IN THE HIGH COURT OF JUSTICE **Claim No PT-2002-000303**
BUSINESS AND PROPERTY COURTS
BUSINESS AND PROPERTY DIVISION

BETWEEN:

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

Claimants

-and-

PERSONS UNKNOWN

Defendants

AUTHORITIES

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LEGISLATION	
Human Rights Act 1998, s.12	**1.**
CASE LAW	
Esso Petroleum Company Ltd v Persons Unknown [2023] EWHC 1837 (KB)	**2.**
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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1 Repealed by Constitutional Reform Act 2005 c. 4 Sch.18(5) para.1 (October 1, 2009)

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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).

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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;

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(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;

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(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

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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.

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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.

.....

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 protesters 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 protesters 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 Kitchin

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*

With the intention of preventing unauthorised encampments by Gypsies or Travellers within their administrative areas, a number of local authorities issued D proceedings under CPR Pt 8 seeking injunctions under section 37 of the Senior Courts Act 1981[1] 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. E 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.

F On appeal by three intervener groups representing the interests of Gypsies and Travellers—

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 G 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 H 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

[1] Senior Courts Act 1981, s 37: see post, para 145.

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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 immoveable 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

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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 Kitchin:

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 E 49; [2003] 1 All ER 289, HL(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 F 487, SC(E)

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

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Cardile v LED Builders Pty Ltd [1999] HCA 18; 198 CLR 380
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)
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
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, High Ct of Delhi
Earthquake Commission v Unknown Defendants [2013] NZHC 708
Ernst & Young Ltd v Department of Immigration 2015 (1) CILR 151
F (orse 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)
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)
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
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
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

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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]
E EWCA Civ 1391; [2023] PTSR 312, CA
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 Provincien" 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);
G [2019] JPL 161
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

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The following additional cases were cited in argument:

A v British Broadcasting Corpn [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;

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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
B Council. On 13 January 2022 the Court of Appeal (Sir Geoffrey Vos MR, Lewison and Elisabeth Laing LJJ) [2022] EWCA Civ 13; [2023] QB 295 allowed the appeals.

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
C 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.

The facts and the agreed issues for the court are stated in the judgment of
E 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.

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

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" (i e 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
G 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.

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
H 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

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

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.

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.

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.

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 (e g '. . . 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.

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

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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*").

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.

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. 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.

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.

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

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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 B 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.

C

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 D simultaneously a claim against nobody, but can only be effective if it is in principle binding on everybody.

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 E 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.

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. F 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.

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 G (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. 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*

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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.

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.

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.

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* (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.

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

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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

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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* D *Ltd v Persons Unknown* [2019] 4 WLR 100.

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 secured by enabling any person affected to seek the recall of the order E 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 Corpn* [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

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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.

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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.

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

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 C out in *Cameron v Hussain* [2019] 1 WLR 1471, para 9 that proceedings may not be brought against unnamed parties.

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 D 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 E 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 F specified land]" in *South Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88).

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 G 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].]

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

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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

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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. 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 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 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.

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.

(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. 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 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

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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

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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.

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 LJJ agreed, the court held that "the judge was B 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.

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

C (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 (i e rights which are protected under the Human Rights D Act 1998)?

(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 E by persons who are identifiable (even if not yet identified) and who have already committed or threatened to commit a relevant wrongful act?

(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

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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

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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.

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."

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.

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.

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 Provincien" 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

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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." A

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 Kinkel 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: B

"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." C

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. D E

(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. F

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 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. G H

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

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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
G defendants to proceedings must be named, and that even a description of 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

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

> "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."

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).

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.

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).

(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:*

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Publication of Information) [1990] Fam 211 and *In re R (Wardship: Restrictions on Publication)* [1994] Fam 254.

(iii) Injunctions to protect human rights

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.

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 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 Convention rights to freedom of speech.

(iv) Reporting restrictions

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 (e g 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 (orse 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

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.

(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.

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).

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.

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):

> "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."

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:

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

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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."

The non-party's right to apply to the court is now reflected in CPR r 40.9,
B 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.

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
C 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
D analysis can be of limited practical significance. Indeed, since non-parties 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,
E 387–388.

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

43 An injunction against newcomers purports to restrain the conduct of
G 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*
H [1979] AC 210 ("*The Siskina*"), at p 256. There has been a gradual but growing reaction against that reasoning (which Lord Diplock himself 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

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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

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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).

47 Another exception is the *Norwich Pharmacal* order, which is available where a third party gets mixed up in the wrongful acts of others, B 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 C 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.

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 D claimant in locating assets to which the claimant had a proprietary claim. 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.

49 Another example of an injunction granted in the absence of a cause E 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.

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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

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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
B 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

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
E 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

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
G 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
H 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.

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

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

> "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."

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."

(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.

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

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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
C 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.

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
D 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*").

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 LJJ) had earlier granted an
E 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*
F *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.

65 Several months later, Ms Gammell, without securing or applying for
G 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
H 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

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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 LJJ 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).

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(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".

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.

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.

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).

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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 (e g *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

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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):

> "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."

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.

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

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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

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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 chronological order.

E

(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

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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

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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 LJJ 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

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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

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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

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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

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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;

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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.

111 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.

112 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."

113 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 KG03 ZJZ on 26 May 2013', does not identify anyone. It does not enable one to know whether any particular person is the one referred to."

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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 B 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 D impossible (even alternative service being tantamount to no service at all), the judge had accordingly been right to refuse permission to amend.

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. E 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 F 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 G exercise of classifying cases as falling into either the first or the second of Lord Sumption's categories.

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 H 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

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email addresses used by the website owners, who were providers of a proxy registration service (i e 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

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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 (e g 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

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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

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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.

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*.

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.

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."

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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

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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.

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.

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.

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.

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

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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

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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.

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.

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.

143 The distinguishing features of an injunction against newcomers are in our view as follows:

(i) They are made against persons who are truly unknowable at the time of the grant, rather than (like Lord Sumption's class 1 in *Cameron*) identifiable persons whose names are not known. They therefore apply potentially to anyone in the world.

(ii) They are always made, as against newcomers, on a without notice basis (see para 139 above). However, as we explain below, informal notice of the application for such an injunction may nevertheless be given by advertisement.

(iii) In the context of Travellers and Gypsies they are made in cases where the persons restrained are unlikely to have any right or liberty to do that which is prohibited by the order, save perhaps Convention rights to be weighed in a proportionality balance. The conduct restrained is typically either a plain trespass or a plain breach of planning control, or both.

(iv) Accordingly, although there are exceptions, these injunctions are generally made in proceedings where there is unlikely to be a real dispute to be resolved, or triable issue of fact or law about the claimant's entitlement, even though the injunction sought is of course always discretionary. They

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and the proceedings in which they are made are generally more a form of enforcement of undisputed rights than a form of dispute resolution. A

(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. B C

(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. D

(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. E

(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. F

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? G H

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

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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:

> "(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."

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.

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 eg *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 (para 21 above).

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:

> "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

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> 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.

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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.

D

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:

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> "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."

G

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:

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> "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

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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
B 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.

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
D 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
E 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.

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
F 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
G 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.

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'

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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 we hope 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

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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.

160 Protection of the court's process from abuse, or preservation of
C 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
D relevant documents in advance of the formal process of disclosure. *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
F 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
G 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.

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
H 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.

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163 Although therefore internet blocking orders are not in form 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 Corpn 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

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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 immoveable 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:

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(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.

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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 (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.

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(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.

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(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.

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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

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

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. 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.

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.

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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 C 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, D 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 E 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.

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 F 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 G 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.

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 H 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)

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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

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trespass: see e g 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 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 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 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 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 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 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 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

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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

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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)).

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
B 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
C 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.

191 The starting point is section 23 of the Caravan Sites and Control of
E 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
F 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.

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
G 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.

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.
H 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

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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

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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.

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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.

G

(iv) Consultation and co-operation

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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

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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

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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
B 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
C 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
D 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
E 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
F 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
G 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
H 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

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

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.

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.

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.

(viii) A need for review

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.

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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

218 We now turn to more general matters and safeguards. As we have foreshadowed, any local authority applying for an injunction against
B 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
C are well equipped to prepare this evidence, supported by copies of all relevant documents, just as they have shown themselves to be in making applications for injunctions in this area for very many years.

219 The full disclosure duty is of the greatest importance (see para 167(iii)). We consider that the relevant authority must make full disclosure to the court not just of all the facts and matters upon which it relies but also and importantly, full disclosure of all facts, matters and
D 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
E the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application.

220 The evidence in support of the application must therefore err on the side of caution; and the court, not the local authority, should be the judge of relevance.

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

221 The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms)
G 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
H 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.

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(4) The prohibited acts

222 It is always important that an injunction spells out clearly and in everyday terms the full extent of the acts it prohibits, and this is particularly so where it is sought against persons unknown, including newcomers. The terms of the injunction—and therefore the prohibited acts—must correspond as closely as possible to the actual or threatened unlawful conduct. Further, the order should extend no further than the minimum necessary to achieve the purpose for which it was granted; and the terms of the order must be sufficiently clear and precise to enable persons affected by it to know what they must not do.

223 Further, if and in so far as the authority seeks to enjoin any conduct which is lawful viewed on its own, this must also be made absolutely clear, and the authority must be prepared to satisfy the court that there is no other more proportionate way of protecting its rights or those of others.

224 It follows but we would nevertheless emphasise that the prohibited acts should not be described in terms of a legal cause of action, such as trespass or nuisance, unless this is unavoidable. They should be defined, so far as possible, in non-technical and readily comprehensible language which a person served with or given notice of the order is capable of understanding without recourse to professional legal advisers.

(5) Geographical and temporal limits

225 The need for strict temporal and territorial limits is another important consideration (see para 167(iv)). One of the more controversial aspects of many of the injunctions granted hitherto has been their duration and geographical scope. These have been subjected to serious criticism, at least some of which we consider to be justified. We have considerable doubt as to whether it could ever be justifiable to grant a Gypsy or Traveller injunction which is directed to persons unknown, including newcomers, and extends over the whole of a borough or for significantly more than a year. It is to be remembered that this is an exceptional remedy, and it must be a proportionate response to the unlawful activity to which it is directed. Further, we consider that an injunction which extends borough-wide is likely to leave the Gypsy and Traveller communities with little or no room for manoeuvre, just as Coulson LJ warned might well be the case (see generally, *Bromley* [2020] PTSR 1043, paras 99–109. Similarly, injunctions of this kind must be reviewed periodically (as Sir Geoffrey Vos MR explained in these appeals at paras 89 and 108) and in our view ought to come to an end (subject to any order of the judge), by effluxion of time in all cases after no more than a year unless an application is made for their renewal. This will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.

(6) Advertising the application in advance

226 We recognise that it would be impossible for a local authority to give effective notice to all newcomers of its intention to make an application for an injunction to prevent unauthorised encampments on its land. That is the

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basis on which we have proceeded. On the other hand, in the interests of procedural fairness, we consider that any local authority intending to make an application of this kind must take reasonable steps to draw the application to the attention of persons likely to be affected by the injunction sought or with some other genuine and proper interest in the application (see para 167(ii) above). This should be done in sufficient time before the application is heard to allow those persons (or those representing them or their interests) to make focused submissions as to whether it is appropriate for an injunction to be granted and, if it is, as to the terms and conditions of any such relief.

227 Here the following further points may also be relevant. First, local authorities have now developed ways to give effective notice of the grant of such injunctions to those likely to be affected by them, and they do so by the use of notices attached to the land and in other ways as we describe in the next section of this judgment. These same methods, appropriately modified, could be used to give notice of the application itself. As we have also mentioned, local authorities have been urged for some time to establish lines of communication with Traveller and Gypsy communities and those representing them, and all these lines of communication, whether using email, social media, advertisements or some other form, could be used by authorities to give notice to these communities and other interested persons and bodies of any applications they are proposing to make.

228 Secondly, we see merit in requiring any local authority making an application of this kind to explain to the court what steps it has taken to give notice of the application to persons likely to be affected by it or to have a proper interest in it, and of all responses it has received.

229 These are all matters for the judges hearing these applications to consider in light of the particular circumstances of the cases before them, and in this way to allow an appropriate practice to develop.

(7) Effective notice of the order

230 We are not concerned in this part of our judgment with whether respondents become party to the proceedings on service of the order upon them, but rather with the obligation on the local authority to take steps actively to draw the order to the attention of all actual and potential respondents; to give any person potentially affected by it full information as to its terms and scope, and the consequences of failing to comply with it; and how any person affected by its terms may make an application for its variation or discharge (again, see para 167(ii) above).

231 Any applicant for such an order must in our view make full and complete disclosure of all the steps it proposes to take (i) to notify all persons likely to be affected by its terms; and (ii) to ascertain the names and addresses of all such persons who are known only by way of description. This will no doubt include placing notices in and around the relevant sites where this is practicable; placing notices on appropriate websites and in relevant publications; and giving notice to relevant community and charitable and other representative groups.

(8) Liberty to apply to discharge or vary

232 As we have mentioned, we consider that an order of this kind ought always to include generous liberty to any person affected by its terms to

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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;

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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 C early review.

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 D short summary of our conclusions:

(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 E 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.

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(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

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Neutral Citation Number: [2025] EWHC 1314 (KB)

Case No: QB-2017-005202

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28th May 2025

Before :

MR JUSTICE GARNHAM

- -

Between :

ROCHDALE METROPOLITAN BOROUGH COUNCIL	**Claimant**
- and -	
(90) PERSONS UNKNOWN (BEING MEMBERS OF THE TRAVELLING COMMUNITY WHO HAVE UNLAWFULLY ENCAMPED WITHIN THE BOROUGH OF ROCHDALE)	**Defendant**
(93) PERSONS UNKNOWN forming unauthorised encampments in the Metropolitan Borough of Rochdale	

- -
- -

Natalie Pratt (instructed by **Sharpe Pritchard**) for the **Claimant**

Hearing dates: 16th May 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 28th May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE GARNHAM :

Introduction

1. The claimant in these proceedings, Rochdale Metropolitan Borough Council (hereafter "Rochdale" or "the Borough"), applies for the renewal for a further 12 months of an injunction against Persons Unknown granted by Butcher J on 11 June 2024.

2. That Injunction binds 56 Named Defendants for a period of five years up to and including 7 June 2029, and the 90th and 93rd Defendants (two categories of Persons Unknown) for 12 months. The order in respect of Persons Unknown is due to expire at 00:00 hrs on 8 June 2025. No Application is made in relation to the Named Defendants.

3. The Injunction is a so-called 'Traveller injunction'. It prohibits unauthorised encampments and the depositing of waste in the Borough. The Injunction is Borough-wide against the Named Defendants but, in relation to Persons Unknown, applies to 334 identified sites which I am told equates to 9.7% of the land area in the Borough.

4. Subject to one matter I return to below, the Application has been served on the "Persons Unknown" in accordance with paragraphs 5 and 7 of the Order of Butcher J and on three Traveller organisations, namely London Gypsies and Travellers; Friends, Families and Travellers; and the Derbyshire Gypsy Liaison Group who were the Appellants in the Supreme Court case of the Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors [2023] UKSC 47 (hereafter "Wolverhampton").

5. The Claimants correctly acknowledge that, following the Supreme Court's decision in Wolverhampton, an injunction against newcomer Persons Unknown is technically always sought and granted on a without notice basis, but there remains an important obligation to take all reasonable steps to draw the Application to the attention of Persons Unknown. In my judgment that obligation has been met in all cases except Site 334, where an error was made which meant the relevant steps were not taken until 14 May.

Procedural Background

6. This matter was last before me on 19 February 2018 when I granted an interim injunction. On 11 June 2024, Butcher J granted the Injunction in the form now before the court against the 56 Named Defendants for a period of five years, and against Persons Unknown for a period of 12 months. Butcher J's judgment is reported at [2024] EWHC 1653 (KB). A power of arrest was attached to the Injunction.

7. The Injunction (and the interim relief before it) prohibit the forming of unauthorised encampments and the depositing of controlled waste (such as fly-tipping). As against Persons Unknown, the relief was granted on an interim basis over 325 sites in the Borough. In June 2024, nine further sites were added so that the Injunction now applies to 334 sites (the "Injunction Sites"). Members of the Travelling community are not prohibited from entering the Injunction sites or encamping lawfully on those sites, nor are they in breach of the Injunction if they establish an unauthorised encampment elsewhere.

8. It is argued by the Claimants that the 334 sites were "carefully selected by reference to the Claimant's analysis of the sites that were frequently targeted by unauthorised encampments visiting the Borough". It is said that those sites include sensitive and vulnerable sites, such as industrial areas, sports and recreation facilities, schools and other public amenities, where it is said greater harm is suffered by the inhabitants of the Borough when unauthorised encampments are formed there.

9. The Claimant seeks the injunctive relief in the discharge of its public functions pursuant to s187B of the Town and Country Planning Act 1990 and s222 of the Local Government Act 1972 to restrain breaches of planning control, and to promote or protect the interests of the inhabitants of their administrative areas (including to restrain acts of trespass). The Claimant is the local planning authority for the Borough, such that it has the administrative function of enforcing planning control within the Borough. It is also the local highway authority, in whom the adopted highways are vested.

10. The Injunction was sought in response to the high volume of unauthorised encampments and the harm it is said resulted from those encampments. The harm caused by the encampments was serious and included risks to public health caused by the depositing of untreated human waste, threats and intimidation to the local inhabitants and financial harm to the Claimant in seeking to deter, enforce against and clean up after encampments.

11. These proceedings became part of the Barking & Dagenham litigation from October 2020 onwards, which culminated in the appeal to the Supreme Court in the Wolverhampton case. The Claimant was a successful respondent in the appeal. The Claim had been listed for final hearing on 22 November 2022, but was adjourned after the Supreme Court granted permission to appeal in Wolverhampton on 25 October 2022.

12. The Claim proceeded to a 'final' hearing on 21 May 2024 (although, following Wolverhampton, the relief was only 'final' as against the Named Defendants). I am told that throughout the period in which the interim relief was in force, unauthorised encampments continued to form in the Borough (and on Injunction Sites), but had done so less frequently, and were of limited size and duration. Butcher J granted the relief, as described above.

The Evidence

13. The facts relevant to the current application are set out in two lengthy witness statements. The first is the second statement in these proceedings from Mr Stuart Morris; the second is the fourth statement of Mr Anthony Johns. It is not necessary to recite all the detail of those statement here, but the following is of particular significance.

14. Stuart Morris is the Head of Strategic Housing at Rochdale Metropolitan Borough Council and his responsibilities include permanent and temporary stopping provision for Gypsies and Travellers. He explains that the Council is required to make provision for Gypsy and Traveller accommodation within the Borough, and monitors the provision required of it by way of the Greater Manchester Gypsy and Traveller Accommodation Assessment (the 'GMGTAA'). The GMGTAA was last updated in

December 2024 with a published final report setting out the projected need for caravan pitches to 2040/41.

15. As to permanent provision, he says that the council has its own site at Roch Vale which provides 27 plots and seven council provided chalets. It also leased a site at Heritage Park which was owned and managed by a Traveller family, but that site has recently been closed by the Traveller family. In December 2024, the Greater Manchester Gypsy and Traveller Accommodation Assessment was updated to take into account the new expanded definition of Gypsies and Travellers. During the current year, two further sites have been identified and are being developed. They will provide for six additional permanent pitches which it is anticipated will meet the increased need for pitches.

16. Mr Morris also gives evidence about unauthorised encampments in Rochdale since the grant of the injunction by Butcher J on 11 June 2024. He says these encampments have been almost exclusively on inappropriate and unsafe locations including road verges, industrial and business premises, and car parks serving sports centres and shopping centres. He says that in each case the council has adopted an approach of engagement and negotiation with the occupiers of the sites. That policy has been effective in that, once made aware of the Injunction, Travellers have generally left the relevant site within a few hours or, at most, by the following morning. He says that that approach of engagement and tolerance has meant that it has not been necessary to take legal action to enforce the orders.

17. Mr Morris explains that Rochdale has had contact with neighbouring authorities across Greater Manchester, with whom Rochdale work closely on management of Traveller sites and unlawful encampments, and none of them have raised any issue with the council regarding the displacement of encampments into other areas.

18. Anthony Johns is Rochdale council's service manager for environmental action and enforcement and, amongst other functions, manages officers responsible for attending unauthorised encampments and the enforcement of the injunction. He says in his statement that the council's approach, of taking a "constructive and educational approach by advising those who are forming the encampment about the injunction" has proved effective. He says that the power of arrest is a last resort and has never, in fact, been used. But, he says, it is that power which makes the injunction "so effective".

19. He says that injunctive relief was first sought in response to the high number of unauthorised encampments occurring between January 2015 and September 2017 "many of which caused significant harm to the Borough and had or were associated with... noise nuisances, anti-social behaviour, threats of violence...and fly tipping." Encampment numbers peaked at 69 in 2017, and have since dropped to single figures.

20. Mr. Johns explains that the Injunction sought by the council is not Borough-wide, but is limited to the 334 sites which together cover 15.3 square kilometres. Since the Borough covers an area of 158 square kilometres that is about 9.7% of the total.

21. He explains that sites were identified which required the protection of an injunction. They were chosen because they were sites where encampments would be especially harmful and where either there had been previous encampments or they were of the same nature as sites that were frequently targeted. "Typically those sites include schools, recreational areas and green spaces, business parks and industrial areas".

Encampments were often associated with the depositing of waste, including fly tipping and the depositing of untreated human excrement. There was often a significant clean-up operation required, at great expense to either the council or the landowner, when the encampment was vacated.

22. Mr Johns gives evidence as to the effectiveness of the interim injunction granted in 2018. He says that in 2015 there were 28 encampments, in 2016 there were 40, and in 2017 there were 69. In the remainder of 2018, after the grant of the interim injunction, there were 21 encampments. In 2019, there were 10; in 2020, 13; in 2021, 9; in 2022, 10; in 2023, 12; in 2024, 6. And in the period up until the date of his statement, 25 April 2025, there were 2.

23. The duration of the encampments has also shown a significant decline since the grant of the Injunction. He attributes that to the "council's ability to move encampments on from protected land swiftly and efficiently with the use of the injunction." In 2015 the average duration for each encampment was 4.6 days; in 2016, 3.85 days; in 2017, 6.28 days; and in 2018, 1.09 days. In 2023 the average duration was 1.16 days, but for all the other years between 2019 and 2025 it was less than 24 hours.

24. Data collected by the council also shows that the reduction in the frequency and duration of encampments has significantly reduced the harm caused by unauthorised encampments. "In particular, the Borough was experiencing significant fly tipping that was associated with the formation of unauthorised encampments...often on a commercial scale." I am told that the expression "commercial scale" was used to indicate both the volume of material deposited and also the fact that the fly-tipping was apparently done for profit. Clean up costs were over £25,000 in 2015; £23,000 in 2016; £87,000 in 2017; £944 in 2018 and zero ever since.

25. Mr Johns says that "the Borough's business parks and industrial areas were often the main target for unauthorised encampments and… these areas suffered a disproportionate number of encampments… Following the grant of the interim injunction the Borough's business parks and industrial areas were still targeted but there was a significantly reduced number", down from 126 in 2015-2017 to 16 in 2023-2024. He explains that the Borough's business and industrial areas are important for the wealth and prosperity of the Borough.

26. According to Mr. Johns, tension often arose between the settled local inhabitants and the Travelling community who were forming unauthorised encampments in the Borough. "The council often received reports of confrontations between members of these two communities...Local residents often became exasperated with the various nuisances associated with encampments." He says that the council's experience is that since the grant of the injunctions "reduced frequency and duration of encampments appears to have reduced tensions in the community." He says that since the grant of the injunction in 2024, he has received no reports from members of the public of any threatening or intimidating behaviour from those forming unauthorised encampments.

27. Mr Johns also notes the disappearance of damage to green spaces or property, previously associated with unauthorised encampments, since the grant of the Injunction.

28. It is acknowledged that there have been some unauthorised encampments since the grant of the Injunction in 2024. There were two in May 2024, one in September 2024, one in October 2024 and two in February 2025. But, as those figures demonstrate, these were much less frequent than had occurred hitherto. In addition, all of them were smaller in size and all were resolved in a matter of hours.

Relevant Legal Principles

29. Against that factual background, I set out what seem to me the relevant legal principles on the following three topics:

(i) The Court's power to grant injunctive relief and the entitlement of local authorities to seek that relief;
(ii) The proper approach to applications against persons unknown; and
(iii) The test to be applied to renewed applications for injunctions against persons unknown.

(i) The power to grant and the entitlement to seek

30. The court's power to grant injunctions is derived from the Senior Courts Act 1981, s37, which provides:

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

31. The authority of a local authority to seek injunctive relief in cases like the present stems from s187B of the Town and Country Planning Act 1990, which provides that:

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

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

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

(4) In this section "the court" means the High Court or the county court.

32. Pursuant to s57(1) of the Town and Country Planning Act 1990 planning permission is required for the carrying out of any development of land. 'Development' is defined to include the carrying out of any building operation on, over or under land or the making of any material change of use of land (**s55(1)**), and the depositing of refuse or waste materials on land (**s55(3)(b)**). Planning permission may be obtained by way of express grant, or by way of deemed grant through permitted development rights. Carrying out development without the required planning permission constitutes a breach of planning control (**s171A(1)**).

33. The breaches of planning control complained of are primarily the material change in the use of the relevant land to a temporary Traveller site, and the depositing of refuse or waste materials, without the requisite planning permission. The decision as to whether something is or is not a breach of planning control is a matter for the local planning authority, or the Secretary of State on appeal, and not the court (***South Buckinghamshire District Council v Porter & Anr*** **[2003] UKHL 26; [2003] 2 AC 558** at [11], [20], [29] and [30]).

34. That said, the court's power to grant an injunction under s187B remains a discretionary one, albeit that that discretion is not unfettered. The discretion must be exercised judicially meaning, in this context

…that the power must be exercised with due regard to the purpose for which it was conferred: to restrain actual and threatened breaches of planning control. The power exists above all to permit abuses to be curbed and urgent solutions provided where these are called for. (***Porter*** at [29] per Lord Bingham).

35. The Local Government Act 1972, s222 provides that:

1. Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area –

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

b) they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment.

36. Accordingly, **s222** does not create a cause of action; instead it confers on local authorities a power to bring proceedings to enforce obedience with public law, without the involvement of the Attorney General (***Stoke-on-Trent City Council v B&Q (Retail) Ltd*** **[1984] AC 754**).

37. The guiding principles as to the exercise of the court's discretion under s222 are identified in ***City of London Corporation v Bovis Construction Ltd*** **[1992] 3 All ER 697** at 714 (per Bingham LJ), and include:

…the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will continue unless and until effectively restrained by the law and that nothing short of an injunction will

be effective to restrain them: see Wychavon DC v Midland Enterprises (Special Events) Ltd (1986) 86 LGR 83 at 89.

38. Where an injunction is granted under s222, a power of arrest may be attached to the injunction pursuant to the Police and Justice Act 2006, s27.

(ii) Applications against persons unknown

39. In **Wolverhampton**, the Supreme Court, (Lords Reed, Briggs and Kitchin with whom Lords Hodge and Lloyd-Jones agreed), considered a number of conjoined cases in which injunctions were sought by local authorities to prevent unauthorised encampments by Gypsies and Travellers. The appeal raised the question whether (and if so, on what basis, and subject to what safeguards) the court has the power to grant an injunction which binds persons who are not identifiable at the time when the order is granted, and who have not at that time infringed or threatened to infringe any right or duty which the claimant seeks to enforce, but may do so at a later date, a class of persons referred to as "newcomers".

40. At [167] the Supreme Court held that.

…there is no immoveable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:

i. There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.

ii. There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226-231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

iii. Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to

research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

iv. The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

v. It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries.

41. At [225] the court said

One of the more controversial aspects of many of the injunctions granted hitherto has been their duration and geographical scope. These have been subjected to serious criticism, at least some of which we consider to be justified. We have considerable doubt as to whether it could ever be justifiable to grant a Gypsy or Traveller injunction which is directed to persons unknown, including newcomers, and extends over the whole of a borough or for significantly more than a year. It is to be remembered that this is an exceptional remedy, and it must be a proportionate response to the unlawful activity to which it is directed. Further, we consider that an injunction which extends borough-wide is likely to leave the Gypsy and Traveller communities with little or no room for manoeuvre, just as Coulson LJ warned might well be the case .... Similarly, injunctions of this kind must be reviewed periodically (as Sir Geoffrey Vos MR explained in these appeals at paras 89 and 108) and in our view ought to come to an end (subject to any order of the judge), by effluxion of time in all cases after no more than a year unless an application is made for their renewal. This will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.

(iii) The test to be applied to renewed applications

42. An issue has arisen, in some recent cases at first instance level, as to the test that should be applied when applications are made to renew injunctions against persons unknown.

43. In ***Basingstoke v Loveridge*, [2024] EWHC 1828 (KB)** Freedman J considered the purpose of the review hearing. He said at [55]:

the continuation of the injunction is something that has to be constrained and checked. It is for that reason that there are the constraints in respect of territorial land temporal limitations. There is a danger in a matter like this that the reaction to the Supreme Court case would be to be involved in tick-boxing so that the case would then be reviewed every year and then continued at the end of the year subject to the tick-boxing.

That would fail to reflect the nature of the guidance given by the Supreme Court, that makes it clear that the remedy is to be carefully scrutinised and only granted in respect of where there is a compelling need for the protection of the rights in the locality.

44. In ***High Speed Two (HS2) Ltd v Persons Unknown*** **[2024] EWHC 1277 (KB)** Ritchie J, was considering an application for the continuation of an interim injunction against protesters. In addressing how a review hearing should be approached, he said:

32. … on a review of an interim injunction against PUs and named Defendants, this Court is not starting de novo. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the quia timet, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.

33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply.

45. In **Arla Foods v Persons Unknown** [2024] EWHC 1952 at [128], Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) described the annual review process as "*…allow[ing] a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate*."

46. Morris J took a similar approach in ***Transport for London v Persons Unknown & Ors*** **[2025] EWHC 55 (KB).** At [54]-[55] he said:

In the present cases, TfL has already provided detailed evidence at a full trial and the Court has, on two occasions, already made a full determination of the issue of risk and the balance of interests. In my judgment, in those circumstances there needed to be some material change in order to justify a conclusion that the Final Injunctions should not continue. (For example, as in the HS2 case where Phase 2 of the HS project had subsequently been abandoned: see paragraph 40 above).

47. This approach was approved and applied by Hill J in ***Valero Energy Ltd v Persons Unknown*** **[2025] EWHC 207 (KB) (*'Valero'*)** and in ***Multiplex Construction Europe Ltd v Persons Unknown*** **[2025] 2 WLUK 578**.

48. When ***Basingstoke v Loveridge*** came back before the court on a review hearing in March 2025, a somewhat different approach was adopted by the judge. Ms Kirsty Brimelow KC, sitting as a deputy judge of this court, considered the observation of Freedman J at *[56] – [57]* to the effect that "*As this matter goes forward, there needs*

to be considered the absence of a formally-negotiated stopping policy. As indicated above, at the moment there is an informal policy of limited toleration of encampments. There is only the very beginning of a negotiated stopping policy. It is very difficult to supervise an informal policy of limited toleration of encampments… The court going forward needs to scrutinise very carefully that the local authority is taking steps to procure a formal, negotiated stopping policy."

49. Perhaps unsurprisingly, in those circumstances, Ms Brimelow held at [25]-[26] in her judgment that she should follow Freedman J's requirement that there be "*close scrutiny of whether there remained a compelling need for the granting of a further injunction*" and "*in these circumstances, I consider the case should be heard de novo and so invited submissions in line with it being a de novo hearing*."

50. In ***Test Valley Borough Council & Anr v Persons Unknown*** (unreported), HHJ Sarah Richardson (sitting as a deputy), considered the point at length and gave a detailed ex tempore judgment of which I was provided with a note (no transcript being presently available). She held that the correct test to apply on an annual review is that identified in the authorities of ***HS2, TfL*** and ***Valero***, namely, the Court should ask whether there has been a material change of circumstances. If there has not, and all procedural and legal rigour has been followed, the Order should be continued. If there has, only then should a full ***Wolverhampton*** assessment be conducted to determine whether the relief should be continued, and on what terms. The Judge took the view that the ***HS2*** approach, as adopted in ***TfL*** and ***Valero*** was principled and in keeping with the ***Wolverhampton*** guidance, and was the correct approach to review hearings of this nature. The court should not perform a full ***Wolverhampton*** assessment on review unless there is a material change of circumstances that necessitates the same.

51. In my judgment the correct approach is dictated by the Supreme Court's judgment in ***Wolverhampton*** and in particular in [225]. This is not a "tick box" exercise, but the matters on which evidence should be adduced and argument focused are (i) how effective the order has been; (ii) whether any reasons or grounds for its discharge have emerged; (iii) whether there is any proper justification for its continuance; and (iv) whether and on what basis a further order ought to be made. The parties should give full disclosure, supported by appropriate evidence, directed towards those questions.

52. There will be cases, such as ***Basingstoke*****,** where an issue has emerged, whether at the original hearing or in preparation for the renewed hearing, which needs to be addressed expressly at that renewal hearing. Whether that necessitates an expanded renewal hearing or what Ms Brimalow calls a *de novo* hearing will depend on the facts. The position may also be different where the application for further injunctive relief is not made during the currency of the previous order, but after it has expired. But the guiding light will always be the Supreme Court's judgment in ***Wolverhampton***.

Discussion

53. I address in turn what seem to me the appropriate elements of the analysis, namely:

    i) The existence of any material change of circumstances;

    ii) The efficacy of the order to date;

iii) The justification for its continuance;

iv) Whether any grounds for discharge have emerged;

v) The basis on which any further order ought to be made; and

vi) The other Wolverhampton requirements.

(i) Any material change in circumstances?

54. In the run of first instance cases discussed above, there is frequent reference to the need for there to be no material change in circumstances if an injunction against persons unknown to is to be continued. It may well be that that expression is used to encompass the points made in [225] of the Wolverhampton case.

55. In my judgment, there is indeed value in identifying whether there has been any material change of circumstances but there must then be focus on the requirements set out in the Wolverhampton case.

56. Two potential changes of circumstances are mooted.

57. First, there has been some significant reduction in the occurrence of unauthorised encampments. But I entirely agree with the submission of Ms Pratt that the reduction in the threat is not evidence that the threat has dissipated, but evidence that the Injunction is having its intended effect.

58. Second, there is one change of circumstance from June 2024 to which, very properly, the Claimant drew expressly to the Court's attention, although it is submitted it is not material to the continuation of the Injunction. That change concerns the availability of pitches in the Borough.

59. As noted above, in December 2024, the GMGTAA was updated to take into account the new expanded definition of Gypsies and Travellers. Following that update, the Claimant requires a further five permanent pitches to meet the assessed need. In consequence, there is currently a five-pitch shortfall. However, in 2025, the Council has identified and "lined up" two sites that can provide six pitches to meet the shortfall. I accept that in those circumstances the shortfall in supply of permanent pitches was only temporary, and steps have been and are being taken to meet the shortfall.

60. In any event, this assessed need relates to pitches for permanent (or seasonal/semi-permanent) residence by members of the Travelling community (ie. those who are settled, or wish to settle, in the Borough). The Injunction being sought, on the other hand, is intended to apply to those persons who are transiting through the Borough, forming temporary encampments in inappropriate and harmful places, and/or undertaking harmful activities such as fly-tipping. There is no evidence that the Borough is experiencing unauthorised encampments because it has a shortfall of permanent pitches.

61. In my judgment there has been no material change of circumstance that requires change to, or discharge of, the Injunction. The risk of the formation of unauthorised encampments and resulting harm persists.

(ii) The efficacy of the Order

62. In my judgment it is perfectly clear on the evidence that the Injunction has been highly effective. Whilst there are still unauthorised encampments that occur in the Borough, and occur on Injunction Sites specifically, the frequency and duration of those encampments, and the resulting harm, is greatly reduced.

63. As Mr Johns explains, there has been a significant reduction in the number of unauthorised encampments forming in the Borough. The reduced frequency, duration and size of unauthorised encampments has caused a significant reduction in the harm suffered by reason of those encampments. There have been no deposits of untreated human waste associated with unauthorised encampments since the grant of injunctive relief; the frequency and duration of encampments in industrial areas has reduced; there have been reduced instances of threats to and intimidation of the inhabitants of the Borough, reduced instances of community tension, and reduced instances of property damage (with no instances at all since the grant of the Injunction in June 2024).

64. Incidents of fly-tipping associated with unauthorised encampments, and the cost incurred by the Claimant in clearing the same, have been greatly reduced. Clean-up costs incurred by the Claimant peaked at £87,895.63 in 2017, and have fallen to nil since 2019.

65. All this evidence serves to establish that the Injunction has achieved its objectives.

(iii) Justification for the continuation of the Order

66. In my judgment, it is well established on the evidence that the potential harm which prompted the application for the injunction persists. The fact that, on occasions, unauthorised encampments appear in the Borough (albeit with reduced frequency) demonstrates that continued risk.

67. Furthermore, unauthorised encampments continue to occur in areas geographically close to Rochdale. The fear of the Claimant's officers that should the Injunction be discharged, those encampments will "migrate" into the Borough, and to the 334 protected sites specifically is, in my view, entirely realistic given the history. That is particularly so given that those sites appear, historically, to be especially attractive to those forming unauthorised encampments. On the evidence, it is clear that it is the existence of the Injunction, and the threat of enforcement by arrest, which discourages the establishment of unauthorised encampments, and limits their size and duration of such encampments as do occur.

68. The experience of neighbouring local authorities in the Greater Manchester area supports that conclusion. Of the five local authorities that responded to enquiries from the Claimant, all but one reported a higher number of unauthorised encampments in the last 12 months than in Rochdale. By way of example, Wigan Council reported 64 encampments, which caused £124,000 in removal costs and associated expenses, and £17,248 of council officer time.

(iv) Grounds for Discharge

69. I have been able to detect no possible grounds for the discharge of the order.

(v) Basis for a further order

70. The basis for a continuation of the order, both legally and factually is the same as that which justified the grant of the order in 2024. The terms of the order will be similar.

(vi) The Wolverhampton requirements

71. For the reasons set out above, in my judgment a full Wolverhampton assessment is not necessary on the facts of this case. I see no ground for going behind the findings of Butcher J.

72. For the sake of completion I can indicate, however, that I have no doubt that there has been clear and comprehensive evidence of wrongful conduct requiring a remedy; there remains a compelling justification for the Injunction; the Claimant has complied with its obligations to consider and provide lawful stopping places for Gypsies and Travellers; the Claimant has considered all reasonable alternative means of controlling or prohibiting unauthorised encampments; and has properly attempted to engage with Gypsy and Traveller communities in an attempt to encourage dialogue and co-operation, and better understand the needs of the respective parties.

73. The order I propose making includes generous liberty to apply provisions, and an obligation to take all reasonable steps to bring the application and any order to the attention of those who may be affected by any order made. It makes provision for (alternative) service (or, more accurately after the Wolverhampton 'notification') of the Order and any subsequent continuation application.

74. The order is constrained by territorial and temporal limitations so as to ensure, as far as it practicable, that they neither 'outflank nor outlast the compelling circumstances relied upon'. It is not borough-wide against Persons Unknown, (nor has it or the interim relief ever been). The Injunction is appropriately limited; the 334 protected sites equate to less than 10% of the Borough and have been carefully selected. They include sensitive sites such as schools, recreational areas, green spaces and business parks, on which the formation of unauthorised encampments is especially harmful. The selected sites are sites that were either targeted frequently prior to the grant of injunctive relief, or are of the same nature as those sites that were frequently targeted.

75. The order's operation is limited to one-year, with the possibility of continuation upon review. If no further application is made, the Order will expire by the effluxion of time.

76. The proposed respondents are defined as precisely as possible, identified and enjoined where possible. The injunction sought by the Claimant is, in my judgment, clear and precise, it uses everyday terms, when setting out the acts that it prohibits. The prohibited acts correspond closely to the actual or threatened unlawful conduct, and extend no further than the minimum necessary to achieve the purpose for which it was granted.

77. In my judgment there is no reason to depart from the usual position that no undertaking as to damages is required.

78. In my judgment, the test articulated by Marcus Smith J in Vastint Leeds BV v Persons Unknown [2019] 4 WLR 2 and approved by Sir Geoffrey Vos MR in Barking and Dagenham v Persons Unknown [2022] EWCA Civ 13 has been subsumed into the

Wolverhampton framework. The Vastint test, however, provides a useful double check. In my judgment, for the reasons set out above, this case satisfies that check. There is a strong possibility that, unless restrained by an injunction, persons unknown will act in breach of the rights which the Claimant is seeking to protect and if that happens the resulting harm would be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate.

79. Finally, so far as I can judge, the Claimant has complied with the duty of full and frank disclosure throughout its evidence and submissions.

Conclusion

80. In those circumstances, in my judgment, it is just and convenient to grant the injunctive relief sought.

81. The error in the notification in respect of Site 334, referred to at [5] above, needs to be addressed. In my judgment, the appropriate and proportionate response to that issue is to suspend the operation of the injunction as it affects that site for 28 days. That will give any person affected sufficient time to make an application to the Court under the liberty to apply clause of the Order.

82. The claimant will be granted a one-year continuation of the Injunction as against the 90th and 93rd Defendants, Persons Unknown.

Neutral Citation Number: [2025] EWHC 1913 (KB)
Case No: KB-2022-001142

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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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 previous 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.

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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 D *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)*

The claimants, three companies within a group of oil and gas companies, had E 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 F 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 G disproportionate, interference with their rights under articles 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms[1], and that the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters[2] ("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 H

[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 1981[3] 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.

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).

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.

(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).

[3] Senior Courts Act 1981, s 37: see post, para 43.

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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; [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; 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

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

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

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)

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)

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
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)
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.

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.

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.

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;

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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 C brand, by unlawful means. The ground of the claim was that the defendants' actions amounted to conspiracy to injure.

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 D 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 E 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 F 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 G 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.

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.

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.

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
III.	Parties	20–24
IV.	Issues	25–26
V.	Approach to judgment	27–28
VI.	Protests	29–34
VII.	Injunction terms	35–39
VIII.	Law 1. Statute 2. Common law	40–58
IX.	Analysis of the 15 factors: Part I (factors 1–6)	59–141
X.	Aarhus Convention analysis	142–171
XI.	Analysis of the 15 factors: Part II (factors 7–15)	172–199
XII.	Overall conclusion	200–207
XIII.	Disposal	208–210
Annex A	Defendants in Claim 3	
Annex B	Procedural history	
Annex C	Materials	
Annex D	Draft undertaking (Claim 3)	

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.

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

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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 B 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 C in conformity with the provisions of this Convention shall not be penalised, persecuted or harassed in any way for their involvement."

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. D 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 E 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 H policies of the government" (p 364).

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:

(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");

(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.

Judgment date	Site(s)	Expiry	Judge	Citation
5 May 2022	Haven Tower	2 May 2023	Bennathan J	Ex tempore (no transcript available)
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
17 April 2024	All three claims	12 November 2024 or four weeks after final hearing (whichever later)	Cotter J	[2024] EWHC 1546 (KB)

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.

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

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)*

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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:

> "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.
>
> "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. 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."

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 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 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 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

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.

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).

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:

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

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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 C 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 E 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 F 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*

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 H 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

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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.

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

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

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 …"

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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. I reserved judgment for precisely that reason.

VI. The protests

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:

> "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."

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 brief account of the protests.

Haven

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

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.

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".

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:

> "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 …
>
> "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.'

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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."

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
B 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

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
D pleaded by Shell.

Claim 1: Haven

36 In respect of Haven, the acts sought to be restrained are:

(a) entering or remaining upon any part of Haven without the consent
E 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
F against Haven; (iii) spraying, painting, pouring, sticking or writing with any substance on or inside any part of Haven; or (iv) otherwise.

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
H 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

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

(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.

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

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*").

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".

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.

1. Statute

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".

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

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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:
> "(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."

G

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

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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."

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.

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:

> "9. The following general principles are well settled, and uncontroversial on this appeal.
>
> "(1) Peaceful protest falls within the scope of the fundamental rights of free speech and freedom of assembly guaranteed by articles 10(1) and 11(1) of the European Convention on Human Rights and Fundamental Freedoms. Interferences with those rights can only be justified if they are necessary in a democratic society and proportionate in pursuit of one of the legitimate aims specified in articles 10(2) and 11(2). Authoritative statements on these topics can be found in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 at [43] (Laws LJ) and *City of London Corpn v Samede* [2012] PTSR 1624, reflecting the Strasbourg jurisprudence.
>
> "(2) But the right to property is also a Convention right, protected by article 1 of the First Protocol ('A1P1'). In a democratic society, the protection of property rights is a legitimate aim, which may justify interference with the rights guaranteed by 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.)

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*

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A of those rights, then it would not exclude the possibility of a state being obliged to protect them by regulating property rights.

"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 B 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 C 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 D other forms." (Emphasis in original.)

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

"In relation to defences to trespass, genuine and bona fide concerns E 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."

58 In similar vein, in *Halsbury's Laws of England*, 5th ed, vol 55 (2012), F 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 H 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

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

Factor	Summary
1.	Cause of action clearly identified
2.	Full and frank disclosure by claimant
3.	Sufficient evidence to prove claim
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
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
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

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.

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
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
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

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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]:

> "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.'"

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:

> "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."

Petrol Stations

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

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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:

> "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 *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 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

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).

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 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

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.

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:

> "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."
>
> "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):

> "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."

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.

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

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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.

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.

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]:

> "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'."

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."

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."

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:

"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."

86 Hill J then continued at para 39:

"(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."

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

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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

C references to 'civil disobedience', 'direct action', and a willingness to risk 'arrest' and 'jail time': para 9.

"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

D 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

E 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,

F "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.

G 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

H 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."

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.

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 pain 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.

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:

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

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

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".

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".

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.

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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

C Planet".

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

D 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".

25 September: One male and one female protester from Christian Climate

F 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".

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

G 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.

15 October: Shell's Chief Energy Adviser, Peter Wood, was giving a

H 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

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:

> "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.
>
> "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.
>
> "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.
>
> "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.
>
> "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.

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"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].

"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.

"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.

"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.

"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 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 CO_2 emissions since the 2016 Paris Agreement. Shell has been named as one of these.

"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.

"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

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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.

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.

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".

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".

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.

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:

> "We do not agree that this injunction is necessary. We believe that Shell should not be protected from lawful protest.
>
> "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.
>
> "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.
>
> "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.
>
> "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.
>
> "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.
>
> "All protests that gave rise to this injunction [were] at locations directly connected with the harm being caused by the ongoing operations of Shell.
>
> "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.

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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.

"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. B 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.

"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 CO_2 in the atmosphere the temperature C has to increase.

"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. D

"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.

"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 E 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

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 F that it is neither safe nor reasonable.

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 G 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" H 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 CO_2 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

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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]):

> "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."

PUs

109 In respect of PUs, I cannot draw an inference regarding undertakings.

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.

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 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."

112 Finally on this point, Hill J noted in *Shell UK Ltd v Persons Unknown* [2023] 1 WLR 4358, para 36:

> "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."

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.

4. Defences

5. Balance of convenience/compelling need

6. Proportionate interference with ECHR rights

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.

(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.

Convention rights and proportionality

116 Article 9 of the ECHR provides:

> "*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.
>
> "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

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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 B 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 C 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, F 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 G 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

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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 Corpn 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

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.

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:

> "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."

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."

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.

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:

> "22. Mr Laurie's submission is that the coming into force of the Public Order Act 2023 represents a material change, since the orders

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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."

"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.

"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.

134 First, that I agree with Cotter J that the change in criminal law is potentially relevant as a material change in circumstances.

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:

"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."

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:

"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."

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*
> "(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.)

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.

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:

> "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'."

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

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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 B 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;
D (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).

E **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 F 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* G *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 H 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:

> "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."

146 To achieve these objectives, the Convention is grounded in three foundational "pillars":

(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."

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:

> "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

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in order to contribute to the protection of the right to live in an environment which is adequate for personal health and wellbeing.'

"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'.

"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."

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.

"*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 Mary 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

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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".

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". B 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*

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 D 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*

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 F 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 H 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.
>
> "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

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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."

164 While there is a focus on participation in decision-making, I recognise F 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 H 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

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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.

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 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 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 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 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.

XI. Anaysis 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 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

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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

179 The claimants seek final orders on terms that are substantially and D 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 G to or from a Shell Petrol Station') is necessary because of the nature of 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 H injunctions are effective. To the extent that they capture lawful activity 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

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."

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.

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.

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."

185 Nothing has changed since this analysis and no point was taken before me. I find that requirement 10 is satisfied.

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11. Whether there is a clear and justifiable geographical limit

186 This matter was reviewed by Cotter J [2024] EWHC 1546 (KB) at [56]:

> "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."

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.

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.

12. Clear and justifiable temporal limit

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:

> "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.
>
> "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 refiling 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 …

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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.

"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."

B

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, C 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:

"a. the claimant shall use all reasonable endeavours to arrange to D 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

"(b) on every upright steel structure forming part of the canopy E 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:

"(a) at each entrance onto the forecourt of each Shell Petrol Station

F "(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;

"c. Sending an email to each of the addresses set out in the Second Schedule of this Order providing a link to and, specifically G 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/

"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 H 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

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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. I have no reason not to accept that evidence, nor was it disputed.

B

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 C 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 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 F 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 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.

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.

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:

> "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.
>
> "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 …"

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

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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. 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."

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.

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".

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:

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**.

(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

Defendants in Claim 3

Persons Unknown	First Defendant
Louis McKechnie	Second Defendant
XXX XXX (Struck out on order of court following undertaking)	Third Defendant
Callum Goode	Fourth Defendant
Christopher Ford	Fifth Defendant
Sean Jordan (also known as Sean Irish, John Jordan, John Michael Jordan and Sean O'Rourke)	Sixth Defendant
Emma Ireland	Seventh Defendant
Charles Philip Laurie	Eighth Defendant
Michael Edward Davies also previously known as Michael Edward Jones	Ninth Defendant
Tessa-Marie Burns (also known as Tez Burns)	Tenth Defendant
Simon Reding	Eleventh Defendant
Kate Bramfit	Twelfth Defendant
Margaret Reid	Thirteenth Defendant
David Nixon	Fourteenth Defendant
Samuel Holland	Fifteenth Defendant

Annex B

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

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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

Annex C

Materials

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
Ms Ireland's skeleton	7
Mr Laurie's skeleton	10

Annex D

Draft undertaking (Claim 3)

Form of Undertaking

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:

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;

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.

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.

Signed .....

Name .....

Dated .....

Applications granted.

SZE PUI NG, Solicitor

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Case No: KB-2024-001765/KB-2024-002132
KB-2024-002317/KB-2024-002473

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
[2026] EWHC 2248 (KB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 30 June 2026

BEFORE:

THE HONOURABLE MR JUSTICE SOOLE

BETWEEN:

VARIOUS AIRPORTS

(London City; Manchester; Stansted; East Midlands; Leeds Bradford; London Luton; Newcastle International; Birmingham; Liverpool John Lennon; Bristol)

Claimants

- and -

PERSONS UNKNOWN

Defendants

MR T MORSHEAD KC and MS E BARDEN appeared on behalf of the Claimants
THE DEFENDANTS did not appear and were not represented.

JUDGMENT
(Approved)

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(Official Shorthand Writers to the Court)

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1. MR JUSTICE SOOLE: This is the annual review hearing in respect of orders comprising precautionary injunctions against prospective protesters, at a number of airports in the UK, in respect of climate change and associated environmental issues. The actions and airports with which the hearing is concerned are: -

1. KB-2024-001765, London City Airport.

2. KB-2024-002132, Manchester Airport, Stansted Airport and East Midlands Airport.

3. KB-2024-002317, Leeds Bradford Airport, London Luton Airport and Newcastle International Airport.

4. KB-2024-002473, Birmingham Airport, Liverpool John Lennon Airport and Bristol Airport.

2. I will refer to the four actions by the first-named airport in each case; thus the London City action, the Manchester action, the Leeds/Bradford action and the Birmingham action. In each case the claimants appear by Mr Timothy Morshead KC and Ms Evie Barden. There has been no attendance by or representation for any person falling within the description of Persons Unknown, nor by or on behalf of anybody else.

3. The current continuing order in each case is as follows. London City action: 20 June 2024, Julian Knowles J, injunction until 20 June 2029, with yearly reviews. Manchester action: 5 July 2025, HHJ Coe KC sitting as a High Court judge, injunction until further order with early reviews. Leeds Bradford action: 19 July 2024, order, as amended under the slip rule, of 19 July and 22 July 2024, Ritchie J, injunction until further order with yearly reviews. Birmingham action: 6 August 2024, Jacobs J, injunction until further order with yearly reviews.

4. Each of these orders was continued with minor amendments by the order of Bourne J dated 24 June 2025, following the first annual review. By application notices in each action, each dated 2 June 2026, the various Claimants apply for the 2026 review to be listed. By various subsequent orders, each application was listed for today, all to be heard together as before.

5. The applicant's applications are in each case supported by witness statements dated 11 June 2026 and 24 June 2026 from the Claimants' solicitor with the current principal conduct of the matter, Mr Alexander James Wright. In each case, the witness statement dated 11 June 2026 sets out the background to the four actions in question. Mr Wright also refers to three other actions and consequent continuing orders, which relate to Heathrow Airport, Gatwick Airport and Southend Airport. The claimants in those three actions act by other solicitors.

6. In respect of the London City action, Mr Wright restates that the cause of action on which this injunction was sought and granted was in trespass alone. As to the other three actions, he has also sought protection in respect of areas of the airport which had been leased to third parties and thus to which the relevant claimants did not have immediate rights of possession. In those cases the cause of action was framed in private nuisance.

7. In respect of the airports at Manchester, Leeds Bradford, London Luton, Newcastle International and Liverpool John Lennon the areas of restraint include an element of public highways for which the cause of action is in public nuisance.

8. Mr Wright restates the health and safety risks which are presented by direct/unlawful protest activity on land belonging to the airport in question. As to events since the 2025 review and the orders of Bourne J on 24 June 2025, Mr Wright cites a range of protests over the past year by protesters variously under the banners of Extinction Rebellion, Greenpeace, Fossil Free London, Shut the System, Boycott Blood Insurance and Take Back Power. In respect of Extinction Rebellion, these have included disruption of the British Insurance awards; targeting the offices of March & Howden; staging a mock crime scene at Barclays Bank; occupying the lobby of Prudential Regulation Authority; staging protests at insurers AXA and AIG; and protesting outside Macquarie Group headquarters against expansion at Farnborough Airport. He acknowledges that none of these protests have taken place at London City Airport nor indeed at any other airport in the country.

9. As to the campaign group Just Stop Oil, Mr Wright states that he is not aware of any incident involving direct/unlawful protest activity attributable to JSO since the last review hearing. He recalls JSO's previous announcement on 27 March 2025 to the effect

that it was ceasing its 'hi-vis' activities, but also its subsequent apparent or potentially contradictory statements.

10. Mr Wright further points to links from JSO's website to the campaign group Take Back Power and to JSO's own website comment in June 2026, which refers to Take Back Power and states that: "…revolutionary change is needed now more than ever. Corrupt politicians are serving the interests of billionaires. Ordinary people are struggling to survive, and the media are shifting blame from their mates on mega yachts to the people on small boats. Meanwhile, the world is getting hotter and hotter. Nothing short of a political and economical revolution is going to get us out of this mess. It's time to Take Back Power."

11. Mr Wright continues that it strongly appears to him that Take Back Power is a successor to Just Stop Oil. The homepage of Take Back Power describes itself as a non-violent civil resistance group, which aims to put the 99% in charge through citizens assemblies. From the Take Back Power website Mr Wright cites a number of incidents involving their activists and supporters since December 2025, for example at the Ritz; Claridge's; the Tower of London; outside Parliament; in supermarkets in four UK cities; at Sotheby's auction house; and at a Ferrari dealership.

12. He states that this gives concern for London City, in particular because of its use by those who own private jets at the airport. He cites events in July 2025 when Extinction Rebellion supporters protested against private jets at London Oxford Airport and at an airport in Scotland; the protest against the expansion of Farnborough Airport; and to an incident back in June 2024 when two JSO protestors spraypainted two private jets at Stansted Airport. He states that London City is very concerned that it will become the focus of direct action by members of Take Back Power or the like, unless restrained by injunction.

13. For that reason, by separate applications dated 18 June 2026 to which I will refer later, the Claimants in all but the Manchester action apply to amend the description of Persons Unknown to include those protesting as wealth inequality campaigners as well as those protesting on climate change and environmental issues. As to the various other organisations which have appeared, e.g. Fossil Free London and Youth Demand, he

states that "Though names and tactics may change and evolve over time, possibly in an attempt to exploit potential loopholes in unlawful protest injunction orders, for a number of the activists the primary objective remains disruptive demonstrations against organisations that they believe stand opposed to their demands…Consequently there remains a continued risk to the Claimants' airports that they will be the target of direct action in the absence of the protection afforded by the injunctions."

14. Mr Wright states that the Claimants continue to have no objection to protests which are lawful and do not interfere with other's rights, subject to those wishing to carry out a peaceful protest at the airport making a request for the claimants to designate an area for that purpose in accordance with the final recital in the 2024 order. He states that the continued lack of direct/unlawful protest activity at the airports, when set aside the continuing incidents which have occurred elsewhere, justifies the inference that protesters have been careful to ensure that their unlawful behaviour has taken place at premises which are not protected by an injunction. Accordingly he contends that the injunction has had the required deterrent effect and should be maintained.

15. Mr Wright then refers to the history of criminal proceedings against various protesters and the varying verdicts which have resulted. He suggested that this shows the protestors are more willing to take their chances with the jury than the judge. Mr Wright concludes that the impact of climate change continues to be firmly on the public agenda and to attract strong feelings and consequent willingness to contemplate disruptive action. The inference he and his clients draw from the evidence is that the injunctions have influenced the pattern of protest, with disruptive action being focussed principally on targets which do not have the benefit of protection by injunction.

16. In each case, the Claimants have a continuing concern that in the absence of such protection, disruptive action would take place and result in irreparable and serious potential harm to the airport and those who use it. He adds that most of the incidents in 2024 which were targeted by environmental protesters occurred between late June and August of that year, i.e. in the busiest period for holiday travel.

17. Mr Wright also identifies a particular concern from the raising on 30 April 2026 by the Joint Terrorism Analysis Centre of the national terrorism threat level from "substantial"

to “severe”, i.e. that “an attack is highly likely”. The suggested significance of this is that airports are acutely sensitive to chaotic disruption caused by unlawful direct action; and that, in turn, terrorism is facilitated by chaos. He cites observations to that effect by Ritchie J in his judgment when making the Leeds Bradford order: [2024] EWHC 2274 (KB).

18. Mr Wright’s statements in respect of the Manchester, Leeds Bradford and Birmingham actions are in similar general terms. He cites the same deterrent effect; and the same continuing concern that this will change if the injunction were not to continue.

19. As to Leeds Bradford, Mr Wright points out that the airport has granted its contractor a right to use and carry out works over an additional area in the vicinity of the terminal building, i.e. additional to that referred to in his first witness statement of 16 July 2024, and that the first Claimant retains exclusive possession or control of that area of land.

Application to amend

20. By application notices dated 18 June 2026, made in respect of all save the Manchester action, there is an application to reamend the claim form so as to extend the definition of Persons Unknown to include those campaigning in respect of wealth inequality as well as those in respect of climate and environmental issues. There is no such application in the Manchester action because in that case the definition of Persons Unknown is not limited to any particular cause of protest. I observe that, other than in respect of the title, there is no application to amend the body of the Particulars of Claim, e.g. by including reference to such campaigns in respect of wealth inequality and their apprehended consequences.

21. In addition:

1. In the Manchester action, the application is to reamend the Particulars of Claim so as to reflect a revision effected by the East Midlands Airport Bylaws 2025, which replaced their predecessor.

2. As to Leeds Bradford, the application is to amend the Particulars of Claim in order to reflect a change which results from the London Luton Airport Bylaws 2025.

Service and notice

22. By his single witness statement dated 24 June 2026 in each of the four actions, Mr Wright sets out the steps he has taken to –

1. Give due notice of this second review hearing and to serve his supporting witness statements. This includes notice in the Birmingham action and in the Manchester action to third-party occupiers within the red line of the injunction order boundary in respect of each airport.

2. Serve the application notices dated 2 June 2026 and the consequent orders listing today's hearing.

3. Serve the application notices dated 18 June 2026 to amend the claim forms and Particulars of Claim in various ways.

23. I was also told that the claimant's skeleton argument for today, dated 24 June 2026, was served in the same way. Insofar as the previous orders prescribed forms of service for these applications and documents, I am satisfied that these have been complied with.

24. Mr Wright's witness statement of 24 June 2026 states that he has uploaded the application dated 18 June 2026 to each individual airport's relevant website and sent a copy to the email addresses referred to in schedule 3 to each of the orders made in 2024. Furthermore he has sent emails in respect of each application dated 18 June 2026 to a number of additional email addresses relating to Take Back Power, Shut the System, Fossil Free London, Youth Demand and Extinction Rebellion. He has also used those email addresses for other notices served for the purpose of the hearing today. No responses have been received to the emails sent.

Full and frank disclosure

25. In accordance with their duty to the court, the Claimants have drawn attention to a number of procedural errors made since the order of Bourne J. These are set out in close detail in the skeleton argument to which I have referred.

26. The first matter concerns notification of the Bourne orders by email. The injunctions required service of any applications or documents to be effected by uploading and also by sending an email to email addresses identified in the order. The uploading requirement was met but it has not been possible to establish that the email provision was complied with by Mr Wright's predecessor, Mr Wortley. Following this discovery, the necessary emails were sent on 9 June 2026. It is submitted that the error must have been due to oversight rather than deliberate.

27. The second matter concerns notification of the Bourne orders by affixing at the sites. In the case covered by the Manchester action, HHJ Coe ordered that further applications or documents were also to be served by affixing a notice at locations marked on plans of the airport, setting out where the applications or documents could be found and obtained in hard copy. For those airports, the Claimants affixed copies of the relevant order of Bourne J at the locations marked on the plans and did so in the week of 30 June 2025.

28. In the cases of Leeds Bradford Airport, Newcastle International Airport and London Luton Airport, Ritchie J ordered that further documents were to be served by carrying out "each of the steps in paragraph 3" of his order. That paragraph included a direction requiring the claimants to affix a notice setting out where the documents and order could be found and obtained in hard copy. The formal notice that was referred to was a warning notice relating to the order made by Ritchie J. In the event a fresh warning notice was not affixed as apparently required by the relevant paragraph of Ritchie J's order. This reflected a misunderstanding of what was required. There may be a question as quite exactly what was required. On 15 June 2026, the orders of Bourne J were affixed at Leeds, Bradford and Newcastle International Airport at the relevant locations.

29. Thirdly, as to the London City Airport, by the order of Bourne J one substantive change was made to the existing injunction. In that case, the cause of action was trespass, such that the geographical scope of the injunction excluded areas over which third parties had interests and to which the claimants did not have an immediate right to possession. As a result of the grant of a further third-party interest, the claimant sought to reduce the scope of the injunction in order to introduce a new zone within the red line of the plan which was excluded from the scope of the injunction.

30. Bourne J gave permission to amend the claim form for that purpose and in consequence a new plan was annexed to the original order of Julian Knowles J. However it was noticed on 10 June 2026 that the order, as in fact amended, annexed a plan which suffered from a formatting problem. The effect was that only part of the redline boundary was visible.

31. Fourthly, in respect of London City Airport, contrary to what was required, the Claimants did not file an amended claim form following the hearing on 24 June 2025 and consequently also did not notify the Defendants. This was again at a time when Mr Wortley was dealing with these matters. This was rectified very recently on 15 June 2026.

32. Fifthly, the Claimants draw attention to the fact that a note of the 2025 review hearing was not uploaded to the dedicated website until 15 June 2026. Whilst there was no order or undertaking to do so, they observe that it might be argued that this should happen in any event, citing observations of Lightman J in *Interoute Telecommunications (UK) Ltd v Fashion Gossip Ltd*, unreported 23 September 1999. However they also point out that a transcript of the oral judgment of Bourne J has been on the websites since August 2025.

The review

33. In *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47, [2024] 1 AC 983, the Supreme Court observed at [225] that 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."

34. Further in *High Speed Two (HS2) Ltd and Secretary of State for Transport v. Persons Unknown* [2024] EWHC 1277 (KB) at [32]-[33], Ritchie J summarised the court's task on a review hearing as follows: "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. 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".

35. I have therefore in each case considered whether there has been any material change which affects the need for the injunction to be in place. For that purpose I have duly taken account of the evidence to which I have already referred and to the submissions made on behalf of each Claimant, both through the evidence of Mr Wright and in substantially similar terms through the submissions of Counsel on behalf of the claimants.

36. I note that the procedural errors which have been made and which have very properly been drawn to the attention of the court. I am quite satisfied they were wholly inadvertent. Of course strict compliance and great care is required, not least in cases involving Persons Unknown. However slips can occur and I see no basis to conclude that any prejudice to any Person Unknown within the defined class has resulted. I conclude there is no basis to discharge the injunction or procedural grounds nor any reason to take those into account when considering the substance of the question of whether the injunction should continue.

37. As to continuation of the order, I do not consider that there has been any material change in circumstances. I am quite satisfied there continues to be a compelling need for these orders. The evidence does indeed demonstrate the deterrent effect of the injunctions. However it does not follow that that there can be any relaxation against the continuing

background of similar type of direct-action protests. I have no doubt that if the restraint were removed, the real and imminent threat of direct action at these airports would resume. In short, all the ingredients that were present for the original grant of the orders remain and all the arguments which justified those orders are still in place.

38. As to the proposed extension of the definition of Persons Unknown to those protesting against wealth inequality, in addition to those campaigning on climate change and environmental issues, I have found this a less straightforward decision. On the one hand, there is real force in the evidence and supporting argument which demonstrate a fluidity between the organisations of protest, and not least between Just Stop Oil and Take Back Power. Further, I accept that the evidence of the protests which have taken place against private jets gives rise to real and understandable concern on the part of the airports. I accept that the present definition of the Persons Unknown would likely be seen as a loophole by such protesters and thus would or might result in direct action, of the type which these orders otherwise restrain, by those concerned in wealth inequality protests.

39. On the other hand, this is a new proposed class of protester. I am not considering this as a matter of review but de novo. Further the Claimants' application does not extend to the amendment of the Particulars of Claim in order to plead the essential basis of its case. Whilst these are unusual forms of proceedings which typically do not result in a final trial it is nonetheless necessary to have a case which pleads out the essential basis for the relief which is claimed.

40. Weighing up these matters, I am persuaded that there is sufficient to conclude that absence this amendment and an associated extension of the injunction, there is a real and imminent risk of harm in the same way as justifies the present and continuing orders. I also note that the Manchester order contains no limitation on the particular cause of protestors and that no application has been made to set aside or vary that order in the two years of its life. Furthermore there will be every opportunity for the amendment to be reviewed pursuant to the general liberty to apply.

41. Further, as with all the other applications when first heard in 2024, damages would not be an adequate remedy; and the balance of convenience points very firmly to the grant of relief. I add that the matter goes beyond a serious issue to be tried; the merits of the

claim would satisfy the heightened test which may apply in cases where the injunction is the essential relief which is sought.

42. I will therefore grant the amendment. However I will also require the relevant Claimants to prepare, file and serve Amended Particulars of Claim in respect of this class of protester. This will provide further relevant material in the event that any person seeks to take advantage of the liberty to apply to set aside this amendment.

43. I accede to all the other applications to amend. I will now hear Counsel on the final form and terms of the orders to be made.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge

Case No: KB-2024-002596

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
[2026] EWHC 2249 (KB)

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 2 July 2026

BEFORE:

MR JUSTICE SOOLE

BETWEEN:

(1) LONDON SOUTHEND AIRPORT LTD
(2) LONDON SOUTHEND SOLAR LTD
(3) THAMES GATEWAY AIRPORT LTD

Claimants

- and -

PERSONS UNKNOWN

Defendant

Mr T ROSCOE (instructed by Bryan Cave Leighton Paisner LLP) on behalf of the Claimants

THE DEFENDANTS did not appear and were not represented

JUDGMENT
(Approved)

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1. MR JUSTICE SOOLE: On 14 August 2024 Farbey J granted an injunction to the operators of London Southend Airport in Essex and two subsidiary operators of the airport, namely the first three Claimants in this action. The effect of the injunction was to prohibit Persons Unknown but linked to Just Stop Oil and other environmental campaigns from committing acts of trespass and nuisance at the airport.

2. The order was made for a period of five years until 14 August 2029 but in accordance with the modern practice as endorsed by the Supreme Court in *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* [2023] UKSC 47, the order provided that the injunction should be reviewed annually. The first review took place before His Honour Judge Freedman, sitting as a Judge of the High Court, on 22 October 2025. He concluded that there had been no material change of circumstance and that the injunction should be continued.

3. The principles for a review are sufficiently stated in the following observations of the court. In *Wolverhampton* the Supreme Court said at [225] that 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."

4. At first instance in *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB), Ritchie J, having referred to a number of authorities including *Wolverhampton*, stated at [32]-[33]: "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. 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."

5. In *Esso Petroleum Co Ltd v Persons Unknown* [2025] EWHC 1768 (KB), Sweeting J, having acknowledged that the primary focus was 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, continued that: "…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."

6. At this hearing, the Claimants have been represented by Mr Tom Roscoe of counsel and his instructing solicitors. There has been no attendance by or representation on behalf of anybody at all and thus nobody within the definition of Persons Unknown as set out in the heading of the claim form.

Service and notice

7. The first matters to consider are the important formalities of notification of the hearing today and the supply of all relevant and associated documents by the means set out in the order of Farbey J. The details of that are set out in particular in the fourth witness statement of Mr Philip Keith Spencer dated 1 July 2026. He is a senior associate in the Claimants' solicitors. He states at paragraph 4 that the information in this statement "…is intended to amount to the "Certificate of Service" required by paragraph 11.2 of the injunction."

8. There is no Certificate of Service as required by that paragraph but he states that he is providing the information in the form of a witness statement in order to provide greater

detail of the steps that have been taken thn could conveniently be included in a certificate. I accept that what has been provided is greater than that would be provided in a Certificate of Service and in consequence have concluded that it is appropriate to waive noncompliance with that particular formality.

9. I am satisfied that there has been compliance otherwise with all the requirements of service.

The review

10. I turn to the substance of the review and the evidence that is provided by the Claimants. This appears in two forms. First, the third witness statement, dated 17 June 2026, of Mr Spencer. Secondly, the third witness statement, dated 17 June 2026, of Mr Marc Taylor. He is the Managing Director for Operations of the first Claimant and has worked at London Southend Airport for over 27 years.

11. Mr Spencer states that the Claimants' position is that the risk of unlawful direct action being directed at Southend Airport by Just Stop Oil, including potentially under the guise of a new activist organisation or other environmental campaigners, has not abated since the injunction was granted. He affirms that since its grant there have been no breaches of its terms. His clients believe that the lack of direct action against the airport since the grant of the injunction demonstrates its success. However they believe that the underlying risk of unlawful direct action remains unchanged and would be heightened were the injunction not renewed.

12. Mr Spencer recites what was before the judge at the first review hearing. This includes the history of Just Stop Oil's announcement on its website in March 2025 that it would be "hanging up the hi vis" following the Government meeting its initial demand on oil and gas policy. However news reports later in May 2025 suggested that Just Stop Oil were planning on making a comeback. Those reports, he says, were confirmed by an email sent from Just Stop Oil to London City Airport's solicitors on 24 June 2025. He says he has no reason to believe that Just Stop Oil have resiled from their position.

13. Mr Spencer continues that the injunction was originally granted in the context of Just Stop Oil threatening to cause a summer of chaos. Summer remains an attractive target to disrupt aviation in the holiday period. He then refers to the emergence of a new civil resistance group called Take Back Power and notes that the Just Stop Oil website refers website visitors to its website. He exhibits a screenshot thereof, together with other pieces of publicity.

14. He states that it appears that Take Back Power is a project under the Just Stop Oil umbrella and in any case a movement which involves present or former members of Just Stop Oil.

15. He then refers to the landing page for the website of an organisation called Youth Demand, previously described in the press as JSO2.0, directing visitors to Take Back Power's website and displaying the same message as Just Stop Oil's website. He states that according to Take Back Power's website, its demand of the government is to institute a house of the people with powers to tax the super-rich in order to fix Britain. Whilst that is their primary demand, their website indicates that environmental policy is also one of its concerns. It states, for example, that the "super-rich" profit from "heating the world to boiling point".

16. The website refers to the success of Just Stop Oil's direct action activities and explains that disruptive and direct action is shown by history to be a necessary part of social change and refers to what it says is the success of Just Stop Oil in affecting government policy. Mr Spencer states that Take Back Power's direct action activities, since apparently forming in December 2025, include protests within the Ritz Hotel and Harrods; at a Ferrari dealership; orchestrating activities across London, taking produce from a supermarket, protesting at Liberty and disrupting access to Claridges.

17. He says that whilst the target of their direct action activities mention the super-rich and its direct action activities to date appear to have targeted the luxury retail sector, his client considers that its existence poses a real risk of direct action against the airport. This is for the following particular reasons:

    1. Take Back Power's apparent connection to Just Stop Oil;

2. The fact that commercial airlines and their ultimate owners which operate from Southend are likely to be a potential target of demonstrations given their status as high profile commercial entities and with a perceived affiliation to the super-rich and their consumption of oil;

3. The fact that private aviation also operates at the Southend Airport, in particular from its Jet Centre; and

4. The airport regularly hosting the RAF Red Arrows and RAF Typhoon Jet Fighter Aircraft and other high profile aviation events.

18. In any event, as to environmental climate campaign groups, he states that the airport believes that there remains a threat posed by other environmental campaign groups, such as Fossil Free London, Extinction Rebellion and Shut the System.

19. Fossil Free London have staged protests directed at the oil and gas centre, including a demonstration outside Shell's London headquarters in May 2026.

20. Extinction Rebellion remain an active group and he refers to articles on their website and how they were gaining strength. The article goes on to refer to a protester demonstration held at RAF Lakenheath in April this year. He says this shows that aviation sites remain a target of protester action; but that example relates to the US and Israel actions in the Middle East.

21. He refers to Shut the System as an active group which has been, for example, targeting a supplier energy company Drax in April 2026 with slingshot rocks and using tools to attempt to cut into the workshop of a defence and aerospace company in the Midlands.

22. He says that private aviation has been in the past and remains a prime target for environmental activist protests. He refers to the targeting of both Oxford Airport and Inverness Airport by Extinction Rebellion last year for protests against private jets. I understand there have been no such protests since the order of HHJ Freedman continuing the injunction.

23. Mr Spencer concludes they remain active groups who wish and intend to use unlawful direct action to further their causes and that the airport is likely to remain a high profile and attractive target for unlawful direct action activities. He suggests that the likely inference is that the cessation of direct action protests at the airport is a reflection of the success of the injunction, which has received wide publicity, rather than any material reduction in the underlying risk of such activities occurring in the absence of an injunction.

24. He observes next that Southend is not the only airport to have a hearing listed for their second annual review. He states, as is correct, that there was a hearing which took place on 30 June 2026 in effect of four actions brought by London City Airport, Manchester Airport, Stanstead Airport, East Midlands Airport, Leeds Bradford Airport, Luton Airport, Newcastle Airport, Birmingham Airport, Bristol Airport and Liverpool John Lennon Airport. That hearing was listed before me on 30 June 2026. I made the orders that were sought, including a matter to which I will return, namely the expansion of the definition of Persons Unknown so as to include wealth inequality campaigners as well as environmental campaigners. Having said that, I of course acknowledge that each application has to be looked at in its own terms.

25. I turn to the third witness statement of Mr Taylor. He states that the injunction has continued to be a proven deterrent and there has been no protest activity within the boundary of the airport since its commencement. Operations of the airport have continued to grow and it is currently the UK's fastest growing airport. Amongst other things, this year there has been a 113% increase in business and aviation charters serving VIP clients and business individuals through the Jet Centre.

26. As to what he describes as the ongoing threat, Mr Taylor refers back to and endorses the observations of Mr Spencer in his third witness statement. He expresses the particular concern that the airport's Jet Centre may be a particular target. He refers back to the earlier episodes at Oxford Airport involving Extinction Rebellion on 5 July 2025 and then in 2024 at Stansted Airport when a private jet was sprayed with orange paint.

27. He continues that, from an operational perspective, any risk to Southend Airport is exacerbated by the fact that all other London airports and nearly all other major UK

airports have dedicated high profile armed policing teams based onsite. Southend does not yet have any police based onsite and relies purely on response from the local policing teams. He refers to an unusual incident which occurred on 8 June 2026 at Southend Airport involving a group of 48 students. It is a somewhat perplexing incident. In the light of the details of that event Mr Roscoe rightly did not seek to rely on it.

Application to amend

28. In addition to the request for the review, the Claimants have by application notice dated 26 June 2026 sought to expand the definition of Persons Unknown in a similar way to that of the 10 airports to whom that relief was granted two days ago. The application notice in those cases was dated 18 June 2026 and was duly lodged and notified in accordance with the requirements in the underlying orders. The Claimants in this action first had notice of that application from the skeleton argument of the 10 airports claimants which was uploaded on 25 June 2026. That resulted in the preparation of this application of 26 June 2026, which has been now issued and sealed.

29. The evidence of steps to notify the Persons Unknown is set out in the fourth witness statement of Mr Spencer dated 1 July 2026. This states that his firm emailed the application documents in draft to the email addresses listed in the order of Farbey J at 7.11 pm on 26 June; and that they affixed notices at locations identified in that same order on Saturday 27 June. He exhibits an image of that notice. Thus the application is notified both online and in hardcopy on those points.

30. The application documents were uploaded in draft to the Claimants' injunction website on Sunday 28 June. The solicitors also emailed Take Back Power's email addresses on the evening of 26 June to inform them both of the second review hearing and the application. On Sunday 28 June emails to the same addresses informed them that the application documents in draft had been uploaded to the website. Mr Spencer states that upon receipt of the sealed application notice from the court, the Claimants' solicitor will upload to the website an email to the requisite addresses and also make the sealed application available at the train station, which is one of the required locations. I am told that the sealed application notice has been now received and has been uploaded and emailed accordingly.

31. On 29 June before 4 p.m. the Claimants filed their skeleton argument for the second review and the solicitors uploaded their skeleton argument and authorities bundle to the website just after 6 pm on the same day; and in other ways made documents available on that date.

32. As confirmed at today's hearing, there has been no response. Mr Roscoe acknowledges that in respect of the issued application there has been less than three days' notice required by CPR 23.7(1)(b). He submits that they have had the unsealed documents for that period of time and he also points out that the application is the same on substance as that which was heard on 30 June 2026 and to which there has been no response. He contends that no prejudice has resulted.

33. I am content to deal with the application today and for that purpose to abridge time accordingly. I am satisfied that the best possible steps have been taken and that no prejudice has been suffered. In any event, any continuing injunction and order allowing amendment would each be subject to the usual liberty to apply. This affords protection if somebody wishes to come back and object to the course that has been taken.

Submissions

34. Supported by the evidence which I have described, Mr Roscoe submits that there is an ongoing threat that such conduct as required the original injunction would re-emerge if the injunction were not continued. In short, that there continues to be a real and imminent risk of serious harm which compels continuation of injunctive relief,

35. He acknowledges that it might be argued that the absence of any breaches of the order gives rise to an implication that the threat had receded and therefore that this relief is no longer required. In response he submits that the evidence suggests that the effect of injunctions is to divert direct action into other areas which are not protected by an injunction. He has taken me through the material from the various campaigning organisations and the terms in which they are written. He emphasises the important position of the airport as a private aviation centre and the risk that this could involve.

36. Mr Roscoe also makes the point that, in circumstances where the recent review in respect of other airports has taken place and resulted in the continuation of the orders and also the expansion of the definition of Persons Unknown, the fact of that would add to the risk that campaigners would turn their attention to an airport that was unprotected. I take that into account as well as reminding myself that I look at each application on its own merits.

37. All in all, he submits that there is no material change of circumstance and that the right course is to continue the order made by Farbey J in 2024.

38. As to the application to amend, Mr Roscoe submits that environmental and wealth inequality campaigns do not exist in separate silos. As demonstrated by the publicity material which is exhibited, they are to a very great extent interwoven. That is most obviously so, he submits, in respect of private aviation whereby wealthy individuals are in a position to undertake activities which climate change campaigners regard as particularly destructive, namely in the respect of the use of private jets. Acknowledging that it might be argued that there was no need to make the amendment, he submits that there is or may be a potential loophole that should be closed.

Conclusions

39. Having considered the appropriate approach to review hearings as set out in the authorities and to all of the evidence which has been placed before me, I am quite satisfied that the injunctions should continue. In my judgment, the fact that the injunctions have been effective does not give any cause for relaxation. In the event that they were to be lifted, I am quite satisfied that the real and imminent risk of serious harm would continue; and that it is necessary to protect this airport, like the others, against it. The private jet facility is a very particular concern but it is only one of the matters which influenced my overall decision. In short, I conclude that there has been no material change of circumstance and that there is no other reason in any of the circumstances of the case not to continue with the order.

40. I am also persuaded that it is appropriate to grant the amendment of the claim form so as to expand the definition of Persons Unknown. I think it right to prevent there being any

such loophole. There is an evident and close link between the wealth inequality and environmental campaigns, both organisationally and in substance.

41. On reflection I do not consider that the proposed amendment is something which should be treated as a fundamental change to the scope or nature of the injunctive relief, nor therefore to be considered de novo. It is something which the review occasion is entitled to consider, the potential loophole having become apparent. To the extent that the further evidence of wealth inequality campaigning activity shows any change of circumstances, in my judgment it compels the amendment which is sought. In any event, even if required to consider the matter de novo, I have no doubt that from the outset such campaigns, linked as they are to environmental campaigning, share the same potential target; and that there is a compelling need for these claimants also to have protection from such campaigns.

42. As I made clear to Mr Roscoe in argument, my qualification is that, as in the applications by the 10 airports on 30 June, I consider it appropriate to require the Claimants to amend their Particulars of Claim not only as to the title of the Defendants but also as to the essential facts upon which they rely in respect of the wealth inequality campaigners. This they have done in a draft today and I am satisfied with its terms.

43. In reaching these decisions I have kept very firmly in mind the cherished right of protest. Nothing in this judgment undermines that importance; but it does not justify the incursions onto private property and/or nuisance which in the light of the evidence are rightly apprehended in the absence of injunctive protection.

44. I have heard from Counsel and discussed the appropriate form of order. Further drafting is necessary, which I will review later today.

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Case No: KB-2024-002210

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
[2026] EWHC 2250 (KB)

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 9 July 2026

BEFORE:

MR JUSTICE SOOLE

BETWEEN:

HEATHROW AIRPORT LTD

Claimant

- and -

PERSONS UNKNOWN

Defendants

and other Named Defendants

Mr T ROSCOE (instructed by Bryan Cave Leighton Paisner LLP) appeared on behalf of the Claimant

THE DEFENDANTS did not appear and were not represented

JUDGMENT
(Approved)

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1. MR JUSTICE SOOLE: This is the second annual review hearing in respect of the injunction restraining acts of trespass and private and public nuisance by protesters at Heathrow Airport. There has been a number of other hearings in the past week or so before me in respect of other airports and their annual review. I of course look at this review in respect of this airport afresh but nonetheless have in mind the orders that have been made in respect of other airports.

2. The central original order was made by Julian Knowles J on 9 July 2024. The reasoning is set out very fully in his subsequent written judgment.

3. In July and early August 2024, after the date of that order, incidents took place at Heathrow Airport which on their face were in breach of the injunction. A number of people were arrested. In consequence 24 named Defendants were added to the injunction by order of Dexter Dias J on 11 December 2024. One of those concerned in the events was at that time in prison and there were issues about service and notice, so that matter was adjourned and came before Ritchie J on 14 February 2025 and Mr Adam Beard was joined.

4. The first annual review was heard by Turner J on 23 July 2025. The judge's reasons for his continuance of the injunction are set out in his judgment.

5. The position on a review was stated in *Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors* [2022] UKSC 0046 by the Supreme Court at [225] in these terms: "This will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made."

6. The focus of this review is of course on the Defendants who are persons unknown as defined rather than the named Defendants.

7. It is unnecessary to cite further authority on the nature of a review but I have reminded myself of the helpful observations of Ritchie J in the *High Speed Two (HS2) Limited &*

Anor v Persons Unknown & Ors [2024] EWHC 1277 KB at [32]-[33]. It is sufficient to refer to the first sentence of [32]: "Drawing these authorities together on a review of a interim injunction against persons unknown and named defendants, this court is not starting de novo." The focus is on whether there has been any material change of circumstance which then justifies altering the order in some way or even not continuing it.

8. The evidence demonstrates that the order following the first review was duly served in the ways that were required by that order. The evidence of Mr Philip Keith Spencer, a senior associate in the Claimant's solicitors, sets out the notification and service, on both the named Defendants and the Persons Unknown, of today's second review hearing. I am satisfied that they have all been properly served. As in all the other review hearings which I have conducted, there is no attendance by or representation on behalf of any named or unnamed Defendants.

9. As to the substance of Heathrow Airport's evidence at this review, this is set out in the third witness statement of Mr Spencer dated 15 June 2026. In this he reviews some of the historic material, including the incidents at Heathrow Airport in July and August 2024 to which I have already referred. He also recites the evidence that was available for the first review hearing about how Just Stop Oil had in March 2025 on its website indicated that it would be in effect calling off its action following a meeting with the Government in respect of the ending of new oil and gas exploration. However further evidence in May 2025, as reported on a news channel, was to the effect that they were planning a comeback.

10. Mr Spencer states that the most recent updates on Just Stop Oil's website suggest that Heathrow Airport is still very much on that group's radar. Amongst other things he cites an update from the website with photographs dated 14 May 2026 concerning two Just Stop Oil supporters who had been found guilty at a retrial for spraying Heathrow departure boards with orange paint. These are two named defendants and one of them is reported as stating that: "Non-violent civil resistance is a necessary part of tackling the climate crisis and I am grateful and proud to have been a part of that." That person also states that they make it very clear that this was not a protest against Heathrow or anyone flying through Heathrow that day: "It is true that the aviation industry is especially

harmful to the climate in terms of emissions, though it is a small number of frequent flyers and private jet users who cause the vast majority of this harm, not families who save up for a holiday once a year."

11. I am drawn to that by Mr Roscoe on behalf of the airport as an illustration of the link between campaigning and protests based on wealth inequality and climate and environmental issues. Mr Spencer's witness statement contains a link to, amongst other organisations, one called Take Back Power which is focused on the activities of the 'super-rich' and those who 'profit from heating the world to boiling point'. He refers to a range of organisations including Youth Demand, Fossil Free London, Extinction Rebellion and Shut the System who are concerned with these issues.

12. As to Take Back Power, he refers to direct action activities since it was formed apparently in December 2025, including depositing manure in the Ritz Hotel, occupying and protesting at a Ferrari dealership in Berkeley Square and at Harrods and orchestrating activities across London, including occupying and protesting at the Liberty store in Regent Street and disrupting access to Claridge's. This poses a further risk of direct action to Heathrow Airport. He says the fact that commercial airlines and their ultimate owners which operate from Heathrow are likely to be a potential target of demonstrations given their status as high-profile commercial entities and therefore the perceived affiliation with the super-rich and their consumption of oil is a factor in the concern. Likewise the groups such as Take Back Power are likely to perceive that the super-rich are likely to be disproportionate users of air travel, particularly on long-haul routes in premium cabins, services which are particularly offered from Heathrow Airport as compared with other UK airports.

13. Mr Spencer refers to the fact that private aviation also operates at Heathrow Airport but it was emphasised in submissions that this is not to the same degree or proportion as arises in other airports, for example London City Airport and Southend Airport, for which I have conducted review hearings in recent days. Mr Spencer refers to the decision of the relevant authorities to raise the national terrorism threat level on 30 April 2026 from substantial to severe; the latter meaning an attack is highly likely. This is pointed out not to suggest that these groups are terrorists but in the context that disruption and

chaos at an airport can be particularly dangerous and of assistance to those who are operating as terrorists.

14. It is acknowledged that there have not been breaches of the original or subsequent orders, save for those matters which occurred in July/August 2024. It is submitted that the absence of such incursions demonstrates the importance and effectiveness of these injunctions. It is then submitted that it would be quite inappropriate to conclude that the absence of activity means that the injunction is no longer necessary. In other words, if the injunction were lifted, this would only enhance the real and imminent risk of harm which led to the order being made.

15. I accept those submissions entirely and consider that there is every reason why these injunctions should continue. In short, there is no material change of circumstance which would justify bringing the injunctions to an end.

16. There is one material change of circumstance, namely the emergence of groups particularly focusing on wealth inequality. This is linked also to the evidence of a fluidity between Just Stop Oil and such campaigning groups. As the evidence explains, and I accept, issues of wealth inequality and climate change will not be and are not perceived by campaigners as being in separate compartments. On the contrary, as the cited observations indicate, the arguments are that the very wealthy, disproportionately by their activities, pose a threat to the environment. This includes the use of private jet flights and all the other aspects of international and luxury travel.

17. In these circumstances the Claimant has made an application dated 3 July 2026 to amend the definition of Persons Unknown in the Claim Form and Particulars of Claim so as to embrace those campaigning on wealth inequality grounds who likewise pose a risk of serious harm to the airport.

18. I have granted these applications at the other review hearings which I have undertaken. I am satisfied from the evidence in Mr Spencer's fourth witness statement that there has been a proper notification and service of the application, late as it has come. In any event, anybody adversely affected will have the benefit of the liberty to apply provision in all the orders which are made. If and to the extent that there is an ambiguity or

loophole, I think it is entirely appropriate that it should be closed in the way that is sought. I do not consider that this represents a fundamental change of circumstance but even if it did I would be quite satisfied that the conditions for making the amendment would be satisfied.

19. I add that it would in any event be appropriate to make this order in circumstances where such orders have been made in respect of all the other airports. It would be wrong to leave Heathrow, the leading airport in the country, exposed in that way.

20. For these reasons, the injunction of Julian Knowles J, as amended by the two orders to which I have already referred and as continued by the order of Turner J one year ago, will continue.

21. As with the other review hearings which I have conducted, I consider it appropriate to have a fresh injunction from today which discharges, upon its sealing, the existing order. This ensures that all affected by the order need only look at one document in order to ascertain what it is they can and cannot do.

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Case No: KB-2024-002336

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
[2026] EWHC 2251 (KB)

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 17 July 2026

BEFORE

MR JUSTICE SOOLE

BETWEEN:

GATWICK AIRPORT LTD

Claimant

- and -

PERSONS UNKNOWN

Defendants

Mr T MORSHEAD and **Ms E BARDEN** appeared on behalf of the Claimant

THE DEFENDANTS did not appear and were not represented

JUDGMENT
(Approved)

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1. MR JUSTICE SOOLE: This is the second annual review of the injunction that was granted to the claimant airport by Ritchie J on 19 July 2024. The first review took place before Mr Duncan Atkinson, KC, sitting as a deputy judge of the High Court on 18 July 2025. The Claimant appears by leading and junior Counsel. There is no attendance by or representation on behalf of any person and in particular any person falling within the definition of "Persons Unknown". The injunction granted by Ritchie J was in respect of the restraint by precautionary injunction of those who might be protesting about fossil fuels or the environment at Gatwick airport. The causes of action were and are in trespass and private nuisance. It is unnecessary on a review to set out the background to the order that was made.

2. The test to be applied at a review hearing is set out in its essence in the judgment of the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983, where at [225] the Court indicated that such review hearings would "... 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."

3. In a number of subsequent first instance decisions High Court judges have elaborated on the process to be followed, including in particular that the court is not on a review starting de novo. The question is whether there has been any material change of circumstance which might affect the decision on whether the order should continue, and if so, on what terms. Those cases are helpfully cited by Lambert J in her decision on a review in *Valero Energy Ltd & Ors v Persons Unknown & Ors* [2026] EWHC 397 (KB) at [5]-[13].

4. As to the procedural aspects of this application, the steps taken by the Claimant are set out in the witness statement of Mr Leon Culot, a senior associate in the Claimant's solicitors. His statement, dated 10 July 2026, identifies the steps that have been taken to notify potential defendants of this review hearing, steps taken in accordance with paragraph 4 of the injunction order of Ritchie J. Further steps have been taken in sending an email to a number of email addresses, including addresses not previously deployed or

required, in particular relating to other campaigning organisations protesting about these and related matters, namely Take Back Power, Fossil Free London, Youth Demand and Shut The System. Mr Culot also sets out steps taken in accordance with the injunction order to affix warning notices appropriately. I am satisfied that all necessary steps have been taken, both in accordance with the existing order and in order to ensure that notice of this review hearing is given as widely as possible, including to those further organisations.

5. As to the substance, the updated information is provided by the witness statement of Mr Graeme James Robertson of counsel in the claimant's solicitor's firm. This sets out the steps that were taken to give due notice of the review order of 2025 made by Mr Duncan Atkinson KC, which continued the order with a minor revision. It then sets out the various injunction orders that have been made in respect of a number of other airports across the country and of the second annual review of those injunction orders which have taken place between 30 June 2026 and 9 July 2026. In fact, in every case I was the judge who made those orders, the effect of which was to continue the injunctions in each case. That is material background which I bear in mind, whilst of course looking at this application individually. Mr Robertson reminds the court that London Gatwick Airport is the second largest airport in the UK after Heathrow. Noting the continuing injunctions in respect of so many other airports, he observes that London Gatwick would be particularly exposed if it were the only major English airport without the continuing protection of an injunction in place. It is the view of his clients that such a situation would increase the risk that London Gatwick would be targeted by protesters over the summer months.

6. Mr Robertson also points out that on 21 September 2025 the Secretary of State for Transport granted development consent to the claimant for its Northern Runway Project to bring the existing northern runway at Gatwick into routine use alongside the main runway. This application had led to considerable objections, a common theme in which was the perceived environmental harm, including the effect of increased greenhouse gas emissions. Two objectors have brought claims for judicial review of the grant of development consent, and these were heard together by Mould J in late January 2026. His judgment was handed down on 23 June 2026 and, as Mr Culot's statement records, dismissed the claims for judicial review in their entirety.

7. Mr Robertson states that the Claimant is concerned that this particular focus on the Northern Runway Project and associated interest from objectors heightens the risk that the airport will be targeted by environmental protesters over the summer months if the injunction is not continued. He also exhibits an email of 16 June 2026 from Mr Justin Berkenshaw, the Chief Superintendent of Sussex Police and the head of protective security command with responsibility for London Gatwick Airport. He says that he would "very much welcome" the continuation of the order and expresses the view "that there is a real risk that Gatwick will be targeted again in the future", and "that the injunction is a useful and necessary tool to support Sussex Police's ability to keep the airport safe and operational".

8. Mr Robertson then sets out a number of matters which have happened since the second review hearing in 2025. He refers to a protest by Extinction Rebellion, on 20 January 2026 outside the headquarters of Macquarie Group, against the proposed expansion of Farnborough Airport. A banner was unfurled calling for a ban on private jets and urging that body, an investment firm, to sever its connections to fossil fuels. He refers to various criminal proceedings which have been unfolding relating to protests back in July 2024 and June 2024. The statement acknowledges that there has not been a disruptive protest activity at UK airports since the 2025 order. Mr Robertson states that he considers it possible that the injunction and the equivalent orders granted to the other airports may be having a deterrent effect on such forms of protest, and that potential protesters of this nature may be targeting their activities at locations that are not protected by an injunction.

9. The statement then sets out the background of Just Stop Oil's apparent abandonment in mid-2025 of its campaign followed by evidence of a change of heart later in 2025; and then refers to the emergence of other organisations to which Just Stop Oil was linked, in particular Take Back Power. The statement exhibits material from the relevant websites of both Just Stop Oil and Take Back Power. The latter in particular focuses on the conduct of the 'super-rich' and their conduct. Whilst focused more broadly on wealth inequality, it also points, for example in a screenshot that was taken on 9 June 2026, to the alleged conduct of the 'super-rich' in 'heating the world to boiling point'. The statement then sets out information about various actions taken by Take Back Power to

make their case, with protest activities at the Tower of London in December 2025, at the Ritz Hotel in the same month and also activities in April 2026 at Sotheby's and at a Ferrari dealership in Berkeley Square. He points to the reference often made to the use of private jets. The statement also refers to the activities of groups such as the Extinction Rebellion, Fossil Free London, Youth Demand and Shut The System.

10. The Claimant makes clear its acknowledgement of the right to non-violent protest in a way which does not involve trespass and private nuisance. Indeed it has provided facilities for one campaigning group in respect of animal welfare to stage a protest in a designated area of the airport on 21 July 2026, i.e. in four days' time. However, the claimant contends, and Mr Morshead KC submits, that there remains a compelling need for the precautionary injunction to continue. There remains, it is submitted, a real and imminent risk of harm to the airport if the injunction were to be lifted. It is said that the fact that there have been no breaches of the injunction at Gatwick since it was imposed emphasises the importance of injunctions as a deterrent. It does not follow, they submit, that there can be or should be any relaxation. The evidence shows that, as injunctions are in place, protest activities move to alternative sites. It does not mean that there is no longer the imminent and real risk of harm uncompensatable by damages that would result. I am also reminded, as I have been in other cases, of the raised alert from significant to severe in respect of the terrorism threat which was effected by the relevant authority on 30 April 2026. That is not to suggest that any of those within this definition are acting as terrorists; rather, as before, the concern is that if protests on the sites were to take place, they would readily result in the sort of chaos which others who have motives of terrorism would exploit and most dangerously.

11. Any such review has to consider very carefully whether it is appropriate to continue the order. In doing so, as in all the other cases, I keep very firmly in mind the cherished importance of the right of protest and public speech. However I am quite satisfied for all the reasons that have been advanced by the claimant in its evidence and through submissions today that there is no material change of circumstance and that it is necessary, compellingly necessary, for the injunction to be continued. Accordingly I so order. I add that in order to ensure that anybody potentially affected by the order has only one document which they need to consult, I require, as I have done in the other

airport cases, a fresh order to be made today which contains the restraint and all information about addresses and places for notification.

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IN THE HIGH COURT OF JUSTICE **CLAIM NO. QB-2022-001098**
KING'S BENCH DIVISION

Before the Honourable Mrs Justice Tipples

On 22 July 2026



B E T W E E N:

(1) ESSO PETROLEUM COMPANY, LIMITED

(2) EXXONMOBIL CHEMICAL LIMITED

Claimants

-and-

(1) PERSONS UNKNOWN WHO, IN CONNECTION WITH THE 'EXTINCTION REBELLION' CAMPAIGN OR THE 'JUST STOP OIL' CAMPAIGN, OR OTHER ENVIRONMENTAL CAMPAIGN ENTER OR REMAIN (WITHOUT THE CONSENT OF THE FIRST CLAIMANT) UPON ANY OF THE FOLLOWING SITES ("THE SITES")

(A) THE OIL REFINERY AND JETTY AT THE PETROCHEMICAL PLANT, MARSH LANE, SOUTHAMPTON SO45 1TX (AS SHOWN FOR IDENTIFICATION EDGED RED AND GREEN BUT EXCLUDING THOSE AREAS EDGED BLUE ON THE 'FAWLEY PLAN' ATTACHED TO THE ELLENBOGEN ORDER (as defined below))

(B) HYTHE OIL TERMINAL, NEW ROAD, HARDLEY SO45 3NR (AS SHOWN FOR IDENTIFICATION EDGED RED ON THE 'HYTHE PLAN' ATTACHED TO THE ELLENBOGEN ORDER)

(C) AVONMOUTH OIL TERMINAL, ST ANDREWS ROAD, BRISTOL BS11 9BN (AS SHOWN FOR IDENTIFICATION EDGED RED ON THE 'AVONMOUTH PLAN' ATTACHED TO THE ELLENBOGEN ORDER)

(D) BIRMINGHAM OIL TERMINAL, WOOD LANE, BIRMINGHAM B24 8DN (AS SHOWN FOR IDENTIFICATION EDGED RED ON THE 'BIRMINGHAM PLAN' ATTACHED TO THE ELLENBOGEN ORDER)

(E) PURFLEET OIL TERMINAL, LONDON ROAD, PURFLEET, ESSEX RM19 1RS (AS SHOWN FOR IDENTIFICATION EDGED RED AND BROWN ON THE 'PURFLEET PLAN' ATTACHED TO THE ELLENBOGEN ORDER)

(F) WEST LONDON OIL TERMINAL, BEDFONT ROAD, STANWELL, MIDDLESEX TW19 7LZ (AS SHOWN FOR IDENTIFICATION EDGED RED ON THE 'WEST LONDON PLAN' ATTACHED TO THE ELLENBOGEN ORDER)

~~**(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 'ALTON COMPOUND PLAN' ATTACHED TO THE ELLENBOGEN ORDER)**

(2) PERSONS UNKNOWN WHO, IN CONNECTION WITH THE 'EXTINCTION REBELLION' CAMPAIGN OR THE 'JUST STOP OIL' CAMPAIGN, OR OTHER ENVIRONMENTAL CAMPAIGN ENTER OR REMAIN (WITHOUT THE CONSENT OF THE FIRST CLAIMANT OR THE SECOND CLAIMANT) UPON THE CHEMICAL PLANT, MARSH LANE,

SOUTHAMPTON SO45 1TX (AS SHOWN FOR IDENTIFICATION EDGED PURPLE ON THE 'FAWLEY PLAN')
(3) PERSONS UNKNOWN WHO, IN CONNECTION WITH THE 'EXTINCTION REBELLION' CAMPAIGN OR THE 'JUST STOP OIL' CAMPAIGN, OR OTHER ENVIRONMENTAL 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

Defendants

ORDER

RECITALS

UPON the Order of Linden J, dated 18 July 2023 (as amended on 21 July 2023 and 16 October 2023) granting the Claimants final injunctive relief until 11 July 2028 (the "Linden Order")

AND UPON the Order of Ellenbogen J, dated 29 January 2024, maintaining the relief granted in the Linden Order but superseding that Order following a review in light of the Supreme Court judgment in *Wolverhampton CC v London Gypsies & Travellers* [2023] UKSC 47 (the "Ellenbogen Order")

AND UPON the Order of Tipples J, dated 10 July 2024, following the first review hearing, making no order as to the continuing effect of the Ellenbogen Order

AND UPON the Order of Sweeting J, dated 10 July 2025, following the second review hearing, making no order as to the continuing effect of the Ellenbogen Order

AND UPON a further review hearing being listed on 22 July 2026 for a review of the Ellenbogen Order, pursuant to paragraph 8 of the Ellenbogen Order (the "Review Hearing")

AND UPON hearing Timothy Morshead KC for the Claimants and the Defendants not appearing and not being represented

AND UPON reading the evidence and the Claimants' skeleton argument

AND UPON the Court being satisfied that proper and effective service of the Ellenbogen Order, pursuant to paragraph 12 of the Ellenbogen Order, and the documents prepared for the

Review Hearing, pursuant to the steps set out in paragraph 15 of the Ellenbogen Order, had been effected on all Defendants

AND UPON the Court reviewing the Ellenbogen Order and being satisfied that, in respect of the First to Third Defendants, there had been no material change in circumstances warranting the setting aside of the relief granted in the Ellenbogen Order

AND UPON the Claimants having received assurances from Diana Hekt that she does not intend to breach any injunction covering the Sites (as defined in the Ellenbogen Order) but not having received any response from Paul Barnes

AND UPON the Claimants indicating to the Court pursuant to their duty of full and frank disclosure that the plan used in association with that part of the Ellenbogen Order which relates to Avonmouth was inaccurate in its depiction of part of the north-eastern boundary

AND UPON the Claimants having applied to the Court to amend the Ellenbogen Order to correct the depiction of the boundary at the Avonmouth site

AND UPON the Court being satisfied that it is appropriate to Order that the Ellenbogen Order be amended accordingly, to depict the correct boundary at the Avonmouth site

IT IS ORDERED THAT:

1. Subject to the following provisions of this Order, no order shall be made as to the continuing effect of the Ellenbogen Order.

2. In view of the assurance given by her mentioned above, expiring on 31 July 2027 or the date of the next annual review hearing, the Fifth Defendant (Diana Hekt) is not to be subject to the injunctions set out in the Ellenbogen Order, without further order.

3. The Fourth Defendant (Paul Barnes) is not to be subject to the injunctions set out in the Ellenbogen Order, but the Claimants have liberty to apply to make him subject to those injunctions in the absence of receiving assurances from him to like effect as those given by him in July 2024 and lasting until 30 June 2025.

4. The Ellenbogen Order be amended (the "Amended Ellenbogen Order") to reflect the change to the boundary of the Avonmouth Terminal described in the Claimants' evidence mentioned above.

5. The Amended Ellenbogen Order shall be notified to the First to Third Defendants pursuant to paragraph 12 of the Ellenbogen Order, except that in relation to paragraph 12.1 of the Ellenbogen Order copies of the Amended Ellenbogen Order may be fixed by a method other than in clear transparent sealed containers. This Order shall be notified to the First to Third Defendants pursuant to the steps in paragraph 15.2-15.3 of the Ellenbogen Order.

6. The Amended Ellenbogen Order and this Order shall be served on the Fourth and Fifth Defendants by email, pursuant to paragraphs 2 and 3 of the Consent Order sealed on 19 July 2023.

7. The next annual review of this Order shall take place on 22 July 2027 at the Royal Courts of Justice before a High Court Judge (unless the Judge in Charge of the KB List considers the matter may be released to a Deputy High Court Judge) at 10.30am or so soon thereafter as counsel can be heard, with a time estimate of half a day.

Mrs Justice Tipples

Dated 22 July 2026

Neutral Citation Number: [2026] EWHC 2569 (KB)

Case No: QB-2022-001236

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Stand, London, WC2A 2LL

Date: 9 October 2026

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**

- -
- -

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

The **Defendants** did not attend and were not represented.
Hearing date: 7 October 2026.
Judgment handed down remotely at 10.30am on 9 October 2026 by circulation to the Claimant's representatives by email (for them to serve on the Defendants within 7 days of receipt) and by release to the National Archives.

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APPROVED JUDGMENT

HHJ Emma Kelly:

Introduction

1. This is the second annual review of an injunction granted in this matter to North Warwickshire Borough Council ("the Claimant"). The Claimant seeks 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 second review hearing.

Background

3. The 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 1*').

4. By order dated 6 September 2024, I granted an injunction, 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.

5. The first review hearing occurred on 18 September 2025. The judgment that followed the review hearing set out the updated evidential position as it stood at that time: *North Warwickshire Borough Council v Barber & Others* [2025] EWHC 2403 (KB) ('*NWBC 2*'). The evidence included that of Mr Maxey, the Claimant's Chief Executive, who stated that:

    i) Protest groups affiliated with the Defendants remained active,

    ii) The Claimant was still receiving notification of planned direct action by other unaffiliated climate groups,

    iii) The nature of the risks posed by direct action or civil disobedience remained unchanged,

    iv) There had been no further protests since the Injunction was granted,

    v) The police still considered the injunction essential, and

    vi) Just Stop Oil had changed the focus of their campaign to stopping the extraction and burning of oil and gas by 2030.

6. By order dated 21 October 2025 ("the First Review Order"), the Injunction and Power of Arrest were continued without amendment, save that both orders were discharged against the 16th Defendant (Jane Thewlis) only. The discharge of the Injunction and Power of Arrest as against Ms Thewlis was to correct a

typographical error in the original orders by which the Ms Thewlis had been included in error in the list of named defendants.

7. The First Review Order directed a second review hearing at 10.30am on 18 September 2026 at Birmingham District Registry. The hearing on that occasion was adjourned to 7 October 2026 due to the court failing to list the case. No Defendant attended the hearing on 18 September 2026. The order of 18 September 2026 ("the Adjournment Order") relisted the second review hearing at 10.30am on 7 October 2026 at the Royal Courts of Justice and required the Claimant to serve the Adjournment Order on the Defendants within 7 days of receipt of the sealed order.

Service

8. For the reasons given at [5] – [11] of *NWBC 2*, I was satisfied that the Injunction and Power of Arrest had been served on the Defendants.

9. Paragraph 5 of the First Review Order provided notice of the time, date and location of the second review hearing. The First Review Order did not specify the date by which said order had to be served on the Defendants. The witness statement of Ms Sofia Ali, the Claimant's Assistant Director of Legal Services, dated 15 September 2026, provides evidence of the steps the Claimant has taken to serve the First Review Order and otherwise advertise the details of the second review hearing. On 19 September 2025, the Claimant posted a media release on its website and social media account to the effect that the Injunction and power of arrest had been reviewed, remained in force and would be subject to another review in 12 months' time. On 26 November 2025, the Claimant caused the 17 signs at the Terminal to be updated with details of the second review hearing. On 2 September 2026, a copy of the First Review Order was uploaded to the Claimant's website and a further press release placed on the Claimant's website and social media accounts informing readers of the time, date and location of the Second Review hearing. On the same day, the Claimant asked Warwickshire Police to share the information on their social media accounts. On 4 September 2026, the named Defendants were emailed or posted the First Review Order, in accordance with the mode of service prescribed by paragraph 9 of the First Review Order. On 14 September 2026, the Claimant emailed the First Review Order to youthclimateswarm@protonmail.com and juststopoil@protonmail.com although the email to Youth Climate Swarm was returned as undelivered.

10. Whilst the First Review Order did not specify the date by which the Claimant was to serve the said order on the Defendants, it was implicit that the Claimant should do so in a timely manner. It is therefore unsatisfactory that the Claimant did not serve the order on the named Defendants until early September 2026, albeit I recognise that a number of steps were taken to publicise the date of the second review hearing.

11. The adjournment of the hearing on 18 September 2026 has however remedied any prejudice that Defendants may have been occasioned by the late service of

the First Review Order. Paragraph 1 of the Adjournment Order provided the hearing date, time and place of the adjourned second review hearing. Paragraphs 2 and 3 of the same order required the Claimant to effect service of the Adjournment Order on the Defendants by variously first class post, email and alternative methods, within 7 days of receipt of the sealed order. Certificates of service confirm that service of those named Defendants required to be served by email occurred on 22 September 2026, and on those required to be served by first class post on 24 September 2026. Ms Sofia Ali has provided a witness statement, dated 25 September 2026, setting out the steps she took to comply with the alternative service provisions on the persons unknown Defendants and other Defendants for whom the Claimant has no email or postal address. The last step was completed on 24 September 2026. I am therefore satisfied that the Defendants have been served with the Adjournment Order, have thus been provided with notice of the second review hearing and have had an opportunity to participate.

12. At the second review hearing on 7 October 2026, I dealt with the Claimant's application, dated 15 September 2026, for relief from sanctions in respect of the late compliance with four aspects of the First Review Order as to updating of signage at the Terminal, the filing and serving of updating evidence and the hearing bundle for the second review, and the uploading of a copy of the judgment from the first review onto the Claimant's website. For the reasons given in an ex tempore judgment during the hearing, I granted that application.

Legal Framework

13. The applicable legal framework for review hearings has not changed since the last review in this case. A review hearing remains an important, and in cases of persons unknown a required, process to ensure the continuation of the injunction remains justified. As noted 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."

14. As I noted in *NWBC 2* at [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]."

15. In the recent case of *Teledyne UK Ltd v Persons Unknown* [2026] EWHC 2252 (KB), Soole J, at [9] noted the observations of Garnham J in *Rochdale Metropolitan Borough Council v Persons Unknown* [2025] EWHC 1314 (KB) ("*Rochdale*"), where at [51] the judge stated:

> "In my judgment the correct approach is dictated by the Supreme Court's judgment in *Wolverhampton* and in particular [225]. This is not a 'tick box' exercise, but the matters on which evidence should be adduced and argument focused are (i) how effective the order has been; (ii) whether any reasons or grounds for its discharge have emerged; (iii) whether there is any proper justification for its continuance; and (iv) whether and on what basis a further order ought to be made. The parties should give full disclosure, supported by appropriate evidence, directed towards those questions."

The evidence

16. The Council relies on the updating evidence from Mr Maxey, the Claimant's Chief Executive. He is also the Claimant's representative on the Strategic Coordinating Group of the Warwickshire Local Resilience Forum. In his sixth witness statement, dated 9 September 2026, he explains that he has undertaken a further internal review of the current need for the injunction and power of arrest.

17. Mr Maxey states that, since the first review hearing, there have been no further protests at the Terminal, no breaches of the Injunction and the Claimant has not received any notifications of planned direct action by Just Stop Oil ("JSO") or affiliated groups. He believes the Injunction and power of arrest are having the intended deterrent effect.

18. He notes that JSO and Extinction Rebellion, the main protest groups with which the named Defendants are affiliated, remain active. Whilst JSO vowed to end disruptive protests some 18 months ago, Mr Maxey believes they have relaunched their campaign. He points to a protest on 2 September 2026 at which approximately 60 JSO activists blocked roads at Parliament Square due to an indication by the Prime Minister that he was "deciding whether to have more oil and gas projects". Mr Maxey has checked JSO's website which, as at the date of his statement, read: "FOR FUCK'S SAKE JUST STOP OIL! Think this summer was bad? It was just the start. Every new oil and gas project will make things worse…if you feel the same, now is the time to resist". The website contained a link below the wording by which readers could sign up to join a call to plan "what happens next".

19. Mr Maxey expresses his concern that the Terminal, which is one of the largest oil terminals in the country and is capable of holding 405 million litres of flammable liquids, remains a target for future civil resistance action. He states he is confident that advance notice of any such protests would not be given to the Claimant or police so as to enable any safety planning. He concludes that the nature of the explosive risks remain the same, putting the lives and livelihoods of countless residents and the local environment at risk.

20. At the hearing on 7 October 2026, Mr Maxey gave oral evidence on oath to provide an update as to JSO's current stated position on their website. He notes that, as at 7 October 2026, the landing page of JSO's website included the following wording, under the hearing "Action":

> "We will not just sit around and wait while everything we love is being destroyed. So once again we are putting our bodies on the line, risking arrest and even imprisonment…If you feel the same, now is the time to resist. Don't wait for others to lead the way. We are all Just Stop Oil now.
>
> Register now to join our next online call 10am, 17th October 2026"

Discussion

21. It is apparent from Mr Maxey's sixth statement that he has undertaken research to ascertain the current evidential position and addressed his mind to whether there is an ongoing need for the Injunction and power of arrest. There is nothing to suggest that the Claimant has been other than full and frank in its updating evidence and the manner in which it has presented its case at the second review hearing.

22. I turn to consider whether there has been any material factual change since the Injunction and First Review Order.

23. There has been no protest activity at the Terminal or any breaches of the Injunction since the first review. Evidence of a cessation of protest activity does not however equate to the threat having dissipated but, on the facts of this case, amounts to evidence that the Injunction has continued to have its intended deterrent effect: applying *Valero* at [34]. The logic I applied in *NWBC 2* at [21] continues to apply to the evidence of cessation as at the second review.

24. In March 2025, JSO published a statement stating they were "hanging up the hi vis". However, by the date of the first review in September 2025, JSO's website made references to "just getting started", civil resistance and a "new revolutionary direct action campaign". I concluded in *NWBC 2* at [22] that the evidence suggested that JSO had further direct action planned and that the Terminal remained at risk of a continued real and imminent risk of direct action. That risk of further direct action has evolved into actual direct action, as seen by JSO's actions in Parliament Square as recently as 2 September 2026. The current wording on JSO's website declaring that they "are once again putting our bodies on the line, risking arrest and even imprisonment", that "now is the

time to resist" and encouraging readers to join a call to find out "what happens next" is further evidence consistent with the resumption of direct action.

25. If individuals are minded to take direct action or other protest activity, the Terminal remains a prominent target. Mr Maxey confirms that the Terminal continues to be one of the largest oil terminals in the country capable of holding 405 million litres of flammable liquids. It is located close to a significant number of residential properties. Interference with the operation of the Terminal gives rise to an increased risk of fire or explosion. The consequences of any fire or explosion would be a significant risk to life, property, the livelihoods of those working in the locality and to the environment. Taking account of the updated evidence, I consider the threat of direct action at the Terminal is actually higher now than it was at the first review.

26. I have considered whether there have been any material changes in legislation or caselaw since the first review but none have been identified.

27. Taking the guidance in *Wolverhampton* at [225], summarised by Garnham J in *Rochdale* at [51], into account:

    i) The Injunction and power of arrest have been very effective in deterring dangerous protest activity at the Terminal. There have been no breaches of the Injunction since the first review hearing.

    ii) No reasons or grounds for discharge have emerged. No Defendant has engaged with the review process or otherwise raised any reason or grounds for discharge. The Claimant has provided full and frank updating evidence which does not identify any factual basis for discharge or variation. No legal basis for discharge or variation has been identified.

    iii) There is proper justification for its continuance. There is evidence that JSO has resumed direct action. The risks that justified the making of the Injunction remain. The Terminal remains at high risk of direct protest, and the consequences of any fire or explosion at the Terminal remain the same.

28. I am therefore persuaded that, having reviewed the evidence and legal landscape, nothing material has changed so as to warrant the amendment or discharge of the Injunction and power of arrest. The Injunction and power of arrest will therefore continue in unamended form.

29. There is no need to list a further annual review as the Injunction and power of arrest expire by effluxion of time at 4pm on 6 September 2027. If the Claimant wishes to apply for an extension of the Injunction, the onus will rest upon it to make a formal application. Paragraph 9 of the Injunction provides 'liberty to apply' and continues to provide any person served with or affected by the order with a mechanism for applying to vary or discharge the same.

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 CATTERMOLE
(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

Claim No. QB-2022-001241

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ROYAL COURTS OF JUSTICE
BEFORE MR JUSTICE RITCHIE



BETWEEN

SHELL U.K. LIMITED

Claimant

- and –

PERSONS UNKNOWN ENTERING OR REMAINING AT THE CLAIMANT'S SITE KNOWN AS SHELL HAVEN, STANFORD-LE-HOPE (AND AS FURTHER DEFINED IN THE PARTICULARS OF CLAIM) WITHOUT THE CONSENT OF THE CLAIMANT, OR BLOCKING THE ENTRANCES TO THAT SITE

Defendant

ORDER

PENAL NOTICE

IF YOU, THE DEFENDANTS, DISOBEY THIS ORDER YOU MAY BE HELD IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

IMPORTANT NOTICE TO DEFENDANTS

This Order prohibits you from doing the acts set out in this Order. You should read it very carefully. You are advised to consult a solicitor as soon as possible.

Any other person who knows of this Order and does anything which helps or permits the Defendants to breach the terms of this Order may also be held to be in contempt of Court and may be imprisoned, fined or have their assets seized.

A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

You have the right to ask the Court to vary or discharge this Order (which is explained below)

RECITALS

BEFORE the Honourable Mr Justice Ritchie on 15 October 2026.

UPON the injunction made by Order of Mr Justice Dexter Dias dated 3 December 2024 ("**the JDD Order**") and the Order of Mr Justice Eyre dated 17 October 2025.

AND UPON the annual review hearings taking place on 15 October 2026 in each of the following claims QB-2022-001241, QB-2022-001259 and QB-2022-001420 having been heard together and pursuant to paragraph 14 of the JDD Order.

AND UPON hearing from Myriam Stacey KC and Joel Semakula for the Claimant.

AND UPON no Defendant either appearing or being represented.

AND UPON the Court being satisfied that there has been no material change since the granting of the JDD Order that provides grounds for declining to continue the injunction made by the JDD Order.

AND UPON the Court giving and extempore judgment.

NOW IT IS ORDERED that:

1. The JDD Order and the injunction made pursuant to it shall remain in full force and effect, save that the JDD Order is amended as follows:

    a. paragraph 15:

        "The Claimant shall have permission to file and serve any further evidence on which it relies in support of the continuation of the injunction, that is, evidence going to whether any material change has arisen since the granting of this Order that provides grounds for declining to continue the injunction (as provided at paragraph 14 of this Order) (other than evidence relating to service) not less than 14 days before the review hearing. Evidence relating to service shall be filed as soon as reasonably practicable and in any event not later than 1 clear day before the review hearing";

    b. a new paragraph 15A is inserted as follows:

        "Any Defendant who wishes to make submissions at the review hearing shall, not less than 7 days before the review hearing, file and serve on the Claimant a document setting out a summary of their argument and any evidence relied on, so as to afford the Claimant sufficient opportunity to respond"; and

    c. paragraph 16:

        "The Claimant shall file (by hard copy and electronic means) and serve (by electronic means only) two copies of the hearing bundle in a form compliant with the King's Bench Guide by no later than 5 days before the review hearing."

2. The next annual hearing in these proceedings shall take place at a hearing to be listed no later than 3 November 2027. The Claimant shall liaise with the Court to list any such hearing and provide a suggested time estimate and provide the Defendants with the notice of hearing as soon as practicable in accordance with paragraph 11 of the JDD Order.

3. The Court will provide sealed copies of this order to the Claimant's solicitors for service or notification in accordance with paragraph 11 of the JDD Order.

Signed: Ritchie J

Made: 15.10.2026