justifiable in a functioning democracy when the actions of

- A genuinely concerned citizens interfere with the rights of others who wish to go about their business or wish to exercise their property rights in peace? In this, the court does not take sides about the policy and political debate; it applies the law. In *Wolverhampton* [2024] AC 983 at paras 170–171, the Supreme Court stated that it was relevant to the court’s discretion to consider whether other “non-judicial” remedies lie open to the claimants.
- B In those gypsy/traveller injunction cases, for example, it was relevant to consider whether local byelaws could be passed by the local authority. Here, however, the claimants have no such powers open to them. They have turned to the court for protection of their substantive rights under the law. The remedy of an equitable injunction has been sought because, as Lord Reed PSC, Lord Briggs JSC and Lord Kitchin said in *Wolverhampton* at para 238(iii)(a): “equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue.”
- C

205 It is vital to return to the basis of these claims. The claimants are not inviting the court to determine whether trespass to land or private or public nuisance has been proved. The question is vitally different. These are applications for anticipatory or precautionary injunctions. The question is simply whether there is a real and imminent risk of future direct action by the defendants or PUs that carries with it the strong probability that the claimants’ rights under civil law will be breached. It is on that exclusive and focused basis that the court exercises its discretion confirmed by section 37 of the SCA 1981 to grant the final orders sought as satisfying the just and convenient test—the true and paramount test.

- D
- 206 Regular review is built into the very structure of the orders to ensure that changing circumstances do not “outflank or outlast” (*Wolverhampton*, para 167(iv)) the compelling need that resulted in the grant, as is the liberty for defendants to apply to vary or set aside. These are essential safeguards and checks and balances. Ultimately, as the Supreme Court remarked in *Wolverhampton* at para 18, the High Court when exercising its equitable discretion in respect of injunctions “possesses the power, and bears the responsibility, to act so as to maintain the rule of law”.
- E

- F 207 It is this high responsibility that this court must give effect to in these three claims.

XIII. Disposal

208 Therefore, on the issues the court was invited to determine:

- (1) Whether to grant final orders in each of the three claims:
- G a. Claim 1 (Haven): final order **GRANTED**;
b. Claim 2 (Tower): final order **GRANTED**;
c. Claim 3 (Petrol Stations): final order **GRANTED**.
- (2) Whether the duration of the final orders should be five years: **GRANTED**.
- (3) Whether alternative service orders should be granted: **GRANTED**.
- H (4) Whether to grant the application to remove the third defendant from Claim 3 (Petrol Stations) and consequently amend the claim form and particulars of claim to reflect the strike out: **GRANTED**.

209 As noted, the claimant in Claim 3 does not seek its costs against the defendants. If there is any other consequential application, it should be notified to the court accompanied by a draft order and skeleton by 4 pm, five working days after electronic publication of the judgment. The other

parties are granted three working days to respond. The applicant(s) granted one further day for a short reply after that. The court will consider whether it can determine the application on the papers. If not, a hearing will be directed.

210 I intend for this judgment to be handed down electronically and published to the National Archives.

Annex A

B

Defendants in Claim 3

Persons Unknown	First Defendant	
Louis McKechnie	Second Defendant	
XXX XXX	Third Defendant	
(Struck out on order of court following undertaking)		C
Callum Goode	Fourth Defendant	
Christopher Ford	Fifth Defendant	
Sean Jordan	Sixth Defendant	
(also known as Sean Irish, John Jordan, John Michael Jordan and Sean O'Rourke)		
Emma Ireland	Seventh Defendant	D
Charles Philip Laurie	Eighth Defendant	
Michael Edward Davies	Ninth Defendant	
also previously known as Michael Edward Jones		
Tessa-Marie Burns	Tenth Defendant	
(also known as Tez Burns)		E
Simon Reding	Eleventh Defendant	
Kate Bramfit	Twelfth Defendant	
Margaret Reid	Thirteenth Defendant	
David Nixon	Fourteenth Defendant	
Samuel Holland	Fifteenth Defendant	

Annex B

F

Procedural history

Date	Event	
3 April 2022	Haven protests	
6–20 April 2022	Tower protests	
28 April 2022	Initial petrol stations protests	
5 May 2022	Bennathan J grants Haven and Tower interim injunctions	
20 May 2022	Johnson J continues Haven and Tower interim injunctions	
24 August 2022	JSO petrol station protest at Cobham services	
26 August 2022	JSO petrol stations protest at Acton Vale and Acton Park	
23 May 2023	Hill J grants petrol stations injunction and continues Haven and Tower and Petrol injunctions	
15 March 2024	Soole J review (joinder and case management directions)	
24 April 2024	Cotter J review and interim injunctions continued	
7 May 2024	Mr Laurie's defence filed	

A	16 May 2024	Ms Ireland's defence filed
	16 October 2024	Mr Laurie's witness statement and skeleton argument
	16 October 2024	Claimants' skeleton argument
	17 October 2024	Ms Ireland's witness statement and skeleton argument
	17 October 2024	Mr Laurie's skeleton argument
	22–23 October 2024	Substantive hearing

B

Annex C

Materials

C	Item	Pages
	Core hearing bundle	1–413
	Previous service bundle	414–7234
	Miscellaneous bundle	7235–7766
	Authorities bundle	636
	Additional authorities bundle	166
	Claimants' skeleton	31
D	Ms Ireland's skeleton	7
	Mr Laurie's skeleton	10

Annex D

Draft undertaking (Claim 3)

Form of Undertaking

E *Shell UK Oil Products Limited v Persons Unknown* (etc) and others with the claim number: QB-2022–001420 (the “Petrol Stations Injunction”)

I promise to the Court that, whilst the Petrol Stations Injunction remains in force (including for the avoidance of doubt where it is continued at a renewal hearing or final hearing and in each case as amended by further order of the Court), I will not engage in the following conduct:

F a) Directly blocking or impeding access to any pedestrian or vehicular entrance to a Shell Petrol Station forecourt or to a building within the Shell Petrol Station;

b) 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;

G c) 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; and

d) Causing damage to any part of a Shell Petrol Station, whether by:

i. Affixing or locking myself, 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.

H ii. Erecting any structure in, on or against any part of a Shell Petrol Station.

iii. Spraying, painting, pouring, depositing or writing in any substance on to any part of a Shell Petrol Station.

e) I confirm I will not carry out such activities myself, by means of another person doing so on my behalf, or on my instructions with my encouragement or assistance.

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

Signed
Name
Dated

Applications granted. B

SZE PUI NG, Solicitor

C

D

E

F

G

H

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

The Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 24 February 2025

BEFORE:

MR JUSTICE SWIFT

BETWEEN:

EXOLUM PIPELINE SYSTEM LIMITED & OTHERS

Claimants

- and -

PERSONS UNKNOWN & ANOTHER

Defendants

MR T MORSHEAD KC on behalf of the Claimants

The Defendants did not appear and were not represented

JUDGMENT
(Approved)

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Lower Ground, 46 Chancery Lane, London WC2A 1JE
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MR JUSTICE SWIFT

1. This is an application made following paragraph 3.1.2 of the Order made by Bennathan J on 29 April 2022.
2. The underlying proceedings were issued on 6 April 2022 and were a claim for an injunction against persons unknown. The persons unknown were identified by reference to two classes; firstly those entering or who threatened to enter sites operated by the claimant, Exolum Pipeline System Limited; and secondly persons either blocking or impeding free access to those sites. The sites in question are petrol storage and distribution terminals at Grays in Essex, Bramhall in Stockport, Seal Sands at Stockton-on-Tees, Misterton at Doncaster, Hallen in Bristol, Thetford in Suffolk and Saffron Walden in Cambridgeshire.
3. An interim order was made by Johnson J on 8 April 2022. The return date was on 29 April 2022 and the matter came then before Bennathan J. He made an order prohibiting the Defendants from entering or remaining upon any part of the terminals, as I have referred to, without permission; prohibiting them from damaging the whole or any part of those terminals; prohibiting them from climbing onto tankers on any part of the access roads for those terminals; preventing tunnelling, that is to say any activity that tunnelled under or undermined any part of the access roads to any of the terminals; also preventing such actions as might cause or appear to cause a risk of ignition or explosion anywhere in the vicinity of tankers or the terminals themselves; and finally preventing the Defendants from affixing themselves to any other person or vehicle or object either in the terminals or any of the access roads.
4. At the same time, Bennathan J made a further non-party disclosure order. That order, made pursuant to CPR 3.17, was directed to the local police forces for each of the terminals. The order required those police forces, on notice, to provide various classes of information to the Claimant, the information being such as might identify those persons who had trespassed on or attempted to trespass on any of the terminal sites.
5. The injunction made by Bennathan J was made following consideration of witness statements made by Mark O'Neill (on 6 April 2022 and 27 April 2022), and by

David Cook (on 6 April 2022). For present purposes I can refer primarily to Mr O'Neill's statements. In those statements he described, in particular, events that had happened on 1 April 2022, when various groups of protestors had attempted to gain access to the Grays terminal in Essex. They had caused significant disruption. They had been the cause of potential danger, given the nature of the materials stored on the site, the site being one used for the storage and distribution of hazardous materials. Mr O'Neill also described further disruption that took place the following Tuesday, 5 April 2022. On that occasion protestors had glued themselves together and then glued themselves to the road. Mr O'Neill further referred to plans that he had heard about concerning a possible month of concerted action by activist groups, including Just Stop Oil, Extinction Rebellion, Insulate Britain and the Youth Climate Swarm.

6. In his second statement Mr O'Neill referred to further protests that had taken place on Sunday 10 April 2022. On that day, some 35 protestors had accessed the Grays terminal by climbing over the boundary fence. Twenty of them had gained access to the road loading bays which are the areas on the site where tankers are filled prior to transporting petroleum and other chemicals to customers. He also explained that 2 protestors had made their way to a nearby storage tank on the terminal site that contained kerosene, another flammable product.
7. That information, in summary, caused Bennathan J to make the order I have already described. At paragraph 3.1.2 of the order, Bennathan J provided for a review hearing to take place approximately 12 months from the date of his order to consider whether or not the order as he had made should continue. That provision has since become the premise for a series of annual reviews of the injunction that is in force in relation to the seven terminal sites.
8. The first such review took place on 23 January 2023 and was considered by Soole J. He ordered that the Order made by Bennathan J should continue subject to a further review 12 months thereafter. On that occasion Soole J took the opportunity to consider a further statement from Mr O'Neill made on 16 January 2023. That statement explained the arrangements that had been put in place for service and notification of the order that had been made. Mr O'Neill also referred to continued protest by activist groups, this time at the claimant's terminal at Clydebank, and he referred to his involvement in the

prosecution of activists who had been arrested the previous April, following their activities at Grays. He explained that additional security measures had been put in place at a number of terminals but, for obvious reasons, did not explain the details of those additional measures.

9. At paragraph 27 of that statement Mr O'Neill also explained that on 28 August 2022, a group of 25 protestors had been present at the Grays site, 5 of whom had gained access to the site and were arrested by the police. Prosecutions did not follow, but Mr O'Neill explained, that was a matter of pragmatism rather than for any other reason. He also explained that on 11 November 2022 there had been another attempt to gain access to the Grays site by a number of activists, this time using ladders. That attempt had been unsuccessful. Further within his statement, Mr O'Neill referred to the continuing general activities of Just Stop Oil and other similar environmental activist organisations, to make the point that there was no prospect that those organisations would cease to pursue the tactics they had previously used to draw attention to their cause.
10. As I have said, Soole J made an order on 23 January providing for a further review of Bennathan J's order after a further period of 12 months. That review took place on 20 February 2024 and was considered by Farbey J. She saw no sufficient reason to discharge the order that Bennathan J had made. Her Order was that the injunction should continue and there should be a further review of the injunction 12 months following. The application made to Farbey J was supported by Mr O'Neill fourth witness statement, made on 15 February 2024. Among other matters, he referred to continued protests at the Claimant's Clydebank terminal, and also to the general continuation by Just Stop Oil and other like-minded organisations of their programmes of disruption of public events and other sites associated with oil production and distribution.
11. The application now before me is the third application for review of Bennathan J's Order. It is supported by witness statements made by Mr O'Neill dated 17 February 2025 and by David Cook dated 18 February 2025. I will refer primarily to Mr O'Neill's statement as that contains the majority of the narrative of events over the past 12 months. He explains that the signage required to notify persons of the injunctions and of the review process remain in place and in good order. He explains that the Claimant continues to take measures to make unauthorised access to the terminals more difficult. For obvious

reasons, those measures are not specified in the witness statement. He further explains that Just Stop Oil and others continue their campaigns of protest in the course of 2024, this time targeting airports in England as well as undertaking other opportunistic attacks on property and attacks that disrupt ordinary commercial and private activities.

12. At paragraph 35 of his statement Mr O'Neill lists a number of well reported incidents in the course of the last 12 months, and then at paragraphs 38 and 39 he says this by way of explanation for the need for Bennathan J's order to continue:

“38. There is therefore no evidence to suggest that there will not be future protests throughout 2025 and beyond. The JSO website generally encourages protestors to push for imprisonment to exploit the state's current weakest point: prison capacity. Whilst it may appear to the court that JSO's strategy may mean that protestors will attend the terminals, notwithstanding the injunction, so as to fulfil the strategy of being arrested and being imprisoned due to the penal notice within the injunction, it should not mean that the injunction should not remain in place. Of course, the deterrent element will be a factor for some protestors, and Exolum wants to do all it can to protect its staff, the public and the defendants themselves.

39. As previously set out in O'Neill 3 and O'Neill 4, I have concerns that the claimants' terminals are at risk of further protest activity due to the nature of the claimants' business being closely related to JSO's objective, despite JSO seemingly recently targeting different areas such as airports and historic monuments and documents, and that the website now encourages activists to take action outside the Houses of Parliament to the point of arrest as many times as possible.”

13. The application for review now before me is of the type anticipated by the Supreme Court in its judgment in *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* [2024] AC 983. The nature of the Order and of the jurisdiction explained by the Supreme Court in that case has been summarised by Sir Anthony Mann in his judgment in *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 1786 (Ch) at paragraphs 14 to 20.
14. The continuation of the Order made by Bennathan J has become necessary as orders of this type have themselves become features of what appear to be contests of attrition between activist organisations, such as Just Stop Oil, and any event or operation that

those activists consider will, if disrupted, obtain publicity for and advance their cause. The attacks that Just Stop Oil undertakes are essentially opportunistic. As one or other target is made less accessible by orders such as the one now under consideration, activists will turn their attention somewhere else. The application to continue the Order made in 2022 rests on the premise that were this order to be discharged these terminals would once again be targeted and, having previously been the subject of an injunction, those terminals would be all the more an attractive target. Experience shows that such pessimism is warranted. I fear that, once made, the need for orders such as this one can almost become self-perpetuating, in that any decision to remove the order would, from the point of view of the activists, wave a flag above these terminals marking their return to the category of targets for disruption. Even though Just Stop Oil and other likeminded organisations may be opportunistic, experience shows that they are also persistent and will take any opportunity that presents itself.

15. I accept in the circumstances of this case that there remains a compelling need for the Order made by Bennathan J to remain in force. I accept that the lack of disruption at the terminals covered by this Order is itself the consequence of the existence of the order. I am satisfied that the practical criteria for the continuation of this injunction, that is to say those identified by the Supreme Court in the judgment in the *Wolverhampton* case as the criteria for making orders in the first place, are met.
16. Orders such as this one also seek to take proper account of Convention rights of free speech and freedom of assembly, taking proper account of those rights and also of the right of persons such as the Claimant to free enjoyment of their property. In this instance, the restriction imposed by Bennathan J's order is calibrated to the operation of the sites. Moreover, the balance struck in this case between exercise of rights to free speech and freedom of assembly recognises the particular risks to property and health that could arise in the event of unauthorised access to the site, including tankers entering or leaving that site. The operations at each terminal are inherently dangerous, involving the storage and removal of large quantities of petrochemicals. Safety standards at the site are strict and carefully monitored. Those standards are threatened by unauthorised entry and activity.

17. In the circumstances of this case, the manner and form of protest is important to the way in which the balance between the competing Convention rights should be struck. It is important because of the possible practical consequences that could arise from the way in which the Defendants acted in April 2022. Those actions warranted the response in the form of the Order made by Bennathan J. That Order, including restriction on the otherwise unrestricted exercise of the Convention rights of free speech and freedom of assembly was entirely justified, striking a fair balance. For the reasons I have already given, the Order, as it will be continued, continues to reflect a fair balance between the competing Convention interests.
18. The terms of the order I will make will be largely similar to those already set out in the orders made by Soole J and Farbey J. In the course of submissions leading counsel for the Claimant, Mr Morshead KC, suggested that the review period might be extended to 18 months rather than 12 months. Ultimately, that was not a submission he sought to pursue. Had he pursued that submission I would have been against him. For now, the annual review process represents a workable and pragmatic course. The Order that is in place is a significant measure and it should be reviewed on an annual basis. Any request for any longer review period would need to be accompanied by some form of express positive obligation on the Claimant to look for and bring to the court's attention such matters as might require the court to reconsider the Order in place.
19. I will make an order, largely in the form sought. I have been provided with a draft order by the Claimants. As discussed in the course of submissions, there will need to be some minor variations to paragraph 2 of the draft in order to clarify the material that needs to be contained within the plastic containers that are on the site (that material comprising the Order and evidence that the court has had before it on the various occasions it has considered this injunction since April 2022). I am satisfied that the remaining paragraphs in the draft order are correct, as drafted.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge



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 :

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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 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

Case No: KB-2024-001765

Neutral Citation Number: [2025] EWHC 2223 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 26th August 2025

BEFORE:

MR JUSTICE BOURNE

BETWEEN:

LONDON CITY AIRPORT LTD & ORS

Claimants

- and -

PERSONS UNKNOWN

Defendants

MR T MORSHEAD KC, MS E BARDEN (instructed by Eversheds Sutherland International LLP) appeared on behalf of the Claimant
THE DEFENDANTS were not present and not represented

JUDGMENT

(Approved)

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1. MR JUSTICE BOURNE: At this hearing I conducted the first annual review of injunctions granted at the separate hearings of four claims last year, concerning activities by environmental protestors at a total of ten airports at different locations in England. The relevant airports are identified in each order.
2. The claimants were represented by Mr Morshead, King’s Counsel and Ms Baden of counsel. There was no appearance by any defendant or by anyone expressing opposition to the continuation of the injunctions.
3. The injunctions were sought because in 2024, airports in England and elsewhere became targets in campaigns of disruptive environmental protest, notably by the campaigning group, “Just Stop Oil” (“JSO”). Individual airports and groups of airports sought injunctive relief against “Persons Unknown”, invoking the “newcomer” jurisdiction as explained by the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47, [2024] 1 AC 983 (“Wolverhampton”).
4. I have read the judgments given when the original injunctions were granted of Julian Knowles J (20 June 2024, KB-2024-176) HHJ Coe KC (5 July, KB-2024-002132) and Ritchie J (19 July 2024, KB-2024-002317). I have also seen a note of what was said by Jacob J in KB-2024-002473 on 6 August 2024.
5. By way of context, I note that orders were also made at hearings in other claims concerning Heathrow (Julian Knowles J, 24 July 2024), Gatwick (Ritchie J, 19 July 2024) and Southend Airports (Farbey J, 14 August 2024). This review does not encompass those three cases.
6. Each judge was satisfied that an injunction was necessary to restrain the threat of tortious conduct and that it was just and convenient to make an order. In particular, because of threats of unlawful action by protest groups, viewed in the light of some previous incidents, and the potential for such action to cause health and safety risks (to the public, airport staff, emergency services and/or the protestors themselves) and delay and disruption to the public. In addition, each judge was satisfied that it was appropriate to grant injunction against “Persons Unknown.”

7. I shall note increase the length of this judgment or extend the corpus of judicial discussions of this broad subject by repeating the statements of legal principle and factual considerations, which were set out by the judges when granting the injunctions last year.
8. It is, in particular, unnecessary for me to explore some distinctive characteristics of these cases which were considered by the judges, notably the fact that the claims concern a combination of (1) land owned by the claimants, (2) land not owned by the claimants but on which there is airport infrastructure and (3) public highways in and around the airports. The injunction granted to London City Airport covers land in category (1) only, whereas the injunctions in the other three cases cover all three categories. The claimants are not seeking any geographical expansion of the injunctions granted last year. London City Airport seeks, and I will grant, permission to amend to reflect a change of ownership of one specific area.
9. The nature of a review hearing of this kind was considered in *Wolverhampton* at paragraph 225, where the Supreme Court observed that the hearing:

“...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 has emerged, whether there is any proper justification for continuance; and whether and on what basis, a further order ought to be made.”
10. In *High Speed Two (HS2) Ltd & Anor v Persons Unknown* [2024] EWHC 1277 (KB), Richie J described the court’s task at a review hearing:

“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.”

11. I have therefore considered whether, since last year’s injunction orders were made, there has been any material change affecting, diminishing or removing the need for them to be in place.
12. Each application for review is supported by a witness statement by Stuart Wortley, a partner in Eversheds Sutherland (International) LLP, who represent the claimants. He sets out a chronology of incidents and events, occurring both before and since last year’s injunctions.
13. Of the events postdating any or all of the injunctions, Mr Moreshead emphasises several, including the following:-
 - (a) On 19 July 2024, one of the JSO founders, Roger Hallam, was found guilty with others of conspiring to organised protests to block the N25 motorway in November 2022. He was sentenced to five years in prison, later reduced on appeal to four years.
 - (b) On 24 July 2024, ten JSO activists were arrested at Heathrow Airport, seemingly equipped to be able to cut through fences and/or affix themselves to parts of the land or aircraft. Of those individuals, nine were later found guilty by a jury of conspiracy to cause a public nuisance. Five were sentenced to terms in prison of up to 15 months, and four were given suspended sentences.
 - (c) On 27 July 2024 a protest which was due to occur at London City Airport, was relocated to the Department of Transport.
 - (d) On 29 July 2024, eight JSO activists were arrested at Gatwick Airport on suspicion of interfering with public infrastructure.

(e) On 30 July 2024, two JSO activists were arrested at Heathrow Airport after spraying orange paint around the Terminal 5 entrance hall and on destination boards in the departure lounge. Following a criminal trial, the jury was unable to return a verdict.

(f) On 31 July 2024, a protest by JSO and Fossil Free London, was held at the Docklands Light Railway Station, at London City Airport. That being an area excluded from the red line of the injunction.

(g) On 1 August 2024, six JSO activists were blocked access to the departure gates at Heathrow Terminal 5.

(h) On 5 August 2024, five JSO activists were arrested on their way to Manchester Airport and were in possession of bolt cutters, angle grinders, glue, sand and banners reading “oil kills”. Four of these individuals were subsequently found guilty of conspiracy to commit a public nuisance and then sentenced to terms of imprisonment, ranging between 18 and 30 months.

(i) On 21 February 2025, XR held a demonstration at Inverness Airport against climate change.

(j) On 27 May 2025, JSO made an announcement which at least gave the impression that it had now decided to withdraw from mounting disruptive protests of a direct action nature.

(k) However, on 18 May 2025, GB News reported that JSO was considering a “dramatic U-turn” and on 21 May 2025, JSO sent a link to its subscribers with the comment, “GB News was right for once. We are ‘plotting a comeback’.”

(l) On 21 May 2025, London City Airport received intelligence information from the Metropolitan Police of a protest by environmental protest groups, which had been planned at Heathrow Airport, to be held at the Sofitel Hotel on 20 May 2025, where an annual general meeting for Shell was being held and which was within the redline boundary of the injunction obtained by that airport. The protest was relocated to the

Shell head office, “in order to avoid the risk of associated penalties for breaching the injunction.”

(m) Over the weekend of 14 and 15 June 2025, JSO arranged an event described as “Seeds of Rebellion”, which seemingly was part of a training programme – a “summer of resistance training” – where attenders would be taught how “to plan actions that cut through” and to “plant the seeds of the coming non-violent revolution.”

(n) JSO’s fundraising page currently invites donations for – “[A] New campaign [that] is in the works”

14. Mr Wortley’s evidence also mentions activities of other protest groups opposed to the use of fossil fuels including Youth Demand, Extinction Rebellion and Fossil Free London. He refers to disruptive protest activity in 2024 and 2025 by Extinction Rebellion, though not at airports. He also exhibited an email sent by the Metropolitan Police to London City Airport’s security team on 21 May 2025, which referred to the incident relating to the Shell AGM and said:

“...The injunction at [Heathrow Airport] had a real impact on the Shell protest yesterday and builds on your experiences. To remove an injunction now, would open up to further protest. And whilst JSO have stepped down, there appear to be a cycle of new groups emerging and this cannot be ruled out, so maintaining it would be very much recommended.”

15. I accept Mr Moreshead’s submission that that advice from the police is a relevant consideration. Although the announcement by JSO on 21 March 2025 could signal a reduction from the risk of unlawful activity at the airports, there is also clear evidence of a possible U-turn from that announcement. And, as Mr Morshead submits, even if JSO left the scene, it is too early to tell what the effect of that would be, having regard to the possibility of some JSO members continuing to support direct action, and to the continued existence of other protest groups. Nor is it possible to conclude that the risk has been materially reduced or removed by the imprisonment of some JSO activists referred to above.

16. Meanwhile, the substantial, though not total lack of direct action at the airports since the grant of the injunctions is consistent with the injunctions having proved to be an effective deterrent. I accept that removing the injunctions at present would create a real risk of a resumption of activity at airports.
17. When granting the injunctions, the judges last year concluded that enforcement of bylaws and criminal proceedings did not provide an adequate alternative remedy. That, in my view, has not changed.
18. In the circumstances considered as a whole, I conclude that there has been no material change which removes or seriously diminishes the justification or the rationale for the injunctions, and that they should continue in force.
19. Turning to the form of the order, Mr Morshead showed me the decision of Nicklin J in *MBR Acres Limited and Others v John Curtin & Persons Unknown* [2025] EWHC 331 (KB), which took a different approach of directing an injunction in a protest case, “**contra mundum**”, rather than by describing categories of defendants by reference to the conduct to be prohibited, which would also make service of the claim unnecessary. Nicklin J noted that the court must consider what other or better solutions may be available, having regard to enhanced police and local authority powers. He also indicated that orders should include a requirement that the court’s permission be obtained before any application is made to commit for contempt of court.
20. Mr Morshead submitted that it would be better in this case to retain a description of the intended defendants, by reference to the conduct being enjoined, and that that course was followed in a later decision of Soole J in *Chancellor, Masters and Scholars of the University of Cambridge v Persons Unknown* [2025] EWHC 724 (KB). He also submitted that a requirement for consent for committal proceedings should not be necessary, having regard to the safeguards built into the injunction and to the impact which applications for consent could have on costs and court resources.
21. In the present cases, the judges last year found it appropriate to describe or define the defendants by specific reference to the type of conduct to be enjoined. Although Nicklin J has identified a possible different approach, it seems to me that on a review

hearing, I should not change the approach taken by the previous judges, where the underlying circumstances have not materially changed. I am also mindful of the need, emphasised by the Supreme Court in *Wolverhampton* at paragraph 221, for defendants in injunctions to be defined as precisely as possible. It seems to me that that also favours a continuation of the approach taken last year.

22. Nor am I persuaded to depart from what was ordered last year by adopting a standard wording to define or describe the prohibited acts in the four cases before me. The differences in wording have not created any difficulty for me in conducting this review, and any potential defendant who has already become aware of the injunction in respect of any specific airport may already be aware of the existing wording, and that factor militates against a change.
23. I also accept the submission that it is not necessary to insert a provision requiring consent or permission to be obtained for any contempt application in the event of a breach of the injunction. Although such a provision could provide a helpful safeguard in some “**contra mundum**” cases, as described by Nicklin J in *MVR Acres*, in the present cases, no enforcement issue has arisen so far. That is by contrast with *MBR Acres*, where Nicklin J vigorously criticised the conduct of claimants who pursued a committal application, which he described as frivolous and bordering on vexatious. As Mr Morshead said, claimants who choose to commence committal proceedings for trivial breaches do so at their own risk. The courts have repeatedly said that, in cases which do not appear to have been cited to the court in *MBR Acres*, such as *Sectorguard Plc v Dienne Plc* [2009] EWHC 2693 (Ch), per Briggs J at paragraph 46. Meanwhile, in the circumstances of the present case, I have no reason to expect that such an issue will arise.
24. It seems to me, by way of confirmation, that the steps taken to publicise the orders last year, remain appropriate and sufficient.
25. I will provide for the next review to take place in one year from now. It will remain open for anyone to apply to vary or discharge the orders before then. The cases will again be listed together upon that occasion, but I see no need to consolidate them.

26. I shall ask counsel to finalise the terms of an order whose effect is that the injunctions granted last year will remain in force. For practical reasons, and in principle, that seems to me preferable to the alternative of granting entirely new injunctions.

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IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 18 July 2025

BEFORE:

MR DUNCAN ATKINSON KC
(Sitting as a Deputy High Court Judge)

BETWEEN:

GATWICK AIRPORT LTD

Claimant

- and -

**PERSONS UNKNOWN WHO, IN CONNECTION WITH THE JUST STOP OIL OR
OTHER ENVIRONMENTAL CAMPAIGN, ENTER OCCUPY OR REMAIN
(WITHOUT THE CLAIMANT'S CONSENT) UPON THAT AREA OF LAND
KNOWN AS LONDON GATWICK AIRPORT (AS SHOWN FOR IDENTIFICATION
OUTLINED IN YELLOW AND SHADED YELLOW AND BLUE ON THE PLAN 1
ATTACHED TO THE CLAIM FORM**

Defendants

TIMOTHY MORSHEAD KC and EVIE BARDEN appeared on behalf of the Claimant.

APPROVED JUDGMENT

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1. MR DUNCAN ATKINSON KC: On 19 July 2024, the Honourable Mr Justice Ritchie granted an injunction order to the Claimant, Gatwick Airport Limited, which prohibited persons unknown from entering, occupying, or remaining on any part of the airport for the purposes of protesting about fossil fuel or environmental concerns. It was directed that this order should be subject to annual review, and that review has taken place before me today.
2. Gatwick Airport is the second largest in the United Kingdom, and the eleventh largest in Europe, with an average 11,000 passengers per day, or 44 million passengers per year, and with a revenue per annum of £1 billion. Gatwick Airport has statutory powers to make bylaws and under these bylaws persons are not entitled to protest or obstruct the airport or display protest banners and they must leave if requested to do so. They have implied consent to attend for travel and concessions have consent to run their businesses there. Peaceful protest is accommodated through prior arrangement. In addition, the airport's statutory obligations, contained within the Airport Act 1986, include a duty to mitigate risks, including risks relating to the movement of vehicles, to objects on the tarmac, and air navigation. If unsafe conditions arise, there is statutory duty for the airport to stop flights.
3. The context for the present application is the order that was made by Ritchie J last year. At that time, in the summer of 2024, a number of environmental protests groups, in particular Just Stop Oil and Extinction Rebellion, planned and undertook a campaign of disruptive protest at the use of fossil fuels and the environmental impact of air travel directed towards airports in the United Kingdom and beyond. Evidence considered by the Court last year referred to actual and planned protests at Farnborough, Stanstead, Gatwick and London City Airports. Just Stop Oil twice wrote to the Prime Minister, making demands and requiring compliance against the threat of their campaign of non-cooperation. The evidence identified the serious consequences of unplanned or uncontrolled protests as including a risk to emergency services by having to climb up structures, the knock-on effect on passengers, the effect in relation to jet engines which are sensitive and potentially hazardous, and implications in relation to fuel which could cause an explosion.

4. In another judgment of Ritchie J in response to the same issue in the case of *Leeds Bradford Airport v Persons Unknown* [2024] EWCA 2274, he said (at paragraphs 30 to 31):

"Airports are part of the national infrastructure which is acutely sensitive to terrorist threats and are highly regulated in relation to safety, maintenance and security. They are also complicated organisations involving the [movement] of thousands of members of the public, close to highly combustible materials and within fast-moving and huge pieces of equipment. Such organisations are acutely sensitive to chaotic dysfunction caused by unlawful direct action."

He went on:

"I also take into account the fear, which I think is justified, of the Chief Executive Officers, that terrorism is facilitated by chaos. I take into account the human rights of the passengers, adults and children, families and individuals, whose business trips and family holiday trips could be potentially catastrophically interrupted, delayed or cancelled by disruption at any of these airports in the summer seasons. Although not pleaded it is not irrelevant to take into account the knock-on effect on employment, union members and the businesses which are run in the airports and which run the airports, financially."

The law relevant to the injunction under review.

5. The injunctions granted by Ritchie J, both in the *Leeds Bradford* case and in the present proceedings, were directed towards persons unknown. That such orders are permissible was made clear by the Supreme Court in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47. Persons unknown, in this context, means persons who are not identifiable at the date the proceedings are commenced but who are intended to be bound by the terms of the injunction sought. Proceedings are typically a form of enforcement of undisputed rights rather than a form of dispute resolution.

6. Although the facts of that case focused on orders relating to members of the Traveller community, it was made clear that they were not limited to such cases. Indeed, the Court said (at paragraph 235) that “...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 the motorway gantries or occupying HS2's land with the intention of disrupting construction. Each of these activities may, depending on the all the circumstances, justify the grant of an injunction against persons unknown including newcomers. “
7. The correct approach, as the Supreme Court identified (at paragraph 236), was that “...each of these cases has called for a full and careful assessment of the justification for the orders sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, insofar as the applicant seeks an injunction against newcomers, the judge must be satisfied that 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 the 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 right to the respondent's 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.”
8. The Court further identified that such orders should be made subject to review, the purpose of which they identified (at paragraph 225) as being to “...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”.
9. Against that background, as was made clear for example by Sweeting J in the case of *Esso Petroleum Company Ltd & Anor v Persons Unknown & Ors* [2025] EWHC 1768 (KB) (at paragraph 5 – 8) the court's role now is not to revisit the merits of the case as if *de novo* but, rather, to assimilate each matter sufficiently to take an informed view

about whether the injunction has outlasted the compelling need which led to it being made in the first place in view of any change in circumstances. That, he said, was the best and most proportionate way of dealing with these matters, and he added:

"Such a review is also an opportunity to make necessary adjustments in the light of experience of the practical operation of the injunction and the changing circumstances."

The approach of Ritchie J.

10. In his *ex tempore* ruling, a note of which has helpfully been provided, Ritchie J identified factors necessary to be considered when granting an injunction against persons unknown, as follows:
11. First, "*the substance of the cause of action*": He identified that that included trespass and private and public nuisance, ownership of the roads, bylaws prohibiting protest and consent to enter only for travel purposes. He considered in this case the substance for the cause of action to be valid.
12. Second, "*full and frank disclosure*": He was satisfied the Claimant, through counsel, had provided such full and frank disclosure.
13. Third, "*whether there was sufficient evidence to prove the claim*": He considered the evidence that had been put before him to be more than sufficient to prove that there was a risk of tort being committed at Gatwick Airport, as had been committed elsewhere.
14. Fourth, "*whether there were realistic defences*": The learned Judge's approach last year was to observe in relation to private land that there was no real defence under the Human Rights Act 1998 based on protest because such protest could take place on public land. In relation to third-party land, he considered on balance that the scope of the injunction should cover small parcels of third-party land within the airport in order to provide proportionate necessary protection for the Claimant, protection of the land and for the businesses run within the areas of their own possession. He added that an impingement of the unknown persons' right to freedom of speech was relatively small

compared to the huge damage that might occur if a person unknown decided to run into Gatwick Airport and hide in a third-party store so that they were not to be covered by the terms of the injunction.

15. I pause in my review of the approach of Ritchie J in relation to that consideration of human rights to take notes of the decision in *Hallam & Ors v R* [2025] EWCA Crim 199. There the Lady Chief Justice (at paragraph 36) made clear that trespass does not remove the trespasser from the scope of articles 10 or 11 of the European Convention on Human Rights. However, she went on to make clear that such protest does significantly weaken the protection those rights afford. I am satisfied that decision does not undermine or alter the approach identified by Ritchie J to the question whether there were realistic defences here. In any event, as he found, the impingement of those rights in relation to an unknown person is relatively small compared to the damage that might be caused by such persons. The rights of the Claimant in this regard, and the rights of those legitimately using the airport, far outweigh any such impingement of the rights of the persons who may be affected by this injunction.
16. Returning to Ritchie J analysis, he then considered “*whether there was compelling justification for granting the ex parte and against persons unknown*”. He considered that this was made out, given the very high level of threat that he identified and to which I have already referred.
17. Next, he considered “*whether alternative remedies would be sufficient*”. He took account of the bylaws to which I have made reference, and the penalties that have been imposed under the criminal law in relation to persons who had protested at airports in the past. He was satisfied that damages were not an adequate remedy, and that the alternative remedy under the bylaws was insufficient.

Notice of this application

18. I turn to consider, then, the present application against that background. But before considering it in turn, I consider whether sufficient notice has been given of this application.

19. By reference to section 12, Human Rights Act 1998, where the court is considering whether to grant relief which might affect the exercise of the convention rights to freedom of expression and where persons who may be affected are not represented, I must be satisfied (i) that the applicant has taken all practical steps to notify the respondents, or (ii) that there are compelling reasons why the respondents should not have been notified.
20. In that regard, I have helpfully been provided with two statements from Graeme Robertson, a senior associate of the firm representing the Claimant. He explains in detail what steps have been taken to give notice of this hearing, including the uploading of the application for the continuance of the injunction and notice of the hearing to Gatwick's website, sending emails to a number of addresses that had been identified at the time of Ritchie J's order, together with further email addresses identified since, and the affixing of notices at relevant locations. He further confirms in his second statement the steps that have in fact been taken. Against that background, I am satisfied that proper notice has been given of this application, and that should anyone falling within its scope have wished to make representations, they have had the opportunity to do so. I should add that, in any event, Mr Morshead KC has properly directed my attention to matters that any such person would have been able to raise had they been here.

Events since the order was made.

21. The central question for the purpose of this review is whether this Court can be satisfied that the circumstances which justified the making of the order remain unchanged so that there remains a compelling need for the order to continue.
22. I have been provided with the chronology of events, the details of which are addressed in Mr Robertson's statements. There is, as is properly conceded, evidence in both directions as to changes of circumstance since the order was made. On the one hand, since the order was made there have been protests, or attempts at protests, leading to arrests at Heathrow, London City and Gatwick airports in July of 2024, and at Heathrow and Manchester airports in August. There was a demonstration at Inverness Airport in February 2025.

23. On the other hand, on 27 March 2025, Just Stop Oil made an announcement to the press to indicate that the group was withdrawing from organised protest. I have considered both whether this should have been drawn to the Court's attention earlier, as indicating at an earlier stage that this order was no longer required, and whether that this announcement means that the order is no longer required now. It is right to observe, first, that the terms of Just Stop Oil's announcement are ambiguous. It includes, beyond saying that they are withdrawing from organised protest, references to continued resistance, adding that this is "not the end of civil resistance". The note to editors at the bottom of their release says, in terms, that Just Stop Oil is "committed to non-violent direct action".
24. There is rather more to the position than that announcement might have suggested beyond its terms.
25. GB News reported on 18 May 2025 that this announcement was not Just Stop Oil's settled position. It predicted a dramatic U-turn. On 21 May, far from denying this, Just Stop Oil commented in an email to its members "GB News was right for once. We are plotting a very big comeback". Their email also contains an invitation to donate for continued action.
26. On the same day, a police assessment as to the threat level was emailed to a number of police forces. It considered the level of risk of environmental protests at airports, considering that situation overall. It described the threat in the UK as having returned to dormant, but not withstanding that overall assessment, it did address a number of active groups. Importantly, that national police assessment was provided by the Metropolitan Police to, amongst others, London City Airport. It did so in the context of providing intelligence that a number of environmental protest groups planned to target the Shell Oil meeting within the area covered by the injunction at Heathrow that had relocated. That email from the Metropolitan Police observed that "...the injunction at Heathrow Airport had a real impact on the Shell protest [...], to remove an injunction now would open up to further protests, and whilst Just Stop Oil have stepped down, there appear to be a cycle of new groups emerging and this cannot be ruled out, so maintaining it would be very much recommended."

27. Further, over the weekend of 14 and 15 June 2025, Just Stop Oil and Youth Demand, another protest organisation, arranged an event described as "Seeds of Rebellion" which, seemingly, was part of a training programme where attendees would be taught "all the theory and practice for pulling off the non-violent democratic revolution that is coming". In keeping with that, Just Stop Oil's fundraising page continues to invite donations for a "new campaign that is in the works".
28. The ambiguous nature of Just Stop Oil's announcement, and the strong reasons to approach it with circumspection, in my judgment, justified the delay in it having been brought to this Court's attention. It has been brought to this Court's attention now, and it has been considered by me.
29. I agree with the analysis of Sweeting J in the *Esso Petroleum* case (at paragraph 25) that "the principle factual development has been Just Stop Oil's announcement in March 2025 in relation to "hanging up the high-vis". However, as I have outlined above, the evidence shows, in my view, 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 Extinction Rebellion and Just Stop Oil'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 Just Stop Oil's campaign remains real and imminent."
30. In my judgment, not only does there remain a clear and present risk from Just Stop Oil, not least given the clear difference between its message to the press and its communication to its members, but there remains such a risk from other similar protest organisations. Four other activist groups remain and continue to protest fossil fuels by the use of direct action. No single protest organisation speaks for all such activists. I have been shown and taken note of posts this year from organisations Shut System and Extinction Rebellion, in April and June of this year more particularly, which each refer to continued activism in this regard. Even a complete repudiation of disruptive protests by all such organisations would not exclude the risk of actions by individuals or other splinter groups.

31. Whilst, as has been properly identified to me, a number of the relevant groups have indicated a change of focus, for example to protests in relation to the prohibition of Palestine Action, that does not mean that such organisations, or members of such organisations, given the opportunity, would not continue their environmental activism. There has been no indication from any of these organisations, including Just Stop Oil, that they have abandoned the convictions that has underpinned their actions thus far.
32. I have, in this context, also been referred to the acquittal of a number of protestors in relation to action at Gatwick Airport. They were prosecuted for public order offences and acquitted for reasons set out in the article to which I was taken. In my judgment, that material does not undermine the need for the injunction that is sought here. Indeed, if anything, the fact that other aspects of the criminal law were not able to address trespassing behaviour perhaps underlines the importance of there being an injunction to prevent such activism.

The effectiveness of the order.

33. It is important in this review to consider whether the injunction has been effective in meeting the risk identified in 2024, the continued presence of which risk I have just addressed.
34. It is clear, on the evidence I have seen, that the injunction has been proved to have acted as an effective deterrent. By way of example, (i) two protests due to have occurred at London City Airport were relocated, social media indicating that that was because the protesters involved were aware of the injunction. (ii) It was a Metropolitan Police assessment, to which I have already referred, in relation to Heathrow Airport, that the injunction continued to have an important positive role. (iii) There has been a dramatic reduction in the number of actual or attempted protests since the injunction was made. That, on the evidence I have seen, is not because the threat has gone but because the injunction is managing that threat.
35. That leads me to a further important consideration, alluded to by the Metropolitan Police email in relation to Heathrow Airport. That is that the removal of the injunction would risk making airports such as Gatwick a greater target in the future. That risk

would be all the greater because a number of injunctions have already been granted in relation to a number of other airports. Were Gatwick Airport not to receive the protection of such an injunction, it would be exposed as a greater target. As Linden J put it in the *Esso Petroleum Company Ltd v Person Unknown & Ors* [2023] EWHC 1837 (at paragraph 67), in the context of disruption of oil infrastructure in 2021/2022:

"It appears that the effect of the various injunctions which have been granted... has been to prevent or deter them from taking the steps prohibited by the order of the court, although of course not invariably so. If, therefore, an injunction is refused in the present case, the overwhelming likelihood is that protests of the sort which were seen in 2021 and 2022 will resume."

36. That remains, in my judgment, an astute observation. As Mr Morshead KC submitted, the protest organisations that are of concern are not unsophisticated in their operation. They will recognise the opportunity to protest where an injunction does not prevent them from doing so.

Conclusions.

37. I am satisfied that there remains a compelling need for the injunction made in July 2024, one year on. I reach that conclusion having undertaken the full and careful assessment required. Whilst it is not my task to consider the merits of the order as originally made, in considering whether the order remains necessary I have taken full account of the careful analysis of Ritchie J to which I have referred. That analysis holds good now as it did then.
38. There has not, in my view, been any change of circumstances that means that the order has outlasted the compelling need. On the contrary, I am satisfied that it is the continuation of the order that has addressed, and must continue to address, the risks that have been identified. The order can in the future be reviewed if that picture changes, and will in any event be reviewed in 12 months' time. I am fortified in the view that I have reached, although I stress I have reached my own conclusions, by the fact that

similar injunctions have recently been reviewed and continued by Bourne J in relation to 10 other airports on 24 June of this year.

39. As was recognised by Sweeting J in *Esso Petroleum Case*, it is permissible to make adjustment to the terms of an order in the light of experience of its practical operation. I should, in that regard, address two matters to which my attention has been drawn. That is to the approach of Nicklin J in the decision of *MBR Acres Ltd & Ors v Curtin* [2025] EWHC 331 (KB). First, he identified that "persons unknown" was a sufficient description for defendants in relation to an injunction such as this. In my judgment, by reference to the observations of the Supreme Court in the *Wolverhampton* case (at paragraph 221), it is important that persons unknown are identified, insofar as is possible, so that it is clear whether a person is or is not affected by the injunction. A more detailed description here, is, in my judgment, appropriate, and I take note both of the approach, and the reasons for it, of Sweeting J in the *Esso Petroleum* case in this regard, at paragraph 28 of that judgment.
40. Secondly, Nicklin J required that the claimant should be required to obtain the court's permission before applying to commit any person in protest cases. That approach may well have been appropriate on the facts of the case with which Nicklin J was dealing. Such an approach here, in my judgment, would fail to give proper effect to what was described in the *Wolverhampton* case (at paragraph 152) as equity's essential flexibility.
41. On the facts of this matter, in my judgment, it would be disproportionate to require the Claimant to refer any person to this court effectively twice for permission, first, before committing them, and then when they were committing them. Such double referral is not necessary, in my judgment, to safeguard the rights of any such defendant. In any event, there is no evidence that I have seen of a disproportionate application of this order by this claimant hitherto. Indeed, if anything, their approach hitherto has been a cautious one. Accordingly, therefore, subject to any amendment that is now sought as to the precise terms of this order, I direct that it should continue for a further period of 12 months.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Birmingham Civil and Family Justice Centre
The Priory Courts, 33 Bull Street
Birmingham B4 6DS

Date: 23 September 2025

Before:

HHJ Emma Kelly sitting as a Judge of the High Court

Between :

**NORTH WARWICKSHIRE BOROUGH
COUNCIL**

Claimant

- and -

**THE DEFENDANTS LISTED AT SCHEDULE A
TO THIS JUDGMENT**

Defendants

Mr Jonathan Manning (instructed by **North Warwickshire Borough Council, Legal Services**) for the **Claimant**.

The **Defendants** did not attend and were not represented.

Hearing date: 18 September 2025.

Judgment handed down remotely at 10am on 23 September 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

APPROVED JUDGMENT

HHJ Emma Kelly:

Introduction

1. This is the first annual review of an injunction granted in this matter to North Warwickshire Borough Council (“the Council”). The Council seek continuation of the existing order and power of arrest.
2. The Defendants are a combination of ‘Persons Unknown’ and named individuals connected with protest activity at an inland oil terminal known as Kingsbury Oil Terminal (“the Terminal”) in Kingsbury, Warwickshire. None of the Defendants attended or were represented at the review hearing.

Background

3. The claim arose from protest activity that occurred in 2022 inside the perimeter and in the locality of the Terminal. The factual and procedural background to the claim is set out at [3]–[13] and [18]–[43] of the judgment that followed the trial: *North Warwickshire Borough Council v Barber & Others* [2024] EWHC 2254 (KB) (‘*NWBC*’).
4. On 6 September 2024, I granted a ‘final’ order, prohibiting protests within the boundary of the Terminal and restricting certain protest activity within the locality of the Terminal (‘the Injunction’). A power of arrest was attached to the Injunction, pursuant to s.27 of the Police and Justice Act 2006. The Injunction was to remain effective until 16:00 on 6 September 2027, subject to annual reviews. The hearing on 18 September 2025 was the first such review.

Service

5. Paragraph 11 of the Injunction granted permission to the Council to serve the Injunction and power of arrest by alternative means. The service requirements fell into one of three categories. Those Defendants (all named individuals) identified in paragraph 11(a) could be served by recorded first class post. Those Defendants (again all named individuals) identified in paragraph 11(b) could be served by email. Those Defendants (some named individuals and some categories of persons unknown) identified in paragraph 11(c) could be served by various alternative methods specified in Schedule 3 to the Injunction. The Claimant was required to complete all of the steps identified in paragraph 1(a)–(h) of Schedule 3 to effect service on the paragraph 11(c) category of Defendants.
6. Paragraph 5 of the Injunction provided the time, date and location of the review hearing. Therefore, even if a Defendant had not been present in court when the Injunction was made on 6 September 2024, they would have been provided with notice of the review hearing on being served with the Injunction.
7. The Council has filed a number of certificates of service in respect of the Injunction and power of arrest. The paragraph 11(a) Defendants were deemed

served on 18 September 2024. The paragraph 11(b) Defendants were deemed served on 16 September 2024.

8. In respect of service on the paragraph 11(c) Defendants, the Council relies on two certificates of service. The first is said to relate to the requirements of paragraph 1(b) – (h) of Schedule 3, and gives a deemed date of service of 26 September 2024. The second certificate relates to the erection of 17 A1 sized signs around the boundary perimeter of the Terminal, required by paragraph 1(a) of Schedule 3, and gives a deemed date of service of 21 December 2024. Mr Manning explained it had taken some time for the signage to be manufactured.
9. During the hearing, I queried whether the Council had complied with paragraph 1(b) of Schedule 3, namely the requirement to place a copy of the Injunction and power of arrest prominently at the entrances to the Terminal. That step did not appear to be referred to in either of the relevant certificates of service. After taking instructions, Mr Manning confirmed that the Council had not placed separate copies of the Injunction and power of arrest at the entrances. The Council's rationale was that the A1 sized signage required by paragraph 1(a) of Schedule 3 provided information about the Injunction and power of arrest, and a QR code link to the documents, and such signage was placed prominently at the entrances. Mr Manning asked the Court to approve the alternative service steps taken to date as amounting to good service of the Injunction and power of arrest on the paragraph 11(c) Defendants. I indicated during the hearing that I was prepared to accede to that submission in circumstances where the aim of publicising the detail of the Injunction and power of arrest in prominent positions at the entrances to the Terminal had still been achieved, albeit via the A1 signage. I do however make it clear that the Court expects a party with the benefit of an alternative service provision to abide by all requirements directed by the Court. It is not appropriate for such a party to take a unilateral decision as to which steps to comply with, rather than making a formal application to vary the terms of alternative service.
10. Paragraph 6 of the Injunction required the Council to file and serve any updating evidence 21 days prior to the review hearing. The Council's updating evidence is contained in the 5th witness statement of Mr Steven Maxey, the Council's Chief Executive, dated 27 August 2025. The Injunction made no provision as to how the updating evidence should be served. It did not need to as paragraph 7 of an earlier order of Soole J, dated 6 December 2023, granted the Council permission to serve any document filed in the proceedings by the methods specified in paragraphs 7(i) to (iii) of that order. As with service of the Injunction, the Defendants were categorised into three groups. The first to be served by recorded first class post, the second by email and the third (which includes the persons unknown Defendants) by a variety of alternative service methods. The paragraph 7(i) Defendants were served by first class post on 30 August 2025. The paragraph 7(ii) Defendants were deemed served by email on 11 September 2025. The paragraph 7(iii) Defendants were deemed served by various alternative means on 28 August 2025.

11. In light of the aforementioned, I am satisfied that the Defendants have been served with the Injunction and power of arrest, and updating evidence, and were thus alive of the review hearing.

Legal Framework

12. The importance of a review hearing, particularly in cases involving persons unknown, was emphasised by the Supreme Court in *Wolverhampton City Council & others v London Gypsies and Travellers & others* [2023] UKSC 47 (“*Wolverhampton*”). At [225] the review hearing:

“...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.”

13. A review hearing is not an opportunity to revisit the original merits of the claim afresh. The proper focus of the review is to consider whether anything material has changed since the injunction and power of arrest were granted. Material changes may be factual and/or developments in the law since the order was granted. If there has been a material change or changes, the Court needs to question whether the scope of the injunction needs amending or indeed whether there remains a compelling need for any kind of injunction or power or arrest at all. Such an approach is consistent with the views expressed in a number of post-*Wolverhampton* cases including by Ritchie J in *HS2 v Persons Unknown* [2024] EWHC 1277 (KB) at [32]-[33], Hill J in *Valero v Persons Unknown* [2025] EWHC 207 (KB) (“*Valero*”) at [20]-[23], and Sweeting J in *Esso Petroleum Company v Persons Unknown* [2025] EWHC 1768 (KB) (“*Esso*”) at [5]-[8].

The evidence

14. The Council relies on the updating evidence in Mr Maxey’s 5th witness statement. Mr Maxey has undertaken an internal review of the current need for an injunction and power of arrest, and remains of the view that they are necessary. His reasoning is as follows.
15. First, Mr Maxey states that Just Stop Oil and Extinction Rebellion, the main protest groups with which known Defendants to the claim are affiliated, remain active. He points to the current homepage of Just Stop Oil’s website which reads “JUST GETTING STARTED” and boasts that civil resistance is how Just Stop Oil “won no new oil and gas licences in 2024.” The website continues “We know how to win, but it’s going to take all of us” and “A new revolutionary direct action campaign is coming. Help us build what’s next.”
16. Second, Mr Maxey states that the Council is still being notified of planned direct-action by other, unaffiliated climate action groups. He states that as recently as July 2025, the police informed the Council of information suggesting direct-

action protests were being planned by environmentalists that summer. He expresses concern that the covert nature of operation of such groups makes it impossible for the Council or police to engage with those in charge of organising such protests to ascertain whether the Terminal is a target and, if so, to discuss how any protest can be conducted safely.

17. Third, Mr Maxey notes that the nature of risks posed by direct action or civil disobedience at the Terminal has not changed. The Terminal continues to operate and hold large volumes of exceptionally flammable products for distribution across the country.
18. Mr Maxey acknowledges that there have not been any further protests since the Injunction was granted but takes the view that the deterrent effect of the Injunction has been instrumental ensuring good order.
19. Mr Maxey gave short oral evidence at the review hearing to update matters since the signing of his 5th statement. He addressed two matters:
 - i) He had attended a meeting of the Strategic Coordinating Group of the Warwickshire Local Resilience Forum the day before the review hearing. At that meeting, the police indicated that they still regard the Injunction and power of arrest as operationally essential and being the mechanism by which order had been restored to the site.
 - ii) On his recent review of Just Stop Oil's website, he noticed a change of emphasis in the direction of their campaign. Whereas previously their stated aim was to stop the granting of new licences to extract oil or gas, he understood that their focus was now on stopping the extraction and burning of oil and gas by 2030. He considered the Terminal's role in the supply chain for oil and gas fuels could continue to make it a potential protest location in connection with the new phase of Just Stop Oil's campaign.

Discussion

20. I consider first whether there has been any material factual change(s) which calls into question the need or required scope of the Injunction.
21. The fact that there has not been any further protest activity at the Terminal since the Injunction was granted does not, of itself, provide evidence that the risk has abated. It is more likely that the Injunction and power of arrest have a deterrent effect. The logic of such an approach was endorsed by Hill J in *Valero* at [34]. The rationale of that conclusion is particularly pertinent in the index claim given the reduction in activity following the granting of the without notice interim injunction and, since September 2022, the cessation of protest activity. By the time of cessation of activity, contempt proceedings had resulted in the imprisonment of a number of protestors.
22. I do not take the view that there has been any material factual change that makes it appropriate to discharge the Injunction or power of arrest. I am satisfied that

there remains a continued real and imminent risk of direct action. The well-publicised statement by Just Stop Oil in March 2025 that it was “hanging up the hi vis” was considered in July 2025 by Sweeting J in *Esso* at [25]. He concluded that the “announcement cannot be taken as an unequivocal and final renunciation of direct action.” The Council has provided evidence of the current wording on Just Stop Oil’s website. The references to “just getting started”, civil resistance and a “new revolutionary direct action campaign” very much suggest that Just Stop Oil do indeed have further direct action planned. I further accept Mr Maxey’s evidence that the Council received police intelligence as to protest activity by other environmentalists, unaffiliated to Just Stop Oil, as recently as July 2025.

23. If individuals are minded to take direct action or other protest activity, the Terminal remains a prominent target. The evidence before the Court is that the Terminal continues to operate as it did when the Injunction was granted. The Terminal remains a prominent cog in the supply chain of oil and gas products for consumption. As described in *NWBC* at [18]-[21], the Terminal is one of the largest oil terminals in the country, holding and transporting millions of litres of highly flammable fossil fuels. The potential consequences of fire or explosion at or in the locality of the Terminal remain extremely grave.
24. I have considered whether there has been any material change in the law since the Injunction was granted. Mr Manning properly drew the Court’s attention to three potential matters of law or procedure that arose from the decision of Nicklin J in *MBR Acres Ltd & others v Curtin* [2025] EWHC 331 (KB) (*‘Curtin’*):
 - i) Whether it is necessary or appropriate to identify, clearly, the categories of persons unknown: *Curtin* at [356], [360].
 - ii) Whether newcomer persons unknown can be served, even under the terms of an alternative service order: *Curtin* at [357]-[359].
 - iii) Whether an injunction should include a requirement that the Court’s permission is obtained before contempt proceedings can be instituted: *Curtin* in [390].

Identifying the categories of persons unknown

25. At [356] of *Curtin*, Nicklin J concluded that “there is now no need carefully to define the category of “Persons Unknown” who are to be defendants to the claim...” In *Esso* at [28], Sweeting J considered the impact of Nicklin J’s decision in the context of an injunction review hearing. He noted differing approaches to the issue in various recent High Court decisions but concluded that the existing detailed description of the persons unknown defendants in *Esso* “best adheres to the guidance in *Wolverhampton* by identifying a class by reference to conduct...”
26. I considered the definition of the persons unknown defendants at the outset of the trial in the index case: see [13] of *NWBC*. Notwithstanding the comments

made in *Curtin*, I am mindful of the Supreme Court's guidance in *Wolverhampton* at [221] that "...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." I remain of the view that current detailed definition of the Persons Unknown defendants 19A, 19B, 19C and 19D best complies with the guidance in *Wolverhampton* and I do not consider it warrants amendment. There is thus no reason to amend the description of the Defendants in this case.

Service of the persons unknown Defendants

27. I am not persuaded that it is appropriate to interfere with the Injunction's alternative service provisions in respect of the persons unknown Defendants. In so far as there is a tension between *Curtin* and *Wolverhampton* as to whether service on persons unknown is required, this Court is bound by the Supreme Court. The Supreme Court made repeated references in *Wolverhampton* to the requirement to inform newcomers of an order. For example, at [230]: "...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..." Further, at [231]: "any application 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... 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." The alternative service provisions required by the Injunction remain consistent with the need for publication identified in *Wolverhampton*.

Permission to bring a contempt application

28. The requirement for permission before a contempt application could be brought was adopted in *Curtin*, and also by Fordham J 'in the particular circumstances of the present case' when granting an interim injunction in *University of Cambridge v Persons Unknown* [2025] EWHC 724 ('*Cambridge*') at [30]. However, at the review hearing in *Esso*, Sweeting J at [29] declined to impose such a requirement, noting that the courts already possess adequate mechanisms to address disproportionate committal application and that there was no evidence in the case before him that the claimants were bringing trivial committal applications.
29. I am not persuaded that it would be appropriate to add a permission requirement in the index case. Firstly, whether a permission requirement is appropriate is a fact specific case management decision. There is no evidence on the facts of this case that the Council, nor the police in utilising the power of arrest, have misused the contempt process. Secondly, the facts of the index case are

materially different to *Curtin*, *Cambridge* and *Esso* in that a power of arrest exists. The activation of the power of arrest commences the contempt process, requiring an arrested defendant to be produced before a court within 24 hours. At [103] of *NWBC*, I discussed why a power of arrest was appropriate. Those reasons remain valid. The imposition of permission requirement would completely undermine the utility of the power of arrest.

30. In conclusion, I am satisfied that there have been no material changes to the facts, or any material legal developments, that warrant amendment or discharge of the Injunction and power of arrest. In accordance with paragraph 5 of the Injunction, a further review hearing will take place in 12 months.

HHJ Emma Kelly

SCHEDULE A

SCHEDULE OF DEFENDANTS

(2) THOMAS BARBER
(3) MICHELLE CADET-ROSE
(4) TIMOTHY HEWES
(5) JOHN HOWLETT
(6) JOHN JORDAN
(7) CARMEN LEAN
(8) ALYSON LEE
(9) AMY PRITCHARD
(10) STEPHEN PRITCHARD
(11) PAUL RAITHBY
(14) JOHN SMITH
(15) BEN TAYLOR
(17) ANTHONY WHITEHOUSE
(19A) PERSONS UNKNOWN WHO, OR WHO INTEND TO, PARTICIPATE IN PROTESTS WITHIN THE SITE KNOWN AS KINGSBURY OIL TERMINAL, TAMWORTH B78 2HA (THE “TERMINAL”) AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS, AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS;
(19B) PERSONS UNKNOWN WHO, OR WHO INTEND TO, PARTICIPATE IN PROTESTS IN THE LOCALITY OF THE TERMINAL, AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS, AND WHO, IN CONNECTION WITH ANY SUCH PROTEST, DO, OR INTEND TO DO, OR INSTRUCT ASSIST OR ENCOURAGE ANY OTHER PERSON TO DO, ANY OF THE FOLLOWING: (A) ENTER OR ATTEMPT TO ENTER THE TERMINAL; (B) CONGREGATE AT ANY ENTRANCE TO THE TERMINAL; (C) OBSTRUCT ANY ENTRANCE TO THE TERMINAL;

(D) CLIMB ON TO OR OTHERWISE DAMAGE OR INTERFERE WITH ANY VEHICLE OR ANY OBJECT ON LAND (INCLUDING BUILDINGS, STRUCTURES, CARAVANS, TREES AND ROCKS);

(E) DAMAGE ANY LAND INCLUDING (BUT NOT LIMITED TO) ROADS, BUILDINGS, STRUCTURES OR TREES ON THAT LAND, OR ANY PIPES OR EQUIPMENT SERVING THE TERMINAL ON OR BENEATH THAT LAND;

(F) AFFIX THEMSELVES TO ANY OTHER PERSON OR OBJECT OR LAND (INCLUDING ROADS, STRUCTURES, BUILDINGS, CARAVANS, TREES OR ROCKS);

(G) ERECT ANY STRUCTURE;

(H) ABANDON ANY VEHICLE WHICH BLOCKS ANY ROAD OR IMPEDES THE PASSAGE OF ANY OTHER VEHICLE ON A ROAD OR ACCESS TO THE TERMINAL;

(I) DIG ANY HOLES IN OR TUNNEL UNDER (OR USE OR OCCUPY EXISTING HOLES IN OR TUNNELS UNDER) LAND, INCLUDING ROADS; OR

(J) ABSEIL FROM BRIDGES OR FROM ANY OTHER BUILDING, STRUCTURE OR TREE ON LAND.

(19C) PERSONS UNKNOWN WHO, OR WHO INTEND TO, ORGANISE, PUBLICISE OR PROMOTE ANY PROTEST WITHIN THE TERMINAL AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS.

(19D) PERSONS UNKNOWN WHO, OR WHO INTEND TO, ORGANISE, PUBLICISE OR PROMOTE ANY PROTEST IN THE LOCALITY OF THE TERMINAL, AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS, AT WHICH PROTEST THEY INTEND OR FORESEE OR OUGHT TO FORESEE THAT ANY OF THE ACTS DESCRIBED AS PART OF THE DESCRIPTION OF DEFENDANT 19B WILL BE CARRIED OUT.

(20) JOHN JORDAN

(22) MARY ADAMS

(23) COLLIN ARIES

(24) STEPHANIE AYLETT

(25) MARCUS BAILIE

(28) PAUL BELL

(29) PAUL BELL

(30) SARAH BENN
(31) RYAN BENTLEY
(32) DAVID ROBERT BARKSHIRE
(33) MOLLY BERRY
(34) GILLIAN BIRD
(36) PAUL BOWERS
(37) KATE BRAMFITT
(38) SCOTT BREEN
(40) EMILY BROCKLEBANK
(42) TEZ BURNS
(43) GEORGE BURROW
(44) JADE CALLAND
(46) CAROLINE CATTERMOLLE
(48) MICHELLE CHARLESWORTH
(49) ZOE COHEN
(50) JONATHAN COLEMAN
(53) JEANINIE DONALD-MCKIM
(55) JANINE EAGLING
(56) STEPHEN EECKELAERS
(58) HOLLY JUNE EXLEY
(59) CAMERON FORD
(60) WILLIAM THOMAS GARRATT-WRIGHT
(61) ELIZABETH GARRATT-WRIGHT
(62) ALASDAIR GIBSON
(64) STEPHEN GINGELL
(65) CALLUM GOODE
(68) JOANNE GROUNDS
(69) ALAN GUTHRIE
(70) DAVID GWYNE
(71) SCOTT HADFIELD
(72) SUSAN HAMPTON
(73) JAKE HANDLING
(75) GWEN HARRISON

(76) DIANA HEKT
(77) ELI HILL
(78) JOANNA HINDLEY
(79) ANNA HOLLAND
(81) JOE HOWLETT
(82) ERIC HOYLAND
(83) REUBEN JAMES
(84) RUTH JARMAN
(85) STEPHEN JARVIS
(86) SAMUEL JOHNSON
(87) INEZ JONES
(88) CHARLOTTE KIRIN
(90) JERRARD MARK LATIMER
(91) CHARLES LAURIE
(92) PETER LAY
(93) VICTORIA LINDSELL
(94) EL LITTEN
(97) DAVID MANN
(98) DIANA MARTIN
(99) LARCH MAXEY
(100) ELIDH MCFADDEN
(101) LOUIS MCKECHNIE
(102) JULIA MERCER
(103) CRAIG MILLER
(104) SIMON MILNER-EDWARDS
(105) BARRY MITCHELL
(106) DARCY MITCHELL
(107) ERIC MOORE
(108) PETER MORGAN
(109) RICHARD MORGAN
(110) ORLA MURPHY
(111) JOANNE MURPHY
(112) GILBERT MURRAY

(113) CHRISTIAN MURRAY-LESLIE
(114) RAJAN NAIDU
(115) CHLOE NALDRETT
(117) DAVID NIXON
(118) THERESA NORTON
(119) RYAN O TOOLE
(120) GEORGE OAKENFOLD
(121) NICOLAS ONLAY
(122) EDWARD OSBOURNE
(123) RICHARD PAINTER
(124) DAVID POWTER
(125) STEPHANIE PRIDE
(127) SIMON REDING
(128) MARGARET REID
(129) CATHERINE RENNIE-NASH
(130) ISABEL ROCK
(131) CATERINE SCOTHORNE
(133) GREGORY SCULTHORPE
(135) VIVIENNE SHAH
(136) SHEILA SHATFORD
(137) DANIEL SHAW
(138) PAUL SHEEKY
(139) SUSAN SIDEY
(141) JOSHUA SMITH
(142) KAI SPRINGORUM
(145) HANNAH TORRANCE BRIGHT
(146) JANE TOUIL
(150) SARAH WEBB
(151) IAN WEBB
(153) WILLIAM WHITE
(155) LUCIA WHITTAKER-DE-ABREU
(156) EDRED WHITTINGHAM
(157) CAREN WILDEN

(158) MEREDITH WILLIAMS

Manual
on

Protest Injunctions

Practice, Procedure and Persons Unknown

Yaaser Vanderman

2025
Version 3

Manual
on
**Protest
Injunctions**

Practice, Procedure and Persons Unknown

2025
Version 3

by
Yaaser Vanderman
Brick Court Chambers

MA (Cantab), BCL (Oxon), LLM (Harvard)

Foreword by
Rt. Hon. Lord Carnwath of Notting Hill,
Justice of the UK Supreme Court from 2012-2020

FOREWORD

I am pleased to welcome this timely new book on protest injunctions. I was a member of the Supreme Court panel which decided *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471 (SC), in which the claimant sought to sue an unidentified hit-and-run driver. This was the first time the Supreme Court or House of Lords had considered the jurisdiction to permit claims to be brought against Persons Unknown and Lord Sumption's judgment, with which I agreed, is now the authoritative statement on when a person can be subject to the court's jurisdiction without having notice of the proceedings. It was not a protest case, but the underlying problem with which we had to deal is fundamentally the same as in cases relating to protest injunctions, which must invariably be directed at Persons Unknown. It is a challenging area of law, liable to confuse and confound legal practitioners let alone their clients.

I first met Yaaser in 2014, when he was a Judicial Assistant at the Supreme Court. Since then I have watched his practice develop successfully in a number of practice areas, including planning, property and human rights. They, and their inter-action, are at the heart of the subject-matter of the present book. As he rightly says in the Preface, there is no other area of law moving so fast. He highlights a succession of recent authorities dealing with such issues as Persons Unknown in protest injunctions, on balancing the rights of those carrying out disruptive protest against the rights of those being disrupted, and on the factors to consider on committal and when to imprison environmental protestors. He also promises regular updates to cover new developments.

I commend this book to all those concerned with obtaining protest injunctions, or defending protest injunctions and indeed the judges deciding whether to grant protest injunctions. It seeks to deal comprehensively with the ever-increasing rules and case law being produced on this topic, and most importantly offers hands-on, practical assistance to all those involved.

**Rt. Hon. Lord Carnwath of Notting Hill, Justice of the UK Supreme Court from
2012-2020**

November 2022

PREFACE

What?

This is an online book setting out the law on protest injunctions – i.e. when a civil injunction is sought to restrain certain types of protest activity. It deals specifically with proceedings brought in the High Court rather than the County Court.

The law on this area has evolved rapidly. By way of example:

- On the issue of Persons Unknown in protest injunctions, the Court of Appeal has dealt with the issue (including making complete u-turns) in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100, *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 and *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946 (CA). The Supreme Court has now had the final word in *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 WLR 45.
- On human rights, there have been several important decisions on how to balance the rights of those carrying out disruptive protest against the rights of those being disrupted: see *DPP v Ziegler* [2022] AC 408 (SC), *DPP v Cuciurean* [2022] 3 WLR 446 (DC) and *Attorney General's Reference (No. 1 of 2022)* [2022] EWCA Crim 1259.
- On committal applications, several cases have tested the courts' resolve on what factors to consider and when to impose custodial sentences on protestors: see *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29 (CA), *National Highways v Heyatawin* [2021] EWHC 3078 (KB), §49(d) (Dame Victoria Sharp P and Chamberlain J) and *Cuciurean v Secretary of State for Transport* [2021] EWCA Civ 357.

These are just some of the issues discussed further below.

Why?

There is no other area of law moving this fast. In the last few years there have been dozens of important cases. Any book published in the usual way would be instantly out-of-date. By staying online, this Manual can and will be regularly updated to account for any important developments in the law.

When?

This 2025 version updates the previous few versions of the Manual, originally released in January 2023. It will continue to be updated regularly.

Where?

To check whether you are reading the most up-to-date version of the Manual, as well as for blogposts on more recent decisions, check on www.protestinjunctions.com.

How?

I have had considerable experience of advising and acting in cases involving protest injunctions, having been instructed in approximately dozens of protest injunction matters since 2022. I am indebted to Katharine Holland KC, who was involved in perhaps the first ever protest injunction relating to Persons Unknown in *Hampshire Waste Services* [2004] Env LR 9 (Ch). Without her, this Manual could never have been written. I am also grateful to Myriam Stacey KC, Jude Bunting KC and Admas Habteslasie for reading earlier drafts of this Manual.

Please get in contact with me at yaaser.vanderman@brickcourt.co.uk or info@protestinjunctions.com if you have any suggestions or think there are any errors or omissions in this Manual.



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ABOUT THE AUTHOR

Yaaser Vanderman is a barrister at Brick Court Chambers specialising in various areas of law, including public law, human rights and property law. In addition, he is called to the Bar of Northern Ireland and is on the Attorney General's B Panel of Counsel. He regularly appears in the High Court and Court of Appeal, and has been instructed in 9 cases before the Supreme Court since 2019.



Yaaser Vanderman first worked on protest issues as an LLM student at Harvard Law School in the Human Rights Clinic. The law of protest injunctions is now at the confluence of his practice areas.

Yaaser has been instructed in dozens of protest injunction matters since 2022. He has been involved in double that number over the last few years and has also advised extensively on these issues, including in relation to claims brought by:

- Local authorities
- NHS trusts
- Universities
- Park authorities
- Security companies
- Energy companies

More widely, he has been involved in some of the most important recent protest cases, including the Sarah Everard vigil ban during the COVID-19 lockdown, the Supreme Court reference on anti-protest zones outside abortion clinics, and protests at Universities in 2024-2025.

GLOSSARY

Claimant – the party seeking, or having obtained, a protest injunction

Defendant – the party subject to a protest injunction who is prohibited from acting in a certain way

Direct action – a form of protest that seeks to hinder, impede or prevent another person from carrying out a lawful activity

Persons Unknown – Defendants whose identities are unknown

Newcomer – as defined by the Supreme Court in *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 WLR 45, §2, Defendants whose identities are unknown by virtue of the fact that they have not yet committed (or threatened to commit) the alleged tort

Protest injunction – a form of court order that restrains Defendants from carrying out certain types of protest activity, usually limited to direct action

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1. CAUSES OF ACTION AND RELIEF

(a) Causes of action

- 1.1 An injunction is a remedy not a cause of action. You may think, therefore, that an underlying substantive cause of action is required before an injunction can be obtained. Until recently, that was the case.¹ This was the position taken, for example, in *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 (KB), §25 (Bennathan J). This must now be wrong following the decision in *Broad Idea International Ltd v Convoy Collateral Ltd* [2022] 2 WLR 703 (and confirmed in *Wolverhampton CC v London Gypsies & Travellers Ltd* [2024] AC 983, §43), in which the Privy Council found (by a majority of 4-3) that no underlying cause of action was necessary; the court has the power to grant an injunction where it is just and equitable to do so.²
- 1.2 That said, the court will still only usually exercise this power where there is an underlying cause of action in order to ensure its discretion is exercised consistently and predictably.
- 1.3 There are a number of causes of action that Claimants have attempted to rely on in the context of protest injunctions:³
 - i. Trespass;
 - ii. Private nuisance;
 - iii. Public nuisance;
 - iv. Economic torts, such as conspiracy to injure by unlawful means;
 - v. Harassment; and,
 - vi. Breaches of the criminal law.

¹ As Lord Diplock said in *The Siskina* [1979] AC 210 (HL), 254: “A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court.”

² This has now been followed by the Court of Appeal in *Donovan v Prescott Place Freeholder Ltd* [2024] EWCA Civ 298, §71 (Asplin LJ and Arnold LJ).

³ In addition, public authorities are empowered by statute to obtain injunctions in certain circumstances: see, e.g. *Wolverhampton CC v Persons Unknown* [2023] EWHC 56 (KB) (Hill J), §§49-60, albeit in the context of street cruising.

- 1.4 The simplest cause of action, and the one most commonly relied upon, is trespass.⁴ All it requires is to show that: (i) an individual is on (and possibly over or under) someone else's land without their consent; and, (ii) the Claimant has better right to occupy the land.⁵ As trespass is concerned with interference with possession of land, not ownership, it is not necessary for a Claimant to establish legal ownership of the land.⁶ It is actionable without proof of damage and no question of intention or concerns about what is happening on the land arises as long as the physical act of entry was voluntary.⁷
- 1.5 In *Heathrow Airport Ltd v Persons Unknown* [2024] EWHC 2599 (KB), Julian Knowles J was willing to grant an injunction based on trespass over the whole of Heathrow Airport even though the Claimant could not demonstrate that it had an immediate right to possession over all of it. The Claimant could not do this because of the complexity of showing which parts of different floors of terminal buildings were subject to leases to third parties: §31. Nonetheless, Julian Knowles J considered that the Claimant could properly seek injunctive relief over the whole of the Airport as it was in "control" of the land, as in *Mayor of London v Hall* [2011] 1 WLR 504 (CA): §§45-46. This was because it was the operator of the Airport – holding a certificate and economic licence from the Civil Aviation Authority – and had made byelaws regulating the use and operation of the airport: §46.
- 1.6 A similar issue arose in *Manchester Airport v Persons Unknown* [2024] EWHC 2247 (KB), where the Claimant airports accepted that, whilst they sought injunctive relief over the entirety of the airports, they did not have an immediate right to possession over various areas of land within the airports. Nonetheless, it was argued that injunctive relief over the entire area was necessary to provide an effective solution as: (1) a protest on such third-party areas could easily spill onto land over which the airports did have an immediate right to possession; and, (2) the Claimants controlled the perimeter of the

⁴ See, generally, *Clerk & Lindsell on Torts* (24th edn, 2023), Chapter 18. A good summary of the trespass, private nuisance and public nuisance causes of action in the protest context can be seen in *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB), §§33-35 (Morris J) and *Esso Petroleum v Persons Unknown* [2023] EWHC 1837 (KB), §60 (Linden J).

⁵ *DPP v Cannon* [2025] Cr App R 6 (DC), §§36-37; *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §77 (Julian Knowles J); *Walton Family Estates Limited v GJD Services Ltd* [2021] EWHC 88 (KB), §§35-41 and 49 (Mr Andrew Hochhauser KC); *Manchester Airport v Dutton* [2000] QB 133 (CA), 149-150 (Laws LJ). This includes temporary possession powers granted under primary legislation or other statutory consenting regimes: *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §75 (Julian Knowles J).

⁶ *DPP v Cannon* [2025] Cr App R 6 (DC), §54; and see *Cambridge University v Persons Unknown* [2025] EWHC 2330 (KB), §48 (Butcher J).

⁷ *Fitzwilliam Land Co v Milton* [2023] EWHC 3406 (KB), §§27-31 (Linden J); *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §80 (Julian Knowles J); *Esso Petroleum v Persons Unknown* [2022] EWHC 966 (KB), §19(i) (Ellenbogen J).

airports and the access routes to those third-party areas. HHJ Coe KC accepted these arguments: §§8-11.

- 1.7 Similarly in *Leeds Bradford Airport v Persons Unknown* [2024] EWHC 2274 (KB), Ritchie J granted an injunction covering the landing lights at the Claimant airports notwithstanding the “*particular legal niceties of who owns the land*”: §39. Moreover, he granted an injunction covering land in the possession of third-party private jet companies on the basis that it was “*necessary for the good operation of these airports*”: §38. Ritchie J relied on the statement of Leggatt LJ in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 that:

“50...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.”

- 1.8 In this context, the facts grounding the trespass claim will usually support a nuisance claim as well, though nuisance requires damage to be proved.⁸
- 1.9 In relation to private nuisance, it must be shown that there has been undue and substantial interference with the enjoyment of land.⁹ For example, direct action that prevents the Claimant using a right of way it enjoys over another’s land may well amount to private nuisance. A further example of private nuisance is where direct action prevents an owner of land accessing that land from an adjoining public highway.¹⁰
- 1.10 In relation to public nuisance,¹¹ this can occur where free passage along a public highway is obstructed or hindered. An owner of land must be able to show that they are specifically affected by it in the sense of suffering substantial inconvenience or damage to an appreciably greater degree than the general public.

⁸ See, generally, *Clerk & Lindsell on Torts* (24th edn, 2023), Chapter 19.

⁹ *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §85 (Julian Knowles J); *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), §41 (Morgan J).

¹⁰ *Teledyne UK Ltd v Gao* [2025] EWHC 2050 (KB), §28 (Richard Wright KC); *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB), §63 (Dexter Dias J); *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §§86-87 (Julian Knowles J); *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29 (CA), §13 (Leggatt LJ); *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), §42 (Morgan J).

¹¹ *Teledyne UK Ltd v Gao* [2025] EWHC 2050 (KB), §29 (Richard Wright KC); *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §§88-90 (Julian Knowles J); *Esso Petroleum v Persons Unknown* [2022] EWHC 966 (KB), §19(ii) (Ellenbogen J); *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), §§42-46 (Morgan J).

- 1.11 Less straightforward are the economic torts; for conspiracy to injure by unlawful means, for example, the following elements will need to be proved: (i) an unlawful act by the Defendant; (ii) with the intention of injuring the Claimant; (iii) pursuant to an agreement with others; (iv) which injures the Claimant.¹² Other economic torts include: procuring a breach of contract; the tort of intimidation; causing loss by unlawful means; and, conspiracy to injure by lawful means.¹³
- 1.12 As to harassment under the Protection from Harassment Act 1997, it has to be shown that:¹⁴ (i) the Defendant has pursued a course of conduct; (ii) which the Defendant knows or ought to know involves harassment; (iii) of two or more individuals; (iv) by which the Defendant intends to persuade those individuals not to do something which they are entitled to do or to do something which they are not under an obligation to do.¹⁵ The threshold for speech-based harassment is a high one.¹⁶
- 1.13 Protest cases brought on the basis of harassment have recently struggled before the courts. This is because of: the difficulties of formulating the injunction to refer to all of the necessary ingredients of the tort; the lack of clarity to a member of the public of a prohibition on “*harassment*”; the highly context-specific nature of assessing harassment; and the fundamental tension between freedom of speech and silencing expression as amounting to harassment.¹⁷
- 1.14 As to breaches of the criminal law, these cannot in and of themselves support a civil claim for a protest injunction without the highly exceptional course of obtaining the consent of the Attorney General. This is because the Claimant itself would have no civil cause of action.¹⁸ Criminal conduct can, however, support the founding of tortious behaviour – e.g. trespass on the public highway and economic torts. Note also the new criminal offences contained in: Part 1 of the Public Order Act 2023, which now

¹² *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB), §§64-70 (Dexter Dias J); *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), §21 (HHJ Lickley KC); *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29, §18 (Leggatt LJ).

¹³ See *Clerk & Lindsell on Torts* (24th edn, 2023), Chapter 23.

¹⁴ Assuming the Claimant is a company – ss.1(1A) and 3A of the Protection from Harassment Act 1997.

¹⁵ See, e.g., *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), §50 (Morgan J).

¹⁶ *MBR Acres Ltd v Free the MBR Beagles* [2022] EWHC 3338 (KB), §64 (Nicklin J).

¹⁷ *MBR Acres Ltd v Free the MBR Beagles* [2021] EWHC 2996 (KB), §§92-96 (Nicklin J); *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417 (KB), §§52-54, 78 (Nicklin J); *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), §§152-156 (Morgan J).

¹⁸ *MBR Acres Ltd v Free the MBR Beagles* [2021] EWHC 2996 (KB), §45 (Nicklin J); *Gouriet v Union of Post Office Workers* [1978] AC 435 (HL). But see s.222 of the Local Government Act 1972, which permits local authorities in exceptional circumstances to use civil proceedings to prevent breaches of the criminal law: *North Warwickshire BC v Baldwin* [2023] EWHC 1719 (KB), §§87-95 (Sweeting J).

criminalises common tactics of direct action, such as locking-on, tunnelling and interfering with the use or operation of key national infrastructure; and, s.78 of the Police, Crime, Sentencing and Courts Act 2022, which abolished the common law offence of public nuisance and codified a statutory offence of public nuisance.¹⁹

- 1.15 Sections 18 and 19 of the Public Order Act 2023 also empower the Secretary of State to bring civil proceedings and obtain protest injunctions with a power of arrest attached. The Secretary of State can do so where he or she reasonably believes that: (a) the conduct is causing or likely to cause serious disruption to national infrastructure or access to any essential goods or service; or, (b) the conduct is having or is likely to have a serious adverse effect on public safety. These provisions have still not been brought into force.
- 1.16 Which one (or more) of these causes of action may be relied upon will depend on the circumstances of the protest and, in particular, what interest the Claimant has in the land on which it is taking place. Usually the most important question is whether the Claimant has a legal right to occupy the land. That right may exist because, for example, the Claimant owns the land, is a lessee of the land or has a licence to occupy the land. But the Claimant has no right to occupy land which it has leased to a third party, such that no claim in trespass will lie unless the lessee is itself joined as a party to the claim (although, see §§1.5-1.7 above for a possible exception to this).
- 1.17 Reliance on economic torts may become necessary when the Claimant has no right to occupy the relevant land. There are two recent successful examples of this:
- i. *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB) (Dexter Dias J):²⁰ this was at the final hearing in a claim brought by Shell against environmental protestors targeting Shell-branded petrol stations. Although the Claimant sold fossil fuels to the petrol stations, in most cases the Claimant had no legal interest in those parcels of land; the petrol stations themselves were operated by 3rd-party contractors. As a result, the Claimant could not rely on trespass or nuisance: §§64-70.
 - ii. *Esso Petroleum v Breen* [2023] EWHC 2013 (KB) (Julian Knowles J):²¹ this was at the trial of the claim brought by Esso against environmental protestors

¹⁹ As an example of this provision being contravened, see *R v Trowland* [2023] 4 All ER 766 (CA).

²⁰ See also the prior hearings in *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), §131, and *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), §25, where Hill J and Johnson J, respectively, came to the same view.

²¹ A similar analysis was given at the interim injunction stage by HHJ Lickley KC in *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), §§20-27.

targeting its Southampton-London Pipeline. The Pipeline is 105km in length and runs over land with a “complex tapestry” of land interests: §36. A conspiracy was alleged to avoid attempting a very detailed and complex exercise in identifying all land interests in all of this land.

- 1.18 The case law confirms that the “*unlawful act*” does not have to be actionable by the Claimant itself (i.e. as opposed to being actionable by 3rd parties) where it consists of criminal conduct or breach of contract.²² As to *tortious* conduct, the same principle was found to apply by Julian Knowles J in *Esso Petroleum v Breen* [2023] EWHC 2013 (KB), §68 – agreeing with HHJ Lickley KC’s analysis in *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), §§22-27, which itself relied on *Revenue and Customs Commissioners v Total Network SL* [2008] 1 AC 1174 (HL) – and *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch) (Morgan J).
- 1.19 Even if a Claimant successfully obtains an injunction on the basis of conspiracy to injure by unlawful means, it will be more difficult to enforce; in order to succeed on a contempt application, the Claimant will have to prove the elements of *agreement* and *intention*. This is unlike injunctions based on, for example, trespass where there will be no need to prove such elements.

(b) Relief

- 1.20 The main objective of Claimants will invariably be to stop the direct action affecting their land or activities. This means obtaining a possession order or an injunction.
- 1.21 A possession order is usually the preferred option because of its superior enforcement mechanism; possession orders obtained from the High Court are enforced by High Court Enforcement Officers. They will physically come onto the land and secure possession. But possession orders will only be available if a trespasser has taken possession of the land. Unless protestors have set up an encampment or barricaded themselves in, their presence will generally be too transitory to constitute taking possession of the land.
- 1.22 More usually, an injunction will be sought (either instead of or together with a possession order). The court has a power to grant an injunction (interim or final) where it appears to be just and convenient.²³ Whilst its existence has a deterrent effect in and of itself, the only way of enforcing against breaches of an injunction is to bring committal

²² *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), §27 (Johnson J).

²³ Section 37(1) of the Senior Courts Act 1981.

proceedings for contempt of court. This involves making a committal application to the Court using a specialised procedure and seeking to prove at a hearing that a breach of the injunction has occurred. More detail on contempt and committal proceedings is set out in **Chapter 10 below**.

- 1.23 Damages may also be available if a Claimant can demonstrate loss suffered as a result of direct action. In reality, and even if technically sought in the claim form, Claimants rarely press for damages due to a combination of: the extra resources it will take to prove the loss caused by the direct action; the unlikelihood of Defendants actually being in a position to pay damages; and, the potential reputational harm in doing so. If, however, a Claimant has pleaded damages and, having obtained the injunctive relief sought, nevertheless wants to keep the option of seeking damages open, a Claimant may be able to ask the Court to stay the damages claim for a specified period of time (often ending when the injunctive relief itself is due to end). The aim is to see how the situation on the ground unfolds before taking further action.

2. BEFORE BRINGING THE CLAIM

(a) Pre-action process

- 2.1 Whether a pre-action process is possible before bringing a claim for a protest injunction will depend on various factors, in particular how urgent it is. Where an injunction is required urgently, it will be difficult to engage in any, or any meaningful, pre-action correspondence. Where, however, the claim is not as urgent, it may be beneficial for all parties to go through some form of pre-action process.
- 2.2 A pre-action process is valuable because it allows: (i) the Claimant to allege that certain unlawful conduct is being carried out by protestors, through direct action or otherwise, and to put the Defendants on notice that legal action is being contemplated; and, (ii) the Defendants to deny that they are responsible for it, to deny that such conduct is unlawful, or to cease their direct action.
- 2.3 If, during this pre-action process, protestors accept that they have been carrying out direct action or have otherwise been acting unlawfully, but that they will now cease, a Claimant may decide not to join them as a Defendant or a Claimant may ask them to make an undertaking to the court in the same terms as the protest injunction ultimately sought. This requires the individual to come to court to give the undertaking in person to the Judge.
- 2.4 The same process can occur once a claim has been brought.²⁴ In *National Highways Ltd v Persons Unknown* [2023] EWHC 1073 (KB), in the context of an application to continue an interim injunction and as part of assessing the future risks posed by Defendants, Cotter J said that the Court should offer the opportunity to Defendants to provide a suitable undertaking: §113. He also emphasised that making an undertaking regulates the position going forward such that it would not affect the existing rights and liabilities of the parties to date: §114.
- 2.5 Breach of an undertaking has the same consequences as a breach of an injunction – i.e. it amounts to contempt of court. The benefit of this for the Defendant is that they are not named in any proceedings that are issued or that any claim against them is discontinued, they play no part in it, and they cannot be liable for any legal costs or to pay any damages

²⁴ See, e.g. *North Warwickshire BC v Persons Unknown* [2024] EWHC 2254 (KB), §11 (HHJ E Kelly); *Transport for London v Lee* [2023] EWHC 1201 (KB), §§10-13 (Eyre J), *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB), §14 (Morris J) and *Bloor Homes Ltd v Callow* [2022] EWHC 3507 (Ch), §6 (Hugh Sims KC sitting as a Deputy High Court Judge).

if a protest injunction is ultimately granted. The benefit of this for the Claimant is that there are fewer Defendants to proceed against.

(b) Part 7 or 8 claim

- 2.6 In the protest context, Claimants will often have a choice as to whether to use the procedure set out in Part 7 or Part 8 of the CPR.
- 2.7 Where there are likely to be substantial disputes of fact, Part 7 should be used.²⁵
- 2.8 In many protest cases, however, there will not be substantial disputes of fact; the usual question is, rather, whether or not the Defendant should be allowed to carry on the activity that they are avowedly (and often publicly) conducting. If that is the case, a Claimant can use the Part 8 procedure instead. Claimants should be aware, though, that if a court disagrees with their opting for the Part 8 procedure, it may transfer the claim to Part 7 with the potential for significant delay.²⁶
- 2.9 As to the relevant practical differences between Part 7 and Part 8 claims, one is that a Claimant cannot obtain default judgment when using the Part 8 procedure.²⁷ This may be particularly relevant in cases where Defendants opt to take no part in proceedings. If the Part 7 procedure is used, following the grant of an interim injunction – and assuming that no acknowledgment of service or defence is served – a Claimant may apply for default judgment rather than having to bring a summary judgment application or prepare for a full but unopposed trial.²⁸ In the context of Persons Unknown (see **Chapter 5 below**), however, an application for default judgment may not be acceptable. There are other procedural differences. For example, a Particulars of Claim is required in a Part 7 claim but not in a Part 8 claim.

(c) Which High Court Division

- 2.10 Previous version of this Manual stated that Claimants had a choice as to whether to bring the claim for a protest injunction in: (i) the King's Bench Division or; (ii) the Chancery Division of the High Court. The Index of Cases at the back of this Manual demonstrates cases being brought in both and they are each well equipped to do so. Whilst this still

²⁵ CPR r.8.1(2)(a).

²⁶ *MBR Acres Ltd v Free the MBR Beagles* [2021] EWHC 2996 (KB), §§3-9 (Nicklin J).

²⁷ CPR r.8.1(5).

²⁸ Though, in relation to Persons Unknown who are Newcomers, it is difficult to see that default judgment could be granted in light of *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983.

appears to be true for the most part, the author is aware of one case where the Claimant was criticised by the Court for bringing a protest injunction claim in the Chancery Division rather than in the King's Bench Division.

2.11 It will rarely make a difference to the substantive outcome. In the author's experience, which Division is chosen will usually depend on which one the Claimant's lawyers are most accustomed to using.

2.12 There are some practical differences which Claimants ought to be aware of.

- Judges in the Chancery Division will tend to have more experience of dealing with property issues whilst Judges in the King's Bench Division will tend to have more experience of dealing with human rights issues.
- Where urgent relief is sought, Claimants may find that one of the Divisions has better availability for an urgent hearing than the other. The Chancery Division in London has a specific Applications List to hear urgent applications as long as they can be dealt with in less than 2 hours.²⁹ This is located in Court 10 of the Rolls Building and sits each working day during term except for the last day of term. Such an Applications List also exists in Leeds and Manchester, albeit they only sit on Fridays. The King's Bench Division has an Interim Applications Judge, sitting in Court 37 of the Royal Courts of Justice, but they will only list hearings likely to take 1 hour or less.³⁰ Hearings likely to take longer than 1 hour will have to be arranged by the King's Bench listing office. It is good practice, generally, for the Claimant's lawyers to phone the listing offices in both Divisions to see when an urgent hearing can be listed.
- The Divisions have slightly different deadlines for the filing of certain documents. For example, in the Chancery Division, for ordinary applications³¹ skeleton arguments should be filed and served by 10am on the working day before the hearing.³² For heavy applications,³³ they must be served by 12pm two clear days before the hearing.³⁴ In the King's Bench

²⁹ Including time for pre-reading, oral argument and dealing with consequential points: the Business and Property Courts of England & Wales - Chancery Guide (2022), §15.16.

³⁰ The King's Bench Guide (2025), §9.57.

³¹ Applications listed for a hearing of half a day (2.5 hours) or less: Chancery Guide (2022), §14.26.

³² Chancery Guide (2022), §14.42.

³³ Applications listed for a hearing of more than half a day: Chancery Guide (2022), §14.44.

³⁴ Chancery Guide (2022), §14.57.

Division, skeleton arguments should be served and filed by 10am one day before an application hearing and by 10am two days before a trial.³⁵

- 2.13 One exception to the free choice of venues referred to above may be claims for a protest injunction based on harassment. In *Canada Goose UK Retail Ltd v Persons Unknown* [2019] EWHC 2459 (KB), Nicklin J indicated that such claims would have to be brought in the Media and Communications List of the King's Bench Division, pursuant to CPR r.53.1(3)(c): §168.

³⁵ King's Bench Division Guide (2025), §9.108.

3 URGENCY AND NOTICE

3.1 The type and amount of notice of a hearing given to a Defendant is an important issue in the context of protest injunctions. Considering the requirement set out in s.12(2) of the Human Rights Act 1998, it is also a jurisdictional issue – i.e. the court will simply not have the power to grant the protest injunction if the notice requirements contained within that provision are not satisfied.

3.2 This Chapter sets out the usual position on filing and serving an application notice before considering those instances where urgency is required.

(a) Standard rules and exceptions

3.3 The general rule is that an application notice – for example, for an interim injunction³⁶ – must be filed and served before being determined.³⁷ Service must usually be effected as soon as practicable after it is filed and at least 3 days before the hearing of the application.³⁸

3.4 There are exceptions to this. The correct approach to take will ultimately depend on how urgently the Claimant needs the relief.

3.5 The court can still *hear* an application even if it is served less than 3 days before the hearing if it considers that, in the circumstances, sufficient notice has been given.³⁹

3.6 According to the CPR, an application (of any sort) may only be made without serving an application notice in the following, admittedly overlapping, scenarios:⁴⁰

- i. Where there is exceptional urgency;
 - ii. Where the overriding objective is best furthered by doing so;
 - iii. By consent of all parties;
 - iv. With the permission of the court;
 - v. Where there is not sufficient time before a hearing that has already been fixed;
- or

³⁶ CPR PD25A, §2.2.

³⁷ CPR r.23.3(1) and 23.4(1). There are exceptions to this rule where permitted by a rule or practice direction or where the court dispenses with the requirement: CPR r.23.3(2) and 23.4(2). See, generally, *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB), §19 (Warby J).

³⁸ CPR r.23.7(1).

³⁹ CPR r.23.7(4); CPR PD23A, §4.1; CPR PD25A, §2.2.

⁴⁰ CPR PD23A, §3.

- vi. Where a court order, rule or practice direction permits. In the context of interim remedies, a court may permit no notice to be given if it appears that there are good reasons for not giving notice.⁴¹ The Claimant's evidence in support of the application must state the reasons why notice has not been given.⁴²

3.7 If no notice or short notice is given in relation to a protest claim, this will usually be because the Claimant considers it needs an injunction urgently. Some of the case law has emphasised how exceptional it is for the court to grant an injunction, particularly where ECHR rights are involved, against a party who has had *no* notice at all.⁴³ For example, it has been said that, given modern methods of communication, urgency can only be a compelling reason for applying without notice "*if there is simply no time at all in which to give notice*".⁴⁴ This point is considered further below.

3.8 Even where full notice cannot be given, short notice should be given unless the circumstances of the application require secrecy.⁴⁵

(b) Levels of urgency

3.9 In the protest context, applications for interim injunctions will often be urgent to a greater or lesser degree. It is important that Claimants correctly assess, and do not overstate, the appropriate level of urgency in their case and, therefore, what steps to take and when.

- i. Most urgent

3.10 In cases of the most urgency:

- i. An application may be heard by telephone but only where the Claimant is being represented by barristers or solicitors.⁴⁶
- ii. In such a case, the phone number to call will vary depending on whether the application is made between 10am-5pm or outside those hours.⁴⁷
- iii. The court will likely require a draft order to be provided by email.⁴⁸

⁴¹ CPR r.25.3(1).

⁴² CPR r.25.3(3).

⁴³ *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB), §20 (Warby J).

⁴⁴ *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB), §53 (Warby J).

⁴⁵ CPR PD23A, §4.2.

⁴⁶ CPR PD25A, §§4.2 and 4.5(5).

⁴⁷ CPR PD25A, §4.5(1).

⁴⁸ CPR PD25A, §4.5(3).

- iv. Assuming a claim form has not yet been issued, the Claimant must undertake to issue a claim form immediately unless the court gives direction for the commencement of the claim.⁴⁹ The claim form should be served with the order for the injunction⁵⁰ where possible.⁵¹
- v. The application notice and evidence in support must be filed with the court on the same or next working day together with two copies of the order for sealing.⁵²

ii. Very urgent

3.11 In very urgent cases (but not so urgent that a telephone hearing is required):

- (1) An application may be made before a claim form is even issued.⁵³ The Claimant must undertake to issue a claim form immediately unless the court gives direction for the commencement of the claim.⁵⁴
- (2) The application notice, evidence in support and draft order should be filed with the court at least two hours before the hearing if possible.⁵⁵ If that is not possible, a draft order should be provided at the hearing and the application notice and evidence filed on the same or next working day.⁵⁶
- (3) Except in cases where secrecy is essential, the Claimant should take steps to notify the Defendant informally of the application.⁵⁷
- (4) The claim form should be served with the order for the injunction⁵⁸ where possible.⁵⁹

iii. Urgent

3.12 In urgent cases (but not those requiring the application to be heard by telephone or before the claim is issued):

⁴⁹ CPR PD25A, §4.4(1).

⁵⁰ Such an order must refer to the parties as “*the Claimant and Defendant in an Intended Action*”: CPR PD25A, §4.4(3).

⁵¹ CPR PD25A, §4.4(2).

⁵² CPR PD25A, §4.5(4).

⁵³ CPR PD25A, §§4.1(2) and 4.4(1).

⁵⁴ CPR PD25A, §4.4.

⁵⁵ CPR PD25A, §4.3(1).

⁵⁶ CPR PD25A, §4.3(2).

⁵⁷ CPR PD25A, §4.3(3).

⁵⁸ Such an order must refer to the parties as “*the Claimant and Defendant in an Intended Action*”: CPR PD25A, §4.4(3).

⁵⁹ CPR PD25A, §4.4(2).

- (1) In most cases, it ought to be possible to file the application notice, supporting evidence and draft order some days in advance of the hearing, even if not the full 3 clear days before. But the application notice, evidence in support and draft order should be filed with the court at least two hours before the hearing.⁶⁰ If that is not possible, a draft order should be provided at the hearing and the application notice and evidence filed on the same or next working day.⁶¹
- (2) Except in cases where secrecy is essential, the Claimant should take steps to notify the Defendant informally of the application.⁶²

3.13 In each of these cases, s.12(2) of the Human Rights Act 1998 will need to be satisfied (see discussion below).

(c) Short and informal notice

3.14 Notice is not binary; it operates along a spectrum.

3.15 At one end of the spectrum, a Claimant may seek relief with the other side being left completely in the dark. At the other end, a Defendant may have been given full notice – an application for an interim injunction being served “*as soon as practicable*” and at least 3 clear days’ before a hearing.⁶³

3.16 Then there are midway options – these are referred to as giving “short notice”. This may involve, for example, serving the Defendant the day before the hearing.

3.17 Similarly, service may be said to be “*informal*” in the sense of not being served by the method set out in CPR r.6.3 or in another way sanctioned by the court – e.g. pursuant to CPR r.6.15 and/or 6.27. In the modern age, there are numerous ways of doing this, such as sending an email to the Defendants attaching the bundle, skeleton argument and notice of hearing.

3.18 The important point to recognise is that, in the court’s eyes, there is a significant difference between short notice and no notice at all and, in all but exceptional cases, at least short and informal notice will be required. Just how much notice is required will depend on all the circumstances. In *Cambridge University v Persons Unknown* [2025] EWHC 454 (KB), Fordham J regretted that the claim and application documents were issued on a Wednesday, the Court listing was received on the Friday but the documents

⁶⁰ CPR PD25A, §4.3(1).

⁶¹ CPR PD25A, §4.3(2).

⁶² CPR PD25A, §4.3(3).

⁶³ CPR r.23.7(1); CPR PD23A, §4.1; CPR PD25A, §2.2.

were not notified to Persons Unknown until the following Wednesday (with the hearing taking place 5 working days later): §§18-19.

(d) Section 12(2) of the Human Rights Act 1998

3.19 The legal significance between no notice, short notice and full notice is codified in s.12(2) of the Human Rights Act 1998, a provision which will inevitably apply to all protest injunctions.

3.20 It 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.”

3.21 This makes the issue of notice a jurisdictional issue,⁶⁴ as compared to an issue resting with the discretion of the court, which would otherwise be the case pursuant to rules in the CPR, as referred to above.

3.22 In other words, the Claimant will only be able to justify anything less than full notice as follows:

- No notice – the Claimant must show be able to show there are “*compelling reasons*” why no notice was given. This will usually only be the case if giving notice to the Defendants would enable them to take steps to defeat the very purpose of the injunction or would otherwise lead to severe harm. The mere fact that notice may cause more protestors to turn up or that direct action may escalate in some way will not usually be sufficient. For example, the *White Book* states that:⁶⁵

“The court should not entertain an application of which no notice has been given unless either giving notice would enable the defendant to take steps to defeat the purpose of the injunction (as in the case of a freezing or search

⁶⁴ *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB), §20 (Warby J).

⁶⁵ *White Book* (2025), §25.3.2 (p.710).

order) or there has been literally no time to give notice before the injunction is required to prevent the threatened wrongful act (*National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Practice Note)* [2009] UKPC 16; [2009] 1 W.L.R. 1405, PC)."

A good protest example is *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB), in which the Claimant sought an injunction against protests made by parents against the teaching of LGBT issues at a primary school. Warby J strongly criticised the Claimant for proceeding without giving the Defendants any notice at all. He stated, at §53, that, "*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.*"

- All practicable steps – this requirement seems to encompass both the timing and method of service. In terms of method, the Claimant will have to show that it has properly sought to bring the fact of the claim/application (as well as the relevant documents) to the attention of the Defendants. This will most obviously involve sending the information to email addresses associated with the Defendants. It may also involve using other types of social media and, depending on the circumstances, affixing notices at the location of the protest. In terms of timing, full notice may not have been given because of the urgency of the claim. In this scenario, the Claimant will have to demonstrate to the court that although the matter was not so urgent or sensitive to engage s.12(2)(b) it was still too urgent or sensitive to permit the full period of notice.

3.23 In *Esso Petroleum v Persons Unknown* [2022] EWHC 966 (KB), §34, the Claimant had sent an email to the Defendants informing them that the hearing would be taking place the following day. Ellenbogen J accepted the Claimant could rely on s.12(2)(b) or, in the alternative, s.12(2)(a) of the Human Rights Act 1998 – i.e. that all practicable steps had been taken to notify the Defendants but, if not, there were compelling reasons why they should not be notified. By contrast, in a separate unreported case that the author was involved in, the Judge found that s.12(2)(a) and (b) were mutually exclusive and that, if some form of notice had been given, the two provisions could not be relied upon in the alternative.

3.24 The courts have held that applications for injunctions against Persons Unknown do not technically engage s.12(2) HRA 1998 as they are made against the world and there is no respondent to the application.⁶⁶ Nonetheless, in these cases the courts have, nonetheless,

⁶⁶ *Heathrow Airport Ltd v Persons Unknown* [2024] EWHC 2599 (KB), §7 (Julian Knowles J); *London City Airport Ltd v Persons Unknown* [2024] EWHC 2557 (KB), §5 (Julian Knowles J); and, *Re Winch* [2021] EWHC 1328 (KB), §32 (Nicklin J).

gone on to consider carefully the steps taken to bring the application to the attention of those that may be affected.⁶⁷

(e) Obligations on Claimant at without notice hearing

3.25 There are a number of obligations on a Claimant both during and after a hearing that has taken place without notice to the Defendant.

3.26 They include the following:

- i. The duty of full and frank disclosure.⁶⁸ The duty applies even if the Defendant is given short notice.⁶⁹ As to factual issues, it requires the Claimant to make full and fair disclosure of those facts which it is material for the court to know. This extends to facts which the Claimant ought to have known if it had made proper inquiries. As to legal issues, the court's attention must be drawn to significant legal and procedural aspects of the case. Failure to comply may lead to injunction being set aside: see *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB), §55 (Warby J) for a case in which this occurred.
- ii. A duty to provide notes of the without notice hearing with all expedition. This includes, but is not limited to, the judgment given.⁷⁰
- iii. A duty to serve the proceedings and injunction on the Defendant as soon as practicable.⁷¹
- iv. A duty to apply for and obtain a return date for a further hearing where the Defendants can be present on full notice.⁷²

3.27 It is important to note that, as set out **below at §5.6(ii)**, all claims and applications against Persons Unknown who are Newcomers will be without notice and so the obligations in (i) and (ii) above will apply at every hearing.

⁶⁷ Ibid.

⁶⁸ *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB), §§21-26 (Warby J); *White Book* (2025), §25.8.1 (p.715).

⁶⁹ *White Book* (2025), §25.8.2 (p.717).

⁷⁰ *White Book* (2025), §25.8.7 (p.719).

⁷¹ CPR PD25A, §5.1(2); *White Book* (2025), §25.8.6 (p.719).

⁷² CPR PD25A, §5.1(3).

4 SERVICE

- 4.1 Service plays a huge part in protest injunctions and getting it right is essential. If Claimants fall down on service it is usually because they cut corners in the rush for seeking urgent injunctive relief. The consequences can be catastrophic for their claim. In *Canada Goose v Persons Unknown* [2020] 1 WLR 2802 (CA), for example, failure properly to serve the claim form on Persons Unknown led not only to refusal of the Claimant's summary judgment application but also to the lifting of the interim injunction: see §§28, 34, 37-54.⁷³

(a) Serving the claim

i. General

- 4.2 Courts are particularly strict when it comes to service of the claim form. This is because service of the originating process is the act by which the Defendant is subjected to the court's jurisdiction. A person simply does not become a party to proceedings until served with a claim form. As Lord Sumption said in *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471 (SC), a case involving a claim sought to be brought against an unknown hit-and-run driver:⁷⁴

"17...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."

- 4.3 This poses no problem for named Defendants, who can be served in the usual way as long as their address is known. In relation to Persons Unknown who are Newcomers, the previous position was that alternative service was required to bring the claim to their attention. Following *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, however, it now appears that Newcomers cannot formally be *served*. Instead, Claimants must take steps to *notify* them of the existence of the claim – see **§5.10(12) below**.

ii. Applications for alternative service

- 4.4 For Defendants (other than Persons Unknown who are Newcomers) whose whereabouts and address are unknown, a Claimant must obtain an order for service by an alternative method, pursuant to CPR r.6.15 (claim form) and 6.27 (other documents).

⁷³ See also *Canada Goose v Persons Unknown* [2020] 1 WLR 417 (KB), §§138-139 (Nicklin J) as well as *Enfield LBC v Persons Unknown* [2020] EWHC 2717 (KB) (Nicklin J) and *Canterbury CC v Persons Unknown* [2020] EWHC 3153 (KB) (Nicklin J), in which serious criticisms were made of the approach taken by the local authorities, albeit in the context of occupations by travellers.

⁷⁴ Repeated in the protest context in *Canada Goose v Persons Unknown* [2020] 1 WLR 2802 (CA), §45.

In order to do so, the Claimant must be able to prove that the proposed method of service can reasonably be expected to bring the proceedings to the attention of the Defendants.⁷⁵ Dispensation of the requirement for service altogether, pursuant to CPR r.6.16, will rarely be acceptable.⁷⁶

4.5 The application for alternative service must be supported with evidence.⁷⁷ This evidence must state:

- i. The reason why an order is sought.
- ii. What alternative method or place is proposed.
- iii. Why the Claimant believes that the document is likely to reach the person to be served by the method or at the place proposed.

4.6 In a standard protest context – i.e. a static group of protestors protesting near to the single object of the protest – all or a combination of the following methods will usually be acceptable:

- Fixing a copy in a clear envelope at a prominent position at the site of the protest;⁷⁸
- Uploading the documents to the Claimant's own website;
- Sending the documents to email addresses connected to the protest;
- Sending the documents to social media accounts connected to the protest – e.g. Facebook and Twitter – including to the accounts of those suspected of carrying out the direct action but whose real identity or address is unknown;⁷⁹
- Publicising the fact of the claim in a local/national newspaper.

4.7 Although Courts will require strict adherence to the terms of any order for alternative service,⁸⁰ common sense will also prevail. For example, in *Wolverhampton CC v Phelps* [2024] EWHC 139 (KB), the Claimant had to “*Maintain...official road signs*” referring to the injunction. HHJ Emma Kelly found that this imported an obligation to “reasonably

⁷⁵ *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §144 (Julian Knowles J).

⁷⁶ See, e.g. *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §143 (Julian Knowles J); *Canada Goose v Persons Unknown* [2020] 1 WLR 2802 (CA), §§48-49, 52.

⁷⁷ CPR r.6.15(3).

⁷⁸ In *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (CA), §50, the Court of Appeal recognised that posting on social media and attaching copies of documentation at nearby premises would have a greater likelihood of bringing notice of the proceedings to the attention of defendants.

⁷⁹ *Ibid.*

⁸⁰ *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (KB), §78 (Nicklin J).

maintain” the road signs: §43. An obligation of result – i.e. that the signage must be present at all times – would be unworkable and contrary to the public interest as it would incentivise the Defendants to remove the signage.

- 4.8 Similarly, in *North Warwickshire BC v Persons Unknown* [2025] EWHC 2403 (KB), on a review of the final injunction granted, the Claimant had failed to comply with a requirement to place a copy of the final order and power of arrest prominently at the entrances to Kingsbury Oil Terminal. Whilst emphasising that the Court expected parties to abide by all alternative service provisions, HHJ Emma Kelly accepted the submission that sufficient notice of the injunction and power of arrest had been given in any event: §9.
- 4.9 Some difficulties arise where the subject of the protest covers a vast area of land or is a large piece of national infrastructure. In *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 (KB) an injunction was granted against Insulate Britain over thousands of miles of the Strategic Road Network. Bennathan J found that the type of alternative methods set out above were “*completely impracticable when dealing with a vast road network*”: §51. The “*absence of any practical and effective method to warn future participants about the existence of the injunction*” essentially meant that service by an alternative method of *Persons Unknown* was not possible. The solution reached by the Judge was that anyone arrested would first have to be identified and then served with the order: §52.
- 4.10 By contrast, in *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), Julian Knowles J found that alternative service of *Persons Unknown* was acceptable, notwithstanding that the injunction covered the entire HS2 route: §229. The methods of alternative service were extensive, including: advertising the injunction in the *Times* and *Guardian*; advertising the injunction within 14 libraries every 10 miles along the route or, if that was not possible, on local parish council notice boards; publicising the order on Twitter and Facebook; and, advertising the order on the HS2 website.
- 4.11 There were, of course, some factual differences between these two cases but it is difficult to see why alternative service was acceptable in the latter but not the former case.
- 4.12 This apparent disparity was considered by Cotter J in *National Highways Ltd v Persons Unknown* [2023] EWHC 1073 (KB) where he seemed to prefer the approach taken by Julian Knowles J, at least at that further stage of proceedings. Cotter J referred to all the circumstances, including statements made by Just Stop Oil, the media coverage of the orders and the widespread knowledge of the orders, as well as the extent to which Just Stop Oil protestors were in communication with each other. He concluded that it was very unlikely that there were any protestors who would not be aware of the injunction;

the “level of constructive knowledge” meant that there were now practical and effective methods of alternative service: §§126-137.⁸¹

- 4.13 There have been other cases where the Court has said that the alternative service provisions sought were not such as could reasonably be expected to bring the proceedings to the attention of all Persons Unknown. In *MBR Acres Ltd v Free the MBR Beagles* [2022] EWHC 3338 (KB), for example, Nicklin J considered that the method of alternative service sought – posting a copy of the injunction order outside one of the Claimant’s site subject to protest – would catch those who had no previous connection with that site (e.g. those protesting at another site): §72.
- 4.14 In respect of Persons Unknown who are Newcomers, these authorities must now be viewed with caution following *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983. This is because the Supreme Court in that case found that service of such Defendants was not possible as they were not parties to the claim. That said, these authorities may still be useful for the theoretically separate question of whether sufficient notice of the claim has been given to Newcomers.
- 4.15 In *National Highways Ltd v Persons Unknown* [2022] EWHC 3497 (KB), Soole J refused to permit alternative service of the claim on a number of named Defendants sought to be joined to the claim. The Claimant relied, amongst other things, on the time and cost of serving the documents, the difficulty of effecting service on the protestors, and the ability to serve documents electronically. The Judge, however, considered that this was not sufficient in the context of orders which can give rise to committal for contempt; the starting point was that such orders must be served personally. If any difficulties in service arose, individual applications could be made but the mere size of the pool of named Defendants did not in itself justify a general departure from the primary method of service: §§49-51.
- 4.16 The application for alternative service may be made without notice.⁸² In fact, such applications in the protest context will almost always be made without notice.
- 4.17 The application for alternative service will often be made at the same time as filing the claim. Depending on how urgent the claim is, the application for alternative service can usually be heard within a matter of days. It is good practice for the Claimant’s lawyers to be in contact with the Court staff in the days running up to filing the claim to see when the Court may have availability to hear the application for alternative service.

⁸¹ Such “constructive knowledge” was also referred to by Cavanagh J in *Transport for London v Lee* [2023] EWHC 402 (KB), §§31-32, and this was adopted in *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), §205 (Hill J).

⁸² CPR r.6.15(3).

4.18 The order granting alternative service has to specify:⁸³

- (1) The method or place of service;
- (2) The date on which the claim form is deemed served; and,
- (3) The period for filing an acknowledgement of service, filing an admission or filing a defence.

iii. Snapshot summary - what to do and when

4.19 For Claimants bringing a claim in an ordinary protest injunction case, the following steps will need to be taken.

4.20 First, the Claimant will need to file:

- (1) Claim form;
- (2) N244 application notice for an interim injunction and draft order;
- (3) N244 application notice for alternative service of the claim form and other documents by an alternative method, and draft order for service by an alternative method;
- (4) Witness statements dealing with the interim injunction and alternative service. These do not necessarily need to be set out in separate statements.

4.21 Secondly, and once the above documents have been issued, the Claimant may need to obtain an order for their service, in addition to the Response Pack, by an alternative method. This is often obtained following a short hearing.

4.22 Thirdly, the Claimant will then need to serve/notify all of these documents.

(b) Serving the Order

4.23 Once an injunction is granted (interim or final), this will need to be served/ notified.

4.24 In relation to named Defendants, the order will generally need to be served personally.⁸⁴

4.25 In relation to Persons Unknown who are Newcomers, for the reasons already set out above, Claimants will need to take sufficient steps to notify them of the existence of the order. This will usually require, at least, affixing the order and large warning notices

⁸³ CPR r.6.15(4).

⁸⁴ *MBR Acres Ltd v Maher* [2022] 3 WLR 999 (KB), §§98, 105 (Nicklin J). It is possible to apply for an order for alternative service, though in some cases the courts have been slow to grant these: *MBR Acres Ltd v Maher* [2022] 3 WLR 999 (KB), §111 (Nicklin J). See also **§4.15 above** and *National Highways Ltd v Persons Unknown* [2022] EWHC 3497 (KB), §§49-51 (Soole J).

around the site of the protest referring to the High Court proceedings and stating in simple terms what actions the injunction prohibits.

(c) Serving other documents

- 4.26 It may also be useful for the initial interim injunction order to provide for how future documents (e.g. applications) are to be served alternatively in order to avoid having to come back before the Court.

5 PERSONS UNKNOWN AND INTERESTED PERSONS

(a) Introduction to Persons Unknown

5.1 There are two types of Persons Unknown:

- i. Individuals whose identities are unknown but who have already committed (or threatened to commit) the alleged tort.
- ii. Individuals whose identities are unknown by virtue of the fact that they have not yet committed (or threatened to commit) the alleged tort (referred to as “Newcomers”).⁸⁵

5.2 Without the ability to bring proceedings against both types of Persons Unknown, protest injunctions would be of much less value to Claimants. This is because, in most cases, the Claimant would not know the names of all (or most of) those carrying out (or those who in the future will carry out) the direct action sought to be prohibited. To limit protest injunctions to named Defendants could, therefore, have the effect of insulating from legal action Defendants who: (i) deliberately hide their identities; and, (ii) are part of organisations who have large enough numbers to replace those identified individuals who have become subject to an injunction with Newcomers, with the effect of frustrating the rights and lawful activities of Claimants.

5.3 That said, the courts are also alive to the potentially draconian consequences of granting wide-ranging injunctions which could bite against unsuspecting members of the public exercising their Article 10/11 ECHR rights. This led Longmore LJ in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA), §31, to say that, “A court should be inherently cautious about granting injunctions against unknown persons since the reach of such an injunction is necessarily difficult to assess in advance.” Similarly, in *Bromley LBC v Persons Unknown* [2020] 4 All ER 114 (CA), §34, the Court of Appeal relied on Article 6 ECHR (right to fair trial) and the principle that the court should hear both sides of an argument in stating that, “a court should always be cautious when considering granting injunctions against persons unknown”.⁸⁶

⁸⁵ In *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, the Supreme Court defined this category as: “2...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”.

⁸⁶ See also Dexter Dias J in *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB), §§16-18.

- 5.4 For some years, the Courts struggled with the question of whether, and if so how, Persons Unknown who were Newcomers could be made subject to injunctions. Following *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (CA) (5 March 2020), Claimants could only obtain final injunctions against individuals who had already carried out the direct action sought to be restrained; in other words, they would not be able to obtain a final injunction against anyone who was a “Newcomer”. This meant that being able to identify an individual, if not by name then by their conduct and physical description, was essential. In *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946 (CA), however, the Court of Appeal reversed the position finding that Newcomers could be covered by final injunctions as Persons Unknown: §§92-96, 99.
- 5.5 The issue has been finally resolved in *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983,⁸⁷ where the Supreme Court was asked to decide whether and, if so, on what basis and subject to what safeguards, the Court had power to grant an injunction against Newcomers. Although a case relating to unlawful encampments of Gypsies and Travellers, the case has much wider implications, including for protest injunctions.
- 5.6 The Supreme Court decided that Courts did have such a power, albeit subject to certain conditions which are discussed further below. Of importance to its analysis were the following considerations:
- i. Injunctions made against Newcomers are a wholly new type of injunction which cannot be fitted into an existing category of injunction; they are, essentially, made against the public at large and potentially embrace the whole of humanity: §§109, 132, 135 and 144.
 - ii. They are always without notice: §§139, 142, 143(ii), 151, 167, 173, 238(i).
 - iii. Injunctions against Newcomers are typically neither interim nor final, at least in substance: §§139, 142, 143(vii), 151, 167, 178, 232, 234. Rather, they are sought for their 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 renewed application in which any defendant is expected to be identified, let alone turn up.

⁸⁷ On appeal from *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946 (CA).

- iv. A Newcomer who knowingly breaches the injunction is liable to be held in contempt whether or not they have been served with the proceedings: §132. Such a person could, instead, apply to have the injunction varied or set aside.
- v. To prohibit Newcomer injunctions would mean that “*where claimants face the prospect of continuing unlawful disruption of their activities by groups of individuals whose composition changes from time to time, then it seems that the only practical means of obtaining the relief required to vindicate their legal rights would be for them to adopt a rolling programme of applications for interim orders, resulting in litigation without end.*”: §138. That would prioritise formalism over substance.

5.7 Notwithstanding this, such injunctions are only to be granted in certain cases, according to the criteria set out in the next section.

(b) Tests to be satisfied for Persons Unknown who are “Newcomers” following *Wolverhampton CC*

5.8 *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983 is not a protest injunction case; it involved injunctions sought by local authorities against Gypsies and Travellers for trespass and breach of planning control. In fact, at §235, the Supreme Court went out of its way to say that “*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*”. Nonetheless, in relation to Newcomers (defined at **§5.1 above**), many of the same factors adopted by the Supreme Court have been applied in the protest context.

5.9 This was the approach taken by Ritchie J in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB), the first case to consider *Wolverhampton CC* in detail in the protest context. Ritchie J found that the guidelines at §82 of *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (see **p.120 below**) remained good law but that *Wolverhampton CC* called for the addition of other factors “*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.*”: §57.

5.10 In the context of a summary judgment application,⁸⁸ Ritchie J stated, at §58, that the factors to be considered were as follows:⁸⁹

- (1) **There must be a civil cause of action identified in the claim form and particulars of claim.**
- (2) **There must be full and frank disclosure by the Claimant seeking the injunction.** That makes sense in respect of Persons Unknown. But even in relation to named Defendants, Dexter Dias J in *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB), §72, suggested that “*there remains a high duty of full and frank disclosure*”.
- (3) **There must be sufficient and detailed evidence before the Court. First, the Claimant has to prove that the claim has a realistic prospect of success. Secondly, the Claimant has to prove that any defence has no realistic prospect of success. The Court should not put too much weight on the absence of any evidence or defence from Persons Unknown as the proceedings are without notice; the Court must be alive to any potential defences and the Claimants must set them out and make submissions upon them.** Although Ritchie J did not refer to this aspect of the test, a Claimant seeking a precautionary injunction (which will be most protest cases) also has

⁸⁸ In *Cambridge University v Persons Unknown* [2025] EWHC 724 (KB), §§29 and 32, an interim injunction application, Soole J preferred to adopt the approach used by Julian Knowles J in *HS2 v Persons Unknown* [2022] EWHC 2360, which involved considering: (1) the general principles which apply to the granting of interim precautionary injunctions; (2) the adaptations to those principles which are necessary where ECHR rights and s.12 HRA 1998 are engaged; and, (3) the principles and guidance identified in *Wolverhampton CC*. Although, it should be noted that in *Trinity College and St John's College v Persons Unknown* [2025] EWHC 1577 (Ch), §59, the Judge stated that he was “*unable to discern any material difference between the approaches of Soole J and Ritchie J*”.

⁸⁹ These have subsequently been adopted in a number of cases, see e.g.: *Teledyne UK Ltd v Gao* [2025] EWHC 2050 (KB), §38 (Richard Wright KC); *Trinity College and St John's College v Persons Unknown* [2025] EWHC 1577 (Ch), §§54 and 61ff (Andrew Twigger KC); *Office Group Properties Ltd v Persons Unknown* [2025] EWHC 1438 (KB), §§26-27 (Sheldon J); *Enfield v Snell* [2025] EWHC 288 (KB), §41 (Jason Beer KC); *UK Oil Pipelines* [2024] EWHC 3549 (Ch), §46 (Miles J); *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB), §§59-60 where Dexter Dias J referred to them as “*a structured and essential checklist*”; *University of London v Harvie-Clark* [2024] EWHC 2895 (Ch), §22ff (Thompson J); *Thurrock Council v Adams* [2024] EWHC 2576 (KB), §41 (Julian Knowles J); *Leeds Bradford Airport v Persons Unknown* [2024] EWHC 2274 (KB), §24 (Ritchie J); *Tendring DC v Persons Unknown* [2024] EWHC 2237 (KB), §18 (Ritchie J); and, *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), §30 (Ritchie J), where the Claimant sought the extension of an interim injunction. In *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 1786 (Ch), §20, Sir Anthony Mann was referred to *Valero* but did not adopt the listed factors.

to prove a sufficiently “*real and imminent risk*” of the tortious conduct occurring (see **§6.28ff below**).⁹⁰

In addition, whilst this is the appropriate test for summary judgment applications made pursuant to CPR Part 24, it may not be appropriate, e.g., for applications where Claimants truly are seeking to hold the ring until a return hearing: the usual test at the interim injunction stage is the relatively low bar of whether there is a serious case to be tried (see **§6.4 below**). That is subject to where “*publication*” is involved, where the Claimant will have to prove that they are “*likely*” to succeed at trial, pursuant to s.12(3) of the Human Rights Act 1998 (see **§6.18ff below**). But, in many cases, given the apparent removal of the distinction between interim and final injunctions in Newcomer cases, it may well be that the “serious case to be tried” bar is no longer appropriate and that greater prospects of success on the merits have to be demonstrated. This will likely depend on whether, at the first hearing, the Claimant is, in effect, applying for final relief without a return hearing. In *HS2 v Persons Unknown* [2024] EWHC 1277 (KB) – where the Claimant sought to extend an existing interim injunction, Ritchie J stated that the relevant test was whether the Claimant was “*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*”: §44. In

- (4) **There must be a “*compelling justification*” for the injunction against Persons Unknown to protect the Claimant's civil rights, as compared to the usual balance of convenience test usually applied for interim relief** (see **§6.14 below**). This threshold was not surpassed in *Office Group Properties Ltd v Persons Unknown* [2025] EWHC 1438 (KB), §§31-36, where Sheldon J found that there was not a real and imminent risk of unlawful conduct – see **§6.36 below**. In some cases, the Court has asked whether all reasonable alternatives

⁹⁰ The Supreme Court in *Wolverhampton CC* referred to a “*strong probability*” of a tort occurring and that this will cause “*real harm*”: §218.

to an injunction have been exhausted and whether there are any other practical steps that could be taken to prevent the wrong.⁹¹

- (5) **If ECHR rights are engaged, the Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UKSC 23, and any injunction must be necessary and proportionate to the need to protect the Claimants' right.** On this, see **Chapter 8 below**.
- (6) **Damages must not be an adequate remedy.** Although Ritchie J did not refer to it, Claimants previously had to prove that the harm would be “grave and irreparable”, this test being derived from *Vastint Leeds BV v Persons Unknown* [2019] 1 WLR 2 (see **§6.11 below**). Where health and safety is in issue, damages will likely be inadequate.⁹² In *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (KB), §78, Garnham J considered that the *Vastint* test had been “subsumed into the *Wolverhampton* framework”.
- (7) **Persons Unknown must be clearly and plainly identified by reference to: (i) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (ii) clearly defined geographical boundaries, if that is possible.** This also presupposes the requirement that it has not been possible to identify any Defendants (see **§5.15 below**).

This criterion was thrown into doubt in *MBR Acres Ltd v Curtin* [2025] EWHC 331 (KB), when Nicklin J relied on *Wolverhampton CC* in stating that:

- “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”: §356.
- Identifying categories of Persons Unknown “is no longer necessary, nor appropriate for contra mundum ‘newcomer’ injunctions.”: §360.

⁹¹ *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 1786 (Ch), §18(ii)-(iii) (Sir Anthony Mann).

⁹² *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (KB), §30 (Ritchie J); *London City Airport Ltd v Persons Unknown* [2024] EWHC 2557 (KB), §41 (Julian Knowles J).

- “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.”: §362.

Nicklin J was, no doubt, influenced by the fact that, in that case, there were 10 separate categories of Persons Unknown occupying 3 pages of the interim injunction order: §361. This position was then followed by Fordham J in *Cambridge University v Persons Unknown* [2025] EWHC 454 (KB), §27.

However, this approach is open to question. Many cases after *Wolverhampton CC* adopted the traditional position⁹³ but only one of these (*Valero*) was referred to in Nicklin J’s judgment (and Nicklin J did not refer to this or any of the other *Valero* factors). And since Nicklin J’s judgment in *MBR Acres*, his approach has been expressly doubted in *North Warwickshire BC v Persons Unknown* [2025] EWHC 2403 (KB), §§25-26 (HHJ Emma Kelly), *London City Airport v Persons Unknown* [2025] EWHC 2223 (KB), §21 (Bourne J), *Teledyne UK Ltd v Gao* [2025] EWHC 2050 (KB), §§73-77 (Richard Wright KC), *Gatwick Airport Ltd v Persons Unknown* [2025] EWHC 2228 (KB), §39 (Duncan Atkinson KC), *Esso Petroleum Ltd v Persons Unknown* [2025] EWHC 1768 (KB), §28 (Sweeting J) and *Cambridge University v Persons Unknown* [2025] EWHC 724 (KB), §7 (Soole J).⁹⁴

⁹³ *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB) (Ritchie J) (26 Jan 2024); *Exolum Pipeline Systems Ltd v Persons Unknown* [2024] EWHC 1015 (Farbey J) (20 Feb 2024); *1 Leadenhall Group London v Persons Unknown* [2024] EWHC 854 (8 Mar 2024); *HS2 v Persons Unknown* [2024] EWHC 1277 (Ritchie J) (24 May 2024); *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 1786 (Sir Anthony Mann) (9 Jul 2024); *Leeds Bradford Airport Ltd v Persons Unknown* [2024] EWHC 2274 (Ritchie J) (18 Jul 2024); *Manchester Airport v Persons Unknown* [2024] EWHC 2247 (HHJ Coe KC) (24 Jul 2024); *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (Ritchie J) (25 Jul 2024); *Arla Foods v Persons Unknown* [2024] EWHC 1952 (Jonathan Hilliard KC) (26 Jul 2024); *Tendring DC v Persons Unknown* [2024] EWHC 2237 (Ritchie J) (31 Jul 2024); *N Warwickshire BC v Persons Unknown* [2024] EWHC 2254 (HHJ E Kelly) (6 Sep 2024); *London City Airport Ltd v Persons Unknown* [2024] EWHC 2557 (Julian Knowles J) (11 Oct 2024); *Thurrock Council v Adams* [2024] EWHC 2576 (Julian Knowles J) (11 Oct 2024); *Heathrow Airport Ltd v Persons Unknown* [2024] EWHC 2599 (Julian Knowles J) (14 Oct 2024); *Shell UK Ltd v Persons Unknown* [2024] EWHC 3130 (Dexter Dias J) (5 Dec 2024); *Teledyne UK Ltd v Gao* [2024] EWHC 3538 (Bourne J) (20 Dec 2024); *TfL v Persons Unknown* [2025] EWHC 55 (Morris J) (16 Jan 2025); *Enfield LBC v Persons Unknown* [2025] EWHC 288 (Jason Beer KC) (12 Feb 2025).

⁹⁴ Nicklin J’s approach was also not adopted in *Trinity College and St John’s College v Persons Unknown* [2025] EWHC 1577 (Ch).

- (8) The prohibitions must be set out in clear words and should not be framed in legal technical terms. Any prohibited conduct which is lawful viewed on its own must 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 (see §9.9ff below).
- (9) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form (see §9.3ff below).
- (10) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible (see §9.18 below).
- (11) 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 tortious activity (see §9.20 below). By this finding, Ritchie J accepted the Claimants' submission that the Supreme Court in *Wolverhampton CC*, at §225, was not confining the temporal limit of such injunctions to 1 year in the protest context. On the facts of *Valero* itself, Ritchie J granted a 5-year final injunction with annual reviews. Similar injunctions have now been granted in a number of cases (see §9.26 below). In *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 1786 (Ch), Sir Anthony Mann stated, at §21(ix), that, "*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...is more appropriate.*"
- (12) The court documents must be served by alternative means which have been considered and sanctioned by the Court. If ECHR rights are engaged, the Claimant must, pursuant to s.12(2) HRA 1998, show that it has taken all practicable steps to notify the Defendants. The first sentence appears to be

a departure from the Supreme Court judgment in *Wolverhampton CC*.⁹⁵ In that case, the Supreme Court emphasised that claims brought against Newcomers were, by definition, without notice and that anyone breaching the injunction would be liable for contempt regardless of whether they had been formally served: see §§132, 139, 142, 167(ii), 176-177 and 226. Instead, the Supreme Court stated that:

“226... 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.”

The difference, then, is between: (i) a Claimant making an application for alternative service, pursuant to CPR 6.15 and 6.27, and obtaining an Order to that effect (see **§4.4ff above**); and, (ii) a Claimant carrying out steps it considers sufficient to bring the application/Order to the notice of Defendants without the Court’s sanction. In practice, Claimants may have to follow option (i) anyway where there are any named Defendants for whom they do not have an address or there are identified Persons Unknown. Even if not, it may be beneficial for Claimants to follow option (i) out of an abundance of caution in order to be confident that there is no subsequent dispute about the efficacy of the notification. But, technically, it now appears that option (ii) is sufficient and, in the author’s experience, option (ii) is often adopted by Claimants and accepted by the Court.

- (13) **Persons Unknown must be given the right to apply to set aside or vary the injunction on shortish notice.**

⁹⁵ In *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (KB), §18, Ritchie J himself stated that Persons Unknown, by definition, “cannot be served, or not served in traditional ways”.

- (14) **Provision must be made for reviewing even a final injunction in the future.**
The regularity of the reviews depends on the circumstances (see §7.13ff below).

5.11 In *Cambridge University v Persons Unknown* [2025] EWHC 2330 (KB), involving a summary judgment application, Butcher J referred to the *Valero* guidelines as a “*helpful checklist*” but preferred to consider the relevant issues in the following different order: §34:

- i. Whether there had been sufficient notice of the hearing: §35;
- ii. Whether the requirements for summary judgment were satisfied, in particular:
 - Whether the Claimant had shown an entitlement to the relief sought: §43.
 - Whether the Claimant was entitled to obtain a precautionary injunction, including whether the threat of unlawful conduct was real and imminent: §49.
 - Whether there were defences available to the Defendants, both defences at law to the causes of action relied upon and equitable considerations which would bar the grant of equitable relief: §54. This included the issue of human rights: §56ff.
- iii. Whether the *Wolverhampton CC* principles were satisfied, in particular:
 - Whether there was a compelling need for the protection of civil rights: §76.
 - Whether there was procedural protection for the rights of affected newcomers: §77.
 - Whether there was full and frank disclosure by the Claimant: §78.
 - Whether the injunction was constrained by territorial and temporal limitations.
 - Whether the injunction was, in all the circumstances, just and convenient: §81.

- 5.12 In *MBR Acres Ltd v Curtin* [2025] EWHC 331 (KB), Nicklin J appeared to impose a further requirement. He stated that, “*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.*”: §390. Nicklin J was, perhaps, influenced by the fact that trivial and inappropriate contempt applications had been brought in that case.
- 5.13 Nicklin J’s approach was followed in *Cambridge University v Persons Unknown* [2025] EWHC 454 (KB), §30 (Fordham J), *Cambridge University v Persons Unknown* [2025] EWHC 724 (KB), §101 (Soole J) and *Cambridge University v Persons Unknown* [2025] 2330 (KB), §66(7) (Butcher J), albeit in the latter two cases this was at the Claimant’s suggestion. In *Trinity College and St John’s College v Persons Unknown* [2025] EWHC 1577 (Ch), §56, the Judge stated that “[Counsel for the Claimants] suggested that this requirement could be added to Ritchie J’s fifteen guidelines in this case, and I agree.”⁹⁶
- 5.14 Subsequently, the blanket inclusion of a permission filter has been the subject of debate. In *Esso Petroleum Ltd v Persons Unknown* [2025] EWHC 1768 (KB), §29, Sweeting J stated that Nicklin J’s suggestion appeared to be made “*per incuriam*” given the case law suggesting the courts already possessed adequate mechanisms to address disproportionate committal applications. He pointed to the facts that: the Supreme Court in *Wolverhampton* had not imposed such a requirement; there was no evidence that claimants were generally bringing trivial committal applications; and, imposing a permission filter could lead to disproportionate burdens and complexities which could be more stressful for potential Defendants and consume significant court resources. Richard Wright KC in *Teledyne UK Ltd v Gao* [2025] EWHC 2050 (KB), §78, agreed with this analysis, and HHJ Emma Kelly in *North Warwickshire BC v Persons Unknown* [2025] EWHC 2403 (KB), §§25-26, Duncan Atkinson KC in *Gatwick Airport Ltd v Persons Unknown* [2025] EWHC 2228 (KB), §§40-41, and Bourne J in *London City Airport v Persons Unknown* [2025] EWHC 2223 (KB), §23, also refused to follow Nicklin J’s suggestion.

(c) When “Persons Unknown” can be restrained

- 5.15 In order to bring a claim against Persons Unknown, the case law suggests it must be “*impossible*” to name the persons who have or will likely commit the tort unless

⁹⁶ See also §131.

restrained.⁹⁷ That is, on its face, a very high bar. But it is unlikely to mean literal “impossibility” given that it may be *possible* to discover an individual’s identity but only if vast amounts of time and money are spent, e.g., using private investigators. In the author’s experience, Judges will, in fact, consider whether reasonable steps have been taken to discover the identity of an individual.

5.16 *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417 (KB) (Nicklin J) is the most extreme example of a Claimant failing to join Defendants whose identities it had discovered. In that case, the Court found that the Claimant had wrongly failed to join any individuals as Defendants, notwithstanding that 37 protestors could have been named at the time of the summary judgment application: §§150 and 163.

(d) How to define Persons Unknown

5.17 Traditionally, the rule has been that Persons Unknown must be defined by reference to their conduct which is alleged to be unlawful.⁹⁸ This was adopted in Ritchie J’s checklist of factors in *Valero*: **§5.10(7) above** but see also the opposing view taken by Nicklin J in *MBR Acres Ltd v Curtin* [2025] EWHC 331 (KB). This is, presumably, what the Supreme Court had in mind in *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, when it said that Claimants should explore “*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)*”: §221. This is unlike possession proceedings where the CPR requires that unknown defendants trespassing on the Claimant’s land simply be referred to as “Persons Unknown”.⁹⁹

5.18 Therefore, once a Claimant decides that it wishes to make Persons Unknown a Defendant, they must be defined in the claim form, court orders, etc as precisely as possible.¹⁰⁰ A failure to do so accurately and correctly according to the case law can be disastrous for a Claimant, with the effect that a class of protestors carrying out direct action is not covered by the injunction.

5.19 The effect is that describing Persons Unknown in protest injunctions is a cumbersome and page-filling exercise. It essentially requires Claimants to repeat the substantive terms of the injunction by reference to each cause of action.

⁹⁷ *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA), §34(2) (Longmore LJ).

⁹⁸ *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (CA), §82(2).

⁹⁹ CPR r.55.3(4).

¹⁰⁰ *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, §221.

(e) Drafting

5.20 By way of example, in relation to a trespass claim on private land, Persons Unknown could be described as follows:

“PERSONS UNKNOWN WHO ENTER OR REMAIN ON LAND X WITHOUT THE CONSENT OF THE CLAIMANT”

5.21 By contrast, the following definition of Persons Unknown in *North Warwickshire BC v Baldwin* [2023] EWHC 1719 (KB) was found to be flawed by Sweeting J, at §145:

“PERSONS UNKNOWN WHO ARE ORGANISING, PARTICIPATING IN OR ENCOURAGING OTHERS TO PARTICIPATE IN PROTESTS AGAINST THE PRODUCTION AND/OR USE OF FOSSIL FUELS, IN THE LOCALITY OF THE SITE KNOWN AS KINGSBURY OIL TERMINAL, TAMWORTH B78 2HA”

5.22 This was defective on the basis that it did not refer to the conduct which was alleged to be unlawful.

5.23 In order to avoid a protest injunction catching a broader class of persons than intended, it is generally good practice to refer specifically to the type of protest being targeted:

“PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS, ENTER OR REMAIN ON LAND X WITHOUT THE CONSENT OF THE CLAIMANT”

5.24 For example, in *Leeds Bradford Airport v Persons Unknown* [2024] EWHC 2274 (KB), Ritchie J considered that a reference merely to “*protestors*” was unsatisfactory due to the potential lack of clarity: §35. He was concerned that this would catch protests on a huge range of matters at airports including, e.g., those relating to delayed luggage. Instead, the words “*about fossil fuels*” would have to be added.

5.25 It should be noted, however, that Constable J in *University of Brighton v Persons Unknown* [2023] EWHC 1485 (KB) – a case involving protests within university premises – required Persons Unknown “*barricading...within the Premises*” not to be defined also by reference to “*the purpose of protesting*”. This is best explained as being unnecessary on the facts of the case given that no lawful behaviour could possibly have involved barricading oneself within the university premises.

5.26 In *Arla Foods v Persons Unknown* [2024] EWHC 1952 (Ch), § 119, the Judge permitted the Claimant not to limit the definition of Persons Unknown to members of “Animal Rising” given the difficulty in identifying their membership, its fluctuating membership and the presence of like-minded protest groups.

5.27 Where there is more than one piece of private land (or more than one cause of action in relation to that private land) there may be multiple Persons Unknown:

“(1) PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS, ENTER OR REMAIN ON LAND X WITHOUT THE CONSENT OF THE CLAIMANT

(2) PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS, ENTER OR REMAIN ON LAND Y WITHOUT THE CONSENT OF THE CLAIMANT

(3) PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS, OBSTRUCT OR OTHERWISE INTERFERE WITH THE CLAIMANT’S ACCESS TO ENTRANCE A ON LAND Y”

5.28 Take the situation where the Claimant is seeking to cover both private and public land (e.g. public highway, parkland, etc.) in an injunction. Here, the Claimant would, generally, not be able to restrain the Defendants’ mere presence on public land. It would, therefore, be limited to restraining only certain specified types of conduct, such as erecting structures, tunnelling, locking-on, etc. All of these specified types of conduct would need to be included in the definition:

“(1) PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS, ENTER OR REMAIN ON LAND X WITHOUT THE CONSENT OF THE CLAIMANT

(1) PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS, ERECT STRUCTURES ON, TUNNEL UNDER, LOCK ONTO OR AFFIX THEMSELVES TO PUBLIC LAND Y”

5.29 In relation to claims brought on the basis of economic torts, the definition of Persons Unknown will be more unwieldy still as it will need to include each element of the tort. For example, as to conspiracy to injure by unlawful means, the injunction in *Shell UK Oil*

Products Ltd v Persons Unknown [2022] EWHC 1215 (KB) (Johnson J) described Persons Unknown as follows:

“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”

5.30 Johnson J stated that including the element of subjective intention was unavoidable because of the nature of the tort: §54.

5.31 It is important for Claimants to sense-check their definition of Persons Unknown to make sure that too broad a class of persons is not captured. For example, in *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB), §70 (Warby J), the Claimant was criticised for describing the Fourth Defendant as “*Persons Unknown*”, which was described as “*All persons*” except the other Defendants. As the Judge indicated, this description included the Judge himself.

5.32 Further, in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (CA), the claimant defined Persons Unknown as follows:

“PERSONS UNKNOWN WHO ARE PROTESTORS AGAINST THE MANUFACTURE AND SALE OF CLOTHING MADE OF OR CONTAINING ANIMAL PRODUCTS AND AGAINST THE SALE OF SUCH CLOTHING AT CANADA GOOSE, 244 REGENT STREET, LONDON W1B 3BR.”

5.33 The High Court and Court of Appeal found this impermissibly wide; it was capable of applying to a person who had never been to the location of the protest (the Canada Goose Shop on Regent Street) and no intention of going there: CA, §85.

(f) How to identify Persons Unknown

5.34 Claimants may be able to identify Persons Unknown through their own investigations.

5.35 Alternatively, Claimants may apply for third party disclosure orders against the relevant police authority to provide details on individuals who have previously been arrested by

the police and, therefore, will have had to reveal their names and addresses. This can be done pursuant to CPR r.31.17(3), which empowers a court to make an order against non-parties where:

- i. The documents of which disclosure is sought are likely to support the case of the Claimant or adversely affect the case of one of the other parties to the proceedings; and,
- ii. Disclosure is necessary in order to dispose fairly of the claim or to save costs.

5.36 These criteria will generally be satisfied when seeking to identify Persons Unknown in the context of protest injunctions; third party disclosure orders have been made against the police in a number of cases.

5.37 In the first instance, Claimants ought to write to the relevant police authority and seek their consent to such an order. Being on the receiving end of such an application, police authorities will usually remain neutral and confirm that they will abide by any order the court makes.

5.38 In the past, orders have been made by the court without difficulty and, in most instances, without opposition.¹⁰¹ In *Esso Petroleum v Persons Unknown* [2022] EWHC 1477 (KB) (Bennathan J), however, it was argued by Counsel for an Interested Person that such disclosure should not be ordered on the basis that it involved using the powers of the state to assist a private party obtain an injunction. Bennathan J rejected this submission, finding that “*it seems to me best that any evidence that could be used by the claimants to pursue breaches is gathered by the legally regulated and democratically accountable police forces of the United Kingdom.*”: §32. The same approach was taken by Freedman J in *Transport for London v Lee* [2022] EWHC 3102 (KB), §96(6).

5.39 It should be noted, however, that the Courts have raised some eyebrows on the power to grant such orders in respect of information and documents not yet in existence – i.e. for future arrests – as well as in relation to people who have been arrested but not yet charged.¹⁰² The strongest statement to date was made in *National Highways Ltd v Persons Unknown* [2023] EWHC 1073 (KB) where Cotter J referred to the “*concern*” caused amongst some High Court Judges by these types of order. Cotter J stated that he was not prepared to continue this aspect of the order in the longer term without understanding

¹⁰¹ See, e.g., *Valero Energy Ltd v Persons Unknown* [2022] EWHC 911 (KB), §44 (Bennathan J); *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 (KB), §53 (Bennathan J).

¹⁰² See, e.g., *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB), §62 (Morris J). No such concerns were voiced by Hill J in *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), §§210-219.

the basis upon which it was said that the Court had, or should use, any power to make such an order: §163.

(g) Consequences of identifying Persons Unknown

5.40 If an individual carrying out the restrained (or sought to be restrained) direct action is identified – in the sense of their name being discovered – that individual must usually be joined as a Defendant.¹⁰³ In *Transport for London v Persons Unknown* [2025] EWHC 55 (KB), §52, Morris J rejected the submissions that there was no need for the Claimant to sue the named defendant as the Claimant’s only purpose of the proceedings was to obtain an injunction against Persons Unknown.¹⁰⁴

5.41 In a few cases it has been argued by Defendants that the Claimant wrongly failed to join certain named individuals who had been identified by the Claimant. To date, the courts have been cautious before requiring Claimants to join specific individuals where there is not evidence that they have carried out or intend to carry out the direct action restrained by that specific injunction:

- i. *HS2 v Harewood* [2022] EWHC 2457 (KB) (“**Appendices Follow Containing the Approved Transcripts of 4 Decisions Made Extempore During the Hearings**”) concerned an order granted by Cotter J which had contained: (a) a protest injunction, which applied to certain named Defendants and Persons Unknown, but in relation to which D33 was not a named Defendant; and, (b) a declaration that that the Claimant was entitled to possession of the land, which did name D33 as a Defendant. A committal application having been brought against him, D33 argued that the protest injunction did not bind him because he was not a named Defendant and he could also not be a Person Unknown given that he was referred to in the order and so obviously known.

This argument was rejected by Ritchie J who found that he was a Person Unknown under the terms of the *injunction*. In particular, he was not trespassing on the relevant land at the time the injunction was granted and no-one knew at that time who would become a Newcomer for the purpose of that specific injunction: §§32 and 35 of the “*Appendices...Containing the Approved Transcripts of 4 decisions Made Extempore During the Hearings*”.

¹⁰³ *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (CA), §82(1).

¹⁰⁴ Relying on *Wolverhampton CC*, §221.

The Court of Appeal (by a majority) rejected his appeal in *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519. The Defendant had not occupied the relevant land so far and the Claimant could not look into the future to see what the Defendant was going to do in the future: §37. Coulson LJ also stated that the court should not prefer an approach which meant a Claimant was better off naming all possible Defendants in a protest injunction: §42.

Phillips LJ disagreed; the Defendant was a known person for the purpose of the proceedings and the order and was also known as a person who may subsequently enter the relevant land: §100(i).

- ii. In *Esso Petroleum v Persons Unknown* [2022] EWHC 966 (KB) (Ellenbogen J), §30, the Judge accepted the Claimant's argument that there was not the requisite "causal nexus" between certain well-known members of Just Stop Oil and the specific direct action being targeted at the Claimant.

5.42 What happens if the Court finds that certain individuals who ought to have been joined were not? The most obvious consequence would appear to be that those specific individuals would not be covered by the injunction. This is because they would not be named Defendants and they would no longer be Persons Unknown. Except perhaps in extreme circumstances, it is difficult to see that the failure to name certain individuals would have a broader impact, such as on the Court's willingness to grant an injunction at all.

5.43 Even if an individual is identified, however, Claimants still have to do their due diligence. In *MBR Acres Ltd v Free the MBR Beagles* [2022] EWHC 3338 (KB), Nicklin J warned against aggregating the general wrongdoing by unidentified individuals and imputing them to specific identified individuals without looking at what that individual had actually done. Such an approach carried a risk of serious injustice and risked contravening the right to freedom of assembly: §67. Rather, each named Defendant was entitled to a fair adjudication of the claim made, and evidence presented, against them irrespective of the claim against Persons Unknown: §68. Further, in *National Highways Ltd v Persons Unknown* [2023] EWHC 1073 (KB), after various named Defendants had made submissions at an interim injunction application, Cotter J stated that it would be wrong to treat the Defendants as a homogenous group and that the case against each named Defendant required individual analysis: §108.

- 5.44 A slightly more relaxed approach appears to have been taken in *Transport for London v Lee* [2022] EWHC 3102 (KB). In that case, the Claimant sought to join named Defendants who had been arrested by the police and whose names had subsequently been provided – i.e. the Claimant was relying on the assertion of the police that they had been acting in breach of the injunction without any supporting information. Although Freedman J had concerns with such an approach, he ultimately joined the named Defendants, particularly in light of the following protections that were available: (i) the Claimants had undertaken to scrutinise, as soon as reasonably practicable after disclosure of information from the police, whether any named Defendant should properly have remained so; and, (ii) any named Defendant was able to apply to discharge or vary the order made against them: §§72-81.
- 5.45 The failure of a named Defendant to participate in proceedings or make submissions is to be taken as indicating that they have chosen not to challenge the case being asserted against them. It may also give an insight into the intention of the named Defendant as to intention of future conduct.¹⁰⁵ Generally speaking, the courts have emphasised the importance of Defendants actively engaging with proceedings in order to protect and improve their position: *National Highways Ltd v Persons Unknown* [2023] EWHC 1073 (KB), §119 (Cotter J).

(h) Interested Persons

- 5.46 There will often be no Defendants willing or able to contest the grant of a protest injunction. Legal aid is not available and there is the prospect of being liable for the Claimant's costs of bringing the claim. There is, however, another way in which an individual concerned about a protest injunction can make its concerns known to the Court.
- 5.47 CPR 40.9 states 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.”
- 5.48 Once an order has been granted, therefore, a non-party may apply to have it set aside or varied as long as they can show that: (a) they are “*directly affected*” by it; and, (b) they have a good point to raise.¹⁰⁶ Interested Persons can do so by promptly filing and serving

¹⁰⁵ *Transport for London v Lee* [2023] EWHC 1201 (KB) §§27 and 34 (Eyre J); *National Highways Ltd v Persons Unknown* [2023] EWCA Civ 182, §41.

¹⁰⁶ *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), §§62-65 (Hill J).

an application notice. In a number of cases, Judges have found that protestors who would not otherwise be Defendants ought to be allowed to file evidence and make submissions as if there was a complete rehearing of the matter.¹⁰⁷

5.49 In *Esso Petroleum v Breen* [2022] EWHC 2600 (KB), Ritchie J set out some factors for the Court to consider when determining the nature and degree of an Interested Person's connection to the claim:¹⁰⁸

- (1) Whether the Interested Person will profit from the litigation financially or otherwise.
- (2) Whether the Interested Person is controlling the whole or a substantial part of the litigation.
- (3) Whether the final decision in the litigation will adversely affect the interested person, whether by way of civil rights, financial interests, property rights or otherwise.
- (4) Whether the Interested Person is funding the litigation or the defence thereof.
- (5) Whether there is a substantial public interest point or a civil liberties point being raised by the interested person.
- (6) The court should take into account the wide or draconian nature of injunctions against unknown persons which may be geographically large or temporarily large or both. There should be a low threshold for Interested Persons to be able to take part in such broad and or wide orders.
- (7) The costs risks and difficulties faced by Interested Persons who are affected by orders which they did not instigate.
- (8) Any prejudice which would be suffered by the Claimant in granting the Interested Persons their request and refusing to require them to become parties.

5.50 *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 (KB) involved a summary judgment application following the grant of interim injunctions to prevent direct action on the Strategic Road Network by supporters of Insulate Britain. Ms B argued that she ought to be able to make submissions on the basis that people like her, not involved with

¹⁰⁷ *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), §§100-101 (Hill J).

¹⁰⁸ The judgment is not reported but these reported factors are taken from A Hardy, "CPR 40.9: a means for Interested Persons to challenge protest injunctions" - <https://tinyurl.com/ye2mmksh> (last accessed on 23 Sep 2025). These factors were relied upon by Hill J in *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), §§75-81.

Insulate Britain, may inadvertently breach the injunctions. Bennathan J made the order under CPR 40.9 because (see §21):

- a. Her concern was not fanciful and would amount to being “*directly affected*”.
- b. In an injunction against Persons Unknown, the Court should adopt a flexible approach for those with a general concern by a person supporting the relevant political cause.
- c. A generous view should be taken where the Court would not otherwise be hearing submissions against the injunction.

5.51 Non-parties have been permitted to make submissions in a number of other cases, including: *Esso Petroleum v Persons Unknown* [2022] EWHC 1477 (KB) (Bennathan J), §§2-5, albeit not expressly by reference to CPR r.40.9; in *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), §11 (HHJ Lickley KC); and, in *Three Counties Agricultural Society v Persons Unknown* [2022] EWHC 2708 (KB), §§14-21 (Spencer J).

5.52 The most detailed treatment of interested persons in this context can be found in *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), where an individual sought to rely on CPR r.40.9 to make submissions without being joined as a Defendant. Hill J found that the individual was “*directly effected*” on the basis that: the injunctions may have a chilling effect on her lawful protests; she had specific concerns about the existence, scope and wording of the injunctions; and, that if she breached the injunctions this would affect her financial interests and expose her to the risk of a prison sentence: §§68-69. Hill J also found that the individual had a good point to make: §§73-74. Hill J considered that individuals applying to make submissions under CPR r.40.9 were not confined, in cases involving Persons Unknown, to challenging existing orders, as opposed to challenging the grant of further orders: §§88-96.

5.53 Such non-parties do, however, have to be wary about being liable for a Claimant’s costs, particularly if their submissions are broad in scope, cause the Claimant to incur extra costs and are ultimately unsuccessful. This is because the Court has the power to make a costs order even against non-parties.¹⁰⁹

5.54 The only qualifications on this power are that, pursuant to CPR r.46.2:

¹⁰⁹ s.51(1) and (3) of the Senior Courts Act 1981; *Alden Shipping Co Ltd v Interbulk Ltd* [1986] AC 965, 979-981 (Lord Goff).

- a. The non-party must be added as a party to the proceedings for the purposes of costs only; and,
- b. The non-party must be given a reasonable opportunity to attend a hearing at which the Court will consider the matter further.

5.55 The authorities sometimes talk about non-party costs order being “exceptional” but the Privy Council in *Dymocks Franchise Systems (NSW) Pty Ltd v Todd* [2004] 1 WLR 2807 (PC) clarified at §25(1) that, “exceptional in this context means no more than outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense.” Instead, the real test is whether in all the circumstances it is just to make the order.¹¹⁰

5.56 There does not appear to be any authority on the specific question of costs liability for those participating pursuant to CPR r.40.9. However, in relation to non-parties in general, the Privy Council in *Dymocks* stated the following about third-party funders of litigation:

“25...(2) Generally speaking the discretion will not be exercised against “pure funders”, described in para 40 of *Hamilton v Al Fayed (No 2)* [2003] QB 1175 , 1194 as “those with no personal interest in the litigation, who do not stand to benefit from it, are not funding it as a matter of business, and in no way seek to control its course”. In their case the court’s usual approach is to give priority to the public interest in the funded party getting access to justice over that of the successful unfunded party recovering his costs and so not having to bear the expense of vindicating his rights. (3) Where, however, the non-party not merely funds the proceedings but substantially also controls or at any rate is to benefit from them, justice will ordinarily require that, if the proceedings fail, he will pay the successful party’s costs. The non-party in these cases is not so much facilitating access to justice by the party funded as himself gaining access to justice for his own purposes. He himself is “the real party” to the litigation, a concept repeatedly invoked throughout the jurisprudence-see, for example, the judgments of the High Court of Australia in the Knight case 174 CLR 178 and Millett LJ’s judgment in *Metalloy Supplies Ltd v MA (UK) Ltd* [1997] 1 WLR 1613. Consistently with this approach, Phillips LJ described the non-party underwriters in *T G A Chapman Ltd v Christopher* [1998] 1 WLR 12 , 22 as “the defendants in all but name”. (emphasis added)

5.57 To the extent that non-parties act, for all intents and purposes, as Defendants, the reasoning in *Dymocks* is analogous and they may, consequently, be at substantial risk of adverse costs orders.

¹¹⁰ *Dymocks Franchise Systems (NSW) Pty Ltd v Todd* [2004] 1 WLR 2807 (PC), §25(1).

5.58 Conversely, interested persons may be able to claim their costs if their submissions are accepted. For an example of this, see *Canterbury CC v Persons Unknown* [2020] EWHC 3153 (KB), §§47-50 (Nicklin J).

6 INTERIM INJUNCTIONS

6.1 This Chapter explores the circumstances in which a Claimant can obtain an interim protest injunction, including the potential relevance of s.12(3) of the Human Rights Act 1998. It is rare for a Claimant not to seek an interim injunction in circumstances where it wishes to bring a claim against the activity of protestors. Indeed, an interim injunction may effectively be the end of the claim. This Chapter also sets out the obligations on Claimants both when they are seeking to obtain an interim protest injunction as well as once they have obtained one.

6.2 It is important, nonetheless, to remember the Supreme Court's judgment in *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983 that injunctions against Persons Unknown who are Newcomers are typically neither interim nor final, at least in substance (see §5.6(iii) above). Therefore, in cases involving Newcomers only, and particularly where Claimants are not merely seeking to hold the ring until a return hearing, it will be prudent to consider the points below in concert with the factors adopted in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB) by Ritchie J (see §5.10 above).

(a) *American Cyanamid test*

6.3 In order to obtain an interim injunction, a court will usually consider the following criteria set out in *American Cyanamid Co v Ethicon* [1975] AC 396:

- i. Whether there is a serious issue to be tried;
- ii. Whether damages would be an adequate remedy for the Claimant or Defendant;
- iii. Whether the balance of convenience favours the grant of an interim injunction.

i. Serious issue to be tried

6.4 By this criterion, the Claimant has to show that the merits of its case reaches a certain threshold without having to satisfy the ordinary "balance of probabilities" test. The test has been described as whether there is a real prospect of success or whether the claim is not frivolous or vexatious.

6.5 Due to this threshold not being very high, most claims for protest injunctions satisfy this criterion relatively straightforwardly. This is also because most protest cases are brought

on the basis of trespass, and often on private land, a cause of action which tends to be difficult to defend (see **Chapter 8 – Human Rights**).¹¹¹

6.6 There are, however, exceptions. For example:

- Where the Claimant seeks an injunction against Persons Unknown, the Court may apply the stricter test of “*whether the Claimants are likely to succeed at trial*”.¹¹² This is on the basis that an injunction against Persons Unknown is, really, an injunction against the world: see **§5.10(3) above**.
- Protest cases brought on the basis of harassment (based on the Protection from Harassment Act 1997) have recently struggled before the courts. This is because of: the difficulties of formulating the injunction to refer to all of the necessary ingredients of the tort; the lack of clarity to a member of the public of a prohibition on “*harassment*”; the highly context-specific nature of assessing harassment; and the fundamental tension between freedom of speech and silencing expression as amounting to harassment.¹¹³ In some of these cases, interim injunctions have been refused.

6.7 At one time, it was also thought that the courts did not look favourably on protest injunctions based on economic torts, such as conspiracy to injure by unlawful means.¹¹⁴ This was because it was considered that a Defendant’s intention, necessary in order to prove the tort, should not be included within an injunction due to its unknown and ephemeral nature.¹¹⁵ The Court of Appeal, however, changed its mind in *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29 (CA), §§65-69 (Leggatt LJ). In two recent cases, protest injunctions have been granted to Claimants relying on conspiracy to injure by unlawful means:

- (1) *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB) (Johnson J): this was an interim application by Shell against environmental protests targeting Shell-branded petrol stations. Although the Claimant sold fossil fuels to the petrol stations, in most cases the Claimant had no legal interest in those parcels of land; the petrol stations themselves were operated by 3rd-

¹¹¹ *MBR Acres Ltd v Free the MBR Beagles* [2021] EWHC 2996 (KB), §92 (Nicklin J).

¹¹² *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), §44 (Ritchie J).

¹¹³ *MBR Acres Ltd v Free the MBR Beagles* [2021] EWHC 2996 (KB), §§92-96 (Nicklin J); *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417 (KB), §§52-54, 78 (Nicklin J); *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), §§152-156 (Morgan J).

¹¹⁴ Such torts are usually relied upon (instead of, e.g. trespass) because the Claimant does not have a legal right to occupy the land which is the subject of the direct action.

¹¹⁵ *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA), §§39-40 (Longmore LJ).

party contractors. As a result, the Claimant could not rely on trespass or nuisance: §25. The inclusion of an intention requirement in the injunction was said to be “*unavoidable*” because of the nature of the tort and that this was “*the inevitable price to be paid for closely tracking the tort*”: §46. Relying on objective conduct alone in this instance would lead to a broader prohibition than was justified.

At the subsequent hearing, *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), the same arguments were accepted by Hill J: §§121-122, 126-127, 129, 155.

At the final hearing, *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213, Dexter Dias J adopted the same approach: §§64-70.

- (2) *Esso Petroleum v Breen* [2023] EWHC 2013 (KB) (Julian Knowles J): this was a claim brought by Esso against environmental protestors targeting its Southampton-London Pipeline. The Pipeline is 105km in length and runs over land with a “*complex tapestry*” of land interests: §36. A conspiracy was alleged to avoid attempting a very detailed and complex exercise in identifying all land interests in all of this land. The Judge had no trouble granting an injunction based on this cause of action: §68.¹¹⁶

- 6.8 In fact, as a result of s.12(3) of the Human Rights Act 1998, there have been a number of protest cases where the relatively low threshold of “serious issue to be tried” has, instead, been replaced with the test of whether the Claimant is likely to succeed at trial. This is discussed further at **§6.19ff below**.

ii. Adequacy of damages

- 6.9 In addition, a Claimant has to show that an award of damages would not be adequate. A Claimant will often be able to surpass this hurdle given:
- There is usually no arguable defence to an allegation of trespass in this context and, if this is the case, the questions of balance of convenience, and damages

¹¹⁶ Julian Knowles J largely relied on the analysis of HHJ Lickley LJ at the interim injunction stage: *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), §§20-27 (HHJ Lickley KC).

being an adequate remedy do not arise. The Claimant will *prima facie* be entitled to an interim injunction to restrain trespass.¹¹⁷

- The often material and potentially unquantifiable losses that may be suffered by the Claimant.
- The lack of evidence that Defendants will be able to pay such damages.
- Health and safety concerns that can sometimes be relied upon to justify the grant of an interim injunction.

6.10 Again, there are exceptions. For example, in one recent case a Court found that damages *would* be an adequate remedy for trespass by drones above the airspace of the Claimant's land.¹¹⁸

6.11 In most cases where a precautionary injunction is sought (see **§6.26ff below** on precautionary injunctions), the court also asks, in addition, whether the harm would be "*grave and irreparable*" such that damages would not be adequate.¹¹⁹ This test originates from *Vastint Leeds BV v Persons Unknown* [2019] 1 WLR 2, where Marcus Smith J stated at §31:

"(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?" (emphasis added)

6.12 Most recently, in *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (KB), §78, Garnham J found that the *Vastint* test had been "*subsumed into the Wolverhampton framework*", albeit providing a useful double-check.

¹¹⁷ *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §74 (Julian Knowles J); *Patel v WH Smith Ltd* [1987] 1 WLR 853, 861 (Balcombe LJ).

¹¹⁸ *MBR Acres Ltd v Free the MBR Beagles* [2021] EWHC 2996 (KB), §115 (Nicklin J).

¹¹⁹ *Arla Foods v Persons Unknown* [2024] EWHC 1952 (Ch), §94 (Jonathan Hilliard KC); *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), §147 (Hill J); *Transport for London v Lee* [2023] EWHC 1201 (KB), §§20, 40-41 (Eyre J); *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB), §§36 and 43 (Morris J); *Transport for London v Lee* [2022] EWHC 3102 (KB), §65 (Freedman J); *Valero Energy Ltd v Persons Unknown* [2022] EWHC 911 (KB), §20(2) (Bennathan J); *Bromley LBC v Persons Unknown* [2020] 4 All ER 114 (CA), §§35 and 95; *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 (Ch), §31(3) (Marcus Smith J).

6.13 The court will also consider whether damages would be an adequate remedy for the Defendant if, at trial, it is found that the interim injunction was wrongly granted. Some recent cases have found that damages would not be adequate for such Defendants, as they will have lost the chance to protest, for which specific timing may be very important.¹²⁰

iii. Balance of convenience

- 6.14 Assuming a serious issue to be tried and that damages would not be an adequate remedy for the Claimant, a court will have to consider where the balance of convenience lies. This has been described, alternatively, as the balance of justice.
- 6.15 This will normally involve a detailed consideration of all the circumstances of the case and, ultimately, deciding which party would be least prejudiced if the wrong decision was made at the interim stage.
- 6.16 In the protest context, the courts have sometimes found the balance to be in favour of the Claimant, relying on the fact that, whereas a Claimant cannot enjoy its property rights in any other way, protest can be continued in one form or another without carrying out the complained of direct action.¹²¹
- 6.17 In light of *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, where the Defendants include “Newcomers”, courts will now need to consider the elevated test of whether there is a “*compelling justification*” for the injunction (see §5.10(4) above).

(b) Section 12(3) of the Human Rights Act 1998

6.18 Section 12(3) of the Human Rights Act 1998 says the following:

“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.

...

(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.”

¹²⁰ *Dyer v Webb* [2023] EWHC 1917, §§101-102 (Dexter Dias KC); *Gitto Estates v Persons Unknown* [2021] EWHC 1997 (KB), §27 (Hugh Southey KC).

¹²¹ *Esso Petroleum v Persons Unknown* [2022] EWHC 966 (KB), §26 (Ellenbogen J); *Balfour Beatty Group Ltd v Persons Unknown* [2022] EWHC 874 (KB), §74 (Linden J); *Secretary of State for Transport v Persons Unknown* [2018] EWHC 1404 (Ch), §58 (Barling J).

6.19 There are two questions: (1) does s.12(3) apply as a matter of course, or otherwise, to protest injunctions? (2) If so, what difference does it make.

6.20 On (1), the authorities do not speak with one voice. The issue has only been properly considered in a handful of cases. In almost all cases it has been academic because the court has granted the protest injunction on the assumption that s.12(3) does apply. In those cases that have considered the issue:

- In *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), in the context of environmental protests against a fracking company, Morgan J found that s.12(3) did apply but did not give reasons: §86.
- In *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100, the Court of Appeal proceeded on the assumption that s.12(3) did apply as its application did not form a ground of appeal: §17.
- In *Birmingham City Council v Afsar* [2019] EWHC 1560 (KB), in the context of protests and online abuse by parents against the teaching of LGBT issues at a primary school, Warby J found that s.12(3) did apply: §§57-62. The Defendants in this case had been handing out leaflets as part of their protest and the Claimant in this case sought to prohibit the making of abusive comments on social media. The type of activities in issue, therefore, more easily came under the definition of “*publication*” than normal methods of direct action.
- In *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (KB), in the context of environmental protests by Insulate Britain, Lavender J found that s.12(3) did not apply but gave no reasons for this decision: §41(1).
- In *Esso Petroleum v Persons Unknown* [2022] EWHC 1477 (KB), in the context of environmental protests at Esso sites, Bennathan J found that s.12(3) did apply. He considered that “*On one view of the law that provision is not really aimed at protest cases such as this, but there is Court of Appeal authority that it should be taken as applying so, of course, I follow that authority*”: §7. He appeared to have been relying on the *Ineos* case.
- In *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), in the context of environmental protests against sites selling Shell’s petrol, Johnson

J found that s.12(3) did not apply: §§66-76.¹²² He did not consider himself bound by *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA) because the Court of Appeal proceeded on an assumption rather than deciding the matter for itself.

- In *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), §§28-40, where the issue was fully argued, HHJ Lickley KC agreed with Johnson J in *Shell* that s.12(3) did not apply. He decided that “acts of trespass etc. in the course of a protest while publicising the protestor’s views do not amount to ‘publication’”: §40.

6.21 These more recent authorities seem not to have been cited to the Court in *MBR Acres Ltd v Free the MBR Beagles* [2022] EWHC 3338 (KB) (Nicklin J) where the Court appeared to find that s.12(3) of the Human Rights Act 1998 applied to all of the protest activity (and not just those relating to placards and slogans): §61. They were also not cited in *National Highways Ltd v Persons Unknown* [2022] EWHC 3497 (KB) (Soole J) where it was assumed that s.12(3) applied: §32(iii).

6.22 In the most recent case to consider the issue - *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB) - Hill J agreed with Johnson J in *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB) that *Ineos* (CA) was not binding: §195. But, given that the injunction in that case involved prohibitions on forms of writing, she considered that s.12(3) would apply “at least in relation to the ‘writing’ aspects of the injunctions”: §§196-198.

6.23 On (2), the effect is that the Claimant has to show they would “likely” succeed at trial. This raises the relatively low threshold that would otherwise apply under the first *American Cyanamid* criterion of “serious issue to be tried”.

6.24 On the meaning of “likely”, this will depend on the circumstances. The question is whether the Claimant’s prospects of success at trial are “sufficiently favourable to justify such an order” in the circumstances of the case. This will usually require the court to ask whether the relief is more likely than not to be granted at trial but there will be circumstances when a lesser degree of likelihood will suffice.¹²³

6.25 In the author’s experience, it is rare for the notionally elevated s.12(3) test to make any difference to the outcome.

¹²² This was approved in *Arla Foods v Persons Unknown* [2024] EWHC 1952 (Ch), §114 (Jonathan Hilliard KC).

¹²³ *Cream Holdings Ltd v Banerjee* [2005] 1 AC, §15 (Lord Nicholls).

(c) Precautionary (*quia timet*) injunctions

6.26 Previously known as *quia timet* injunctions,¹²⁴ precautionary protest injunctions prohibit conduct which has either not yet taken place or not yet been carried out by a particular Defendant.

6.27 Because precautionary injunctions seek to prohibit conduct that has not yet happened, the courts are more reluctant to grant them. For example, in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA), the Court of Appeal rejected the idea of granting wide-ranging protest injunctions before the complained-of conduct had even occurred:

“42. Mr Alan Maclean QC for the claimants submitted that the court should grant advance relief of this kind in appropriate cases in order to save time and much energy later devoted to legal proceedings after the events have happened. But it is only when events have happened which can in retrospect be seen to have been illegal that, in my view, wide ranging injunctions of the kind granted against the third and fifth defendants should be granted. The citizen's right of protest is not to be diminished by advance fear of committal except in the clearest of cases, of which trespass is perhaps the best example.”

6.28 In order to be successful, a Claimant will have to show that there is a sufficiently “*real and imminent risk*” of a tort being committed by the Defendant.¹²⁵ These terms are more flexible than they might appear on first glance.

6.29 The courts have not sought to gloss the meaning of a “*real*” risk. They have, rather, emphasised the importance of context and doing justice between the parties – i.e. the degree of probability of future injury is not an absolute standard.¹²⁶

6.30 The term “*imminent*” is used in the sense that the remedy sought is not premature.¹²⁷ The likely gravity of damage is also an important factor.¹²⁸

6.31 In *Vastint Leeds BV v Persons Unknown* [2019] 1 WLR 2, 31(3)(a), Marcus Smith J asked whether there was a “*strong probability*” that the Defendant would act in breach of the Claimant’s rights.

6.32 Linden J in *Esso Petroleum v Persons Unknown* [2023] EWHC 1837 (KB), at §§63-64, confessed to some doubts about the nature of the *Vastint* test. He went on to say:

¹²⁴ The Court of Appeal in *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946, §8, described the use of Latin in this area of law as “*inappropriate*”.

¹²⁵ *London Borough of Islington v Elliott* [2012] EWCA Civ 56, §29 (Patten LJ).

¹²⁶ *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), §§176-177 (Julian Knowles J).

¹²⁷ *Hooper v Rogers* [1975] Ch 43 (CA), 49-50 (Russell LJ).

¹²⁸ *Network Rail Infrastructure Ltd v Williams* [2019] QB 601 (CA), §71 (Sir Etherton MR).

“63...To my mind they are questions which the Court should consider in applying the test under section 37 Senior Courts Act 1981, namely what is “just and convenient” but they are not threshold tests. I also note that, even taking into account *Vastint*, the editors of *Gee on Commercial Injunctions* (7th Edition) say at 2-045:

“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, and the risk of wrongdoing 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.”

64. Where the court is being asked to grant an injunction in circumstances where no tort has been committed or completed it will naturally need to be persuaded that the risks and consequences of not making such an order are sufficiently compelling to grant relief. Where, as in the present case, tortious conduct has taken place but the identity of the tortfeasors is unknown, and relief is sought on a final basis against future tortfeasors who are not a parties and are identified only by description, again the court will be cautious. But it would be surprising if, for example, a court which considered that there was a significant risk of further tortious conduct, but not a strong probability of such conduct, was compelled to refuse the injunction no matter how serious the damage if that conduct then took place.”

6.33 Nonetheless, Linden J did not depart from *Vastint* on the basis that the point was not fully argued before him and that, on the facts of the case, he did not need to do so. Dexter Dias J in *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB) agreed with Linden J: §§48-50. He stated that, “*The court will inevitably and rightly be concerned by the risk of very grave consequence and may be prepared to grant injunctive relief where the risk of occurrence is lower than a case where the harm is less severe. All these factors have to be weighed together.*”

6.34 It is noted that in *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (KB), §78, Garnham J considered that the *Vastint* test had been “*subsumed into the Wolverhampton framework*”.

6.35 The fact that a named Defendant has not engaged with the claim or the Court will support the argument that he/she will carry out the unlawful acts in the future in the absence of an injunction.¹²⁹ In addition, the fact that a Defendant has not given assurances or other evidence that it has no intention to carry out or repeat the impugned conduct will strengthen the case for an injunction.¹³⁰

¹²⁹ *Transport for London v Lee* [2023] EWHC 1201 (KB), §§36 and 38 (Eyre J).

¹³⁰ *Esso Petroleum v Persons Unknown* [2023] EWHC 1837 (KB), §67 (Linden J).

- 6.36 One case in which a “*real and imminent risk*” was rejected by the Court is *Office Group Properties Ltd v Persons Unknown* [2025] EWHC 1438 (KB), §31ff (Sheldon J). The encampment of commercial premises had ended by the time the claim had been served and there was no cogent evidence that the premises would be targeted again in the near future.
- 6.37 Even if a precautionary injunction satisfies the “*real and imminent risk*” or “*strong probability*” test, its precautionary nature will impact the breadth of the restriction. For example, in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA), the Court of Appeal found that restrictions such as blocking the highway to slow down traffic, slow-walking and unreasonably preventing the claimants from accessing a site were “*too wide and too uncertain*” for a precautionary injunction: §41.
- 6.38 A protest injunction may be sought over an entire project or piece of infrastructure, notwithstanding that it occupies or runs over a very large area of land. The fact that direct action has only targeted certain parts of the project at the date of the Claimant’s application does not mean that only those parts targeted to date suffer from a “*real and imminent risk*” of tortious conduct.¹³¹ There are several recent examples of the court granting an injunction covering the entire length of a large project or piece of infrastructure in these circumstances:
- i. In *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (KB), Lavender J granted an injunction across 4,300 miles of the Strategic Roads Network against protests being conducted by Insulate Britain. It was said that this was necessary due to the “*unpredictable and itinerant nature of the Insulate Britain protests*”: §24(7).
 - ii. In *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), Julian Knowles J granted an interim injunction over effectively the whole route of HS2. Given the activities to date and the protestors stated intention, the Judge found that to limit the scope of the injunction until other parts of the route had been affected would be a licence for “*guerrilla tactics*”: §177.
 - iii. In *Esso Petroleum v Breen* [2023] EWHC 2013 (KB), Julian Knowles J granted an injunction covering the entire 105km oil pipeline from Southampton to Heathrow that was being upgraded. He rejected the argument that an imminent danger of very substantial damage could not be found in relation

¹³¹ The issue is sometimes dealt with as a point going towards proportionality/ whether the protest injunction has clear geographical limits.

to the whole area of the pipeline for the same reasons as those given in the above *HS2* case: §69.¹³²

- iv. In *Esso Petroleum v Persons Unknown* [2023] EWHC 1837 (KB), where direct action had affected some but not all of the Claimant's sites, Linden J stated, at §70, that "*the essence of anticipatory relief, where it is justified, is that the claimant need not wait until harm is suffered before claiming protection*".

6.39 The same analysis applies to non-contiguous areas of land. For example, in *Esso Petroleum v Persons Unknown* [2022] EWHC 966 (KB) (Ellenbogen J), the Claimant sought a protest injunction over a number of different sites across the country even though a number of those had not actually been affected to date. Ellenbogen J rejected the argument that the injunction should be confined only to those sites had had already been affected. She stated:

"28...But that is to adopt an excessively granular, artificial approach to the evidence, considered as a whole. So considered, I am satisfied that the risk of infringement of the claimants' rights, absent injunction, is real. Those aligning themselves with one or both campaigns have shown themselves willing to engage in direct action in furtherance of their aims. ER's stated plans include focused economic disruption at an unspecified single fossil fuel target and to block major UK oil refineries this month.

29. There is no reason to think that the key sites proportionately identified by the claimants will be treated any differently, going forward, from those sites which have been the subject of past direct action. The risk of harm is sufficiently imminent to justify intervention by the court; activity has escalated since the beginning of this month, with all the associated risks to health and safety and the claimants' operational activities, set out in their evidence. In those circumstances, in particular, there is no legal basis upon which the claimants should be obliged to suffer harm at each of the Sites before the court will grant relief in relation to it."

6.40 Moreover, in *Transport for London v Lee* [2023] EWHC 1201 (KB), Eyre J granted a final injunction over a number of roads in London, many of which had not yet been targeted by Just Stop Oil. This was because, "*all are locations in London where the blocking of the road will be liable to cause substantial and widespread congestion. They are precisely the kind of location at which such protests have previously occurred and the fact that a particular location has not previously been targeted is not an indication of the absence of risk*": §33.

¹³² HHJ Lickley at the interim injunction stage (*Esso Petroleum v Breen* [2022] EWHC 2664 (KB)) came to the same conclusion.

6.41 There are many examples of the Court adopting this type of reasoning – see, e.g.: *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), §48 (Johnson J) and *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), §§94-95 (Morgan J).

(d) Renewing an interim injunction

6.42 Where a Claimant seeks to renew an interim injunction – i.e. extend a previous interim injunction that has already been granted and is soon to expire – the Court is entitled to review any aspect of the merits of the claim and entitlement to the Order sought.¹³³ In practice, and particularly where there has been no challenge by a Defendant to any element of the claim, the Court will focus its consideration on whether there remains a continuing threat of a real and imminent risk.¹³⁴

6.43 It should be noted that courts have taken differing approaches to whether an interim injunction can be renewed for a lengthy period of time or whether a Claimant ought to progress the claim to its final determination such that directions ought to be set for trial. For example, in both *Esso Petroleum v Persons Unknown* (30 Mar 2023) (unreported) (KB) and *UK Oil Pipelines Ltd v Persons Unknown* (21 Apr 2023) (unreported) (Ch), interim injunctions granted the previous year in relation to environmental protests were sought to be continued. Collins Rice J and Rajah J, respectively, probed the Claimants on what steps had been taken to progress the claim to final determination. Both Courts subsequently made directions/orders effectively requiring the Claimants to bring the claim to trial or otherwise have the claims finally determined in short order. By contrast, on very similar facts, interim injunctions were continued for 12 months in the cases of *Valero Energy v Persons Unknown* (11 Jan 2023) (unreported) (KB) (Soole J), *Exolum v Persons Unknown* (11 Jan 2023) (unreported) (KB) (Soole J), *Navigator Terminals v Persons Unknown* (28 Apr 2023) (unreported) (KB) (Garnham J), *Essar Oil v Persons Unknown* (11 May 2023) (unreported) (Ch) (HHJ Monty KC) and *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB) (Hill J).

6.44 In light of *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, in the case of Newcomers, the traditional distinction between interim and final injunctions appears to have been demolished. Rather, all relief obtained could be said to be final relief subject to liberty to any Defendants to apply to set aside the order and subject to regular review from the Court.

¹³³ *National Highways Ltd v Persons Unknown* [2023] EWHC 1073 (KB), §64 (Cotter J).

¹³⁴ See, e.g., *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), §44 (Ritchie J).

6.45 In *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), the Defendants argued that the Claimant ought to have brought the claim to a final hearing rather than seek an extension of the interim injunction. Ritchie J rejected this approach for the following reasons:

“58...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.”

6.46 In *London City Airport Ltd v Persons Unknown* [2024] EWHC 2557 (KB), §45, where a 5-year injunction was granted at the first, without notice, hearing, the Court stated that “As the claim is being brought against Persons Unknown only, no return date hearing or final hearing is required.”¹³⁵

(e) Obligations on the Claimant

6.47 Other than in the scenario already discussed at **§3.25ff above**, a Claimant has traditionally had various obligations when obtaining an interim injunction. These include:

- i. Giving a cross-undertaking in damages, unless the court orders otherwise.¹³⁶
The purpose is to ensure that, if the Defendant ends up winning at trial, they can be compensated for the loss suffered as a result of the (wrongly granted) interim injunction. Different considerations may apply for public authorities, particularly where they are seeking a protest injunction in order to be able to

¹³⁵ A similar position was reached in *Manchester Airport v Persons Unknown* [2024] EWHC 2247 (KB), §26 (HHJ Coe KC). See also *1 Leadenhall Group London v Persons Unknown* [2024] EWHC 854 (KB) – an urban explorer trespass case – where the claim was against Newcomers only. The Claimants obtained final relief at the first without notice hearing (there being no return date ordered) and, just before the expiry of that injunction two years later, applied for and obtained an extension.

¹³⁶ CPR PD25A, §5.1(1). See *Birmingham CC v Afsar* [2019] EWHC 1619 (KB) for the general principles.

exercise statutory functions.¹³⁷ In *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, the Supreme Court has now tantalisingly implied that cross-undertakings may not be necessary in injunctions against Newcomers as they are not technically interim orders and they are “*not in any sense holding the ring until the final determination of the merits of the claim at trial*”: §234. It did say, however, that this was “*another important issue for another day*”.

- ii. Progressing the claim. This is considered further, below, in **Chapter 7**.
- iii. Keeping the situation under review. As the Court of Appeal said in *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946 (CA), §89, 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.*” Where, for example, a Claimant becomes aware of information which renders incorrect something that was previously said to the court, it is under a duty to tell the court and/or the Defendant of the change.¹³⁸ This includes changes in the law that have occurred since the grant of the interim injunction.¹³⁹

In *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), the injunction covered the entire route, including phase 2. The announcement by the Government that phase 2A and 2B would no longer be going ahead, however, meant that no construction would be taking place on areas of land covered by the injunction. This meant there were no compelling reasons to continue the injunction over this land: §§44-45 and 55.

Equally, in *MBR Acres Ltd v Free the MBR Beagles* [2022] EWHC 3338 (KB), Nicklin J stated that the Court will keep the terms of any interim injunctions under review – and in appropriate cases make changes to the injunction – to ensure that they are not having an unintended effect: §10.

This duty appears to apply to final injunctions just as much as it does to interim injunctions (and see **below at §7.13**).¹⁴⁰

¹³⁷ *North Warwickshire BC v Baldwin* [2023] EWHC 1719 (KB), §§121-122 (Sweeting J); *Financial Services Authority v Sinaloa Gold plc* [2013] 2 AC 28 (SC), §§30-33 and 41 (Lord Mance). But see *Birmingham CC v Afsar* [2019] EWHC 1619 (KB), §2, where Warby J considered the relevant principles and did require the local authority to give a cross-undertaking.

¹³⁸ *Ineos Upstream v Persons Unknown* [2022] EWHC 684 (Ch), §44 (HHJ Klein); *Enfield LBC v Persons Unknown* [2020] EWHC 2717 (KB), §32 (Nicklin J).

¹³⁹ *Enfield LBC v Persons Unknown* [2020] EWHC 2717 (KB), §§27-32 (Nicklin J).

¹⁴⁰ *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946 (CA), §77.

7 FINAL INJUNCTIONS

7.1 A Claimant who does obtain an interim injunction (and see §6.2 above in respect of the position with Newcomers) has traditionally been bound to get on with progressing the claim as rapidly as it can.¹⁴¹ A failure to do so would ordinarily lead the court to strike out the claim form as an abuse of process. Some recent cases have suggested, in the wake of *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, a potentially new approach.

(a) Traditional procedural options

7.2 A Claimant has traditionally had several options:

- (1) Apply for summary judgment, pursuant to CPR Part 24;
- (2) Apply for default judgment, pursuant to CPR Part 12;
- (3) Bring the claim to trial; or,
- (4) Discontinue the claim.

7.3 As to summary judgment, the Claimant has to demonstrate that the Defendant has no real prospect of successfully defending the claim and that there is no other compelling reason why the case should be disposed of at a trial.¹⁴² Such an application may not usually be made until the Defendant has filed an acknowledgement of service or defence (or the time for doing so has expired).¹⁴³ The relevant procedure is set out in CPR r24.4 and PD24, §2.

7.4 In *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 (KB), the Claimant had sought summary judgment against 133 named Defendants as well as Persons Unknown. Bennathan J granted the application against 24 of the named Defendants who had already been found to be in contempt of court for breaching the interim injunctions. But he refused to grant a final injunction against the remaining 109 named Defendants (though he did grant a precautionary interim injunction against them on the same terms). This was on the basis that he was not satisfied that those Defendants had already committed the tort of trespass or nuisance.

7.5 The Court of Appeal overturned this decision that a final injunction could not be granted against the 109 named Defendants.¹⁴⁴ For the grant of a final precautionary injunction,

¹⁴¹ *Gee on Commercial Injunctions* (7th edn, 2022), §§24-029 – 24-032 adopted in *Ineos Upstream v Persons Unknown* [2022] EWHC 684 (Ch), §43 (HHJ Klein).

¹⁴² CPR r.24.2.

¹⁴³ CPR PD24, §2(6).

¹⁴⁴ *National Highways Ltd v Persons Unknown* [2023] EWCA Civ 182.

it is not a requirement that the Claimant prove a Defendant has already committed the relevant tort. The essence of this form of injunction is that the tort is *threatened*: §39.

- 7.6 *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB) represents the most cited judgment dealing with a summary judgment application in a protest context – see §§5.9-5.10 above.
- 7.7 As to default judgment, a Claimant may not obtain this where they have brought a Part 8 claim.¹⁴⁵ Even in a Part 7 claim, a Claimant may consider that it is inappropriate to make an application for default judgment in a case against Persons Unknown where the Court will not be able to consider the merits of a case.
- 7.8 As to going to trial, it was previously quite common for a claim never to reach this stage as an interim injunction would have effectively disposed of the proceedings. Indeed, the Court of Appeal in *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946 (CA) said that “*There is, as I have said, almost never a trial in a persons unknown case, whether one involving protestors or unauthorised encampments.*”: §92. The approach appears to have changed subsequently with the Courts emphasising the need to progress claims.¹⁴⁶ Where the claim is against Newcomers only, however, following *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983 it may be unnecessary for a claim to proceed to trial at all.
- 7.9 It is also possible to seek expedition for trial depending on the circumstances. In *Transport for London v Lee* [2023] EWHC 402 (KB), for example, the Claimants applied for, and were granted, an expedited trial. Cavanagh J found that it was in the public interest for the trial to take place as soon as possible given the importance of the case to the Claimant, the general public and the Defendants. There was no prejudice to the Defendants given that all but one had not taken part: §§15-17.
- 7.10 Two recent examples of a protest injunction going to trial can be found in *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB) (Morris J), relating to Insulate Britain, and *Transport for London v Lee* [2023] EWHC 1201 (KB) (Eyre J), relating to Just Stop Oil.
- 7.11 A recent example of a Claimant failing to progress a claim (or discontinue it) can be seen in *Ineos Upstream v Persons Unknown* [2022] EWHC 684 (Ch) (HHJ Klein). In that case, the court decried the fact that the Claimant had failed, for a number of years, to take steps to obtain a directions hearing following the decision in *Ineos Upstream v Persons Unknown*

¹⁴⁵ CPR r12.2(b).

¹⁴⁶ See, for example, *Ineos Upstream v Persons Unknown* [2022] EWHC 684 (Ch), §§32 and 60 (HHJ Klein); *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946 (CA), §108.

[2019] 4 WLR 100 (CA). Even on the Claimant's own case, it had taken 7 months to apply for the interim injunction to be discharged following a material change in circumstances: planning permission for the relevant fracking sites having lapsed. The court found that the Claimant had acted improperly in waiting so long. Ultimately, it decided not to strike out the claim but did order the discharge of the interim injunction on the ground of material change in circumstances. It did, however, impose a sanction in costs on the Claimant.¹⁴⁷ In the sequel, *Ineos Upstream v Persons Unknown* [2023] EWHC 214 (Ch) (Master Kaye), the Judge did decide to strike out the claim. She considered that, the interim injunctions having been discharged and the claim having been discontinued against the defendants, the proceedings served no useful purpose such that they were abusive: §114. The claim was, therefore, struck out under the Court's inherent power under CPR r 3.3, 3.4 and 3.1(2)(m).

(b) A new approach?

7.12 Since *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, it appears to be the case that a Claimant may not be required to come back for a second hearing in order to obtain final relief. On this issue, see **§§6.44-6.46 above**.

(c) Review of final injunctions

7.13 As set out at **§6.47(iii) above**, there is a duty to keep the situation under review. This appears to apply to final injunctions just as much as it does to interim injunctions.¹⁴⁸ As such, even where a final injunction is made, Claimants must still consider whether they ought to come back to Court following a material change of circumstances.

7.14 This is separate from in-built periodic reviews ordered by courts to ensure that there remains a continuing threat of direct action. This is good practice even for final injunctions.¹⁴⁹ Such periodic reviews – normally an annual review –¹⁵⁰ are now regular occurrences in the case law.¹⁵¹

¹⁴⁷ See also the sequel in *Ineos Upstream v Persons Unknown* [2023] EWHC 214 (Ch), in which Master Kaye made a further costs award against the Claimants.

¹⁴⁸ *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946 (CA), §77.

¹⁴⁹ *Exolum Pipeline Systems Ltd v Persons Unknown* [2024] EWHC 1015 (KB), §18 (Farbey J).

¹⁵⁰ See *Exolum Pipeline Systems Ltd v Persons Unknown* [2025] EWHC 1913 (KB), §18, in which Swift J would have rejected an 18-month review without "some form of express positive obligation on the Claimant to look for and bring to the court's attention such matters as might require the court to reconsider the Order in place".

¹⁵¹ Final relief was granted in the form of a 5-year injunction but with provision for an annual review in the following cases: *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB); *Transport for London v Lee* [2023]

7.15 When conducting these review hearings, although such reviews are not merely a “*rubber stamp*”,¹⁵² a court is not starting from scratch. As Ritchie J stated in *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), in relation to the renewal of an interim injunction:

“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.”

7.16 Further, in *Arla Foods v Persons Unknown* [2024] EWHC 1952 (Ch), Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) stated, in relation to a final injunction:

“128... 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.”

7.17 In *Transport for London v Persons Unknown* [2025] EWHC 55 (KB), Morris J referred to *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, §225, before stating that:

“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

EWHC 1201 (KB); *Esso Petroleum v Persons Unknown* [2023] EWHC 1837 (KB); *UK Oil Pipelines Ltd v Persons Unknown* (PT-2022-000303) (Ch) (unreported); *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB); *Arla Foods v Persons Unknown* [2024] EWHC 1952 (Ch); *London City Airport v Persons Unknown* [2024] EWHC 2557 (KB).

¹⁵² *Exolum Pipeline Systems Ltd v Persons Unknown* [2024] EWHC 1015 (KB), §28 (Farbey J).

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)."

7.18 A different approach was taken in *Basingstoke & Deane BC v Persons Unknown* [2025] EWHC 738 (KB), §§19-25, where the Judge considered that a "*de novo*" hearing was required, particularly in light of the comments of Freedman J (who had previously continued the injunction)¹⁵³ that "*close scrutiny*" of the injunction ought to be undertaken at a future stage.

7.19 In *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 (KB), §§42-52, Garnham J summarised the case law above before taking the view that the "*guiding light*" was the judgment in *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, §225, i.e.:

"51...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."

7.20 Garnham J stated that there may be cases where a fuller assessment is required but this will depend on the facts of each case.¹⁵⁴ On the facts of *Rochdale MBC* itself, a fuller assessment was not necessary: §71.¹⁵⁵

7.21 In *Esso Petroleum v Persons Unknown* [2025] EWHC 1768 (KB), §7, Sweeting J referred to these cases and summarised that, "*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.*"¹⁵⁶

7.22 In *Exolum Pipeline Systems Ltd v Persons Unknown* [2025] EWHC 1913 (KB), Swift J referred to the "*self-perpetuating*" nature of protect injunctions in certain claims – this case involving environmental protests. He stated:

"14...I fear that, once made, the need for orders such as this one can almost become self-perpetuating, in that any decision to remove the order would, from the point of view of the activists, wave a flag above these terminals marking their return to

¹⁵³ [2024] EWHC 1828 (KB).

¹⁵⁴ See also *Teledyne UK Ltd v Gao* [2025] EWHC 2050 (KB), §§44-49 (Richard Wright KC).

¹⁵⁵ See also *London City Airport v Persons Unknown* [2025] EWHC 2223 (KB), §§9-11 (Bourne J).

¹⁵⁶ See also *North Warwickshire BC v Persons Unknown* [2025] EWHC 2403 (KB), §§12-13 (HHJ Emma Kelly), *Gatwick Airport Ltd v Persons Unknown* [2025] EWHC 2228 (KB), §9 (Duncan Atkinson KC) and *Valero Energy Ltd v Persons Unknown* [2025] EWHC 207 (KB), §§20-23 (Hill J).

the category of targets for disruption. Even though Just Stop Oil and other likeminded organisations may be opportunistic, experience shows that they are also persistent and will take any opportunity that presents itself.”

(d) Material changes in circumstances

7.23 A material change in circumstances could be any number of things. Most obviously it is a change in the facts or a change in the law.

7.24 As to a change in the facts, in *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), the injunction covered the entire route, including phase 2. The announcement by the Government that phase 2A and 2B would no longer be going ahead, however, meant that no construction would be taking place on areas of land covered by the injunction. This meant there was no longer a compelling reason to continue the injunction over this land: §55.

7.25 As to a change in the law, a number of recent cases have considered whether the enactment of the Public Order Act 2023 constituted a material change. In *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB), Dexter Dias J considered that the change in criminal law *was* a material change in circumstances: §§134 and 140. Nonetheless, he found that it was “*essential is to assess the evidence about what the significance of that change is or is likely to be*”: §135. Ultimately, he considered 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.*”: §140. To date, the courts have unanimously found that the mere existence of the new criminal offences in the Public Order Act 2023 did not, in and of themselves, warrant the refusal to grant/ discharge of an injunction.¹⁵⁷

7.26 In *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 1786 (Ch), there was evidence that Animal Rising (the organisation responsible for the direct action) had published a press release stating that it was suspending its campaign of direct action against horse racing indefinitely: §10. Sir Anthony Mann, however, found that the risk

¹⁵⁷ *Valero Energy Ltd v Persons Unknown* [2025] EWHC 207 (KB) §§35-37 (Hill J); *Transport for London v Persons Unknown* [2025] EWHC 55 (KB), §§58-67 (Morris J); *North Warwickshire BC v Persons Unknown* [2024] EWHC 2254 (KB), §88 (HHJ Emma Kelly); *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (KB), §§24 and 28 (Ritchie J); and, *HS2 v Persons Unknown* [2024] EWHC 1277 (Ritchie J).

had not gone away; he considered that these public pronouncements were more plausibly a tactical move leaving open the real possibility of further direct action: §21(i).

7.27 Similarly, in *Esso Petroleum v Persons Unknown* [2025] EWHC 1768 (KB), there was evidence that Just Stop Oil had issued a press release stating that it would be “*hanging up the hi vis*” at the end of April 2025. Based on all the evidence, however, Sweeting J considered that a real risk of direct action remained. This included the facts that no specific assurances had been given to the claimant and also because of the limited governance within JSO meaning that a binding assurance could not be given in respect of everyone connected to their campaign: §18.

8 HUMAN RIGHTS

- 8.1 The area of protest injunctions is infused with human rights. There is barely a part of the proceedings left untouched by it: its impact being felt just as much in procedural issues (e.g. notice and service) as in substantive ones. This Chapter deals with the latter. In particular, it considers the tests that will need to be satisfied before a court grants a protest injunction, notwithstanding potential interference with a protestor's ECHR right, as well as how to balance the various competing rights and interests.
- 8.2 In *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (KB), §18, Ritchie J emphasised the particular importance in considering ECHR rights where Persons Unknown were concerned. He stated:

“18...The importance of considering the ECHR rights is greatly increased because the persons unknown [PU] are not before the Court, and it is recognised that PU injunctions based on a quia timet (what we fear) basis are akin to a form of enforcement of established rights rather than enforcement of rights pending the trial of asserted but disputed rights. So, they are less designed to enhance or protect Court proceedings and more designed to protect established, indisputable rights.”

(a) The rights in play

- 8.3 For Defendants, the main rights that will be impacted by a protest injunction will be Articles 10 (freedom of expression) and 11 ECHR (freedom of assembly and association). These state that:

“ARTICLE 10

Freedom of expression

- i. 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.
- ii. 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 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

- iii. 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.
- iv. 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.”

- 8.4 Articles 10 and 11 ECHR are closely related; the case law has treated Article 11 ECHR as a specific manifestation of the broader Article 10 ECHR right. In the protest context, the analysis under both tends to be identical such that courts invariably deal with them together.
- 8.5 These rights are given strong protection and it is of their very essence that they can affect or disturb others. As Sedley LJ stated in *Redmond-Bate v Director of Public Prosecutions* [2000] HRLR 249 (KB), §20: “Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.”
- 8.6 In *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213, Dexter Dias J found that Article 3(8) of the Aarhus Convention (an unincorporated international treaty relating to the environment) could be used as an aid to interpreting ECHR rights: §§160 and 167.¹⁵⁸ He also appeared to consider whether there was a free-standing breach of Article 3(8) (see §168).¹⁵⁹
- 8.7 For Claimants, the main right that will be impacted by those carrying out direct action will be Article 1 of Protocol 1 ECHR. This states that:

¹⁵⁸ Article 3(8) of the Aarhus Convention states: “8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalised, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.”

¹⁵⁹ On the question of whether a court ought to determine if there is a breach of an unincorporated international treaty, see <https://protestinjunctions.com/blog/f/shell-shock---aarhus-in-the-middle-of-our-streets>.

“(1) 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.”

- 8.8 There is House of Lords authority that “core” public authorities – e.g. governmental organisations – do not themselves enjoy ECHR rights. This is because they cannot be “victims”, for the purpose of s.7 of the Human Rights Act 1998, as that term is defined in Article 34 ECHR as “any person, non-governmental organisation or group of individuals”.¹⁶⁰
- 8.9 In a series of protest cases, however, the courts seemingly *have* allowed public authorities to rely on their A1P1 ECHR rights (or equivalent common law rights) against protestors. The matter was fully argued in *HS2 v Persons Unknown* [2022] EWHC 2360 (KB). Julian Knowles J appears to have found that he was bound by Court of Appeal authority that even core public authorities can rely on A1P1 ECHR “and the common law values they reflect” in a protest injunction case: §§125-129.¹⁶¹ The reasoning in *Aston Cantlow* was not dealt with.
- 8.10 For other examples where this approach has been taken, see:¹⁶²
- i. *Cambridge University v Persons Unknown* [2025] EWHC 2330 (KB), §58 (Butcher J);
 - ii. *Cambridge University v Persons Unknown* [2025] EWHC 724 (KB), §§44 and 86 (Soole J);
 - iii. *Secretary of State for Transport v Cuciurean* [2022] 1 WLR 3847 (CA), §28 (Lewison LJ);
 - iv. *Olympic Delivery Authority v Persons Unknown* [2012] EWHC 1114 (Ch), §24 (Arnold J); and,

¹⁶⁰ *Aston Cantlow v Wallbank* [2004] 1 AC 546 (HL), §8 (Lord Nicholls), §45 (Lord Hope), §87 (Lord Hobhouse).

¹⁶¹ On the relevance of common law property rights, see also *Cambridge University v Persons Unknown* [2025] EWHC 2330 (KB), §58 (Butcher J); *Trinity College and St John’s College v Persons Unknown* [2025] EWHC 1577 (Ch), §§46-47 and 76; *Cambridge University v Persons Unknown* [2025] EWHC 724 (KB), §86 (Soole J); *Queen Mary University of London v Persons Unknown* [2024] EWHC 2386 (Ch), §§48 and 53 (Deputy Master Henderson); and, *Birmingham University v Persons Unknown* [2024] EWHC 1770 (KB), §68 (Johnson J).

¹⁶² In *Trinity College and St John’s College v Persons Unknown* [2025] EWHC 1577 (Ch), §46, the Judge reached no concluded view.

- v. *Olympic Delivery Authority v Persons Unknown* [2012] EWHC 1012 (Ch), §22 (Arnold J).

(b) Private land

- 8.11 The position is straightforward where a Claimant is alleging trespass on private land; Articles 10/11 ECHR will rarely provide protection to those protesting on privately owned land or upon publicly owned land from which the public are generally excluded.¹⁶³ Previously, it was not entirely clear whether Articles 10/11 ECHR were engaged at all in such a situation.¹⁶⁴ In *R v Hallam* [2025] 4 WLR 33 (CA), however, the Court of Appeal confirmed that acts of trespass did not remove the Defendants from the scope of Articles 10/11 ECHR – i.e. those rights continued to be engaged: §§34-36.¹⁶⁵ Nonetheless, the fact that the acts of the Defendants involved criminal trespass “significantly weakened the protections afforded by articles 10 and 11”. In most cases, therefore, the fact that these rights are engaged will not make a difference to the outcome. A possible exception to this is where it can be said that the bar on access to private property would lead to the essence of the right being destroyed – e.g. where an entire town is controlled by a private body.¹⁶⁶
- 8.12 The effect is that in this context a protestor has limited rights for the Court to weigh in the balance and a protest injunction will generally be granted as a matter of course. As Sheldon J put it in *Office Group Properties Ltd v Persons Unknown* [2025] EWHC 1438 (KB), §29, “it will be an unusual case where the Article 10 and 11 rights of those who trespass on private land will outweigh the A1P1 rights of the landowner.”
- 8.13 In *Birmingham University v Persons Unknown* [2024] EWHC 1770 (KB) (Johnson J),¹⁶⁷ the Claimant argued that it was seeking possession of private land and was not exercising public functions in doing so (such that ECHR rights were not interfered with): §§49 and 60-61. For the purposes of the first hearing, the Judge rejected this and proceeded on the

¹⁶³ *DPP v Cuciurean* [2022] 3 WLR 446 (DC), §§40-50, relying on *Appleby v UK* (2003) 37 EHRR 38; *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA), §36 (Longmore LJ). See also *Arla Foods v Persons Unknown* [2024] EWHC 1952 (Ch), §§65-66 and 72-73 (Jonathan Hilliard KC).

¹⁶⁴ In *Hicks v DPP* [2023] EWHC 1089 (KB), for example, Chamberlain J stated that an argument to the effect that Articles 10/11 ECHR were not engaged at all in these circumstances was “ambitious”: §46. But he then stated that it was not necessary for him to decide the issue. Also in *DPP v Bailey* [2023] 2 WLR 1140, §57, the Divisional Court stated that “This is an arid debate in the context of this case, as the end result on either analysis is the same.”

¹⁶⁵ Findings to the contrary must now be open to doubt: see, e.g., *Heathrow Airport Ltd v Persons Unknown* [2024] EWHC 2599 (KB), §10 (Julian Knowles J). For the reasons stated, this is, however, unlikely to make a difference.

¹⁶⁶ *DPP v Cuciurean* [2022] 3 WLR 446 (DC), §§42-44.

¹⁶⁷ The Claimant applied for a possession order in this case rather than an injunction but the same analysis would apply.

basis that there would be an interference with Articles 9/10/11 ECHR: §§62-64.¹⁶⁸ This was in light of the statutory duties owed by Universities to students in the realm of free speech and their potential challenge only by way of judicial review: §50. The result was a detailed consideration of the *Ziegler* tests: see **§8.21 below**.

(c) Public land

8.14 The situation is different where protest injunctions are sought covering land which the public have some legal entitlement to access. This most commonly includes the public highway but can include other types of land, such as park land, and other public spaces, such as Parliament Square. In these instances, courts will have to consider the Article 10/11 ECHR rights of protestors.

i. Difference between protest and direct action

8.15 The case law has determined that there is a fundamental difference between simple protest and (peaceful) direct action; unlike the former, the latter involves as its aim the deliberate disruption and frustration of a person's lawful activity. Those seeking to obtain a protest injunction are generally only concerned to stop direct action rather than protest *per se*.

8.16 This distinction is analysed in the case law as the difference between seeking to *persuade*, on the one hand, and seeking to *compel* others to act in a way you desire, on the other hand.¹⁶⁹ Whereas both can fall within Article 10/11 ECHR,¹⁷⁰ direct action is not at the core of those rights.¹⁷¹ It will, therefore, be given less weight when balancing the competing rights and interests in play.¹⁷² By contrast, in *Canada Goose v Persons Unknown*

¹⁶⁸ The same approach has, subsequently, been taken in a number of cases: *Cambridge University v Persons Unknown* [2025] EWHC 2330 (KB), §57 (Butcher J); *Trinity College and St John's College v Persons Unknown* [2025] EWHC 1577 (Ch), §§38-39 (Andrew Twigger KC); *Cambridge University v Persons Unknown* [2025] EWHC 724 (KB), §45 (Soole J); *Cambridge University v Persons Unknown* [2025] EWHC 454 (KB), §29 (Fordham J); *Queen Mary University of London v Persons Unknown* [2024] EWHC 2386 (Ch), §44 (Deputy Master Henderson); *University of Nottingham v Persons Unknown* [2024] EWHC 1771 (KB), §§37-40 (Johnson J).

¹⁶⁹ *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), §§61-62 (Johnson J); *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29 (CA), §94 (Leggatt LJ).

¹⁷⁰ Direct action will tend to engage Article 10/11 ECHR rights: see, e.g., *Sheffield CC v Fairhall* [2017] EWHC 2121 (KB), §§74-80 (Males J).

¹⁷¹ *Esso Petroleum v Persons Unknown* [2023] EWHC 1837 (KB), §57 (Linden J); *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), §§176-177 (Hill J); *DPP v Bailey* [2023] 2 WLR 1140 (DC), §§61-62; *Attorney General's Reference (No. 1 of 2022)* [2022] EWCA Crim 1259, §86; *DPP v Cuciurean* [2022] 3 WLR 446 (DC), §§36-37; *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), §59 (Johnson J); *Balfour Beatty Group Ltd v Persons Unknown* [2022] EWHC 874 (KB), §68 (Linden J).

¹⁷² *DPP v Ziegler* [2022] AC 408 (SC), §§70, 74 (Lord Hamblen and Lord Stephens); *Sheffield CC v Fairhall* [2017] EWHC 2121 (KB), §89(1), (4)-(7) (Males J).

[2020] 1 WLR 417 (KB), §§98 and 125 (Nicklin J), the Court was clearly concerned that the protest injunction restrained simple protest.

- 8.17 There may be some circumstances in which direct action will not be protected by Article 10/11 ECHR. For example, in *Heathrow Airport Ltd v Garman* [2007] EWHC 1957 (KB) (Swift J) a group of protestors threatened to conduct mass disruption at Heathrow airport. The Judge appeared to find that this activity was not protected by Articles 10/11 ECHR:

“108. Reliance is placed by the Defendants on Articles 10 and 11 of the ECHR, i.e. the rights to freedom of expression and freedom of association. These are, of course, fundamental rights that must be carefully guarded. However, these rights do not entitle ordinary citizens, by means of mass protest or unlawful action, to stop the lawful activities of others.

109. The activity that is intended by Plane Stupid and others is not a lawful assembly for the purpose of communicating their views to members of the public. Such an assembly always carries the attendant risk of being hijacked by a minority of persons intent on behaving unlawfully. In those circumstances, the rights of the law-abiding majority should plainly not be curtailed. But the position here is very different. The activity intended is not a lawful protest. Its sole purpose is to disrupt the operation of the airport. The actions contemplated may be peaceful in that they involve no violence. They would, however, be designed to interfere with the rights of thousands of people, acting perfectly lawfully, as well as with the lawful activities of an authority responsible for running an operation of vital importance to this country, its international communications and its commercial interests.”

- 8.18 It is possible that this authority, of some vintage in protest injunction terms, simply no longer represents good law. In *Sheffield CC v Fairhall* [2017] EWHC 2121 (KB), however, Males J, in the course of dealing with the issue of whether direct action was protected by Article 10/11 ECHR, endorsed it. He stated that:

“78. It is not surprising that the extreme activities of the defendants in the Heathrow Airport case were held not to be protected by articles 10 and 11. They appear to have accepted that they supported and encouraged “unlawful direct action” in the pursuit of their objectives: see para 23 of the judgment. However, while the case supports the existence of a distinction between peaceful protest and unlawful direct action, “direct action” is not a term of art and it does not necessarily follow that all activities which may be so described are unlawful. Nor does it follow that every action which constitutes a trespass or is contrary to some provision of domestic criminal law is necessarily outside the scope of the articles. So to hold would be contrary to the decision of the Court of Appeal in *City of London Corp'n v Samede* [2012] PTSR 1624, where the establishment of the Occupy camp outside St Paul’s Cathedral was found to be tortious and to involve the commission of a

criminal offence, not least because it impeded members of the public in doing what they were lawfully entitled to do: see eg the judgment at first instance [2012] EWHC 34 (QB) at [92]. Despite this, the defendants' article 10 and 11 rights were held to be engaged so that the order for possession sought by the City needed to be justified under paragraph 2 of those articles."

8.19 The effect is that certain types of direct action, even if peaceful, may not be protected by Articles 10/11 ECHR.

8.20 This can be contrasted with protests involving some element of violence to person and property – i.e. *"where the organisers engage in violence, have violent intentions, incite violence or otherwise 'reject the foundations of a democratic society'"* – which are not protected by Article 10/11 ECHR at all.¹⁷³

ii. Test to be applied

8.21 When deciding whether to grant a protest injunction (at the interim or final stage), the Court will ask the following questions:¹⁷⁴

- (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? The relevance of this requirement being that article 10 envisages the right to freedom of expression being subject to such restrictions as are prescribed by law and that article 11 provides that only such restrictions as are prescribed by law shall be placed on the right to freedom of assembly.
- (4) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Article 10 or Article 11?
- (5) If so, is the interference 'necessary in a democratic society' such that a fair balance is struck between the legitimate aim and the requirements of freedom of expression and freedom of assembly?

8.22 The analysis is usually focused on the last question, which is in turn answered by considering the following factors:¹⁷⁵

¹⁷³ *Attorney General's Reference (No. 1 of 2022)* [2022] EWCA Crim 1259, §§82, 84-87, 90, 102, 110.

¹⁷⁴ *DPP v Ziegler* [2022] AC 408 (SC), §16 (Lord Hamblen and Lord Stephens). For a recent application of this test, see *Transport for London v Lee* [2023] EWHC 1201 (KB), §§42-46 (Eyre J).

¹⁷⁵ *DPP v Ziegler* [2022] AC 408 (SC), §§16, 64-65 (Lord Hamblen and Lord Stephens).

- (1) Is the aim sufficiently important to justify interference with a fundamental right? For this purpose, a Claimant will tend to be able to rely on its own A1P1 ECHR right or other lawful activity it is seeking to pursue.
- (2) Is there a rational connection between the means chosen and the aim in view? A protest injunction restraining direct action will invariably be rationally connected to the aim of protecting the Claimant's A1P1 ECHR rights or other lawful activities.
- (3) Are there less restrictive alternative means available to achieve that aim? This is considered further below.
- (4) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others? This is considered further below.

8.23 In practice, it is the last two of these questions which will figure most heavily in the Court's analysis.

iii. Less restrictive alternative means

8.24 The Courts will look carefully at what other steps Claimants have, or could have, taken before seeking injunctive relief.¹⁷⁶

8.25 In various cases, Claimants have successfully argued that less restrictive alternative means do not exist on the bases that: (1) damages would not prevent further protests; (2) prosecutions for criminal offences can only be brought after the event and are, in any event, not a sufficient deterrent;¹⁷⁷ (3) other methods of deterring the protests are impractical;¹⁷⁸ and, (4) a Claimant wishes to avoid the involvement of the police or the application of the criminal law due to the consequences this would have for students of a University.¹⁷⁹

¹⁷⁶ See, e.g., *Sheffield Environmental Services v Persons Unknown* [2025] EWHC 2141 (KB), §§51 and 54 (Stacey J).

¹⁷⁷ See, e.g., *Cambridge University v Persons Unknown* [2025] EWHC 2330 (KB), §65, where Butcher J considered the nature of police powers under the Anti-social Behaviour Crime and Policing Act 2014 and under s. 68 Criminal Justice and Public Order Act 1994; *Trinity College and St John's College v Persons Unknown* [2025] EWHC 1577 (Ch), §§82 and 84 (Andrew Twigger KC); and, *Cambridge University v Persons Unknown* [2025] EWHC 724 (KB), §89 (Soole J).

¹⁷⁸ See, e.g., *Transport for London v Lee* [2023] EWHC 1201 (KB) §50 (Eyre J); *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB), §45(3) (Morris J).

¹⁷⁹ *Cambridge University v Persons Unknown* [2025] EWHC 2330 (KB), §64 (Butcher J).

8.26 In *North Warwickshire BC v Persons Unknown* [2024] EWHC 2254 (KB), for example, HHJ E Kelly considered whether the Claimant Council ought to have relied instead on: (a) a Public Spaces Protection Order, pursuant to the Anti-social Behaviour, Crime and Policing Act 2014; (b) byelaws; and/or, (c) the existing criminal law. She found that these were not viable less restrictive means of achieving the Claimant's objective as:

- (1) Public Space Protection Orders cannot be imposed on private land; the maximum sanction for breach is a level 3 fine (up to £1,000); breach is not an arrestable offence: §84.
- (2) Breach of byelaws gave rise to a maximum fine of £500 and is not an arrestable offence: §85.
- (3) In relation to the criminal justice system, and particularly the new offences in the Public Order Act 2023: they do not have the same deterrent effect as an injunction; the mechanism by which individuals would be brought before civil courts following a breach of an injunction is more expeditious; the Claimant would have control of the pursuit of contempt proceedings; and, an injunction is preventative in nature as opposed to the criminal law which is reactive: §88.

8.27 Moreover, the fact that a Claimant has been granted a possession order does not mean that an injunction is unnecessary. In *Trinity College and St John's College v Persons Unknown* [2025] EWHC 1577 (Ch), §78, Andrew Twigger KC stated that an injunction has a different function from a possession order – i.e. it prevents defendants from returning or coming on to the land temporarily.

8.28 In other cases, where a Claimant has sought to restrain direct action on the public highway, Defendants have argued that a protest injunction should not be granted on the bases that: (1) the precise circumstances in which such conduct will take place will vary; and, (2) it should, therefore, be left to the police to strike the right balance on each occasion and determine how to deal with the protest.

8.29 Different judges have taken different approaches to this argument. In *Esso Petroleum v Persons Unknown* [2022] EWHC 1477 (KB), Bennathan J accepted it. He stated:

“28. I do have a concern in cases such as this about banning any blocking of the road flowing from the Supreme Court case law in *Ziegler*. The effect of that decision, it seems to me, is that Parliament and the Supreme Court have brought about a situation where the rights of protestors and the rights of those against whom they protect can be assessed and weighed carefully with knowledge of all the facts. An injunction banning any blocking of any road would have the effect of demolishing that delicate balance. There would be no “lawful excuse” defence to a

breach of that order. Protestors whose identities, dispositions and activities were completely unknown to the court when the order was made would be liable to imprisonment.

29. In my view the better course when dealing with actions by protestors that might be found lawful on a *Ziegler* assessment, is that taken by the claimants in this case allowing this court to leave those matters to the police to enforce and the Magistrates' Court to adjudicate. I should make clear that these observations on the law after *Ziegler* do not seek to encourage individuals to block highways nor to assure anyone that such action can be carried out with impunity. The police have the power to arrest those they consider to be committing an offence under s.137 of the Highways Act 1980, and the courts have the power to convict them."

8.30 The Judge did go on to state that he was "*not purporting to lay down any sort of immutable rule*": §30.

8.31 Bennathan J also took the same approach in *Valero Energy Ltd v Persons Unknown* [2022] EWHC 911 (KB), §§35-42.

8.32 Nicklin adopted a similar approach in *MBR Acres Ltd v Free the MBR Beagles* [2022] EWHC 3338 (KB) (Nicklin J) where he stated that:

"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..."

8.33 Although, this case was based on alleged harassment so, arguably, different issues arose and a more cautious approach was warranted.

8.34 In other cases, the argument has been rejected. For example, in *Three Counties Agricultural Society v Persons Unknown* [2022] EWHC 2708 (KB), Spencer J stated:

"25...In particular, I do not consider that it is sufficient to leave the situation on the highway to the duties of the police. The aims of the police (to uphold the criminal law) are not identical to the legitimate aims of the Claimant (to avoid public and private nuisance), and I consider that there would be a real risk, if no order were made, that there would be direct physical – and potentially violent – confrontation which the police would be unable to prevent and a risk to the maintenance of public order. The police are generally reactive rather than proactive and the injunction sought would complement the function of the police in maintaining public order and responding to criminal obstruction of the highway"

8.35 The same approach was taken in *Esso Petroleum v Breen* [2022] EWHC 2664 (KB) (HHJ Lickley KC) and *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358 (KB), §178 (Hill J).¹⁸⁰

8.36 In light of the Supreme Court's comments in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] AC 505 (SC), however, there must now be some doubt about the approach taken by Bennathan J in *Esso Petroleum v Persons Unknown* [2022] EWHC 1477 (KB) and *Valero Energy Ltd v Persons Unknown* [2022] EWHC 911 (KB). This is because the Supreme Court rejected the point made in *DPP v Ziegler* [2022] AC 408 (SC) that “Determination of the proportionality of an interference with ECHR rights is a fact-specific inquiry which requires the evaluation of the circumstances in the individual case”: §§28-29 and 66. Rather, it went on to state:¹⁸¹

“30. ...the determination of whether an interference with a Convention right is proportionate is not an exercise in fact-finding. It involves the application, in a factual context (often not in material dispute), of the series of legal tests set out at para 24 above, together with a sophisticated body of case law, and may also involve the application of statutory provisions such as sections 3 and 6 of the Human Rights Act , or the development of the common law...”

iv. Factors to consider as part of fair balance analysis

8.37 When deciding how to strike a fair balance between the competing rights, courts will consider a number of factors, including:¹⁸²

- (1) Whether the views giving rise to the protest relate to very important issues and which many would see as being of considerable breadth, depth and relevance. It is rare to find a case where the court finds the issues being protested about do not relate to important issues. In *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), for example, Johnson J referred to climate change protestors as being “motivated by matters of the greatest importance”: §57.¹⁸³ This will not, however, be a “particularly weighty factor” to

¹⁸⁰ See also *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), §60 (Johnson J).

¹⁸¹ It should be noted, though, that *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] AC 505 (SC) itself was a case about the proportionality of a legislative measure.

¹⁸² See *City of London v Samede* [2012] 2 All ER 1039 (CA), §§39-41 (Lord Neuberger MR) and adopted by the Supreme Court in *DPP v Ziegler* [2022] AC 408 (SC), §72 (Lord Hamblen and Lord Stephens). More recently, see *Thurrock Council v Adams* [2024] EWHC 2750 (KB), §58 (Bourne J).

¹⁸³ See also *Transport for London v Lee* [2023] EWHC 1201 (KB), §52(ii) (Eyre J).

avoid judges simply giving greater protection to views they, themselves, think are important.¹⁸⁴

- (2) Whether the protestors believe in the views they were expressing. Again, it is rare to find a case where a protestor does not believe in the views being expressed.
- (3) The importance of the precise location to the protestors.¹⁸⁵ In *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (KB), Lavender J counted against the Insulate Britain protestors the fact that their protest on the Strategic Road Network was not directed at a specific location: §40(4)(a).¹⁸⁶ Freedman J took the same view in *Transport for London v Lee* [2022] EWHC 3102 (KB), where those disrupted by the protests (members of the public using the highway) were not the apparent object of the protest (the Government): §§46, 61.¹⁸⁷ In *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), §114, it also counted against the protestors that the location of the direct action was chosen merely because it was the best place to interfere with the activities of fracking operators. This can be contrasted with *Westminster CC v Haw* [2002] EWHC 2073 (KB), §21 (Gray J), where the Court found the location of the protest – Parliament Square outside the Houses of Parliament – was appropriate given that its aim was to influence Parliament on its policy towards Iraq. Similarly, in *Valero Energy Ltd v Persons Unknown* [2022] EWHC 911 (KB), §41 (Bennathan J), a specific term of an interim injunction was not granted, in part due to the importance of the location of the protest on the highway.
- (4) The extent to which the protestors could still protest even if a protest injunction was granted.¹⁸⁸ In a number of cases, courts have granted protest

¹⁸⁴ *Transport for London v Lee* [2023] EWHC 1201 (KB), §24 (Eyre J); *City of London v Samede* [2012] 2 All ER 1039 (CA), §41 (Lord Neuberger MR).

¹⁸⁵ *Trinity College and St John's College v Persons Unknown* [2025] EWHC 1577 (Ch), §§43 and 85 (Andrew Twigger KC); *Arla Foods v Persons Unknown* [2024] EWHC 1952 (Ch), §§107(2b) (Jonathan Hilliard KC); *Hicks v DPP* [2023] EWHC 1089 (KB), §§40-43 (Chamberlain J); *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), §59 (Johnson J); *Esso Petroleum v Persons Unknown* [2022] EWHC 966 (KB), §22(iv) (Ellenbogen J); *Balfour Beatty Group Ltd v Persons Unknown* [2022] EWHC 874 (KB), §69 (Linden J); *Mayor of London v Hall* [2011] 1 WLR 504 (CA), §49 (Lord Neuberger MR); *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23, §47 (Wall LJ).

¹⁸⁶ See also *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 (KB), §49 (Bennathan J) and *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB), §45(4) (Morris J).

¹⁸⁷ See also *Transport for London v Lee* [2023] EWHC 1201 (KB), §53(iii) (Eyre J).

¹⁸⁸ Although related, factors (3) and (4) have been separated out as being conceptually different.

injunctions and found that the Defendants are still able to make their points in other ways.¹⁸⁹

- (5) The extent to which the continuation of the protest would breach domestic law.¹⁹⁰
- (6) The duration of the protest. In *Sheffield CC v Fairhall* [2017] EWHC 2121 (KB), §88, Males J stated that “a protest which starts as a legitimate exercise of article 10 or 11 rights may become unlawful if it continues for a more extended period. The more serious the tortious or criminal conduct in question and the greater the impact on the rights of others, the shorter the period is likely to be before the initially legitimate protest becomes unlawful.”¹⁹¹ Moreover, a court will look at the practical realities of the situation in determining how long the direct action has been continuing for; it will not necessarily be the duration of an individual protest as opposed to the overall length of a course of a campaign of direct action.¹⁹² In *Arla Foods v Persons Unknown* [2024] EWHC 1952 (Ch), §107(2c), an important factor was that the direct action was of significant duration, lasting in one case for 24 hours. This caused significant financial harm to the Claimants. By contrast, in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23, §41 (Laws LJ), the fact that the Aldermaston Women’s Peace Camp had been taking place each month for over 23 years on the Secretary of State’s land without complaint supported the protestors’ argument that the camp was not unduly interfering with the Secretary of State’s rights.

¹⁸⁹ See *Cambridge University v Persons Unknown* [2025] EWHC 2330 (KB), §66(6) (Butcher J); *Trinity College and St John’s College v Persons Unknown* [2025] EWHC 1577 (Ch), §§44, 85 and 94 (Andrew Twigger KC); *Cambridge University v Persons Unknown* [2025] EWHC 724 (KB), §90 (Soole J); *University of London v Harvie-Clark* [2024] EWHC 2895 (Ch), §36 (Thompson J); *Birmingham University v Persons Unknown* [2024] EWHC 1770 (KB), §72 (Johnson J); *Transport for London v Lee* [2023] EWHC 1201 (KB), §53(v) (Eyre J); *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB), §45(4) (Morris J); *Transport for London v Lee* [2022] EWHC 3102 (KB), §61 (Freedman J); *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), §53(iv) (HHJ Lickley KC); *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), §59 (Johnson J); *Esso Petroleum v Persons Unknown* [2022] EWHC 966 (KB), §22(iv) (Ellenbogen J); *Balfour Beatty Group Ltd v Persons Unknown* [2022] EWHC 874 (KB), §§69-70 (Linden J); *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (KB), §40(4)(a) (Lavender J); *Sheffield CC v Fairhall* [2017] EWHC 2121 (KB), §89(7) (Males J); *Mayor of London v Hall* [2011] 1 WLR 504 (CA), §48 (Lord Neuberger MR).

¹⁹⁰ See *Transport for London v Lee* [2022] EWHC 3102 (KB), §51 (Freedman J).

¹⁹¹ See also *Mayor of London v Hall* [2011] 1 WLR 504 (CA), §48 (Lord Neuberger MR).

¹⁹² See, e.g. *Balfour Beatty Group Ltd v Persons Unknown* [2022] EWHC 874 (KB), §67 (Linden J); *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 (Ch), §114 (Morgan J); *Sheffield CC v Fairhall* [2017] EWHC 2121 (KB), §89(4) (Males J).

- (7) The degree to which the protestors occupy the land. In *Transport for London v Lee* [2022] EWHC 3102 (KB), although the physical occupation of the roads was quite limited, Freedman J took into account the fact that it caused congestion over a much wider area: §48.
- (8) The extent to which the protest interferes with the rights of others.¹⁹³ This is against a background that “Rights worth having are unruly things” and that activities engaging Articles 10/11 ECHR cannot be interfered with merely because they are “inconvenient or tiresome”.¹⁹⁴ *Westminster CC v Haw* [2002] EWHC 2073 (KB), §21 (Gray J) is a case where the impact on the rights of others was minimal because few people actually used the inner pavements in Parliament Square, the location of the obstruction.¹⁹⁵ Similarly, in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23, §48 (Wall LJ), there was no evidence that the presence of the Aldermaston Women’s Peace Camp was incompatible with the operational requirements of the landowner. By contrast, in many cases the interference with the rights of others has been substantial and the courts have not been persuaded to find that the matter should be left to the police; such enforcement could only take place after the event meaning inevitable loss to the Claimant.¹⁹⁶ In *Transport for London v Lee* [2022] EWHC 3102 (KB), Freedman J considered it strongly arguable that the blocking of roads in London by Just Stop Oil had caused substantial and unreasonable interference and disruption to the owner of the land and members of the public trying to use the highway, not to mention risking the life of protestors and emergency services: §§43-44, 61.¹⁹⁷ He referred to the fact that the protests sometimes occurred during the morning rush hour, leading to very large numbers of people being inconvenienced: §50. Freedman J was also concerned about the considerable police time and diversion of police resources that was being caused by the protests: §45.¹⁹⁸ In *Transport for London v Lee* [2023] EWHC 1201 (KB), Eyre J further relied on the anger and frustration caused to others and the risk of consequent disorder:

¹⁹³ E.g., in relation to highway protests, whether there are alternative routes which can be used: *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (KB), §40(4)(b) (Lavender J).

¹⁹⁴ *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23, §43 (Laws LJ).

¹⁹⁵ Contrast *Mayor of London v Hall* [2011] 1 WLR 504 (CA), §49 (Lord Neuberger MR).

¹⁹⁶ See §§8.22-8.30 above.

¹⁹⁷ See also the judgment in the final trial of the matter to similar effect: *Transport for London v Lee* [2023] EWHC 1201 (KB), §§52(iv) and 53(i) (Eyre J).

¹⁹⁸ See also *Transport for London v Lee* [2023] EWHC 1201 (KB), §53(ii) (Eyre J).

§53(iv). In *Hicks v DPP* [2023] EWHC 1089 (KB), the defendant attended a hospital to question reports in the media that it was overflowing with COVID-19 patients. In a stairwell of the hospital, she abused and threatened health care professionals. The Court found that although her speech was political and so engaged Article 10 ECHR, there was no need to threaten or abuse anyone: §43.

- (9) The extent to which the subject of the protest has been through the democratic processes.¹⁹⁹ In *HS2 v Persons Unknown* [2022] EWHC 2360 (KB), Julian Knowles J relied heavily on the fact that HS2 was the “*culmination of a democratic process*” in granting the protest injunction: §§16-23. Also in relation to protests on HS2, in *DPP v Cuciurean* [2022] 3 WLR 446 (DC), Lord Burnett of Maldon CJ stated Articles 10/11 ECHR “*do not sanction a right to use guerrilla tactics endlessly to delay and increase the cost of an infrastructure project which has been subjected to the most detailed public scrutiny, including in Parliament.*”: §84.²⁰⁰ In *Bloor Homes Ltd v Callow* [2022] EWHC 3507 (Ch), Hugh Sims KC (sitting as a Deputy High Court Judge) relied on the fact that the Claimant had gone through the full planning process in order to fell a tree that the protestors sought to protect: §§35, 39, 42-45.

8.38 Some cases have stated that the peaceful nature of a protest, and the lack of disorder, is also a relevant factor.²⁰¹ In *DPP v Cuciurean* [2022] 3 WLR 446 (DC), however, Lord Burnett of Maldon CJ appeared to suggest that this was not relevant – “*if the defendant had been violent, his protest would not have been peaceful, so that he would not have been entitled to rely upon articles 10 and 11. No proportionality exercise would have been necessary at all.*”: §86.

¹⁹⁹ See *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), §§4-5 (HHJ Lickley KC); *Sheffield CC v Fairhall* [2017] EWHC 2121 (KB), §§90-91 (Males J);

²⁰⁰ In relation to HS2, see also *Balfour Beatty Group Ltd v Persons Unknown* [2022] EWHC 874 (KB), §71 (Linden J).

²⁰¹ *DPP v Ziegler* [2022] AC 408 (SC), §80 (Lord Hamblen and Lord Stephens); *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (KB), §39(1)-(2) (Lavender J).

9 SCOPE OF THE INJUNCTION

- 9.1 In *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB), §58, Ritchie J set out various requirements relating to the scope of protest injunctions. Although expressly said to refer to injunctions against Persons Unknown, these specific factors apply equally to named Defendants:

“ ...

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.
...”

- 9.2 This Chapter will consider these requirements in more detail.

(a) Terms must correspond to threatened tort, including lawful conduct if necessary

- 9.3 Generally, the conduct sought to be prohibited by a protest injunction must be closely tailored to the cause of action relied upon – in other words, it must incorporate and be confined to the ingredients of the relevant tort. For example:

- i. In a trespass claim, the injunction must state something along the lines of:

“The Defendant is prohibited from entering or remaining on the Claimant’s land without the Claimant’s consent.”

- ii. In a conspiracy to injure by unlawful means claim, the injunction must state something along the lines of:²⁰²

“The Defendant must not with any other person with the intention of causing damage to the Claimant by preventing or impeding the construction of the pipeline do [the prohibited conduct].”

9.4 The courts have, however, admitted of some flexibility to this principle. In *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29 (CA), §50, Leggatt LJ accepted that “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.” This was confirmed in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (CA), §§78, 82(5), *North Warwickshire BC v Baldwin* [2023] EWHC 1719 (KB), §78 (Sweeting J) and most recently in *Leeds Bradford Airport v Persons Unknown* [2024] EWHC 2274 (KB), §50 (Ritchie J).

9.5 A claim which fell foul of this rule was *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (CA) itself. The injunction applied for sought to restrain a huge amount of protest activity outside the Canada Goose shop on Regent Street in London. In the course of finding that the interim injunction previously granted was impermissibly wide, the Court of Appeal stated:

“86...Furthermore, the specified prohibited acts were not confined, or not inevitably confined, to unlawful acts: for example, behaving in a threatening and/or intimidating and/or abusive and/or insulting manner at any of the protected persons, intentionally photographing or filming the protected persons, making in any way whatsoever any abusive or threatening electronic communication to the protected persons, projecting images on the outside of the store, demonstrating in the inner zone or the outer zone, using a loud-hailer anywhere within the vicinity of the store otherwise than for the amplification of voice.”

9.6 Similarly, *Valero Energy Ltd v Persons Unknown* [2022] EWHC 911 (KB) involved feared direct action on environmental grounds against the Claimant’s business importing and processing oil. Whilst granting an injunction prohibiting certain action, Bennathan J refused to include the following terms:

“Blocking, endangering, slowing down, preventing, or obstructing the free passage of traffic onto or along those parts of the Access Roads”

9.7 The Judge decided that, at that moment in time, the injunction should not be granted to catch otherwise lawful conduct:

²⁰² Using the example in *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), §59 (HHJ Lickley KC).

“40. In *Canada Goose* the Court stated that an injunction can ban what would otherwise be lawful, but the way that proposition was expressed was in qualified [and perhaps even reluctant] terms: *may* include lawful conduct if, and *only to the extent* that, there is *no other proportionate means* of protecting the claimant’s rights [emphasis added]. The Court was clearly not expressing a rule that a defendant’s otherwise lawful conduct was *irrelevant* to whether an injunction should be granted. The limit of that ruling in *Canada Goose*, it seems to me with respect, is that the facts of a certain case may require such an order which I, of course, unhesitatingly accept. My conclusion is only that this case, at present, does not.”

9.8 This can be contrasted with a case such as *Esso Petroleum v Breen* [2023] EWHC 2013 (KB), in which a protest injunction was granted to prevent direct action against the upgrading of the Claimant’s pipeline. Given the potential for the protest injunction to catch lawful conduct, Julian Knowles J accepted the submission that:²⁰³

“40... (5)...Any interference with Articles 10 or 11 on the highway which might emerge from the order is minor and (this, ultimately, the Claimant says is what counts) certainly proportionate given what is at stake in this case - where a strategically national important project has been explicitly threatened by persons who mean to stop it.”

(b) Terms must be sufficiently clear and precise

9.9 The terms of any injunction must be clear and certain to make it clear what is permitted and what is prohibited.²⁰⁴

9.10 The fullest treatment of the need for clarity and precision in protest injunctions can be found in *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29 (CA), §§54-83 (Leggatt LJ). Although an appeal against a committal order, one of the grounds of appeal was that certain paragraphs of the protest injunction were insufficiently clear and certain. The following main propositions can be taken from the case:

- i. There are three types of unclarity, in particular where words are (§§57-58):
 - Ambiguous: words having more than one meaning.
 - Vague: terms worded in such a way so as to create borderline cases where it is inherently uncertain whether the term applies. It will

²⁰³ See also *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), where HHJ Lickley KC came to the same conclusion at the interim injunction stage.

²⁰⁴ *AG v Punch Ltd* [2003] 1 AC 1046 (HL), §35.

be unacceptably vague where there is no way of telling with confidence what will fall within its scope and what will not.

- Inaccessible: terms which are convoluted, technical or opaque and, therefore, not readily understandable to Defendants. Where Defendants include Persons Unknown, terms must not be such as to require legal advice to understand. In *Sheffield Environmental Services v Persons Unknown* [2025] EWHC 2141 (KB), §57, Stacey J preferred the terms “*exiting or entering*” to “*access and egress*”, describing the latter as “*archaic languages*”.
- ii. Whether the terms of a protest injunction are unclear is dependent on context. What may be clear in one situation may be unclear in another: §60.
- iii. There is nothing unclear, in principle, about including a requirement of intention in an injunction. It is an ordinary English word to be given its ordinary meaning. *Dicta* to the contrary in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA) was wrong: §§63-65, 68-69, 74. In any contempt application, however, a Claimant will still have to prove such intention beyond reasonable doubt. That said, the Court of Appeal has said it is better practice to formulate a prohibition without reference to intention if the tortious act can be described in ordinary language without doing so.²⁰⁵ It is not clear how this can be squared with cases where the court has positively included a requirement for intention as a further layer of protection for protestors: see, e.g., *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (KB), §24(6) (Lavender J).
- iv. If a term of a protest injunction is not sufficiently clear for any of these reasons, a Defendant should not be held in contempt of court for allegedly breaching it: §59. But this will only be the case if the unclarity itself is material to the alleged breach: §60.

9.11 Context is key. For example, in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA), a term of the interim injunction sought to restrain slow walking in front of vehicles with the object of slowing them down and the intention of causing inconvenience and delay.

²⁰⁵ *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (CA), §81.

Longmore LJ found that this was impermissibly uncertain (§§40-42): no damage may result and how slow was slow?

9.12 By contrast, in *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29 (CA), the Court of Appeal found that a term of the injunction prohibiting “*blocking or obstructing the highway by slow walking in front of vehicles with the object of slowing them down*” was acceptable. The Court distinguished *Ineos* on the basis that *Ineos* was a “*pure*” precautionary injunction where no direct action had yet taken place. In *Cuadrilla*, however, there was a well-documented history of this sort of conduct which provided a solid basis for the prohibition.

9.13 In *Valero Energy Ltd v Persons Unknown* [2022] EWHC 911 (KB), Bennathan J refused to include the following term in an interim injunction:

“Blocking, endangering, slowing down, preventing, or obstructing the free passage of traffic onto or along those parts of the Access Roads...”

9.14 One of the grounds for doing so was that it lacked clarity. The Judge stated:

“37...Does a protestor standing at the very edge of the carriageway endanger themselves or a vehicle? Would a large group of noisy protestors proximate to the road cause a cautious tanker driver to slow down?”

9.15 Bennathan J did stress, however, that he was not setting down an immutable rule. Rather, this specific case had not yet developed to the stage where such a prohibition was justified: §42.

9.16 In *North Warwickshire BC v Baldwin* [2023] EWHC 1719 (KB), Sweeting J found that carrying out the prohibited activity “*in the locality of*” the claimant’s site was sufficiently clear: §§149-151.

9.17 The courts will also consider whether the Defendant was himself/herself clear about what conduct was prohibited and whether it caught him/her. In *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, for example, a majority of the Court of Appeal found that a plausible alternative construction of the protest injunction – that it did not catch the Defendant – did not make the finding of contempt unjustified: §51. This was because the Defendant himself had always understood that he was caught by the order.

(c) Clear geographical limits

9.18 In most cases a Claimant will be able to define the area covered by the protest injunction without too much difficulty. This is most obviously done by way of a map attached to

the injunction which delineates the relevant land on which the injunction bites. It is rare for a claim to become unstuck on this ground.

9.19 There are some cases where it is more difficult. *Sheffield CC v Fairhall* [2017] EWHC 2121 (KB) (Males J) is such an example, where the Defendants were carrying out direct action to prevent the felling of a large number of highway trees throughout Sheffield, which the Claimant was doing in exercise of its statutory duties. This most usually consisted of Defendants standing under a tree to be felled to frustrate its felling. The Claimant obtained an injunction which covered “safety zones” around trees to be felled. In order to make the injunction geographically certain, the injunction provided for fencing to be erected around each tree to be felled, so that Defendants could be clear on where exactly they were and were not allowed to stand.

(d) Clear temporal limits

9.20 It will be unacceptable for an injunction to have no temporal limit.²⁰⁶

9.21 Where an interim injunction has been granted, there are generally now two possibilities:

- i. Interim injunctions will often be expressed to be effective “*Until trial or further order*”, though this can only be ordered if “*made in the presence of all parties to be bound by it or made at a hearing of which they have had notice*” – i.e. not at without notice hearings.²⁰⁷ In order to make sure that this temporal limit does not become academic, there are obligations on a Claimant to make sure that steps towards a final trial are taken (see **§6.47(2) and Chapter 7 above**).
- ii. In some cases, courts will set a short defined temporal limit. For example, in *Esso Petroleum v Breen* [2022] EWHC 2664 (KB), HHJ Lickley KC granted an interim injunction for 4 months, within which the final trial had to take place. He did not grant it for 15 months as sought, until December 2023, because that would in effect be a final order, the relevant works having been planned to finish by that date: §64. Similarly, in *Esso Petroleum v Persons Unknown* (30 Mar 2023) (unreported) (KB), the Claimants sought to continue an interim injunction for a further 12 months but Collins Rice J instead made directions for trial to come on within a few months. The interim injunction was only continued for the intervening period. In *UK Oil Pipelines Ltd v Persons*

²⁰⁶ *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA), §43 (Longmore LJ).

²⁰⁷ CPR PD25A, §5.4.

Unknown (21 Apr 2023) (unreported) (Ch) Rajah J took a similar approach by only continuing the interim injunction for a further 6 months.

9.22 A third possibility used to be the Court providing for a longstop date with a regular review mechanism. This was on the basis that interim injunctions against Persons Unknown would sometimes not need to proceed to a final trial at all, there being no identified individual actually defending himself/herself. Following *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, however, the distinction between interim and final injunctions has been removed meaning that this third possibility amounts, in effect, to final relief. The result is that a Claimant will have to prove its case as if a final injunction were being sought.

9.23 For final injunctions, there will generally be a defined end-date, possibly with reviews built in.²⁰⁸

9.24 In *Wolverhampton CC v London Gypsies & Travellers* [2024] AC 983, the Supreme Court appeared to suggest that final injunctions against Persons Unknown should never extend for more than a year:

“225...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.”

9.25 That case involved, however, borough-wide injunctions obtained by local authorities against travellers, a group in relation to which local authorities have various statutory duties. The Supreme Court appeared to accept the situation may be different in the context of protest, stating:

“(11) Protest cases

...

236... 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.”

²⁰⁸ See Chapter 6 above.

- 9.26 This was confirmed in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB), where Ritchie J granted the Claimants a 5-year final injunction subject to annual review, and in a number of subsequent cases where an injunction of more than 1 year has been granted. Dealing expressly with this issue in *North Warwickshire BC v Persons Unknown* [2024] EWHC 2254 (KB), §98, HHJ Emma Kelly stated that “Slightly different considerations apply where an injunction limits only certain types of protest behaviour as the consequences of an order are less draconian than for a gypsy or traveller being deprived of somewhere to site the vehicle in which they live.”
- 9.27 The precise duration of the injunction will, then, depend on the circumstances.
- 9.28 Where the Claimant’s activity being disrupted is a discrete project, such as construction of a development, it will usually be proportionate to seek an injunction until that project is planned to be complete.
- 9.29 Where the Claimant’s activity being disrupted is an ongoing process with no defined endpoint, such as its usual commercial activity, it is more difficult to predict what approach a court will take. There have been protest cases in the past where relatively long injunctions have been granted. For example, in *Harrods Ltd v McNally* [2018] EWHC 1437 (KB), an injunction was directed at limiting the activities of the protestors objecting to Harrods’ policy of selling fur products. Nicol J extended an injunction originally granted in 2013 for a further 5 years. More recently, however, it was difficult to find a case where a protest injunction had been granted for longer than 18 months. That was until *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946, §108, where the Court of Appeal said that it was good practice to incorporate a periodic review into the order.²⁰⁹ Since then, the courts appear to have taken a slightly different approach. In *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB) (relating to Insulate Britain), for example, Morris J granted a final injunction for 5 years but with a yearly review by the Court for supervisory purposes: §52. The same approach has now been taken in a number of recent cases.²¹⁰
- 9.30 On whether a final injunction can be extended before the fixed time limit expires, particularly where there is no liberty to apply to extend, Nicklin J expressed doubts in both *Enfield LBC v Persons Unknown* [2020] EWHC 2717 (KB), §4(b) and *Canterbury CC v Persons Unknown* [2020] EWHC 3153 (KB), §43(h).

²⁰⁹ *Barking & Dagenham LBC v Persons Unknown* [2022] 2 WLR 946 (CA), §108.

²¹⁰ *Teledyne UK Ltd v Gao* [2025] EWHC 2050 (KB), §81 (Richard Wright KC). See §7.14 above.

(10) CONTEMPT

- 10.1 Unlike possession proceedings, the only method of enforcement for breach of a protest injunction is committal for contempt of court – i.e. breach of a court order. This requires the Claimant to make an application to the court seeking to commit a Defendant on the basis that they have breached the injunction. Sanctions can be extremely serious, including imprisonment.
- 10.2 Over the last few years there has been an explosion in case law on issues arising from contempt applications, most particularly flowing from environmental protests.

(a) Nature of committal proceedings

- 10.3 The nature of committal proceedings – and its hybrid civil/criminal foundations – was recently valuably discussed in *Sheffield City Council v Brooke* [2019] QB 48 (KB). Males J found that it had more in common with criminal proceedings:

“58. The application to commit Mr Brooke for contempt has something in common with both civil and criminal proceedings. It arises out of civil proceedings for an injunction which is a civil remedy, albeit that in the present case the injunction was granted (and Mr Brooke's undertaking was given) to restrain conduct which was both criminal ... and tortious It has been subject to civil rules of procedure and evidence. The contempt proceedings themselves are civil proceedings.

59. On the other hand, the application is not concerned with financial compensation which is the typical function of civil proceedings. Its purpose is to enforce the order of the court, to punish past breaches of the order and to deter future breaches. The more demanding criminal standard of proof applies and contempt may be punished with a prison sentence, the paradigm example of a criminal sanction. A defendant who was punished for contempt by being sent to prison would not be being punished for committing an obstruction of the highway or for the tort of trespass, neither of which attracts a sanction of imprisonment, but for disobedience to the order of the court, a more serious matter which damages the proper functioning of society. As I indicated at the outset of this judgment, it is critical to the rule of law that the orders of the court should be complied with. The law of contempt therefore represents a vital public interest and invokes the full power of the state to enforce that interest.

60. In the present case, moreover, the injunction was sought by the council as a public authority in order to enable it to carry out its function as a highway authority. Enforcement of an injunction in such circumstances serves a more obviously public purpose than in the case of a purely private dispute.

61. Applying the test which I have described, I conclude that the objective of the application to commit Mr Brooke is essentially a public objective which has more in common with the objective of criminal proceedings than it does with that of civil proceedings, notwithstanding that as a matter of legal classification the application is classified as civil.”

- 10.4 Due to the draconian power involved – punishing contempt by an order for committal – the power is usually reserved to a Divisional Court (i.e. two or more judges of the Division sitting together). This is subject to exceptions, e.g. where it is considered the power could be properly delegated to a single judge.²¹¹
- 10.5 In a contempt application, the burden of proof is on the Claimant to show that the Defendant has, beyond reasonable doubt, intentionally committed an act which is in breach of the protest injunction. If the protest injunction is reasonably susceptible to more than one meaning, the meaning favourable to the Defendant should be adopted,²¹² although there may be exceptions. For example, in *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, Coulson LJ (in the majority) found that any question of doubt should be resolved in the Claimant’s favour in circumstances where the Defendant had raised the issue of whether he was caught by protest injunction so late in the day: §52.
- 10.6 Given the seriousness of committal applications, Claimants must consider carefully: (i) the terms of the injunction and whether the conduct complained of amounts to a breach of it;²¹³ and, (ii) whether to make a committal application against individuals who may have inadvertently breached the protest injunction in a trivial or technical way and where no penalty is likely. This is particularly important where Persons Unknown are Defendants, given the potential number of individuals that could accidentally be subject to the protest injunction. A failure to do so may have serious consequences. In *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (KB) (Nicklin J), for example, the Claimants were severely criticised for bringing a committal application against a solicitor who had confirmed in a statement of truth that she was unaware of the protest injunction and whose breach was, at best, technical: §96. As a result, Nicklin J sanctioned the Claimant by making an order requiring the Claimants to obtain the permission of the court before bringing further contempt applications: §§102-104.

²¹¹ *White Book* (2025), §81.3.8 (p.2420).

²¹² *Sheffield City Council v Brooke* [2019] QB 48 (KB), §7 (Males J).

²¹³ *QRT v JBE* [2022] EWHC 2902 (KB), §47 (Nicklin J).

(b) Use it or lose it

- 10.7 In *Tendring DC v Persons Unknown* [2024] EWHC 2237, the Claimant local authority had been granted an injunction most years since 2013 in order to prevent parking in areas that jeopardised the safe workings of Clacton Air Show. There were apparent breaches of these injunctions in 2013, 2017 and 2018. Ritchie J was greatly concerned that the Claimant had never sought to enforce the injunctions. He stated the following:

“22...I was informed that the Claimants will: immediately after any breach is known, ascertain and decide whether it is appropriate to take action to enforce the injunction that this Court might grant, based on all of the circumstances, including the seriousness and the nature and the extent of the breach and the circumstances of the knowledge of those alleged to have breached the order and any mitigating circumstances as to why the breach occurred and how it occurred.

23. That, it seems to me, is the minimum that is required, but I do find it acceptable and I give this warning: that next year, if a further injunction is applied for and the evidence that is put before this Court, on full and frank disclosure, shows that (say) 10 caravans turned up and trespassed and no contempt proceedings were brought, it is likely that I at least would not grant a further injunction. These civil PU injunctions, the nuclear weapons of civil law, are not handed out willy nilly to be ignored; they are to be obtained seriously and enforced properly. If they are granted and then not enforced, whether because the council does not consider a breach is serious enough to enforce or because of costs constraints, then they should not be granted in the first place and criminal law protection is the right protection.”

(c) Pre-action process

- 10.8 Before bringing an application for committal, it may be appropriate to send a pre-action letter to the proposed Defendant. This will put the Defendant on notice of the Claimant’s intentions and enables the Defendant to obtain legal advice at an early stage. It also gives the Defendant the chance to provide an explanation for, and defence of, his or her actions to the Claimant and, thereby, possibly avoid the application being brought in the first place. Claimants may be criticised for not engaging in a pre-action process, particularly if the factual position is not straightforward.²¹⁴

²¹⁴ *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (KB), §94 (Nicklin J).

(d) Procedure – CPR Part 81

10.9 The procedure for making a contempt of court application is set out in CPR Part 81. Following criticisms of the old regime, CPR Part 81 was significantly amended from 1 October 2020.²¹⁵

10.10 In summary, the main procedural rules to be aware of are as follows:

- i. A contempt application is made by way of a Part 23 application in the proceedings in which the protest injunction, alleged to have been breached, was made.²¹⁶ The N600 form ought to be used unless there are compelling reasons for not doing so.²¹⁷
- ii. Contempt applications must be supported by written evidence given by affidavit or affirmation.²¹⁸ This requirement also appears to apply to evidence filed and served subsequently – i.e. it does not just apply to evidence filed at the same time as the application.
- iii. The contempt application must include all of the statements set out in CPR r.81.4(2)(a)-(s) unless they are wholly inapplicable. Of particular importance, it must set out:
 - (1) The date and terms of the protest injunction alleged to have been breached.²¹⁹
 - (2) A brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order.²²⁰ This is conventionally done in a separate document headed “Grounds”.²²¹ A Defendant, or the Court of its own motion, may seek to argue that a sufficiently clear summary was not provided in breach of CPR r.81.4(2)(h). The test is whether the application notice contains a clear summary, enough to enable the defendant to understand the case which has to be met.²²² *QRT v JBE* [2022] EWHC 2902 (KB) (Nicklin J) is a case

²¹⁵ See a discussion on the new CPR 81 in *MBR Acres Ltd v Maher* [2022] 3 WLR 999 (KB), §§53-66 (Nicklin J).

²¹⁶ CPR r.81.3(1).

²¹⁷ *MBR Acres Ltd v Maher* [2022] 3 WLR 999 (KB), §19 (Nicklin J).

²¹⁸ CPR r.81.4(1).

²¹⁹ CPR r.81.4(2)(b).

²²⁰ CPR r.81.4(2)(h).

²²¹ *QRT v JBE* [2022] EWHC 2902 (KB), §24 (Nicklin J).

²²² *QRT v JBE* [2022] EWHC 2902 (KB), §29 (Nicklin J); *Business Mortgage Finance 4 plc v Hussain* [2023] 1 WLR 396 (CA), §87 (Nugee LJ).

where the Judge found the claimant had failed to comply with this requirement, which would justify the Court either dismissing the application entirely or giving the claimant the opportunity to amend the application: §33. In *Business Mortgage Finance 4 plc v Hussain* [2023] 1 WLR 396 (CA), §89, however, Nugee LJ emphasised the fact that only a “*brief summary*” was required rather than a “*fully particularised pleading*”. It was “*more akin to a count on an indictment*”.

- (3) A penal notice to the effect that the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law.²²³ Previously, in *Re Taray Brokering Ltd* [2022] EWHC 2958 (Ch), the Court confirmed that if a penal notice had not been included on the face of an order (e.g. by mistake), a Claimant could not add a penal notice of its volition; it had to apply to the Court to vary the order: §§15-21. Following amendments to the Civil Procedure Rules,²²⁴ however, from 6 April 2024 it appears that a Claimant will be able to add a penal notice to an order without a further order from the Court.
- iv. Unless the court directs otherwise, a contempt application must be served personally on the Defendant.²²⁵ If no objection is made, the application can instead be served on the Defendant’s legal representative.²²⁶ A Court can, however, dispense with personal service and in *Business Mortgage Finance 4 plc v Hussain* [2023] 1 WLR 396 (CA), §§57-77 and 81-83 (Nugee LJ), a non-protest case, it was held that the Court has power to do this retrospectively at a committal application. It did so in that case due to the fact that the defendant had actual knowledge of the terms of the order.
- v. The court has a power to issue a bench warrant to ensure Defendants attend a hearing.²²⁷ But a contempt hearing may take place in the absence of the Defendant.²²⁸

²²³ CPR r.81.4(2)(p).

²²⁴ By rule 11 of the Civil Procedure (Amendment) Rules 2024.

²²⁵ CPR r.81.5(1).

²²⁶ CPR r.81.5(2).

²²⁷ CPR r.81.7(2).

²²⁸ CPR r.81.4(o).

- vi. In a committal application, a Defendant is entitled to legal aid as of right – i.e. without any assessment of means or whether it is in the interests of justice for representation to be provided. The application must be made to the Legal Aid Agency.²²⁹ But in order to obtain funding for the services of a KC, an additional application must be made to the Court. Such an application was refused in *Esso Petroleum v Breen* [2022] EWCA Civ 1405.

- 10.11 CPR r.81.7(1) clarifies that the court may make directions as to hearings. The position with listing committal hearings has never been straightforward. Under the old CPR Part 81, service of the application had to be effected at least 14 days before the hearing. That appeared to allow for the possibility of the Defendant having 14 days to obtain legal advice and prepare a defence before the substantive hearing. That would give the Claimant little idea about what the Defendant’s case would be and limited time for a Defendant to mount a proper defence against an allegation with potentially very serious consequences. The new CPR Part 81 has not expressly solved this problem but it has now removed the 14-day requirement. In practice, the effect is that the first hearing can now come on within 14 days and will usually be a directions hearing, particularly where the defendant is a litigant in person, enabling them to be advised of their right to remain silent, the opportunity to seek legal advice and representation, and the availability of legal aid.²³⁰ A proper timetable can then be set down for trial, if the allegation is going to be defended. There is still no requirement for pleadings.²³¹
- 10.12 A Defendant may apply to discharge the committal order by way of a Part 23 application.²³²
- 10.13 In some cases, a Defendant will be involved in both civil and criminal proceedings at the same time. It is usually inappropriate to adjourn civil proceedings to await the outcome of criminal proceedings. As Dexter Dias J said in *Shell UK Ltd v Persons Unknown* [2025] PTSR 1213 (KB) – following a defendant’s concern that he was “trapped” between the parallel criminal and civil proceedings – “*the distinct proceedings are directed at different matters*”: §201. In particular, the civil proceedings were “*exclusively aimed at prohibiting future breaches of the lawful rights possessed by Shell*”. The Court will, however, consider whether the Defendant may be punished twice for the

²²⁹ *National Highways v Heyatawin* [2021] EWHC 3078 (KB), §31 (Dame Victoria Sharp P and Chamberlain J).

²³⁰ *QRT v JBE* [2022] EWHC 2902 (KB), §23 (Nicklin J).

²³¹ *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, §30 (Coulson LJ).

²³² CPR r.81.10.

same misconduct and whether the penalty for contempt would be manifestly discrepant with any potential criminal sentence.²³³

(e) Knowledge requirement

10.14 There is no requirement to show that the Defendant was aware of the terms of a protest injunction in order to prove contempt. All that a Claimant will usually have to do is comply with the service provisions set out in the interim or final injunction; no further knowledge requirement on the part of the Defendant is necessary. This is one reason why it is so important to have robust service provisions and to provide sufficient notice of the protest injunction, particularly in relation to Persons Unknown, which are likely to come to the attention of Defendants.

10.15 This position was confirmed in *Cuciurean v Secretary of State for Transport* [2021] EWCA Civ 357, where Warby LJ stated:²³⁴

“58. These authorities indicate that (1) in this context "notice" is equivalent to "service" and vice versa ; (2) the Court's civil contempt jurisdiction is engaged if the claimant proves to the criminal standard that the order in question was served, and that the defendant performed at least one deliberate act that, as a matter of fact, was non-compliant with the order; (3) there is no further requirement of mens rea, though the respondent's state of knowledge may be important in deciding what if any action to take in respect of the contempt. I agree also with the Judge's description of the appellant's argument below: "it replaces the very clear rules on service with an altogether incoherent additional criterion for the service of the order." But nor am I comfortable with the notion that service in accordance with an order properly made can be set aside if the respondent shows that it would be "unjust in the circumstances" to proceed. This is not how the Court saw the matter in *Cuadrilla*, nor is it a basis on which good service can generally be set aside. It also seems to me too nebulous a test.

...

62. One can perhaps understand the unease referred to by the Judge at the notion that a person may be held in contempt of court even though he is not shown to have had actual knowledge of the relevant order, or its relevant aspects. For my part, I doubt this is a dilemma to which a solution is required. The situation does not seem likely to occur often. And if it does then, as this Court indicated in *Cuadrilla*, no penalty would be imposed. I do not see that as problematic in principle, especially as this is a civil not a criminal jurisdiction...”

²³³ *National Highways Ltd v Lancaster* [2021] EWHC 3080 (KB), §§30-33 (Cotter J).

²³⁴ Cited in *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (KB), §70 (Nicklin J) and *MBR Acres Ltd v Maher* [2022] 3 WLR 999 (KB), §§26-28 (Nicklin J).

- 10.16 The point was, subsequently, fully argued in *National Highways Ltd v Kirin* [2023] EWHC 3000 (KB) (Soole J). Counsel for the Respondents argued that the Court was not bound by the “*observations in Cuciurean*”, that *Cuciurean* was in any event out of step with previous authority, and that notice of an injunction meant knowledge of it: §§16-27. This was rejected by Soole J, who considered that *Cuciurean* was not out of step with previous authority and was binding on him: §17.²³⁵ The same conclusion was reached in *Wolverhampton CC v Phelps* [2024] EWHC 139 (KB) (HHJ Emma Kelly), §49, apparently without the Court being referred to the *Kirin* case. This position has also been adopted in *Teledyne UK Ltd v Ensell* [2025] EWHC 2164 (KB), §5 (Stacey J).
- 10.17 There are also cases, however, where the Court will *retrospectively* dispense with the need for service: see **§10.10(iv) above**.
- 10.18 Knowledge of the order will, however, inevitably be relevant at the stage of determining what sanction to impose.²³⁶ Indeed, there have been occasions where a court has criticised a Claimant for even making a committal application against a Defendant who had been unaware of the protest injunction (see **§10.6 above**).²³⁷

(f) Defences

- 10.19 There are very few defences to a committal application if it can be shown that the Defendant did a deliberate act which amounted to a breach of the terms of an order. In this sense, contempt involves strict liability. In some very specific circumstances, however, the following defences can be relied upon, as set out below.
- 10.20 Impossibility: whilst it is not a defence to show that compliance with an order would be burdensome, inconvenient or expensive, it is a defence to show that compliance was not possible.²³⁸ This is because the Defendant did not have the choice whether to commit the relevant act or omission.
- 10.21 Defence of another: acting in defence of another can be a defence to an application for contempt of court.

²³⁵ See also *National Highways Ltd v Goode* [2024] EWHC 1505 (KB) §21 (Soole J).

²³⁶ *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29 (CA), §25 (Leggatt LJ). See, e.g., *National Highways Ltd v Goode* [2024] EWHC 1505 (KB), §§77-78 (Soole J) and *National Highways Ltd v Gunning* [2024] EWHC 1506 (KB), §§10 and 21 (Soole J).

²³⁷ *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (KB) (Nicklin J).

²³⁸ *Perkier Foods Ltd v Halo Foods Ltd* [2019] EWHC 3462 (KB), §§10-15 (Chamberlain J).

- 10.22 In *Sheffield City Council v Brooke* [2019] QB 48 (KB), a protestor had managed to climb over Heras fencing and remain in a safety zone within which a tree was about to be felled. Security guards attempted to remove this protestor with force. The Defendant then deliberately broke down the Heras fencing making up the safety zone, before entering the safety zone, in order to reach and defend the protestor. This was a breach of the protest injunction, which had prevented individuals entering such safety zones. Males J found that defence of another was capable of providing a defence to an application to commit for contempt: §48. The action taken by the Defendant must be reasonable, the reasonableness of the action taken being judged objectively by reference to the circumstances as subjectively believed by the Defendant: §52. He did warn, however, that “a court will need to look carefully and on occasion sceptically at claims made by defendants that it was necessary to intervene”: §49.
- 10.23 Improper collateral purpose: a committal application must not be brought for an improper collateral purpose. There is distinction between a valid application, even where the applicant may be motivated by revenge, and use of Part 81 CPR for an improper collateral purpose, such as a threat in order to secure settlement.²³⁹ Objective factors such as a hopeless application or one involving purely technical breaches are the signs to look for when considering abuse.²⁴⁰

(g) Undertakings

- 10.24 Even after a contempt application has been made, it is possible for the Claimant to decide not to pursue the matter to a contested hearing. This will usually be the case where the Defendant accepts he/she has breached the protest injunction, apologises for that breach and undertakes to the court not to carry out further breaches of the protest injunction. If the Claimant is content with this, it can seek to withdraw the application. This approach must, ultimately, be accepted by the court.
- 10.25 The court will often accept such an undertaking and, thereby, agree to the withdrawal of the contempt application without any sanction being imposed.²⁴¹ But sometimes the court does so reluctantly. In *HS2 v Maxey* [2022] EWHC 1010 (KB), the parties sought a consent order whereby the Defendant apologised to the court for acting in contempt

²³⁹ *Fitzwilliam Land Co v Milton* [2023] EWHC 3406 (KB), §21 (Linden J).

²⁴⁰ *Navigators Equities Ltd v Deripaska* [2022] 1 WLR 3656, §114 (Carr LJ).

²⁴¹ *HS2 v Harewood* [2022] EWHC 2457 (KB) (“**Appendices Follow Containing the Approved Transcripts of 4 Decisions Made Extempore During the Hearings**”), §§51, 58-61 (Ritchie J).

and undertook not to do so again. Linden J ultimately granted the consent order but not before saying the following:

“17. The terms of the proposed consent order suggest a highly pragmatic approach on the part of the claimant having regard to its particular interests and priorities. This is understandable. The court also generally encourages the parties to resolve their differences by agreement if they can. However, the interests and priorities of the parties are not the only relevant consideration in this type of application, given that the court is seized of the fact that its orders were breached by the defendants. Although committal applications for breach of an order are brought by the beneficiary of the order which was breached, and although that party's views as to whether a proposed outcome is satisfactory in terms of ensuring compliance with the order in question and redress for any harm which has been done are relevant, there is also a strong public interest in the court deterring disobedience to its orders and upholding the rule of law.

...

20. The breaches of the relevant orders by all of the defendants in the present case, and especially the first defendant, were particularly serious. They were well aware of the orders which had been made and, in the case of the first defendant, had the benefit of competent legal advice throughout. What made their failures to comply so serious was the fact that they put their lives and the lives of others at a very high degree of risk. It was extremely dangerous for anyone to be down there in makeshift and poorly-constructed tunnels but they also subjected the CST officers to that risk. Particularly in the case of the first and second defendants, they also heightened that risk by reckless behaviour in obstructing attempts to remove them from the network of tunnels.

21. Initially, I was therefore very doubtful that I should approve the proposed consent order and invited counsel to explain why I should do so. They then addressed arguments to me which I have accepted...”

10.26 These arguments included the facts that: there was substantial compliance with the order within a relatively short time; the Claimant was slow to proceed with the application for committal; there was no evidence of similar activities by the Defendants since that time; the Defendants made sincere apologies and had given clear undertakings; the Claimant considered that these undertakings were sufficient; and, it would potentially prevent further litigation, wasted court time and public expense: §22.

10.27 There is no material difference between breaching an undertaking and breaching an injunction.²⁴² The consequences are exactly the same.

²⁴² *QRT v JBE* [2022] EWHC 2902 (KB), §51 (Nicklin J).

(h) Factual findings

10.28 In *Business Mortgage Finance 4 plc v Hussain* [2023] 1 WLR 396 (CA), §96, Nugee LJ summarised the legal principles applicable to findings of fact in a contempt case. These include the following:

“(1) Contempt has to be established to the criminal standard of proof: *In re L-W (Enforcement and Committal: Contact)* [2011] 1 FLR 1095, para 34 per Munby LJ.

(2) As in criminal cases, inferences can be drawn but only where the jury (or in this case the judge) is able to exclude all realistic possibilities consistent with the defendant's innocence: *R v Masih (Younis)* [2015] EWCA Crim 477 at [3] per Pitchford LJ.

(3) Where the evidence relied on is entirely circumstantial the court must be satisfied that the facts are inconsistent with any conclusion other than that the contempt has been committed: *Masri v Consolidated Contractors International Co SAL (No 3)* [2011] EWHC 1024 (Comm) at [146] per Christopher Clarke J.

(4) Where a number of contempts are charged it is not right to consider individual heads of contempt in isolation: they are details on a broad canvas, and the individual details of the canvas should be informed by the overall picture, although each head of contempt must still be proved beyond reasonable doubt: *Gulf Azov Shipping Co Ltd v Idisi* [2001] EWCA Civ 21 at [18] per Lord Phillips of Worth Matravers MR.

(5) If after considering the evidence the court concludes that there is more than one reasonable inference to be drawn and at least one of them is inconsistent with contempt, the claimants fail: *Daltel Europe Ltd v Makki* [2005] EWHC 749 (Ch) at [30] per David Richards J, *JSC BTA Bank v Ablyazov (No 8)* [2012] EWHC 237 (Comm) at [8] per Teare J.”

10.29 If the Claimant and Defendant disagree about the facts, a *Newton* hearing may be conducted where the criminal burden and standard of proof will be adopted.²⁴³

(i) Sanctions

10.30 Sanctions for contempt of court are imposed to punish the breach, ensure compliance with court orders and rehabilitate the person in contempt.²⁴⁴ It has been said, however, that in civil contempts, as opposed to criminal contempts, punishment is a less significant aim than securing compliance with court orders.²⁴⁵

²⁴³ *Teledyne UK Ltd v Ensell* [2025] EWHC 2164, §§13-16 (Stacey J).

²⁴⁴ *National Highways v Buse* [2021] EWHC 3404 (KB), §28 (Johnson J).

²⁴⁵ *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, §105 (Edis LJ).

- 10.31 Where an individual had no knowledge of the relevant injunction, no penalty will be imposed for the purely technical breach. The court has no discretion.²⁴⁶ But that is not the case where the individual is notified of the injunction whilst the breach is taking place and fails to cease.²⁴⁷
- 10.32 Otherwise, the following factors demonstrate the correct approach to sanctions in protest cases:²⁴⁸
- i. The court should adopt an approach analogous to that in criminal cases where the Sentencing Council's Guidelines require the court to assess the seriousness of the conduct by reference to the offender's culpability and the harm caused, intended or likely to be caused. This includes consideration of the following:²⁴⁹
 - (1) Whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy.
 - (2) The extent to which the contemnor has acted under pressure.
 - (3) Whether the breach of the order was deliberate or unintentional.
 - (4) The degree of culpability.
 - (5) Whether the Defendant was placed in breach by reason of the conduct of others.
 - (6) Whether the Defendant appreciated the seriousness of the breach.
 - (7) Whether the Defendant has cooperated, for example by providing information.
 - (8) Whether the Defendant has admitted his contempt and has entered the equivalent of a guilty plea.
 - (9) Whether a sincere apology has been given.²⁵⁰
 - (10) The Defendant's previous good character and antecedents.

²⁴⁶ *National Highways Ltd v Kirin* [2023] EWHC 3000 (KB), §§110-111 (Soole J).

²⁴⁷ *National Highways Ltd v Kirin* [2023] EWHC 3000 (KB), §§150-153 (Soole J).

²⁴⁸ The factors set out by the Supreme Court in *AG v Crosland* [2021] 4 WLR 103 (SC), §44, have been adopted and expanded by reference to other case law.

²⁴⁹ *National Highways v Heyatawin* [2021] EWHC 3078 (KB), §49(d) (Dame Victoria Sharp P and Chamberlain J).

²⁵⁰ In *Ocado Group plc v McKeeve* [2022] Costs LR 1489 there was a dispute as to the relevance of this factor to the question of seriousness. Adam Johnson J, at §15, found that it was relevant.

(11) The impact on police resources.²⁵¹

(12) Any other personal mitigation.

- ii. A more benign sentence will ordinarily be justified for protestors carrying out acts of civil disobedience as compared to “ordinary law-breakers”.²⁵² As well as there being a moral difference between these two groups, this is also on the basis that conscious objectors are capable of engaging in a dialogue with the court with a view to mending their ways.²⁵³ But the more disproportionate or extreme the protest action, the less obvious is the justification for reduced culpability and more lenient sentencing.²⁵⁴ Moreover, the courts have sometimes found that what may have started out as a dialogue has turned into a monologue from the Defendant.²⁵⁵ The conscientious motives of a protestor act do not act as a licence to flout court orders with impunity.²⁵⁶ In *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, §75, Coulson LJ stated that:

“A protestor, no matter how conscientious he or she believes themselves to be, cannot keep ignoring the court’s orders, and then expect some sort of discount in the sanction to be applied every time they are dealt with for contempt.”

- iii. In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty. As part of this, the court will keep in mind the desirability of keeping offenders, and in particular first-time offenders, out of prison.²⁵⁷
- iv. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt. This is likely to be the case where there has been serious contumacious flouting of a court order.²⁵⁸ The maximum sentence is

²⁵¹ *North Warwickshire BC v Shatford* [2022] EWHC 2570 (KB) (HHJ Kelly), §§22-23.

²⁵² *Jockey Club Racecourses Ltd v Kidby* [2023] EWHC 2643 (Ch), §24 (Miles J); *National Highways v Buse* [2021] EWHC 3404 (KB), §30 (Johnson J); *National Highways v Heyatawin* [2021] EWHC 3078 (KB), §50 (Dame Victoria Sharp P and Chamberlain J); *AG v Crosland* [2021] 4 WLR 103 (SC), §47; *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29 (CA), §§97-98 (Leggatt LJ).

²⁵³ *National Highways Ltd v Kirin* [2023] EWHC 3000 (KB) (Soole J), §§117 and 148; *National Highways v Heyatawin* [2021] EWHC 3078 (KB), §53 (Dame Victoria Sharp P and Chamberlain J).

²⁵⁴ *R v Trowland* [2023] 4 All ER 766 (CA), §50.

²⁵⁵ *HS2 v Harewood* [2022] EWHC 2457 (KB), §155 (Ritchie J), confirmed in *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, §74 (Coulson LJ).

²⁵⁶ *AG v Crosland* [2021] 4 WLR 103 (SC), §47.

²⁵⁷ *SRA v Khan* [2022] EWHC 45 (Ch), §52(3) (Leech J).

²⁵⁸ *National Highways v Heyatawin* [2021] EWHC 3078 (KB), §49(e) (Dame Victoria Sharp P and Chamberlain J).

two years' imprisonment.²⁵⁹ A person committed to prison for contempt is entitled to unconditional release after serving half of the sentence.²⁶⁰ If a custodial sentence is imposed, a fine can²⁶¹ but should not generally be imposed in addition, particularly if the Defendant has no way of paying the fine.²⁶²

- v. Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.
- vi. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children or vulnerable adults in their care.
- vii. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on Reduction in Sentence for a Guilty Plea.
- viii. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. A court can suspend a sentence pursuant to its inherent powers.

In deciding whether to suspend a sentence, the Sentencing Council's Guideline on the "Imposition of Community and Custodial Sentences states that:²⁶³

- It would not be appropriate to suspend a custodial sentence where: the Defendant presents a risk/ danger to the public; an appropriate punishment can only be achieved by immediate custody; or, there is a history of poor compliance with court orders.
- It may be appropriate to suspend a custodial sentence where; there is a realistic prospect of rehabilitation; strong personal mitigation; or where immediate custody will result in significant harmful impact upon others. In the author's experience, a genuine apology to the Court will usually result in a sentence of imprisonment

²⁵⁹ Section 14(1) of the Contempt of Court Act 1981.

²⁶⁰ Section 258(2) of the Criminal Justice Act 2003.

²⁶¹ *White Book* (2025), §81.9.1 (p.2435). In *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, §109, Edis LJ said that, "It may well be that orders for a committal to prison and a fine are rare and confined to cases of people with very substantial assets who show themselves to be prepared to lose their liberty but may be more concerned about those assets.": §111.

²⁶² *Esso Petroleum v Breen* [2022] EWCA Civ 1405, §§85-86 (Coulson LJ); *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, §93 (Coulson LJ).

²⁶³ *Esso Petroleum v Breen* [2022] EWCA Civ 1405, §§15 and 46 (Coulson LJ).

being suspended, although this will of course depend on all the other circumstances.²⁶⁴

- ix. Citation of other cases to compare penalties is generally inappropriate in contempt cases because they vary so widely in context and fact.²⁶⁵
- x. Prison conditions – i.e. how full they are – may also be taken into account in reducing the custodial penalty.²⁶⁶
- xi. Although there is no requirement to reduce a custodial sentence to reflect a period already spent in custody following arrest, the Court may do so.²⁶⁷

10.33 In terms of how long a custodial sentence should be, assuming the custody threshold has been passed, there is no Sentencing Council Guideline to assist. The courts have, occasionally, attempted to come up with a methodology of their own. In *Esso Petroleum v Breen* [2022] EWCA Civ 1405, the Judge at first instance had imposed a sentence of 112 days imprisonment, using the following calculation:

$$\begin{array}{l} 5 \text{ days for each day the Defendant remained on the relevant land in breach of the order} \\ (5 \times 16 \text{ days}) + 21 \text{ days for each of 5 aggravating factors} \\ \hline 40\% \text{ discount for mitigation} \end{array}$$

10.34 This approach was criticised by the Court of Appeal as being “*too granular*”, involving “*arbitrary*” multipliers and inviting comparison between different cases: §49.²⁶⁸ That said, the sentence of 112 days was not found to be excessive and one that the Judge was entitled to impose: §53. A similar critique as to methodology likely also applies to the approach adopted in *HS2 v Harewood* [2022] EWHC 2457 (KB), §§100, 119, 136, 170 where Ritchie J imposed 7 days’ custody for every day the Defendants had spent tunnelling under the HS2 development.

²⁶⁴ *National Highways v Heyatawin* [2021] EWHC 3078 (KB), §65 (Dame Victoria Sharp P and Chamberlain J). But see *Esso Petroleum v Breen* [2022] EWCA Civ 1405, §67 (Coulson LJ), where this was not the case when an apology was made part way through the committal hearing.

²⁶⁵ *Esso Petroleum v Breen* [2022] EWCA Civ 1405, §12 (Coulson LJ).

²⁶⁶ *National Highways Ltd v Lancaster* [2021] EWHC 3080 (KB), §50 (Cotter J).

²⁶⁷ *National Highways Ltd v Lancaster* [2021] EWHC 3080 (KB), §51 (Cotter J). The sentence was reduced on this basis in *North Warwickshire BC v Shatford* [2022] EWHC 2570 (KB) (HHJ Kelly), §29.

²⁶⁸ See also *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, §94 (Coulson LJ).

- 10.35 The courts have differed on whether time spent on remand in parallel criminal proceedings ought to mitigate the sentence. In *Jockey Club Racecourses Ltd v Kidby* [2023] EWHC 2643 (Ch), Miles J considered that it did: §27. But in *National Highways Ltd v Kirin* [2023] EWHC 3000 (KB), Soole J found that this was not the right course to take: §120.
- 10.36 Traditionally, courts took the position that whereas Counsel for the Claimant should make submissions to the court on the extent of its powers and the guidelines set out above, Counsel should not make submissions on what sentence should actually be imposed; that was thought to be a matter between the Court and the Defendant.²⁶⁹ More recently, however, the Court of Appeal has said that there is nothing improper about Claimants remaining partial or suggesting to the Judge the length of imprisonment that should be imposed. This is on the bases that private parties have a proper private interest in the outcome of the application, their lawyers are duty-bound to act on their clients' instructions, and that if they had to act impartially it may discourage Claimants from pursuing such applications contrary to the public interest.²⁷⁰

(j) Costs

- 10.37 In general, the approach to an award of costs in a contempt case involving breach of a protest injunction is the same as in other civil proceedings – i.e. costs should follow the event.²⁷¹ Similarly, even where a contempt application is only successful on one of multiple grounds, the Court will not generally make an issues-based costs order. The question will be who, in the event, was ultimately the successful party.²⁷²
- 10.38 This general approach is tempered to some extent; because of the relevance of Article 10 and 11 ECHR, the court must be satisfied that the award of costs does not amount to a breach of those rights – it must be necessary in a democratic society for the protection of the rights of the Claimant and maintaining the authority of the judiciary.²⁷³

²⁶⁹ *Rehbeim v Isufai* [2005] EWCA Civ 1046, §20 (Ward LJ), §§25-26 (Smith LJ).

²⁷⁰ *Navigator Equities Ltd v Deripaska* [2022] 1 WLR 3656 (CA), §§135-138 (Carr LJ); *Business Mortgage Finance 4 plc v Hussain* [2023] 1 WLR 396 (CA), §131 (Arnold LJ).

²⁷¹ *Secretary of State for Transport v Cuciurean* [2022] 1 WLR 3847 (CA), §50.

²⁷² *Ocado Group plc v McKeeve* [2022] Costs LR 1489 (Ch), §§54-61 (Adam Johnson J).

²⁷³ *Secretary of State for Transport v Cuciurean* [2022] 1 WLR 3847 (CA), §55 (Lewison LJ).

- 10.39 Awarding the Claimant its reasonable costs will usually be proportionate in order to compensate it, at least partially, for the legal costs incurred in vindicating its own rights, and maintaining the rule of law and the authority of the court. This is in circumstances where the balance between conflicting rights has already been struck by the terms of the protest injunction and the Defendant has, nonetheless, decided to breach that order.²⁷⁴
- 10.40 The means of the Defendant will generally not be relevant to this assessment.²⁷⁵ If, however, there is evidence that the Defendant will be completely unable to pay the costs award, this may be relevant in determining whether there is a rational connection between the aim of compensating the Claimant and making a costs award. It will be up to the Defendant to provide satisfactory evidence as the court will not undertake an inquisitorial function to discover the relevant information.²⁷⁶

(k) Appeals

- 10.41 Parties may appeal decisions made on contempt applications.²⁷⁷ A decision from the High Court can be appealed to the Court of Appeal.²⁷⁸ A contemnor does not need permission to appeal.²⁷⁹ A decision from the Divisional Court can only be appealed to the Supreme Court.²⁸⁰ Where an appeal to the Supreme Court is made from the Divisional Court, permission to appeal must be obtained and it must be certified that a point of law of general public importance is involved.²⁸¹
- 10.42 Such an appeal will be a review rather than a re-hearing, such that the appeal court will only interfere if satisfied that the decision was wrong or unjust because of a serious procedural or other irregularity.²⁸² In relation to appealing against a sentence for contempt, the appeal court will be reluctant to interfere with such a decision and will

²⁷⁴ *Secretary of State for Transport v Cuciurean* [2022] 1 WLR 3847 (CA), §§53, 64. See *Fitzwilliam Land Co v Milton* [2023] EWHC 3406 (KB), §§97-100 (Linden J), for an example of no order to costs being made, despite the claimant being successful, on account of the facts that: the claimants had acted disproportionately in prosecuting one of the alleged breaches; the claimants made the contempt application without giving the defendant a warning that further breaches would result in proceedings; and, there were significant delays in bringing the application.

²⁷⁵ *Secretary of State for Transport v Cuciurean* [2022] 1 WLR 3847 (CA), §§53 and 65; *National Highways Ltd v Lancaster* [2021] EWHC 3080 (KB), §64 (Cotter J).

²⁷⁶ *Secretary of State for Transport v Cuciurean* [2022] 1 WLR 3847 (CA), §§58-60 and 64(b).

²⁷⁷ Section 13 of the Administration of Justice Act 1960.

²⁷⁸ *National Highways Ltd v Lancaster* [2021] EWHC 3080 (KB), §57 (Cotter J).

²⁷⁹ *Business Mortgage Finance 4 plc v Hussain* [2023] 1 WLR 396 (CA), §§5-6 (Nugee LJ).

²⁸⁰ Section 13(2)(b)-(c) of the Administration of Justice Act 1960.

²⁸¹ Section 1(2) of the Administration of Justice Act 1960; *National Highways v Buse* [2021] EWHC 3404 (KB), §61 (Johnson J).

²⁸² CPR r.52.21. See *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519, §56 (Coulson LJ).

generally only do so if the judge made an error of principle, took into account immaterial factors or failed to take into account material factors, or reached a decision which was outside the range of decisions reasonably open to him/her.²⁸³

²⁸³ *Financial Conduct Authority v McKendrick* [2019] 4 WLR 65 (CA), §37.

Guidelines from Court

1. In *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, §82, the Court of Appeal set out the following procedural guidelines applicable to proceedings for interim relief against Persons Unknown:

“(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.”

2. In *Shell UK Oil Products Ltd v Persons Unknown* [2022] EWHC 1215 (KB), Johnson J stated:

“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.”

3. In *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB), in the context of injunctions against Newcomers, Ritchie J stated:

“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."

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