SKELETON ARGUMENT FOR ANNUAL REVIEW HEARING

10 JULY 2024

CLAIM NO. QB-2022-001098

(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, 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 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

DEFENDANTS

3 July 2024

Norton Rose Fulbright LLP
3 More London Riverside
London SE1 2AQ
United Kingdom

Tel +44 20 7283 6000
Fax +44 20 7283 6500
DX 85 London
nortonrosefulbright.com

To whom it may concern

This notice is given in connection with Operating Sites injunctions that the Claimants have sought and which were granted by Mr Justice Linden on 18 July 2023 (as amended on 21 July 2023 and 16 October 2023) (the **Linden Order**) and by Mrs Justice Ellenbogen on 29 January 2024 against various defendants connected to the Extinction Rebellion or Just Stop Oil campaigns with claim number QB-2022-001098 (the **Ellenbogen Order**).

We refer to the notice of 11 April 2024, in which we confirmed that the Claimants have fixed this year's annual review hearing for Wednesday, 10 July 2024, with a time estimate of half a day.

Pursuant to paragraph 10 of the Ellenbogen Order, the Claimants are required to lodge and exchange the skeleton argument and bundle of authorities in support 3 days before the annual review hearing. By way of service, we enclose a skeleton argument dated 2 July 2024 (the **Skeleton**) in support of the injunctions and the authorities bundle of legal authorities referenced in the Skeleton (the **Bundle of Authorities** and, with the Skeleton, the **Documents**).

A copy of the Documents may be obtained from Norton Rose Fulbright LLP at the address stated above or by emailing ExxonMobil.Service@nortonrosefulbright.com. This notice can also be viewed at https://www.exxonmobil.co.uk/Company/Overview/UK-operations.

Yours faithfully

Norton Rose Fulbright LLP

Norton Rose Fulbright LLP

Enc.

IN THE HIGH COURT OF JUSTICE Claim No QB-2022-001098

KING'S BENCH DIVISION

B E T W E E N:

(1) ESSO PETROLEUM COMPANY, LIMITED
(2) EXXONMOBIL CHEMICAL LIMITED

Claimants

-and-

PERSONS UNKNOWN AS FURTHER DESCRIBED IN THE RE-AMENDED CLAIM FORM

Defendants

CLAIMANTS' SKELETON ARGUMENT

Hearing date, 10 July 2024

Time Estimate: assuming the matter remains unopposed, 1.5hrs of judicial time, and 1.5hrs of pre-reading.

References: A reference to "TB/w/x" is to tab w and page x of the Trial Bundle. A reference to "AB/y/z" is to tab y and page z of the Authorities Bundle.

***Suggested Pre-Reading, in suggested order*:**

1. Judgment of Ellenbogen J, dated 6 April 2022 **[TB/4/29-40]**
2. Judgment of Linden J, dated 18 July 2023 **[TB/10/103-118]**
3. Order of Ellenbogen J, dated 29 January 2024 **[TB/13/127-144]**
4. Anthony Milne WS, dated 3 April 2022 **[TB/14/145-166]**
5. Stuart Sherbrooke Wortley WS, dated 4 April 2022 **[TB/15/167-175]**
6. Nawaaz Allybokus WS#3, dated 22 April 2022 **[TB/16/176-183]**
7. Martin Pullman WS#2, dated 6 June 2023 **[TB/17/184-195]**
8. Holly Stebbing WS#3, dated 20 June 2024 **[TB/18/196-211]**

Introduction

1. This is a review of an injunction obtained originally in interim form in 2022, in response to the environmental protest campaigns which came to prominence at that time. On 19 July

2023, Linden J granted "final" relief ("the Linden Order") with an injunction effective for 5 years, subject to annual review. The essential question for the Court is whether anything material has changed so as to make the injunction unnecessary.

2. On 29 January 2024, Ellenbogen J reviewed the Linden Order following the Supreme Court's judgment in *Wolverhampton CC v London Gypsies & Travellers* [2024] 2 WLR 45 ("*Wolverhampton CC"*), in order to assess whether the decision in that case necessitated amendments to the Linden Order. She found that it did not and granted the same relief (the "Ellenbogen Order #2") — subject to "tidying up" to deal with (a) one area no longer needing protection and (b) one area of previously unregistered land becoming registered, as described in the recitals to her order.

3. The hearing on 10 July 2024 is the first annual review of the Linden Order.

4. Cs maintain that there has been no relevant change in circumstances such as to supersede the need for the injunction and, indeed, far from receding, the evidence shows that the threat is re-intensifying and re-focusing on areas (airports) which are not widely protected by injunctions. A correct inference from the evidence is that campaigners seek out targets which are not protected by injunction, precisely because the injunction is an effective deterrent. Thus, not only has the injunction been effective to date, its continuation is necessary in order to prevent the terminals and Fawley refinery from coming back into focus as targets for protest.

Service

5. The Notice of Hearing in respect of this review hearing was notified to Persons Unknown by the various methods sanctioned in the Ellenbogen #2 Order, ¶15 **[TB/13/133-134]**: Stebbing WS#3, ¶5.2 **[TB/18/209-210]**. The deemed date of notification was, therefore, 25 April 2024.

6. The Notice of Hearing was also posted to D4 and D5 by first class post on 25 April 2024: Stebbing WS#3, ¶5.4 **[TB/18/210]**. The deemed date of service was, therefore, 29 April 2024.

The Sites

7. The Sites which are the subject of this claim (the "Sites") are a mixture of an oil refinery/fuels terminals/logistics hubs/compounds. Their substance and importance not only to Cs but to the nation, are really self-explanatory: but, by way of example only, the Fawley site is the largest oil refinery in the UK and provides 20% of UK refinery capacity.

8. The titles to the Sites and the Claimants' interests in those Sites are set out in the Witness Statement of Stuart Wortley dated 4 April 2022. The Sites are shown in the Plans attached to the Ellenbogen Order.

9. So far as concerns tenure, this was considered in extensive detail before Ellenbogen J in April 2022, who was satisfied as to Cs' title. In his judgment, Linden J stated **[TB/10/109]**:

> "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."

10. Apart from the "tidying up" already mentioned, nothing has changed on this point. Accordingly, this approach remains appropriate.

Background.

11. The protests which took off mainly in 2022 are now common knowledge but the background is helpfully summarised in the judgment of Linden J, ¶¶29-41 **[TB/10/109-111]**. This can be seen in greater detail in Milne WS ¶¶7.1–7.5 **[TB/14/148-149]**, ¶¶8.1–8.8 **[TB/14/149-151]**, 9.1–9.30 **[TB/14/151-157];** and, Wortley WS ¶¶40–41 **[TB/15/174-175]**.

12. The problems experienced by Cs were not isolated events: "direct action" was being taken at other oil terminals around the country: see Allybokus WS#3 ¶¶23–24 **[TB/16/181]**; and Pullman WS ¶¶17–20 **[TB/17/190-192]**.

13. Cs now rely on Stebbing WS#3 to demonstrate the continuing threat of direct action.

Continued threat of direct action

14. As explained by Stebbing WS#3 ¶¶3.1-3.29 **[TB/18/198-207]**, the threat of direct action at and against the Sites continues.

15. In summary, Cs rely on the evidence that:

(1) Just Stop Oil appear to be referring explicitly to the existence of the injunctions at, e.g. the Sites, as a reason for not targeting them. In a tweet, dated 13 September 2023, the Just Stop Oil account stated, in relation to protests on highways:

> "Disruption is frustrating, but we have no other choice. Fossil fuel companies have taken out private injunctions that makes protests impossible at oil refineries, oil depots and even petrol stations…"

(2) In two cases similar to the present application, the Court has recently found that the threat continues: *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB) (26 Jan 2024) ("*Valero*") **[AB/1/3-40]** and *Exolum Pipeline Systems Ltd v Persons Unknown* [2024] EWHC 1015 (KB) (20 Feb 2024) **[AB/2/41-47]**.

(3) An individual trespassed on the Fawley Site in December 2023 in order to film the layout of the Site by drone: ¶¶3.8-3.15 **[TB/18/199-201]**. Although he was not overtly carrying out a protest or direct action, his filming of the Site and publication on YouTube, now viewed over 100,000 times, demonstrates a continued interest in

Cs' Sites.

(4) Cs' wider assets in England continue to be of interest to environmental activists: ¶¶3.2–3.7 **[TB/18/198-199]**.

(5) Extinction Rebellion and Just Stop Oil continue to focus their attention on the oil and gas sector: ¶3.16 **[TB/18/201-203]**. For example, on 27 February 2024, several Extinction Rebellion protestors stormed and occupied the Walkie Talkie building in Fenchurch Street, London, demanding that insurance companies talk to them about insuring oil and gas corporations. Similarly, on 2 June 2024, more than 100 Extinction Rebellion protestors blocked access to Farnborough airport as part of a week of international action against private jets.

(6) Just Stop Oil have announced a nationwide campaign of direct action against airports this summer. This suggests that they intend to continue with their tactics of direct action against those industries they perceive as inimical to their interests — but responding dynamically to avoid sites which are protected by injunction.

16. This demonstrates that the risk of direct action is likely to continue, focused on sites which are not protected by injunction.

17. "Direct action" produces a variety of consequences, all of them harmful and many of them dangerous: see Milne WS ¶¶10.2 **[TB/14/158]** and 11.3–11.6 **[TB/14/159]**, and Pullman WS#2, ¶¶25-35 **[TB/17/192-194]**. At the risk of stating what is perhaps self-evident, by way of summary/ example:

(1) The operations at the various Sites involve use for the production and storage of highly flammable and otherwise hazardous substances. The Fawley site and each of the Terminals are regulated under the Control of Major Accident Hazards Regulations 2015 by the Health and Safety Executive. As one would expect, access to these sites is very strictly controlled.

(2) Cs' employees who work at such locations are appropriately trained and equipped. But the protesters do not understand the hazards, are untrained and unlikely to have the appropriate protective clothing or equipment. There are therefore risks in respect of personal injury and health and safety.

(3) Cs have important contractual obligations to customers which have to be fulfilled in order to 'keep the country moving', including road, rail and air travel. There is a clear risk of disruption to Cs' operations and the subsequent impact upon the UK's downstream fuel resilience.

Relevant legal tests

18. Following the Supreme Court judgment in *Wolverhampton CC v London Gypsies &*

Travellers [2024] 2 WLR 45 **[AB/3/48-117]**, to some extent the relevant legal tests have been reformulated since the Linden Order was granted. Nonetheless, the main contribution of *Wolverhampton* was to clarify the legal basis of an injunction against persons unknown, as a *sui generis* form of proceeding. The legal tests to be applied by the Courts in deciding whether or not to grant such relief have not materially changed, as accepted by Ellenbogen J: see the recitals to the Ellenbogen Order #2 **[TB/13/128-129]**.

19. At the recent review hearing in *HS2 v Persons Unknown* [2024] EWHC 1277 (KB) ("*HS2*") **[AB/4/118-146]**, Ritchie J set out the following approach to be adopted at review hearings such as the present:

> "32. Drawing these authorities together, on a review of an interim injunction against PUs and named Defendants, this Court is not starting de novo. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the quia timet, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.
>
> 33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply."

20. Therefore, the relevant question is "*whether anything material has changed*" since the Linden Order.

21. However, for completeness: in *Valero*, when considering a fresh application for an injunction made after the *Wolverhampton* decision, Ritchie J approached the test by asking 15 questions. Without suggesting that this is always going to be an appropriate, or the most appropriate, framework for analysis, even in the case of a fresh application for an injunction, submissions are made on each of Ritchie J's questions below: ie, as if the present application were made afresh, rather than as a review.

Submissions

22. Cs submit that nothing material has changed since the Linden Order. There is a continued threat of direct action at the Sites for the reasons set out above.

23. The Claimants note that in *HS2* Ritchie J referred to the coming into force of new criminal offences in the Public Order Act 2023 since the previous injunction had been granted as a material change: ¶39 **[AB/4/138]**. This was considered to be one factor in deciding not to extend the injunction over that part of the HS2 project no longer being pursued by the Government: ¶¶44 and 55 [**AB/4/139 and 142]**. The Claimants submit that the coming into force of the Public Order Act 2023 is not, in and of itself, a material change in the present

case nor that, even if it was, it would affect the need for the injunction as:

i. The feared direct action already amounts to an imprisonable criminal offence; the maximum sentence for aggravated trespass is a 3-month term of imprisonment: Criminal Justice and Public Order Act 1994, s.68(3).

ii. The evidence suggests that the individuals targeting the Claimants' Sites will carry out direct action regardless of whether they are committing criminal offences. Those individuals who were previously Fourth to Eighth Defendants[1] in this case were all convicted of aggravated trespass in February-March 2023 due to their actions on the First Claimant's land, albeit they were given conditional discharges in the Magistrates Court. As noted in the judgment of Linden J, ¶41 **[TB/10/111]**, there were more than 500 arrests in March/April 2022 at the Kingsbury Terminal.

iii. Just Stop Oil are directly targeting airports this summer: Stebbing WS#3, ¶¶3.22-3.23 **[TB/18/204]**. This is notwithstanding the fact that intentionally interfering with the use or operation of air transport infrastructure is a criminal offence under s.7 of the Public Order Act 2023.

iv. It seems clear that protesters are willing to "take their chances" under the general law and risk prosecution before magistrates and juries, but that they are not willing to "take their chances" in relation to sites protected by bespoke civil Court injunctions.

24. Overall, Cs submit that the enactment of the Public Order Act 2023 does not materially affect the continuing threat of direct action from Persons Unknown.

25. For the avoidance of doubt, the Claimants also submit that the 15 *Valero* requirements are satisfied for the following reasons:

i. There is a civil cause of action identified: trespass and nuisance.

ii. The Claimants have complied (and will continue to comply) with their duty of full and frank disclosure.

iii. There is sufficient evidence to prove that the claim is likely to succeed. This was proved to Linden J's satisfaction at the hearing of Cs' summary judgment application. The evidence of events since then does not diminish this assessment.

iv. There is no realistic defence. It is difficult to see what potential defence could be put forward.

v. There is a compelling justification for the interim injunction. This is due to the

[1] Paul Barnes, Paul Fawkesley, Diana Hekt, Oliver Clegg and Alan Woods. The Claimants no longer seek injunctive relief against any named individuals as a result of assurances received from them.

significant health and safety risks posed by trespassing on the Sites as well as the substantial financial loss that could be suffered by Cs. This is in contrast to the lack of any possible justification for the apprehended unlawful conduct.

vi. No ECHR balancing exercise is required as Articles 10 and 11 include no right to trespass on private property and thereby override the rights of private landowners: *DPP v Cuciurean* [2022] 3 WLR 446 (DC), ¶¶40–50 **[AB/5/157-160]**.

vii. Damages would not be an adequate remedy in light of the health and safety risks, the amount of disruption likely to be caused and the fact that there are no named defendants to seek damages from: *Valero*, ¶70 **[AB/1/38]**. The threatened harm would also be "grave and irreparable" for these reasons.

viii. The Persons Unknown are clearly and plainly identified by reference to the tortious conduct prohibited. It is not possible to identify the Persons Unknown as they have not yet carried out the threatened trespass, it is not known who may attempt to do so in the future and the Claimants may well not know (all of) their names if they did.

ix. The prohibition in the Order is set out in clear words. It does not prohibit any conduct which would be lawful on its own.

x. The prohibition in the Order mirrors the torts claimed.

xi. The prohibition in the Order is defined by clear geographic boundaries.

xii. The Linden Order, as continued by the Ellenbogen Order #2, has granted a 5-year injunction with an annual review. That is appropriate and mirrors the approach in similar cases: *TfL v Persons Unknown* [2023] EWHC 1038 (KB), ¶52 **[AB/6/182]**; *TFL v Lee* [2023] EWHC 1201 (KB), ¶57 **[AB/7/201]**; *UKOP v Persons Unknown* (PT-2022-000303) (Ch) (6 Oct 2023) [**AB/8/205-220]**; *Valero*, ¶¶8 and 75 **[AB/1/6 and 39]**.

xiii. Persons Unknown have been notified of the claim documents, applications and Orders through methods sanctioned by the Court.

xiv. The Order includes provision for any person to apply to set aside or vary the injunction on short notice.

xv. The Order will be reviewed each year the injunction is in force.

Landmark Chambers
180 Fleet Street
London EC4A 2HG

TIMOTHY MORSHEAD, KC
YAASER VANDERMAN
2 July 2024

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

CLAIM NO. QB-2022-001098

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, 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 1TH (AS SHOWN FOR IDENTIFICATION EDGED RED AND GREEN BUT EXCLUDING THOSE AREAS EDGED BLUE ON THE ATTACHED 'FAWLEY PLAN')

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

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(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

Defendants

AUTHORITIES BUNDLE – 10 JULY 2024

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Neutral Citation Number: [2024] EWHC 134 (KB)

Claim no: QB-2022-000904

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

Date: 26th January 2024

Before:
MR JUSTICE RITCHIE
- - - - - - - - - - - - - - - - - - -

BETWEEN

(1) VALERO ENERGY LTD
(2) VALERO LOGISTICS UK LTD
(3) VALERO PEMBROKESHIRE OIL TERMINAL LTD

Claimants

-and-

(1) PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS BY THE 'JUST STOP OIL' OR 'EXTINCTION REBELLION' OR 'INSULATE BRITAIN' OR 'YOUTH CLIMATE SWARM' (ALSO KNOWN AS YOUTH SWARM) MOVEMENTS ENTER OR REMAIN WITHOUT THE CONSENT OF THE FIRST CLAIMANT UPON ANY OF THE 8 SITES (defined below)

(2) PERSONS UNKNOWN WHO, IN CONNECTION WITH ENVIRONMENTAL PROTESTS BY THE 'JUST STOP OIL' OR 'EXTINCTION REBELLION' OR 'INSULATE BRITAIN' OR 'YOUTH CLIMATE SWARM' (ALSO KNOWN AS YOUTH SWARM) MOVEMENTS CAUSE BLOCKADES, OBSTRUCTIONS OF TRAFFIC AND INTERFERE WITH THE PASSAGE BY THE CLAIMANTS AND THEIR AGENTS, SERVANTS, EMPLOYEES, LICENSEES, INVITEES WITH OR WITHOUT VEHICLES AND EQUIPMENT TO, FROM,

OVER AND ACROSS THE ROADS IN THE VICINITY OF
THE 8 SITES (defined below)

(3) MRS ALICE BRENCHER AND 16 OTHERS

Defendants

Katharine Holland KC and **Yaaser Vanderman**
(instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Claimant**.
The Defendants did not appear.

Hearing date: 17th January 2024

- -

Approved Judgment

This judgment was handed down remotely at 14.00pm on Friday 26th January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Ritchie:

The Parties

1. The Claimants are three companies who are part of a large petrochemical group called the Valero Group and own or have a right to possession of the 8 Sites defined out below.

2. The "4 Organisations" relevant to this judgment are:
   2.1 Just Stop Oil.
   2.2 Extinction Rebellion.
   2.3 Insulate Britain.
   2.4 Youth Climate Swarm.

   I have been provided with a little information about the persons who set up and run some of these 4 Organisations. They appear to be crowdfunded partly by donations. A man called Richard Hallam appears to be a co-founder of 3 of them.

3. The Defendants are firstly, persons unknown (PUs) connected with 4 Organisations who trespass or stay on the 8 Sites defined below. Secondly, they are PUs who block access to the 8 Sites defined below or otherwise interfere with the access to the 8 Sites by the Claimants, their servants, agents, licensees or invitees. Thirdly, they are named persons who have been involved in suspected tortious behaviour or whom the Claimants fear will be involved in tortious behaviour at the 8 Sites and the relevant access roads.

The 8 Sites

4. The "8 Sites" are:
   4.1 the first Claimant's Pembroke oil refinery, Angle, Pembroke SA71 5SJ (shown outlined red on plan A in Schedule 1 to the Order made by Bourne J on 28.7.2023);
   4.2 the first Claimant's Pembroke oil refinery jetties at Angle, Pembroke SA71 5SJ (as shown outlined red on plan B in Schedule 1 to the Order made by Bourne J on 28.7.2023);
   4.3 the second Claimant's Manchester oil terminal at Churchill Way, Trafford P ark, Manchester M17 1BS (shown outlined red on plan C in Schedule 1 to the Order made by Bourne J on 28.7.2023);
   4.4 the second Claimant's Kingsbury oil terminal at plot B, Trinity Road, Kingsbury, Tamworth B78 2EJ (shown outlined red on plan D in Schedule 1 to the Order made by Bourne J on 28.7.2023);
   4.5 the second Claimant's Plymouth oil terminal at Oakfield Terrace Road, Cattedown, Plymouth PL4 0RY (shown outlined red on plan E in Schedule 1 to the Order made by Bourne J on 28.7.2023);
   4.6 the second Claimant's Cardiff oil terminal at Roath Dock, Rover Way, Cardiff CF10 4US (shown outlined red on plan F in Schedule 1 to the Order made by Bourne J on 28.7.2023);

4.7 the second Claimant's Avonmouth oil terminal at Holesmouth Road, Royal E dward dock, Avonmouth BS11 9BT (shown outlined red on the plan G in Schedule 1 to the Order made by Bourne J on 28.7.2023);

4.8 the third Claimant's Pembrokeshire terminal at Main Road, Waterston, Milford Haven SA73 1DR (shown outlined red on plan H in Schedule 1 to the Order made by Bourne J on 28.7.2023).

Bundles

5. For the hearing I was provided with a core bundle and 5 lever arch files making up the supplementary bundle, a bundle of authorities, a skeleton argument, a draft order and a final witness statement from Ms Hurle. Nothing was provided by any Defendant.

Summary

6. The 4 Organisations and members of the public connected with them seek to disrupt the petrochemical industry in England and Wales in furtherance of their political objectives and demands. After various public threats and protests and on police intelligence the Claimants issued a Claim Form on the 18th of March 2022 alleging that they feared tortious trespass and nuisance by persons unknown connected with the 4 Organisations at their 8 Sites and their access roads and seeking an interim injunction prohibiting that tortious behaviour.

7. Various interim prohibitions were granted by Mr Justice Butcher on the 21st of March 2022 in an ex-parte interim injunction protecting the 8 Sites and access thereto. However, protests involving tortious action took place at the Claimant's and other companies' Kingsbury site between the 1st and the 15th of April 2022 leading to not less than 86 protesters being arrested. The Claimants applied to continue their injunction and it was renewed by various High Court judges and eventually replaced by a similar interim injunction made by Mr Justice Bourne on the 28th of July 2023.

8. On the 12th of December 2023 the Claimants applied for summary judgment and for a final injunction to last five years with annual reviews. This judgment deals with the final hearing of that application which took place before me.

9. Despite valid service of the application, evidence and notice of hearing, none of the named Defendants attended at the hearing which was in open Court and no UPs attended at the hearing, nor did any member of the public as far as I could see in Court. The Claimants' counsel informed me that no communication took place between any named Defendant and the Claimants' solicitors in relation to the hearing other than by way of negotiations for undertakings for 43 of the named Defendants who all promised not to commit the feared torts in future.

The Issues

10. The issues before me were as follows:

10.1 Are the elements of CPR Part 24 satisfied so that summary judgment can be entered?

10.2 Should a final injunction against unknown persons and named Defendants be granted on the evidence presented by the Claimants?

10.3 What should the terms of any such injunction be?

The ancillary applications

11. The Claimants also made various tidying up applications which I can deal with briefly here. They applied to amend the Claimants' names, to change the word "limited" to a shortened version thereof to match the registered names of the companies. They applied to delete two Defendants, whom they accepted were wrongly added to the proceedings (and after the hearing a third). They applied to make minor alterations to the descriptions of the 1st and 2nd Defendants who are unknown persons. The Claimants also applied for permission to apply for summary judgment. This application was made retrospectively to satisfy the requirements of CPR rule 24.4. None of these applications was opposed. I granted all of them and they are to be encompassed in a set of directions which will be issued in an Order.

Pleadings and chronology of the action

12. In the Claim Form the details of the claims were set out. The Claimants sought a *quia timet* (since he fears) injunction, fearing that persons would trespass into the 8 Sites and cause danger or damage therein and disrupt the processes carried out therein, or block access to the 8 Sites thereby committing a private nuisance on private roads or a public nuisance on public highways. The Claimants relied on the letter sent by Just Stop Oil dated 14th February 2022 to Her Majesty's Government threatening intervention unless various demands were met. Just Stop Oil asserted they planned to commence action from the 22nd of March 2022. Police intelligence briefings supported the risk of trespass and nuisance at the Claimants' 8 Sites. 3 unidentified groups of persons in connection with the 4 Organisations were categorised as Defendants in the claim as follows: (1) those trespassing onto the 8 Sites; (2) those blockading or obstructing access to the 8 Sites; (3) those carrying out a miscellany of other feared torts such as locking on, tunnelling or encouraging others to commit torts at the 8 Sites or on the access roads thereto. The Claim Form was amended by order of Bennathan J. in April 2022; Re amended by order of Cotter J. in September 2022 and re re amended in July 2023 by order of Bourne J.

13. In late March 2022 Mr Justice Butcher issued an interim ex parte injunction on a quia timet basis until trial, expressly stating it was not intended to prohibit lawful protest. He prohibited the Defendants from entering or staying on the 8 sites; impeding access to the 8 sites; damaging the Claimants' land; locking on or causing or encouraging others to breach the injunction. The Order provided for various alternative methods of service for the unknown persons by fixing hard copies of the injunction at the entrances and on access road at the 8 Sites, publishing digital copies online at a specific website and sending emails to the 4 Organisations.

14. Despite the interim injunction, between the 1st and the 7th of April 2022 protesters attended at the Claimants' Kingsbury site and 48 were arrested. Between the 9th and 15th of April 2022 further protesters attended at the Kingsbury site and 38 were arrested. No application to commit any person to prison for contempt was made. The protests were not just at the Claimants' parts of the Kingsbury site. They targeted other owners' sites there too.

15. On the return date, the original interim injunction was replaced by an Order dated 11th of April 2022 made by Bennathan J. which was in similar terms and provided for alternative service in a similar way and gave directions for varying or discharging the interim injunction on the application by any unknown person who was required provide their name and address if they wished to do so (none ever did). Geographical plans were attached to the original injunction and the replacement injunction setting out clearly which access roads were covered and delineating each of the 8 Sites. Undertakings were given by the Claimants and directions were given for various Chief Constables to disclose lists and names of persons arrested at the 8 Sites on dates up to the 1st of June 2022.

16. The Chief Constables duly obliged and on the 20th of September 2022 Mr Justice Cotter added named Defendants to the proceedings, extended the term of the interim injunction, provided retrospective permission for service and gave directions allowing variation or discharge of the injunction on application by any Defendant. Unknown persons who wished to apply were required to self-name and provide an address for service (none ever did). Then, on the 16th of December 2022 Mr Justice Cotter gave further retrospective permission for service of various documents. On the 20th of January 2023 Mr Justice Soole reviewed the interim injunction, gave permission for retrospective service of various documents and replaced the interim injunction with a similar further interim injunction. Alternative service was again permitted in a similar fashion by: (1) publication on a specified website, (2) e-mail to the 4 Organisations, (3) personal service on the named Defendants where that was possible because they had provided addresses. At that time no acknowledgement of service or defence from any Defendant was required.

17. In April 2023 the Claimants changed their solicitors and in June 2023 Master Cook gave prospective alternative service directions for future service of all Court documents by: (1) publication on the named website, (2) e-mail to the 4 Organisations, (3) fixing a notification to signs at the front entrances and the access roads of the 8 Sites. Normal service applied for the named Defendants who had provided addresses.

18. On the 28th of July 2023, before Bourne J., the Claimants agreed not to pursue contempt applications for breaches of the orders of Mr Justice Butcher and Mr Justice Bennathan for any activities before the date of the hearing. Present at that hearing were counsel for Defendants 31 and 53. Directions were given permitting a redefinition of "Unknown

Persons" and solving a substantial range of service and drafting defects in the previous procedure and documents since the Claim Form had been issued. A direction was given for Acknowledgements of Service and Defences to be served by early October 2023 and the claim was discontinued against Defendants 16, 19, 26, 29, 38, 46 and 47 on the basis that they no longer posed a threat. A direction was given for any other Defendant to give an undertaking by the 6th of October 2023 to the Claimants' solicitors. Service was to be in accordance with the provisions laid down by Master Cook in June 2023.

19. On the 30th November 2023 Master Eastman ordered that service of exhibits to witness statements and hearing bundles was to be by: (1) uploading them onto the specific website, (2) emailing a notification to the 4 Organisations, (3) placing a notice at the 8 Sites entrances and access roads, (4) postal service to of a covering letter named Defendants who had provided addresses informing them where the exhibits could be read.

20. The Claimants applied for summary judgment on the 12th of December 2023.

21. By the time of the hearing before me, 43 named Defendants had provided undertakings in accordance with the Order of Mr Justice Bourne. Defendants 14 and 44 were wrongly added and so 17 named Defendants remained who had refused to provide undertakings. None of these attended the hearing or communicated with the Court.

The lay witness evidence

22. I read evidence from the following witnesses provided in statements served and filed by the Claimants:
    - 22.1 Laurence Matthews, April 2022, June 2023.
    - 22.2 David Blackhouse, March and April 2022, January, June and November 2023.
    - 22.3 Emma Pinkerton, June and December 2023.
    - 22.4 Kate McCall, March and April 2022, January (x3) 2023.
    - 22.5 David McLoughlin, March 2022, November 2023.
    - 22.6 Adrian Rafferty, March 2022
    - 22.7 Richard Wilcox, April and August 2022, March 2023.
    - 22.8 Aimee Cook, January 2023.
    - 22.9 Anthea Adair, May, July and August 2023.
    - 22.10 Jessica Hurle, January 2024 (x2).
    - 22.11 Certificates of service: supplementary bundles pages 3234-3239.

Service evidence

23. The previous orders made by the Judges who have heard the interlocutory matters dealt with all previous service matters. In relation to the hearing before me I carefully checked the service evidence and was helpfully led through it by counsel. A concern of substance arose over some defective evidence given by Miss Hurle which was hearsay but did not state the sources of the hearsay. This was resolved by the provision

of a further witness statement at the Court's request clarifying the hearsay element of her assertion which I have read and accept.

24. On the evidence before me I find, on the balance of probabilities, that the application for summary judgment and ancillary applications and the supporting evidence and notice of hearing were properly served in accordance with the orders of Master Cook and Master Eastman and the CPR on all of the Defendants.

Substantive evidence

25. **David Blackhouse.** Mr. Blackhouse is employed by Valero International Security as European regional security manager. In his earlier statements he evidenced his fears that there were real and imminent threats to the Claimants' 8 Sites and in his later statements set out the direct action suffered at the Claimants' sites which fully matched his earlier fears.

26. In his first witness statement he set out evidence from the police and from the Just Stop Oil website evidencing their commitment to action and their plans to participate in protests. The website set out an action plan asking members of the public to sign up to the group's mailing list so that the group could send out information about their proposed activities and provide training. Intervention was planned from the 22nd of March 2022 if the Government did not back down to the group's demands. Newspaper reports from anonymous spokespersons for the group threatened activity that would lead to arrests involving blocking oil sites and paralysing the country. A Just Stop Oil spokesperson asserted they would go beyond the activities of Extinction Rebellion and Insulate Britain through civil resistance, taking inspiration from the old fuel protests 22 years before when lorries blockaded oil refineries and fuel depots. Mr. Blackhouse also summarised various podcasts made by alleged members of the group in which the group asserted it would train up members of the public to cause disruption together with Youth Climate Swarm and Extinction Rebellion to focus on the oil industry in April 2022 with the aim of causing disruption in the oil industry. Mr. Blackhouse also provided evidence of press releases and statements by Extinction Rebellion planning to block major UK oil refineries in April 2022 but refusing to name the actual sites which they would block. They asserted their protests would *"continue indefinitely*" until the Government backed down. Insulate Britain's press releases and podcasts included statements that persons aligned with the group intended to carry out "*extreme protests"* matching the protests 22 years before which allegedly brought the country to a "*standstill*". They stated they needed to cause an "*intolerable level of disruption"*. Blocking oil refineries and different actions disrupting oil infrastructure was specifically stated as their objective.

27. In his second witness statement David Blackhouse summarised the protest events at Kingsbury terminal on the 1st of April 2022 (which were carried out in conjunction with similar protests at Esso Purfleet, Navigator at Thurrock and Exolum in Grays). He was present at the Site and was an eye-witness. The protesters blocked the access roads which were public and then moved onto private access roads. More than 30 protesters

blocked various tankers from entering the site. Some climbed on top of the tankers. Police in large numbers were used to tidy up the protest. On the next day, the 2nd of April 2022, protesters again blocked public and private access roads at various places at the Kingsbury site. Further arrests were made. Mr Blackhouse was present at the site.

28. In his third witness statement he summarised the nationwide disruption of the petrochemical industry which included protests at Esso West near Heathrow airport; Esso Hive in Southampton, BP Hamble in Southampton, Exolum in Essex, Navigator terminals in Essex, Esso Tyburn Road in Birmingham, Esso Purfleet in Essex, and the Kingsbury site in Warwickshire possessed by the Claimants and BP. In this witness statement Mr. Blackhouse asserted that during April 2022 protesters forcibly broke into the second Claimant's Kingsbury site and climbed onto pipe racks, gantries and static tankers in the loading bays. He also presented evidence that protesters dug and occupied tunnels under the Kingsbury site's private road and Piccadilly Way and Trinity Road. He asserted that 180 arrests were made around the Kingsbury site in April 2022. He asserted that he was confident that the protesters were aware of the existence of the injunction granted in March 2022 because of the signs put up at the Kingsbury site both at the entrances and at the access roads. He gave evidence that in late April and early May protesters stood in front of the signs advertising the injunction with their own signs stating: "*we are breaking the injunction*". He evidenced that on the Just Stop Oil website the organisation wrote that they would not be "intimidated by changes to the law" and would not be stopped by "private injunctions". Mr. Blackhouse evidenced that further protests took place in May, August and September at the Kingsbury site on a smaller scale involving the creation of tunnels and lock on positions to facilitate road closures. In July 2022 protesters under the banner of Extinction Rebellion staged a protest in Plymouth City centre marching to the entrance of the second Claimant's Plymouth oil terminal which was blocked for two hours. Tanker movements had to be rescheduled. Mr. Blackhouse summarised further Just Stop Oil press releases in October 2022 asserting their campaign would "continue until their demands were met by the Government". He set out various protests in central London and on the Dartford crossing bridge of the M25. Mr. Blackhouse also relied on a video released by one Roger Hallam, who he asserted was a co-founder of Just Stop Oil, through YouTube on the 4th of November 2022. He described this video as a call to arms making analogies with war and revolution and encouraging the *"systematic disruption of society*" in an effort to change Government policies affecting global warming. He highlighted the sentence by Mr Hallam:

> "if it's necessary to prevent some massive harm, some evil, some illegality, some immorality, it's justified, *you have a right of necessity to cause harm".*

The video concluded with the assertion "there is no question that disruption is effective, the only question is doing enough of it". In the same month Just Stop Oil was encouraging members of the public to sign up for arrestable direct action. In November

2022 Just Stop Oil tweeted that they would escalate their legal disruption. Mr. Blackhouse then summarised what appeared to be statements by Extinction Rebellion withdrawing from more direct action. However Just Stop Oil continued to publish in late 2022 that they would not be intimidated by private injunctions. Mr Blackhouse researched the mission statements of Insulate Britain which contained the assertion that their continued intention included a campaign of civil resistance, but they only had the next two to three years to sort it out and their next campaign had to be more ambitious. Whilst not disclosing the contents of the briefings received from the police it was clear that Mr. Blackhouse asserted, in summary, that the police warned that Just Stop Oil intended to have a high tempo civil resistance campaign which would continue to involve obstruction, tunnelling, lock one and at height protests at petrochemical facilities.

29. In his 4th witness statement Mr Blackhouse set out a summary of the direct actions suffered by the Claimants as follows ("The Refinery" means Pembroke Oil refinery):

> "***September 2019***
> 6.5 The Refinery was the target of protest activity in 2019, albeit this was on a smaller scale to that which took place in 2022 at the Kingsbury Terminal. The activity at the Refinery involved the blocking of access roads whereby the protestors used concrete "Lock Ons" i.e. the protestors locked arms, within the concrete blocks placed on the road, whilst sitting on the road to prevent removal. Although it was a non-violent protest it did impact upon employees at the Refinery who were prevented from attending and leaving work. Day to day operations and deliveries were negatively impacted as a result.
> 6.6…
> ***Friday 1st April 2022***
> Protestors obstructed the crossroads junction of Trinity Road, Piccadilly Way, and the entrance to the private access road by sitting in the road. They also climbed onto two stationary road tanker wagons on Piccadilly Way, about thirty metres from the same junction, preventing the vehicles from moving, causing a partial obstruction of the road in the direction of the terminal. They also climbed onto one road tanker wagon that had stopped on Trinity Road on the approach to the private access road to the terminal. Fuel supplies from the Valero terminal were seriously disrupted due to the continued obstruction of the highway and the entrance to the private access road throughout the day. Valero staff had to stop the movement of road tanker wagons to or from the site between the hours of 07:40 hrs and 20:30 hrs. My understanding is that up to twenty two persons were arrested by the Police before Valero were able to receive road tanker traffic and resume normal supplies of fuel.
> ***Sunday 3rd April 2022***

6.6.1 Protestors obstructed the same entrance point to the private shared access road leading from Trinity Road. The obstructions started at around 02:00 hrs and continued until 17:27 hrs. There was reduced access for road tankers whilst Police completed the removal and arrest of the protestors.

Tuesday 5th April 2022

6.6.2 Disruption started at 04:49 hrs. Approximately twenty protestors blocked the same entrance point to the private shared access road from Trinity Road. They were reported to have used adhesive to glue themselves to the road surface or used equipment to lock themselves together. Police attended and I understand that eight persons were arrested. Road tanker movements at Valero were halted between 04:49 hrs and 10:50 hrs that day.

Thursday 7th April 2022

6.6.3 This was a day of major disruption. At around 00:30 hrs the Valero Terminal Operator initiated an Emergency Shut Down having identified intruders on CCTV within the perimeter of the site. Five video files have been downloaded from the CCTV system showing a group of about fifteen trespassers approaching the rear of the Kingsbury Terminal across the railway lines. The majority appear to climb over the palisade fencing into the Kingsbury Terminal whilst several others appear to have gained access by cutting mesh fencing on the border with WOSL. There is then footage of protestors in different areas of the site including footage at 00:43 hrs of one intruder walking across the loading bay holding up what appears to be a mobile phone in front of him, clearly contravening site safety rules. He then climbed onto a stationary road tanker on the loading bay. There is clear footage of several others sitting in an elevated position in the pipe rack adjacent to the loading bay. I am also aware that Valero staff reported that two persons climbed the staircase to sit on top of one of the gas oil storage tanks and four others were found having climbed the staircase to sit on the roof of a gasoline storage tank. Police attended and spent much of the day removing protestors from the site enabling it to reopen at 18:00 hrs. There is CCTV footage of one or more persons being removed from top of the stationary road tanker wagon on the loading bays.

6.6.4 The shutdown of more than seventeen hours caused major disruption to road tanker movements that day as customers were unable to access the site.

Saturday 9th April 2022

6.6.5 Protest activity occurred involving several persons around the entrance to the private access road. I believe that Police made three arrests and there was little or no disruption to road tanker movements.

Sunday 10th April 2022

6.6.6 A caravan was left parked on the side of the road on Piccadilly way, between the roundabout junction with the A51 and the entrance to the Shell fuel terminal. Police detained a small group of protestors with the caravan including one who remained within a tunnel that had been excavated under the road. It appeared to be an attempt to cause a closure of one of the two routes leading to the oil terminals.

6.6.7 By 16:00 hrs police responded to two road tankers that were stranded on Trinity Road, approximately 900 metres north of the entrance to the private access road. Protestors had climbed onto the tankers preventing them from being driven any further, causing an obstruction on the second access route into the oil terminals.

6.6.8 The Police managed to remove the protestors on top of the road tankers but 18:00 hrs and I understand that the individual within the tunnel on Piccadilly Way was removed shortly after.

6.6.9 I understand that the Police made twenty-two arrests on the approach roads to the fuel terminals throughout the day. The road tanker wagons still managed to enter and leave the Valero site during the day taking whichever route was open at the time. This inevitably meant that some vehicles could not take their preferred route but could at least collect fuel as required. I was subsequently informed that a structural survey was quickly completed on the road tunnel and deemed safe to backfill without the need for further road closure.

Friday 15th April 2022

6.6.10 This was another day of major disruption. At 04:25 hrs the Valero operator initiated an emergency shutdown. The events were captured on seventeen video files recording imagery from two CCTV cameras within the site between 04:20 hrs and 15:45 hrs that day.

6.6.11 At 04:25 a group of about ten protestors approached the emergency access gate which is located on the northern corner of the site, opening out onto Trinity Road, 600 metres north of the entrance to the shared private access road. They were all on foot and could be seen carrying ladders. Two ladders were used to climb up the outside of the emergency gate and then another two ladders were passed over to provide a means of climbing down inside the Valero site. Seven persons managed to climb over before a police vehicle pulled up alongside the gate. The seven then dispersed into the Kingsbury Terminal.

6.6.12 The video footage captures the group of four males and three females sitting for several hours on the pipe rack, with two of them (one male and one female) making their way up onto the roof of the loading bay area nearby. The two on the roof sat closely together whilst the male undressed and sat naked for a considerable time sunbathing. The video footage concludes with footage of Police and the Fire and Rescue service working together to remove the two individuals.

6.6.13 The Valero terminal remained closed between 04:30 hrs and 16:00 hrs that day causing major disruption to fuel collections. The protestors breached the site's safety rules and the emergency services needed to use a 'Cherry Picker' (hydraulic platform) during their removal. There were also concerns that the roof panels would not withstand the weight of the two persons sitting on it.

6.6.14 I understand that Police made thirteen arrests in or around Valero and the other fuel terminals that day and had to request 'mutual aid' from neighbouring police forces.

Tuesday 26th April 2022

6.6.15 I was informed that approximately twelve protestors arrived outside the Kingsbury Terminal at about 07:30 hrs, increasing to about twenty by 09:30 hrs. Initially they engaged in a peaceful non obstructive protest but by 10:00 hrs had blocked the entrance to the private access road by sitting across it. Police then made a number of arrests and the obstructions were cleared by 10:40 hrs. On this occasion there was minimal disruption to the Valero site.

Wednesday 27th April 2022

6.6.16 At about 16:00 hrs a group of about ten protestors were arrested whilst attempting to block the entrance to the shared private access road.

Thursday 28th April 2022

6.6.17 At about 12:40 hrs a similar protest took place involving a group of about eight persons attempting to block the entrance to the shared private access road. The police arrested them and opened the access by 13:10 hrs.

Wednesday 4th May 2022

6.6.18 At about 13:30 hrs twelve protestors assembled at the entrance to the shared private access road without incident. I was informed that by 15:49 hrs Police had arrested ten individuals who had attempted to block the access.

Thursday 12th May 2022

6.6.19 At 13:30 hrs eight persons peacefully protested at the entrance to the private access road. By 14:20 hrs the numbers increased to eleven. The activity continued until 20:15 hrs by which time Police made several arrests of persons causing obstructions. I have retained images of the obstructions that were taken during the protest.

Monday 22nd August 2022

6.6.20 Contractors clearing undergrowth alerted Police to suspicious activity involving three persons who were on land between Trinity Road and the railway tracks which lead to the rear of the Valero and WOSL terminals. The location is about 1.5 km from the entrance to the shared private access road to the Kingsbury Terminal. A police dog handler attended and arrested two of the persons with the third making

off. Three tunnels were found close to a tent that the three were believed to be sleeping in. The tunnels started on the roadside embankment and two of them clearly went under the road. The entrances were carefully prepared and concealed in the undergrowth. Police agreed that they were 'lock in' positions for protestors intending to cause a road closure along one of the two approach roads to the oil terminals. The road was closed awaiting structural survey. I have retained a collection of the images taken by my staff at the scene.

Tuesday 23rd August 2022

6.6.21 During the morning protestors obstructed a tanker in Trinity Road, approximately 1km from the Valero Terminal. There was also an obstruction of the highway close to the Shell terminal entrance on Piccadilly Way. I understand that both incidents led to arrests and a temporary blockage for road tankers trying to access the Valero site. Later that afternoon another tunnel was discovered under the road on Trinity Way, between the roundabout of the A51 and the Shell terminal. It was reported that protestors had locked themselves into positions within the tunnel. Police were forced to close the road meaning that all road tanker traffic into the Kingsbury Terminal had to approach via Trinity road and the north. It then became clear that the tunnels found on Trinity Road the previous day had been scheduled for use at the same time to create a total closure of the two routes into the fuel terminals.

6.6.22 The closure of Piccadilly Way continued for another two days whilst protestors were removed and remediation work was completed to fill in the tunnels.

Wednesday 14th September 2022

6.6.23 There was serious disruption to the Valero Terminal after protestors blocked the entrance to the private access road. I believe that Police made fifty one arrests before the area was cleared to allow road tankers to access the terminal.

6.6.24 Tanker movements were halted for just over seven hours between mid-day and 19:00 hrs. On Saturday 16th July and Sunday 17th July 2022, the group known as Extinction Rebellion staged a protest in Plymouth city centre. The protest was planned and disclosed to the police in advance and included a march of about two hundred people from the city centre down to the entrance to the Valero Plymouth Terminal in Oakfield Terrace Rd. The access to the terminal was blocked for about two hours. Road tanker movements were re-scheduled in advance minimising any disruption to fuel supplies."

I note that the events of 16th July 2022 are out of chronological order.

30. In his 5th witness statement the main threats identified by Mr Blackhouse were; (1) protesters directly entering the 8 Sites. He stated there had been serious incidents in the

past in which protestors forcibly gained access by cutting through mesh border fencing or climbing over fencing and then carrying out dangerous activities such as climbing and sitting on top of storage tanks containing highly flammable fuel and vapour. He warned that the risk of fire for explosion at the 8 Sites is high due to the millions of litres of flammable liquid and gas stored at each. Mobile phones and lighters are heavily controlled or prohibited. (2) He warned that any activity which blocked or restricted access roads would be likely to create a situation where the Claimants were forced to take action to reduce the health and safety risks relating to emergency access which might include evacuating the sites or shutting some activity on the sites.

31. Mr. Blackhouse warned of the knock-on effects of the Claimants having to manage protester activity to mitigate potential health and safety risks which would impact on the general public. If activity on the 8 Sites is reduced or prevented due to protester activity this would reduce the level of fuel produced, stored and transported, which would ultimately result in shortages at filling station forecourts, potentially panic buying and the adverse effects thereof. He referred to the panic buying that occurred in September 2021. Mr Blackhouse described the various refineries and terminals and the businesses carried on there. He also described the access roads to the sites. He described the substantial number of staff accessing the sites and the substantial number of tanker movements per day accessing refineries. He also described the substantial number of ship movements to and from the jetties per annum. He warned of the dangers of blocking emergency services getting access to the 8 Sites. He stated that if access roads at the 8 Sites were blocked the Claimants would have no option but to cease operations and shut down the refineries to ensure compliance with health and safety risk assessments. He informed the Court that one of the most hazardous times at the refineries was when restarting the processes after a shut down. The temperatures and pressures in the refinery are high and during restarting there is a higher probability of a leak and resultant explosions. Accordingly, the Claimants seek to limit shutdown and restart activity as much as possible. Generally, these only happen every four or five years under strictly controlled conditions.

32. Mr. Blackhouse referred to an incident in 2019 when Extinction Rebellion targeted the Pembroke oil refinery and jetties by blocking the access roads. He warned that slow walking and blocking access roads remained a real risk and a health and safety concern. He also informed the Court that local police at this refinery took a substantial time to deal with protesters due to locking on and climbing in, resulting in significant delay. He further evidenced this by reference to the Kingsbury terminal protest in 2022.

33. Mr. Blackhouse asserted that all of the 8 Sites are classified as “Critical National Infrastructure”. The Claimants liaise closely with the National Protective Security Authority and the National Crime Agency and the Counter Terrorism Security Advisor Service of the police. Secret reports received from those agencies evidenced continuing potential activity by the 4 Organisations. In addition, on the 8th of July 2023 Extinction Rebellion stickers were placed on a sign at the refinery.

34. Overall Mr. Blackhouse asserted that the deterrent effect of the injunctions granted has diminished the protest activity at the 8 Sites but warned that it was clear that at least some of the 4 Organisations maintained an ongoing campaign of protest activity throughout the UK. He asserted it was critical that the injunctive relief remained in place for the protection of the Claimants' employees, visitors to the sites, the public in surrounding areas and the protesters themselves.

35. **David McLoughlin.** Mr McLoughlin is a director employed by the Valero group responsible for pipeline and terminals. His responsibilities include directing operations and logistics across all of the 8 Sites.

36. He warned the Court that blocking access to the 8 Sites would have potentially very serious health and safety and environmental consequences and would cause significant business disruption. He described how under the *Control of Major Accidents Hazards Involving Dangerous Substances Regulations 2015* the 8 Sites are categorised according to the risks they present which relate directly to the quantity of dangerous substances held on each site. Heavy responsibilities are placed upon the Claimants to manage their activities in a way so as to minimise the risk to employees, visitors and the general public and to prevent major accidents. The Claimants are required to carry out health and safety executive guided risk assessments which involve ensuring emergency services can quickly access the 8 Sites and to ensure appropriate manning. He warned that there were known safety risks of causing fires and explosions from lighters, mobile phones, key fobs and acrylic clothing. The risks are higher around the storage tanks and loading gantries which seemed to be favoured by protestors. He warned that the Plymouth and Manchester sites were within easy reach of large populations which created a risk to the public. He warned that blocking access roads to the 8 Sites would give rise to a potential risk of breaching the 2015 Regulations which would be both dangerous and a criminal offence. Additionally blocking access would lead to a build-up of tankers containing fuel which themselves posed a risk. He warned of the potential knock-on effects of an access road blockade on the supply chain for in excess of 700 filling stations and to the inward supply chain from tankers. He warned of the 1-2 day filling station tank capacity which needed constant and regular supply from the Claimants' sites. He also warned about the disruption to commercial contracts which would be caused by disruption to the 8 Sites. He set out details of the various sites and their access roads. He referred to the July 2022 protest at the Plymouth terminal site and pointed out the deterrent effect of the injunction, which was in place at that time, had been real and had reduced the risk.

37. **Emma Pinkerton.** Miss Pinkerton has provided 5 witness statements in these proceedings, the last one dated December 2023. She is a partner at CMS Cameron McKenna Nabarro Olswang LLP.

38. In her 3rd statement she set out details relating to the interlocutory course of the proceedings and service and necessary changes to various interim orders made.

39. In her last witness statement she gave evidence that the Claimants do not seek to prevent protesters from undertaking peaceful lawful protests. She asserted that the Defendants had no real prospect of successfully defending the claim and pointed out that no Acknowledgments of Service or Defences had been served. She set out the chronology of the action and service of proceedings. She dealt with various errors in the orders made. She summarised that 43 undertakings had been taken from Defendants. She pointed out that there were errors in the naming of some Defendants. Miss Pinkerton summarised the continuing threat pointing out that the Just Stop Oil Twitter feed contained a statement dated 9th June 2023 setting out that the writer explained to Just Stop Oil connected readers that the injunctions banned people from taking action at refineries, distribution hubs and petrol stations and that the punishments for breaking injunctions ranged from unlimited fines to imprisonment. She asserted that the Claimants' interim injunctions in combination with those obtained by Warwickshire Borough Council had significantly reduced protest activity at the Kingsbury site.

40. Miss Pinkerton provided a helpful summary of incidents since June 2023. On the 26th of June 2023 Just Stop Oil protesters carried out four separate slow marches across London impacting access on King's College Hospital. On the 3rd of July 2023 protesters connected with Extinction Rebellion protested outside the offices of Wood Group in Aberdeen and Surrey letting off flares and spraying fake oil across the entrance in Surrey. On 10th July 2023 several marches took place across London. On the 20th of July 2023 supporters of Just Stop Oil threw orange paint over the headquarters of Exxon Mobile. On the 1st of August 2023 protesters connected with Just Stop Oil marched through Cambridge City centre. On the 13th of August 2023 protesters connected with Money Rebellion (which may be associated with Extinction Rebellion) set off flares at the AIG Women's Open in Tadworth. On the 18th of August 2023 protesters associated with Just Stop Oil carried out a slow march in Wells, Somerset and the next day a similar march took place in Exeter City centre. On the 26th of August 2023 a similar march took place in Leeds. On the 2nd of September 2023 protesters associated with Extinction Rebellion protested outside the London headquarters of Perenco, an oil and gas company. On the 9th of September 2023 there was a slow march by protesters connected with Just Stop Oil in Portsmouth City centre. On the 18th of September 2023 protesters connected with Extinction Rebellion poured fake oil over the steps of the Labour Party headquarters and climbed the building letting off smoke grenades and one protester locked on to a handrail. On the 1st of October 2023 protesters connected with Extinction Rebellion protested in Durham. On the 10th of October 2023 protesters connected with Just Stop Oil sprayed orange paint over the Radcliffe Camera library building in Oxford and the facade of the forum at Exeter University. On the 11th of October 2023 protesters connected with Just Stop Oil sprayed orange paint over parts of Falmouth University. On the 17th of October 2023 various protesters were arrested in connection with the Energy Intelligence forum in London. On the 19th of October

2023 protests took place in Canary Wharf targeting financial businesses allegedly supporting fossil fuels and insurance companies in the City of London. On the 30th of October 2023 60 protesters were arrested for slow marching outside Parliament. On the 10th of November 2023 protesters connected with Extinction Rebellion occupied the offices of the Daily Telegraph. On the 12th of November 2023 protesters connected with Just Stop Oil marched in Holloway Road in London. On the 13th of November 2023 protesters connected with Just Stop Oil marched from Hendon Way leading to a number of arrests. On the 14th of November 2023 protesters connected with Just Stop Oil marched from Kennington Park Rd. On the same day the Metropolitan Police warned that the costs of policing such daily marches was becoming unsustainable to the public purse. On the 15th of November 2023 protesters connected with Just Stop Oil marched down the Cromwell Road and 66 were arrested. On the 18th of November 2023 protestors connected with Just Stop Oil and Extinction Rebellion protested outside the headquarters of Shell in London and some arrests were made. On the 20th of November 2023 protesters connected with Just Stop Oil gathered in Trafalgar Square and started to march and some arrests were made. On the 30th of November 2023 protesters connected with Just Stop Oil gathered in Kensington in London and 16 were arrested.

41. Miss Pinkerton extracted some quotes from the Just Stop Oil press releases including assertions that their campaign would be "*indefinite*" until the Government agreed to stop new fossil fuel projects in the UK and mentioning their supporters storming the pitch at Twickenham during the Gallagher Premiership Rugby final. Further press releases in June and July 2023 encouraging civil resistance against oil, gas and coal were published. In an open letter to the police unions dated 13th September 2023 Just Stop Oil stated they would be back on the streets from October the 29th for a resumption after their 13 week campaign between April and July 2023 which they asserted had already cost the Metropolitan Police more than £7.7 million and required the equivalent of an extra 23,500 officer shifts.

42. Miss Pinkerton also examined the Extinction Rebellion press statements which included advice to members of the public to picket, organise locally, disobey and asserted that civil disobedience works. On the 30th of October 2023 a spokesperson for Just Stop Oil told the Guardian newspaper that the organisation supporters were willing to slow march to the point of arrest every day until the police took action to prosecute the real criminals who were facilitating new oil and gas extraction.

43. Miss Pinkerton summarised the various applications for injunctions made by Esso Oil, Stanlow Terminals Limited, Infranorth Limited, North Warwickshire Borough Council, Esso Petroleum, Exxon Mobile Chemical Limited, Thurrock Council, Essex Council, Shell International, Shell UK, UK Oil Pipelines, West London Pipeline and Storage, Exolum Pipeline Systems, Exolum Storage, Exolum Seal Sands and Navigator Terminals.

44. Miss Pinkerton asserted that the Claimants had given full and frank disclosure as required by the Supreme Court in *Wolverhampton v London Gypsies* (citation below). In summary she asserted that the Claimants remained very concerned that protest groups including the 4 Organisations would undertake disruptive, direct action by trespass or blocking access to the 8 Sites and that a final injunction was necessary to prevent future tortious behaviour.

Previous decision on the relevant facts

45. In *North Warwickshire v Baldwin and 158 others and PUs* [2023] EWHC 1719, Sweeting J gave judgment in relation to a claim brought by North Warwickshire council against 159 named defendants relating to the Kingsbury terminal which is operated by Shell, Oil Pipelines Limited, Warwickshire Oil Storage Limited and Valero Energy Ltd. Findings of fact were made in that judgment about the events in March and April 2022 which are relevant to my judgment. Sweeting J. found that protests began at Kingsbury during March 2022 and were characterised by protesters glueing themselves to roads accessing the terminal; breaking into the terminal compounds by cutting through gates and trespassing; climbing onto storage tanks containing unleaded petrol, diesel and fuel additives; using mobile phones within the terminal to take video films of their activities while standing on top of oil tankers and storage tanks and next to fuel transfer equipment; interfering with oil tankers by climbing onto them and fixing themselves to the roofs thereof; letting air out of the tyres of tankers; obstructing the highways accessing the terminal generally and climbing equipment and abseiling from a road bridge into the terminal. In relation to the 7th of April Sweeting J found that at 12:30 (past midnight) a group of protesters approached one of the main terminal entrances and attempted to glue themselves to the road. When the police were deployed a group of protesters approached the same enclosure from the fields to the rear and used a saw to break through an exterior gate and scaled fences to gain access. Once inside they locked themselves onto a number of different fixtures including the top of three large fuel storage tanks containing petrol diesel and fuel additives and the tops of two fuel tankers and the floating roof of a large fuel storage tank. The floating roof floated on the surface of stored liquid hydrocarbons. Sweeting J found that the ignition of liquid fuel or vapour in such a storage tank was an obvious source of risk to life. On the 9th of April 2022 protesters placed a caravan at the side of the road called Piccadilly Way which is an access road to the terminal and protesters glued themselves to the sides and top of the caravan whilst others attempted to dig a tunnel under the road through a false floor in the caravan. That was a road used by heavily laden oil tankers to and from the terminal and the collapse of the road due to a tunnel caused by a tanker passing over it was identified by Sweeting J as including the risk of injury and road damage and the escape of fuel fluid into the soil of the environment.

Assessment of lay witnesses

46. I decide all facts in this hearing on the balance of probabilities. I have not seen any witness give live evidence. None were required for cross-examination by the Defendants. None were challenged. I take that into account.

47. Having carefully read the statements I accept the evidence put before me from the Claimants' witnesses. I have not found sloppiness, internal inconsistency or exaggeration in the way they were written or any reason to doubt the evidence provided.

The Law

Summary Judgment

48. Under CPR part 24 it is the first task of this Court to determine whether the Defendants have a realistic prospect of success in defending the claim. Realistic is distinguished from a fanciful prospect of success, see *Swain v Hillman* [2001] 1 ALL ER 91. The threshold for what is a realistic prospect was examined in *ED and F Man Liquid Products v Patel* [2003] EWCA Civ. 472. It is higher than a merely arguable prospect of success. Whilst it is clear that on a summary judgement application the Court is not required to effect a mini trial, it does need to analyse the evidence put before it to determine whether it is worthless, contradictory, unimpressive or incredible and overall to determine whether it is credible and worthy of acceptance. The Court is also required to take into account, in a claim against PUs, not only the evidence put before it on the application but also the evidence which could reasonably be expected to be available at trial both on behalf of the Claimants and the Defendants, see *Royal Brompton Hospitals v Hammond (#5)* [2001] EWCA Civ. 550. Where reasonable grounds exist for believing that a fuller investigation of the facts of the case at trial would affect the outcome of the decision then summary judgement should be refused, see *Doncaster Pharmaceuticals v Bolton Pharmaceutical Co* [2007] F.S.R 3. I take into account that the burden of proof rests in the first place on the applicant and also the guidance given in *Sainsbury's Supermarkets v Condek Holdings* [2014] EWHC 2016, at paragraph 13, that if the applicant has produced credible evidence in support of the assertion that the applicant has a realistic prospect of success on the claim, then the respondent is required to prove some real prospect of success in defending the claim or some other substantial reason for the claim going to trial. I also take into account the guidance given at paragraph 40 of the judgment of Sir Julian Flaux in the Court of Appeal in *National Highways Limited v Persons Unknown* [2023] EWCA Civ. 182, that the test to be applied when a final anticipatory injunction is sought through a summary judgment application is the same as in all other cases.

49. CPR part 24 r.24.5 states that if a respondent to a summary judgment application wishes to put in evidence he "must" file and serve written evidence 7 days before the hearing. Of course, this cannot apply to PUs who will have no knowledge of the hearing. It does apply to named and served Defendants.

50. But what approach should the Court take where named Defendant served nothing and PUs are also Defendants? In *King v Stiefel* [2021] EWHC 1045 (Comm) Cockerill J. ruled as follows on what to do in relation to evidence:

> "21. The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the court will be entitled to draw a line and say that - even bearing well in mind all of those points - it would be contrary to principle for a case to proceed to trial.
> 22. So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up . . ."

51. In my judgment, in a case such as this, where named Defendants have taken no part and where other Defendants are PUs, the safest course is to follow the guidance of the Supreme Court and treat the hearing as ex-parte and to consider the defences which the PUs could run.

Final Injunctions

52. The power of this Court to grant an injunction is set out in S.37 of *the Senior Courts Act 1981*. The relevant sections follow:

> "37 Powers of High Court with respect to injunctions ….
> (1) The High Court may by order (whether interlocutory or final) grant an injunction … in all cases in which it appears to the court to be just and convenient to do so.
> (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just."

53. An injunction is a discretionary remedy which can be enforced through contempt proceedings. There are two types, mandatory and prohibitory. I am only dealing with an application for the latter type and only on the basis of quia timet – which is the fear of the Claimants that an actionable wrong will be committed against them. Whilst the balance of convenience test was initially developed for interim injunctions it developed such that it is generally used in the granting of final relief. I shall refer below to how it is refined in PU cases.

54. In law a landowner whose title is not disputed is prima facie entitled to an injunction to restrain a threatened or apprehended trespass on his land: see Snell's Equity (34th ed) at para 18-012. In relation to quia timet injunctions, like the one sought in this case, the Claimants must prove that there is a real and imminent risk of the Defendant causing the torts feared, not that the torts have already been committed, per Longmore LJ in *Ineos Upstream v Boyd* [2019] 4 WLR 100, para 34(1). I also take account of the

judgment of Sir Julian Flaux in *National Highways v PUs* [2023] 1 WLR 2088, in which at paras. 37-40 the following ruling was provided:

> "37. Although the judge did correctly identify the test for the grant of an anticipatory injunction, in para 38 of his judgment, unfortunately he fell into error in considering the question whether the injunction granted should be final or interim. His error was in making the assumption that before summary judgment for a final anticipatory injunction could be granted NHL had to demonstrate, in relation to each defendant, that that defendant had committed the tort of trespass or nuisance and that there was no defence to a claim that such a tort had been committed. That error infected both his approach as to whether a final anticipatory injunction should be granted and as to whether summary judgment should be granted.
> 38. As regards the former, it is not a necessary criterion for the grant of an anticipatory injunction, whether final or interim, that the defendant should have already committed the relevant tort which is threatened. *Vastint* [2019] 4 WLR 2 was a case where a final injunction was sought and no distinction is drawn in the authorities between a final prohibitory anticipatory injunction and an interim prohibitory anticipatory injunction in terms of the test to be satisfied. Marcus Smith J summarises at para 31(1) the effect of authorities which do draw a distinction between final prohibitory injunctions and final mandatory injunctions, but that distinction is of no relevance in the present case, which is only concerned with prohibitory injunctions.
> 39. There is certainly no requirement for the grant of a final anticipatory injunction that the claimant prove that the relevant tort has already been committed. The essence of this form of injunction, whether interim or final, is that the tort is threatened and, as the passage from *Vastint* at para 31(2) quoted at para 27 above makes clear, for some reason the claimant's cause of action is not complete. It follows that the judge fell into error in concluding, at para 35 of the judgment, that he could not grant summary judgment for a final anticipatory injunction against any named defendant unless he was satisfied that particular defendant had committed the relevant tort of trespass or nuisance.
> 40. The test which the judge should have applied in determining whether to grant summary judgment for a final anticipatory injunction was the standard test under CPR r 24.2, namely, whether the defendants had no real prospect of successfully defending the claim. In applying that test, the fact that (apart from the three named defendants to whom we have referred) none of the defendants served a defence or any evidence or otherwise engaged with the proceedings, despite being given ample opportunity to do so, was not, as the judge thought, irrelevant, but of considerable relevance, since it supported NHL's case

that the defendants had no real prospect of successfully defending the claim for an injunction at trial."

55. In relation to the substantive and procedural requirements for the granting of an injunction against persons unknown, guidance was given in *Canada Goose v Persons Unknown* [2021] WLR 2802, by the Court of Appeal. In a joint judgment Sir Terence Etherton and Lord Justices Richards and Coulson ruled as follows:

> "82 Building on *Cameron* [2019] 1 WLR 1471 and the *Ineos* requirements, it is now possible to set out the following procedural guidelines applicable to proceedings for interim relief against "persons unknown" in protestor cases like the present one:
> (1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".
> (2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.
> (3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.
> (4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as "persons unknown", must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.
> (5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.
> (6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical

language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application."

56. I also take into account the guidance and the rulings made by the Supreme Court in *Wolverhampton City Council v London Gypsies* [2023] UKSC 47; [2024] 2 WLR 45 on final injunctions against PUs. This was a case involving a final injunction against unknown gypsies and travellers. The circumstances were different from protester cases because Local Authorities have duties in relation to travellers. In their joint judgment the Supreme Court ruled as follows:

"167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no 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. …"

…

"5. The process of application for, grant and monitoring of newcomer injunctions and protection for newcomers' rights

187. We turn now to consider the practical application of the principles affecting an application for a newcomer injunction against Gypsies and Travellers, and the safeguards that should accompany the making of such an order. As we have mentioned, these are matters to which judges hearing such applications have given a good deal of attention, as has the Court of Appeal in considering appeals against the orders they have made. Further, the relevant principles and safeguards will inevitably evolve in these and other cases in the light of experience. Nevertheless, they do have a bearing on the issues of principle we have to decide, in that we must be satisfied that the points raised by the appellants do not, individually or collectively, preclude the grant of what are in some ways final (but regularly reviewable) injunctions that prevent persons who are unknown and unidentifiable at the date of the order from trespassing on and occupying local authority land. We have also been invited to give guidance on these matters so far as we feel able to do so having regard to our conclusions as to the nature of newcomer injunctions and the principles applicable to their grant.

Compelling justification for the remedy

188. Any applicant for the grant of an injunction against newcomers in a Gypsy and Traveller case must satisfy the court by detailed evidence that there is a compelling justification for the order sought. This is an overarching principle that must guide the court at all stages of its consideration (see para 167(i))."

…

"(viii) *A need for review*

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

218. We now turn to more general matters and safeguards. As we have foreshadowed, any local authority applying for an injunction against

persons unknown, including newcomers, in Gypsy and Traveller cases must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought (see para 167(i) above). There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further, the threat must be real and imminent. We have no doubt that local authorities are well equipped to prepare this evidence, supported by copies of all relevant documents, just as they have shown themselves to be in making applications for injunctions in this area for very many years.

219. The full disclosure duty is of the greatest importance (see para 167(iii)). We consider that the relevant authority must make full disclosure to the court not just of all the facts and matters upon which it relies but also and importantly, full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This is a continuing obligation on any local authority seeking or securing such an order, and it is one it must fulfil having regard to the one-sided nature of the application and the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application.

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

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

221. The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in *Cameron* [2019] 1 WLR 1471, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference

to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible.

(4) The prohibited acts

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

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

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

(5) *Geographical and temporal limits*

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

full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been; whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.

(6) Advertising the application in advance

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

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

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

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

(7) *Effective notice of the order*

230. We are not concerned in this part of our judgment with whether respondents become party to the proceedings on service of the order upon them, but rather with the obligation on the local authority to take steps actively to draw the order to the attention of all actual and potential

respondents; to give any person potentially affected by it full information as to its terms and scope, and the consequences of failing to comply with it; and how any person affected by its terms may make an application for its variation or discharge (again, see para 167(ii) above).
231. Any applicant for such an order must in our view make full and complete disclosure of all the steps it proposes to take (i) to notify all persons likely to be affected by its terms; and (ii) to ascertain the names and addresses of all such persons who are known only by way of description. This will no doubt include placing notices in and around the relevant sites where this is practicable; placing notices on appropriate websites and in relevant publications; and giving notice to relevant community and charitable and other representative groups.
(8) *Liberty to apply to discharge or vary*
232. As we have mentioned, we consider that an order of this kind ought always to include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the order (again, see para 167(ii) above). This is so whether the order is interim or final in form, so that a respondent can challenge the grant of the injunction on any grounds which might have been available at the time of its grant.
(9) *Costs protection*
233. This is a difficult subject, and it is one on which we have received little assistance. We have considerable concern that costs of litigation of this kind are way beyond the means of most if not all Gypsies and Travellers and many interveners, as counsel for the first interveners, Friends of the Earth, submitted. This raises the question whether the court has jurisdiction to make a protective or costs capping order. This is a matter to be considered on another day by the judge making or continuing the order. We can see the benefit of such an order in an appropriate case to ensure that all relevant arguments are properly ventilated, and the court is equipped to give general guidance on the difficult issues to which it may give rise.
(10) *Cross-undertaking*
234. This is another important issue for another day. But a few general points may be made at this stage. It is true that this new form of injunction is not an interim order, and it is not in any sense holding the ring until the final determination of the merits of the claim at trial. Further, so far as the applicant is a public body acting in pursuance of its public duty, a cross undertaking may not in any event be appropriate. Nevertheless, there may be occasions where a cross undertaking is considered appropriate, for reasons such as those given by Warby J in *Birmingham City Council v Afsar* [2019] EWHC 1619 (QB), a protest case. These are matters to be considered on a case-by-case basis, and the applicant must equip the court asked to make or continue the order with the most up-to-date guidance and assistance.

(11) *Protest cases*

235. The emphasis in this discussion has been on newcomer injunctions in Gypsy and Traveller cases and nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protesters who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2's land with the intention of disrupting construction. Each of these activities may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers. Any of these persons who have notice of the order will be bound by it, just as effectively as the injunction in the proceedings the subject of this appeal has bound newcomer Gypsies and Travellers.

236. Counsel for the Secretary of State for Transport has submitted and we accept that each of these cases has called for a full and careful assessment of the justification for the order sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, in so far as the applicant seeks an injunction against newcomers, the judge must be satisfied there is a compelling need for the order. Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained."

57. I conclude from the rulings in *Wolverhampton* that the 7 rulings in *Canada Goose* remain good law and that other factors have been added. To summarise, in summary judgment applications for a final injunction against unknown persons ("PUs") or newcomers, who are protesters of some sort, the following 13 guidelines and rules must be met for the injunction to be granted. These have been imposed because a final injunction against PUs is a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future so must be used only with due safeguards in place.

58. **(A) Substantive Requirements**

Cause of action

(1) There must be a civil cause of action identified in the claim form and particulars of claim. The usual quia timet (since he fears) action relates to the fear of torts such as trespass, damage to property, private or public nuisance, tortious interference with trade contracts, conspiracy with consequential damage and on-site criminal activity.

Full and frank disclosure by the Claimant

(2) There must be full and frank disclosure by the Claimant (applicant) seeking the injunction against the PUs.

Sufficient evidence to prove the claim

(3) There must be sufficient and detailed evidence before the Court on the summary judgment application to justify the Court finding that the immediate fear is proven on the balance of probabilities and that no trial is needed to determine that issue. The way this is done is by two steps. Firstly stage (1), the claimant has to prove that the claim has a realistic prospect of success, then the burden shifts to the defendant. At stage (2) to prove that any defence has no realistic prospect of success. In PU cases where there is no defendant present, the matter is considered ex-parte by the Court. If there is no evidence served and no foreseeable realistic defence, the claimant is left with an open field for the evidence submitted by him and his realistic prospect found at stage (1) of the hearing may be upgraded to a balance of probabilities decision by the Judge. The Court does not carry out a mini trial but does carry out an analysis of the evidence to determine if it the claimant's evidence is credible and acceptable. The case law on this process is set out in more detail under the section headed "The Law" above.

No realistic defence

(4) The defendant must be found unable to raise a defence to the claim which has a realistic prospect of success, taking into account not only the evidence put before the Court (if any), but also, evidence that a putative PU defendant might reasonably be foreseen as able to put before the Court (for instance in relation to the PUs civil rights to freedom of speech, freedom to associate, freedom to protest and freedom to pass and repass on the highway). Whilst in *National Highways* the absence of any defence from the PUs was relevant to this determination, the Supreme Court's ruling in *Wolverhampton* enjoins this Court not to put much weight on the lack of any served defence or defence evidence in a PU case. The nature of the proceedings are "ex-parte" in PU cases and so the Court must be alive to any potential defences and the Claimants must set them out and make submissions upon them. In my judgment this is not a "Micawber" point, it is a just approach point.

Balance of convenience – compelling justification

(5) In interim injunction hearings, pursuant to *American Cyanamid v Ethicon* [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in PU cases, pursuant to *Wolverhampton,* this balance is angled against the applicant to a greater extent than is required usually, so that there

must be a "compelling justification" for the injunction against PUs to protect the claimant's civil rights. In my judgment this also applies when there are PUs and named defendants.

(6) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UKSC 23, if the PUs' rights under the European Convention on Human Rights (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect the Claimants' right.

Damages not an adequate remedy

(7) For the Court to grant a final injunction against PUs the claimant must show that damages would not be an adequate remedy.

(B) Procedural Requirements

Identifying PUs

(8) The PUs must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (b) clearly defined geographical boundaries, if that is possible.

The terms of injunction

(9) The prohibitions must be set out in clear words and should not be framed in legal technical terms (like "tortious" for instance). Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

The prohibitions must match the claim

(10) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form.

Geographic boundaries

(11) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

Temporal limits - duration

(12) The duration of the final injunction should be only such as is proven to be reasonably necessary to protect the claimant's legal rights in the light of the evidence of past tortious activity and the future feared (quia timet) tortious activity.

Service

(13) Understanding that PUs by their nature are not identified, the proceedings, the evidence, the summary judgment application and the draft order must be served by alternative means which have been considered and sanctioned by the Court. The applicant must, under the Human Rights Act 1998 S.12(2), show that it has taken all practicable steps to notify the respondents.

The right to set aside or vary

(14) The PUs must be given the right to apply to set aside or vary the injunction on shortish notice.

Review

(15) Even a final injunction involving PUs is not totally final. Provision must be made for reviewing the injunction in the future. The regularity of the reviews depends on the circumstances. Thus such injunctions are "Quasi-final" not wholly final.

59. Costs and undertakings may be relevant in final injunction cases but the Supreme Court did not give guidance upon these matters.

60. I have read and take into account the cases setting out the historical growth of PU injunctions including *Ineos Upstream v PUs* [2019] EWCA Civ. 515, per Longmore LJ at paras. 18-34. I do not consider that extracts from the judgment are necessary here.

Applying the law to the facts

61. When applying the law to the facts I take into account the interlocutory judgments of Bennathan J and Bourne J in this case. I apply the balance of probabilities. I treat the hearing as an ex-parte hearing at which the Claimants must prove their case and put forward the potential defences of the PUs and show why they have no realistic prospect of success.

<u>(A) Substantive Requirements</u>

Cause of action

62. The pleaded claim is fear of trespass, crime and public and private nuisance at the 8 Sites and on the access roads thereto. In the event, as was found by Sweeting J, Bennathan J. and Bourne J. all 3 feared torts were committed in April 2022 and thereafter mainly at the Kingsbury site but also in Plymouth later on. In my judgment the claim as pleaded is sufficient on a quia timet basis.

Full and frank disclosure

63. By their approach to the hearing I consider that the Claimant and their legal team have evidenced providing full and frank disclosure.

Sufficient evidence to prove the claim

64. In my judgment the evidence shows that the Claimants have a good cause of action and fully justified fears that they face a high risk and an imminent threat that the remaining 17 named Defendants (who would not give undertakings) and/or that UPs will commit the pleaded torts of trespass and nuisance at the 8 Sites in connection with the 4 Organisations. I consider the phrase "in connection with" is broad and does not require membership of the 4 Organisations (if such exists), or proof of donation. It requires merely joining in with a protest organised by, encouraged by or at which one or more of the 4 Organisations were present or represented. The history of the invasive and dangerous protests in April 2022, despite the existence of the interim injunction made

by Butcher J, is compelling. Climbing onto fuel filled tankers on access roads is a hugely dangerous activity. Invading and trespassing upon petrochemical refineries and storage facilities and climbing on storage tanks and tankers is likewise very dangerous. Tunnelling under roads to obstruct and damage fuel tankers is also a dangerous tort of nuisance. I accept the evidence of further torts committed between May and September 2022. I have carefully considered the reduction in activity against the Claimants' Sites in 2023, however the threats from the spokespersons who align themselves or speak for the 4 Organisations did not reduce. I find that the reduction or abolition of direct tortious activity against the Claimants' 8 Sites was probably a consequence of the interim injunctions which were restraining the PUs connected with the 4 Organisations and that it is probable that without the injunctions direct tortious activity would quickly have recommenced and in future would quickly recommence.

No realistic defence

65. The Defendants have not entered any appearance or defence. Utterly properly Miss Holland KC dealt with the potential defences which the Defendants could have raised in her skeleton. Those related to Articles 10 and 11 of the European Convention on Human Rights. In *Cuciurean v Secretary of State for Transport* [2021] EWCA 357, [9(1)]-[9(2)] (emphasis added) Warby LJ said:

> "9. The following general principles are well-settled, and uncontroversial on this appeal.
> (1) Peaceful protest falls within the scope of the fundamental rights of free speech and freedom of assembly guaranteed by Articles 10(1) and 11(1) of the European Convention on Human Rights and Fundamental Freedoms. Interferences with those rights can only be justified if they are necessary in a democratic society and proportionate in pursuit of one of the legitimate aims specified in Articles 10(2) and 11(2). Authoritative statements on these topics can be found in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 [43] (Laws LJ) and *City of London v Samede* [2012] EWCA Civ 160 [2012] 2 All ER 1039, reflecting the Strasbourg jurisprudence.
> (2) But the right to property is also a Convention right, protected by Article 1 of the First Protocol ('A1P1'). In a democratic society, the protection of property rights is a legitimate aim, which may justify interference with the rights guaranteed by Article 10 and 11. Trespass is an interference with A1P1 rights, which in turn requires justification. In a democratic society, Articles 10 and 11 cannot normally justify a person in trespassing on land of which another has *the right to possession*, just because the defendant wishes to do so for the purposes of protest against government policy. Interference by trespass will rarely be a necessary and proportionate way of pursuing the right to make such a protest."

66. I consider that any defence assertion that the final injunction amounts to a breach of the Defendants' rights under Articles 10 and 11 of the *European Convention on Human Rights* would be bound to fail. Trespass on the Claimants' 8 sites and criminal damage thereon is not justified by those Articles and they are irrelevant to those pleaded causes. As for private nuisance the same reasoning applies. The Articles would only be relevant to the public nuisance on the highways. The Claimants accept that those rights would be engaged on public highways. However, the injunction is prescribed by law in that it is granted by the Court. It is granted with a legitimate aim, namely to protect the Claimant's civil rights to property and access thereto, to avoid criminal damage, to avoid serious health and safety dangers, to protect the right to life of the Claimants' staff and invitees should a serious accidents occur and to enable the emergency services by enabling to access the 8 Sites. There is also a wider interest in avoiding the disruption to emergency services, schools, transport and national services from disruption in fuel supplies. In my judgment there are no less restrictive means available to achieve the aim of protecting the Claimants' civil rights and property than the terms of the final injunction. The Defendants have demonstrated that they are committed to continuing to carry out their unlawful behaviour. In my judgment an injunction in the terms sought strikes a fair balance. In particular, the Defendants' actions in seeking to *compel* rather than *persuade* the Government to act in a certain way (by attacking the Claimants 8 Sites), are not at the core of their Article 10 and 11 rights, see *Attorney General's Reference (No 1 of 2022)* [2023] KB 37, at para 86. I take into account that direct action is not being carried out on the highway because the highway is in some way important or related to the protest. It is a means by which the Defendants can inflict significant disruption, see *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (KB), at para 40(4)(a) per Lavender J and *Ineos v Persons Unknown* [2017] EWHC 2945 (Ch), at para.114 per Morgan J. I take into account that the Defendants will still be able to protest and make their points in other lawful ways after the final injunction is granted, see *Shell v Persons Unknown* [2022] EWHC 1215, at para. 59 per Johnson J. I take into account that the impact on the rights of others of the Defendants' direct action, for instance at Kingsbury, is substantial for the reasons set out above. As well as being a public nuisance, the acts sought to be restrained are also offences contrary to s.137 of the *Highways Act 1980* (obstruction of the highway), s.1 of the *Public Order Act 2023* (locking-on) and s.7 of the *Public Order Act 2023* (interference with use or operation of key national infrastructure). In these circumstances I do not consider that the Defendants have any realistic prospect of success on their potential defences.

Balance of convenience – compelling justification

67. In my judgment the balance of convenience and justice weigh in favour of granting the final injunction. The balance tips further in the Claimants' favour because I consider that there are compelling justifications for the injunction against the named Defendants and the PUs to protect the Claimants' 8 Sites d the nearby public from the threatened torts, all of which are at places which are part of the National Infrastructure. In

addition, there are compelling reasons to protect the staff and visitors at the 8 Sites from the risk of death or personal injury and to protect the public at large who live near the 8 Sites. The risk of explosion may be small, but the potential harm caused by an explosion due to the tortious activities of a protester with a mobile phone or lighter, who has no training in safe handling in relation to fuel in tankers or storage tanks or fuel pipes, could be a human catastrophe.

68. I also take into account the dangers involved in shutting down any refinery site. I take into account that a temporary emergency shutdown had to be put in place at Kingsbury on 7th April 2022 and the dangers that such safety measures cause on restart.

69. I take into account that no spokesperson for any of the 4 Organisations has agreed to sign undertakings and that 17 Defendants have refused to sign undertakings. I take into account the dark and ominous threats made by Roger Hallam, the asserted co-founder of Just Stop Oil and the statements of those who assert that they speak for the Just Stop Oil and the other organisations, that some will continue action using methods towards a more excessive limit.

Damages not an adequate remedy

70. I consider that damages would not be an adequate remedy for the feared direct action incursions onto or blockages of access at the 8 Sites. None of the named Defendants are prepared to offer to pay costs or damages. 43 have sought to exchange undertakings for the prohibitions in the interim injunctions, but none offered damages or costs. Recovery from PUs is impossible and recovery from named Defendants is wholly uncertain in any event. No evidence has been put before this Court about the 4 Organisations' finances or structure or legal status or to identify which legal persons hold their bank accounts or what funding or equipment they provided to the protesters or what their legal structure is. Whilst no economic tort is pleaded the damage caused by disruption of supply and of refining works may run into substantial sums as does the cost to the police and emergency services resulting from torts or crimes at the 8 Sites and the access roads thereto. Finally, any health and safety risk, if triggered, could potentially cause fatalities or serious injuries for which damages would not be a full remedy. Persons injured or killed by tortious conduct are entitled to compensation, but they would always prefer to suffer no injury.

<u>(B) Procedural Requirements</u>

Identifying PUs

71. In my judgment, as drafted the injunction clearly and plainly identifies the PUs by reference to the tortious conduct to be prohibited and that conduct mirrors the feared torts claimed in the Claim Form. The PUs' conduct is also limited and defined by reference to clearly defined geographical boundaries on coloured plans.

The terms of the injunction

72. The prohibitions in the injunction are set out in clear words and the order avoids using legal technical terms. Further, in so far as the prohibitions affect public highways, they do not prohibit any conduct which is lawful viewed on its own save to the extent that such is necessary and proportionate. I am satisfied that there is no other more proportionate way of protecting the Claimants' rights or those of their staff, invitees and suppliers.

The prohibitions must match the claim

73. The prohibitions in the final injunction do mirror the torts feared in the Claim Form.

Geographic boundaries

74. The prohibitions in the final injunction are defined by clear geographic boundaries which in my judgment are reasonable.

Temporal limits - duration

75. I have carefully considered whether 5 years is an appropriate duration for this quasi-final injunction. The undertakings expire in August 2026 and I have thought carefully about whether the injunction should match that duration. However, in the light of the threats of some of the 4 Organisations on the longevity of their campaigns and the continued actions elsewhere in the UK, the express aim of causing financial waste to the police force and the Claimants and the total lack of engagement in dialogue with the Claimants throughout the proceedings, I do not consider it reasonable to put the Claimants to the further expense of re-issuing for a further injunction in 2 years 7 months' time. I have seen no evidence suggesting that those connected with the 4 organisations will abandon or tire of their desire for direct tortious action causing disruption, danger and economic damage with a view to forcing Government to cease or prevent oil exploration and extraction.

Service

76. I find that the summary judgment application, evidence in support and draft order were served by alternative means in accordance with the previous Orders made by the Court.

The right to set aside or vary

77. The final injunction gives the PUs the right to apply to set aside or vary the final injunction on short notice.

Review

78. Provision has been made in the quasi-final injunction for review annually in future. In the circumstances of this case I consider that to be a reasonable period.

Conclusions

79. I grant the quasi-final injunction sought by the Claimants for the reasons set out above.

END

Case No: KB-2022-001142

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
[2024] EWHC 1015 (KB)

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 20 February 2024

BEFORE:

MRS JUSTICE FARBEY

BETWEEN:

EXOLUM PIPELINE SYSTEM LIMITED & ORS

Claimant

- and -

PERSONS UNKNOWN

Defendant

MR T MORSHEAD, KC appeared on behalf of the Claimant
The Defendants did not appear and were not represented

JUDGMENT
-------- (Approved)---------

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Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

MRS JUSTICE FARBEY:

1. This is a review of the order of Bennathan J made on 29 April 2022. It is the second review. The claimants seek the continuation of the injunction with a further review in around 18 months' time.

2. The background is as follows. The claimants are importers, exporters and distributors of oil and chemical products. In order to carry out their business, they own and operate bulk liquid storage terminals in the United Kingdom. By a claim issued under CPR Part 8 on 11 April 2022, the claimants sought an injunction against persons unknown in relation to activities at seven of their terminals in England. The target of the injunction was and remains environmental protesters.

3. The claimant's injunction application followed a protest at and in the vicinity of the terminal at Grays. According to the evidence filed by the claimants, on 1 April 2022, protesters climbed on top of tankers they had stopped on the access road to the Grays site. Some of the protester chained or glued themselves to fuel tankers. Fuel tanker tyres were let down. By the next morning, the protesters had dug a tunnel under an access road, and some of the protesters were in the tunnel.

4. There was some further protester activity on 5 April 2022 of a lesser sort. According to the evidence, on 10 April 2022, protesters gained access to the Grays site by climbing over the boundary fence using ladders. They gained access to areas classed as hazardous under health and safety regulations because they may contain an explosive atmosphere. The protesters had with them mobile phones, which posed a risk of ignition and are therefore prohibited from being on the site. They glued themselves to each other or chained themselves to infrastructure. The protests continued through 11 April 2022. There were further protests at Grays on 13 and 15 April 2022.

5. I have seen copies of social media postings by Just Stop Oil on 10 and 11 April 2022, which publicise some of the activities at Grays. It is plain from the social media posts that the protesters were expressing their political beliefs. For example, one post says:

> "The youth have been holding Grays oil depot for over 24 hours. Young people have had enough of the UK Government's criminal inaction on the climate crisis, which is ultimately going to shorten the lives of so many young people in our society."

6. The claimants were concerned that disruptive and dangerous activity would spread to their other sites and so sought relief in this court. The kind of injunction that the claimants sought has come to be known as a "newcomer" injunction because its terms operate against persons who at the time of the injunction were neither defendants nor identifiable and are described on the injunction simply as "persons unknown" (see *Wolverhampton City Council and Others v London Gypsies and Travellers and Others* [2023] UKSC 47, [2024] 2 WLR 45).

7. By order dated 6 April 2022, Johnson J granted an interim injunction prohibiting persons unknown, as further described in two different ways in the title of the order, from doing a number of things. On the return date, Bennathan J granted injunctive relief, albeit that he reduced the number and scope of the prohibitions within the injunction. He made a separate non-party disclosure order against various Chief Constables in order that anyone arrested in the course of protesting at or in the vicinity of the claimants' terminals would have their details passed by the police to the claimants with a view to naming them as defendants in the claim.

8. On 23 January 2023, Soole J reviewed Bennathan J's order. Mr Morshead KC appeared on behalf of the claimants. No one else appeared. Soole J was satisfied that the injunction should not be discontinued. He ordered that it should be reviewed again in February 2024. That is how the matter comes before me today.

9. Soole J's order imposed various procedural requirements on the claimants, which were intended to bring the proceedings and this second review to the notice of those who might wish to resist the continuation of the injunction. I am satisfied on the evidence before me that those procedural requirements have been met. The court is not aware of any person who wishes to argue that Bennathan J's order should be discontinued. Like Soole J, I have heard from Mr Morshead, and no one else has appeared.

10. Soole J was provided with updating evidence of developments since Bennathan J's order. Among other things, there was evidence before Soole J that despite the injunction there was further disruptive and dangerous activity at Grays on 23 August 2022, when five protesters gained entry. On 3 May 2022, less than four days after the injunction was made, protesters went to the Clydebank site of Exolum Storage Limited and took actions similar to those taken at Grays.

11. I have likewise been provided with evidence of developments since Soole J's review. These developments are set out in the fourth witness statement of Mark O'Neill, who has since last year been promoted to being the North West Europe Operations and Maintenance Lead at Exolum International (UK) Limited. He confirms that service and maintenance of the injunction signage around the terminals has continued. Additional security measures have been put in place to make access to the terminals more difficult for the defendants. These measures are intended to ensure the safety of the claimants' staff and visitors as well as the defendants and other members of the public who may be in the vicinity of the terminals.

12. Mr O'Neill says that the claimants continue to provide assistance to the police in relation to the prosecution of protesters in respect of the protest activity at Grays terminal in April 2022. For example, Mr O'Neill has given evidence to the Magistrates' Court when needed. The claimants wish to use the third-party disclosure order to add named defendants to the injunction order in the event that sufficient evidence can be obtained to do so.

13. Mr O'Neill confirms that the email address advertised on the injunction signs continues to be monitored for enquiries in respect of the injunction. A request for copies of the claim documents referred to in the injunction order was made in July 2023, but there

have been no emails or other forms of communication objecting to the injunction. There has been no further disruption at any of the terminals that are subject to the injunction since the 2023 order.

14. Mr O'Neill describes the importance of maintaining the injunction in the following terms:

> "38. I believe that the injunction has been an effective deterrent to further protest activity, and the fact that there has not been such activity at the terminals since the 2023 order also supports this belief.
>
> 39. Given the fact that Just Stop Oil appear committed to further protest activity until their objective is reached, I consider that it is important for the injunction to continue.
>
> 40. The claimants also remain committed to protecting the terminals by all legal means possible, by the additional security measures, assisting the police with prosecutions, and seeking to continue the injunction at the review hearing."

15. In his submissions, Mr Morshead emphasises that the Scottish protest shows that the protesters are well organised and have sought to disrupt the claimant's business where it is not protected by the injunction.

16. Since the last review in this case, the Supreme Court has given its judgment in the *Wolverhampton* case. In his judgment in that case, with which the other members of the court agreed, Lord Reed observed at paragraph 167(iv) that newcomer injunctions are "constrained by territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon" for their making.

17. At paragraph 235, Lord Reed cautioned against treating as prescriptive in other contexts (such as protester cases) the principles about newcomer injunctions in traveller cases. He went on to state that, in protester cases, the judge must be satisfied that there is a "compelling need" for the order. 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 principles explained by the court.

18. In the context of newcomer traveller injunctions, Lord Reed referred at paragraph 237 to the prospect of appropriate and early review. I do not regard that reference as limited to traveller injunctions in the sense that reviews cannot or should not take place in other cases. I agree with Mr Morshead that it remains good practice to provide for a periodic review even when a final order is made (see *Barking and Dagenham London Borough Council v Persons Unknown* [2022] EWCA Civ 13, [2022] 2 WLR 946, paragraph 108, per Sir Geoffrey Vos MR, with whom the other members of the court agreed).

19. In his helpful written and oral submissions, Mr Morshead submits that the Supreme Court's judgment in the *Wolverhampton* case has clarified the conceptual framework to be applied to the making of newcomer injunctions. The judgment is notable for its shift from the approach in *American Cyanamid Co v Ethicon* [1975] AC 396 to the consideration of a new kind of injunction requiring a different approach. In such cases, the primary question is: what is needed for the court to intervene in cases where the practical reality is that the persons unknown are not likely to be present in court?

20. Mr Morshead submits that there are two principal considerations that arise from the *Wolverhampton* case. First, the court will only grant relief if there is a compelling need, sufficiently demonstrated by the evidence, in order to protect the claimant's rights (*Wolverhampton* paragraph 167(i)). Mr Morshead properly accepts that is a high threshold and is indeed a higher test than the balance of convenience under *American Cyanamid*. He submits that the threshold is to be flexibly applied on a case-specific basis. There may be a compelling need for the court to order injunctive relief in relation to a small risk of future disruption if the consequences of the risk materialising are serious. Conversely, if the harm that the claimants anticipate is very slight, the court may consider that there is no compelling need for an injunction, even if the risk of the harm materialising is great. Convention rights of putative protesters will always be considered (*Wolverhampton*, paragraph 167(ii)) and it is open to the court to conclude that Convention rights must prevail in circumstances where the interference caused by the injunction would be disproportionate.

21. Mr Morshead submits that the court may in the absence of any named defendants protect the rights of protesters in two ways. First, it may impose strict procedural requirements of notice of the injunction and any review, which may enable anyone affected to apply to the court for the injunction to be discharged or varied. Secondly, the court will consider the evidence that is before it and, in the absence of any defendant, may probe the claimant to satisfy itself that the duties of the court and the duties of a party appearing without an opponent are discharged.

22. Even if that approach is wrong, Mr Morshead submits that, in any event, I need not and should not at this stage apply the various familiar limbs of the full *American Cyanamid* test as if this were a fresh application for an injunction. That exercise has already been conducted on other occasions. He submits that for present purposes it is sufficient and proportionate for me to consider whether there has been a change of circumstances since the last review.

23. He accepts that I will need to balance the legal rights of the claimants against the rights of free speech (Article 10 of the Convention) and free assembly (Article 11 of the Convention) of the putative protesters. He makes the point that Johnson J and Bennathan J gave full weight to Article 10 and Article 11 rights. He submits that the evidence of continuing disruptive protests by climate change activists in various parts of England demonstrates a continued need for the injunction in the terms that have been ordered. However, in the circumstances of this case, he submits that it is difficult to conceive how any application of *American Cyanamid* would impose any higher threshold than the test of compelling need.

24. I agree with Mr Morshead. I have kept firmly in mind the high public interest in the right to express beliefs and to engage in legitimate public protest. If the *American Cyanamid* principles apply, I accept that there is and remains a good arguable case for relief and that damages are not an adequate remedy. I see no reason at this juncture to take a different view to Soole J in these regards.

25. I accept that the test of balance of convenience would add nothing to the test of compelling need. If the test of compelling need is met, then on the facts of this case the full panoply of the *American Cyanamid* requirements is met.

26. I am prepared to accept that, unless restrained, there is at least some risk, and probably a high risk, that some activity would resume at some point within an imminent period. There is at least some risk, and probably a high risk, that if protest activities were to take place at the claimants' sites there would be damage. There would not only be damage to property but also a risk to life and limb. The protesters would not know which tankers were full of explosive material and which were empty. They would not know whether even an empty tanker was clean or retained residual inflammable material. They would not know which parts of the claimants' infrastructure were dangerous and which were safe. In dangerous parts of the site, they may not know that the use of mobile phones, which has been an integral part of some of the protests in order to publicise the activities on social media, is a danger to life.

27. In terms of the court's duty to protect the protesters' Convention rights, the claimants have complied with the steps set down by the court to bring the injunction and today's hearing to the attention of those who may want the injunction discontinued. The court has sought to protect the right to protest through the full use of its case management powers.

28. The review is not a rubber stamp but has involved the court probing counsel as to its concerns for the purpose of ensuring that the continuation of the injunction is proportionate and that its duration is no longer than is necessary.

29. I have been provided with no reason to discontinue or vary the order made by Bennathan J. On the other hand, it is notable, as I have said, that the evidence is that the protesters breached the Grays perimeter, went onto its property and acted in a dangerous way that could have led to an explosion with risk to property and ultimately with risk to life and limb. There is, in my judgment, a compelling need for the order to be continued.

30. I will order that the injunction is to continue in force until the next review. I am concerned that a review period of 18 months may lead to drift. The next review will be listed on the first available date after 20 February 2025. There will be notice requirements as set out in the draft order supplied by the claimants.

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

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Email: civil@epiqglobal.co.uk

(This judgment has been approved by the judge)

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 intent 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. The E 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.

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 Jauncey of Tullichettle 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 became the subject of a newcomer injunction wishes to raise particular circumstances applicable to them and relevant to a balancing of their article 8 Convention rights against the claim for an injunction, this can be done under the liberty to apply (post, para 183).

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

A in direct action. Such activity may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers (post, para 235).

Decision of the Court of Appeal sub nom *Barking and Dagenham London Borough Council v Persons Unknown* [2022] EWCA Civ 13; [2023] QB 295; [2022] 2 WLR 946; [2022] 4 All ER 51 affirmed on different grounds.

B The following cases are referred to in the judgment of Lord Reed PSC, Lord Briggs JSC and Lord 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 New River Co (1805) 11 Ves 429

C *Anton Piller KG v Manufacturing Processes Ltd* [1975] EWCA Civ 12; [1976] Ch 55; [1976] 2 WLR 162; [1976] 1 All ER 779, CA

Ashworth Hospital Authority v MGN Ltd [2002] UKHL 29; [2002] 1 WLR 2033; [2002] 4 All ER 193, HL(E)

Attorney General v Chaudry [1971] 1 WLR 1614; [1971] 3 All ER 938, CA

Attorney General v Crosland [2021] UKSC 15; [2021] 4 WLR 103; [2021] UKSC 58; [2022] 1 WLR 367; [2022] 2 All ER 401, SC(E)

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

Attorney General v Leveller Magazine Ltd [1979] AC 440; [1979] 2 WLR 247; [1979] 1 All ER 745; 68 Cr App R 342, HL(E)

Attorney General v Newspaper Publishing plc [1988] Ch 333; [1987] 3 WLR 942; [1987] 3 All ER 276, CA

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

E *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191; [1991] 2 WLR 994; [1991] 2 All ER 398, HL(E)

Baden's Deed Trusts, In re [1971] AC 424; [1970] 2 WLR 1110; [1970] 2 All ER 228, HL(E)

Bankers Trust Co v Shapira [1980] 1 WLR 1274; [1980] 3 All ER 353, CA

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

F *Birmingham City Council v Afsar* [2019] EWHC 1619 (QB)

Blain (Tony) Pty Ltd v Splain [1993] 3 NZLR 185

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

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

British Airways Board v Laker Airways Ltd [1985] AC 58; [1984] 3 WLR 413; G [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

CMOC Sales and Marketing Ltd v Person Unknown [2018] EWHC 2230 (Comm); H [2019] Lloyd's Rep FC 62

Cameron v Hussain [2019] UKSC 6; [2019] 1 WLR 1471; [2019] 3 All ER 1, SC(E)

Canada Goose UK Retail Ltd v Persons Unknown [2019] EWHC 2459 (QB); [2020] 1 WLR 417; [2020] EWCA Civ 303; [2020] 1 WLR 2802; [2020] 4 All ER 575, CA

Cardile v LED Builders Pty Ltd [1999] HCA 18; 198 CLR 380

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; [1981] 1 Lloyd's Rep 113, HL(E)
Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd [1993] AC 334; [1993] 2 WLR 262; [1993] 1 All ER 664; [1993] 1 Lloyd's Rep 291, 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 [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 Private 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
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; [1995] 2 Lloyd's Rep 417, PC
Meux v Maltby (1818) 2 Swans 277
Michaels (M) (Furriers) Ltd v Askew (1983) 127 SJ 597, CA
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
Parkin v Thorold (1852) 16 Beav 59
Persons formerly known as Winch, In re [2021] EWHC 1328 (QB); [2021] EMLR 20, DC; [2021] EWHC 3284 (QB); [2022] ACD 22, DC
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
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 [1979] AC 210; [1977] 3 WLR 818; [1977] 3 All ER 803; [1978] 1 Lloyd's Rep 1, HL(E)
Smith v Secretary of State for Housing, Communities and Local Government [2022] 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
South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV [1987] AC 24; [1986] 3 WLR 398; [1986] 3 All ER 487; [1986] 2 Lloyd's Rep 317, HL(E)
Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] AC 754; [1984] 2 WLR 929; [1984] 2 All ER 332, HL(E)
TSB Private Bank International SA v Chabra [1992] 1 WLR 231; [1992] 2 All ER 245
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch); [2019] JPL 161
United Kingdom Nirex Ltd v Barton The Times, 14 October 1986
Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908
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; [1982] 1 Lloyd's Rep 240, CA

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, CA
Birmingham City Council v Nagmadin [2023] EWHC 56 (KB)
Birmingham City Council v Sharif [2020] EWCA Civ 1488; [2021] 1 WLR 685; [2021] 3 All ER 176; [2021] RTR 15, CA
Cambridge City Council v Traditional Cambridge Tours Ltd [2018] EWHC 1304 (QB); [2018] LLR 458
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
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; Test Valley Borough Council; Thurrock Council; Hillingdon London Borough Council; Richmond upon Thames London Borough Council; Walsall Metropolitan Borough Council and Wolverhampton City Council. The following bodies were granted permission to intervene in the appeal: London Gypsies and Travellers; Friends, Families and Travellers; Derbyshire Gypsy Liaison Group; High Speed Two (HS2) Ltd and Basildon Borough Council. On 13 January 2022 the Court of Appeal (Sir Geoffrey Vos MR,

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 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) 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 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.

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

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

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

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

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

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

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 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 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 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 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:

(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 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 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?

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:

(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

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?

B (3) Can a claim form properly describe the defendants as persons unknown, with or without a description referring to the conduct sought to be enjoined? Can an injunction properly be addressed to persons so described? If the description refers to the conduct which is prohibited, can the defendants properly be described, and can an injunction properly be issued, in terms which mean that persons do not become bound by the injunction until they infringe it?

C (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 D the absence of a cause of action, (4) the commencement of proceedings against unidentified defendants, and (5) the service of proceedings on unidentified defendants.

(1) The jurisdiction to grant injunctions

16 As Lord Scott of Foscote commented in *Fourie v Le Roux* [2007] E 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 F 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 G power.

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* H *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.

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 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."

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:

> "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."

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.

(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.

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.

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

(i) Representative proceedings

27 The general rule of practice in England and Wales used to be that the defendants to proceedings must be named, and that even a description of 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 circumstances relief can be sought against representative defendants, with other unnamed persons being described in the order in general terms. Although formerly recognised by RSC Ord 15, r 12, and currently the subject of rule 19.8 of the CPR, this form of procedure has existed for several centuries and was developed by the Court of Chancery. Its rationale was explained by Sir Thomas Plumer MR in *Meux v Maltby* (1818) 2 Swans 277, 281–282:

> "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 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) 127 SJ 597, 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* The Times, 14 October 1986, 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: 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.

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

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 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 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 *Siskina (Owners of cargo lately laden on board) v Distos Cia Naviera SA* [1979] AC 210 ("*The Siskina*"), at p 256. There has been a gradual but

A 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 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.

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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).

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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.

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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

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

48 Another type of injunction which can be issued against a defendant in the absence of a cause of action is a *Bankers Trust* order. In the case from which the order derives its name, *Bankers Trust Co v Shapira* [1980] 1 WLR 1274 (para 20 above), an order was granted requiring an innocent third party to disclose documents and information which might assist the claimant in locating assets to which the claimant had a proprietary claim. 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 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 ("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 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.

(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.

A **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 the act by which the defendant is subjected to the court's jurisdiction, in the

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

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.

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 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.

(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 Morritt V-C in 2003 which bear on this appeal. There had been a theft of several pre-publication copies of a new Harry Potter novel, some of which had been offered to national newspapers ahead of the launch date. By the time of the hearing of a much adjourned interim application most but not all of the thieves had been arrested, but the claimant publisher wished to have continued injunctions, until the date a month later when the book was due to be published, against unnamed further persons, described as the person or persons who had offered a copy of the book to the three named newspapers and the person or persons in physical possession of the book without the consent of the claimants.

59 The Vice-Chancellor acknowledged that it would under the old RSC and relevant authority in relation to them have been improper to seek to identify intended defendants in that way (see para 27 above). He noted (para 11) the anomalous consequence:

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> "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
B 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
C 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]
D 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
E 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
F 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
G 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
H remained on any of the sites in question on or around the specified date. This 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

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

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

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 injunction under section 187B of the Town and Country Planning Act 1990 against persons described as "persons unknown . . . causing or permitting hardcore to be deposited . . . caravans, mobile homes or other forms of residential accommodation to be stationed . . . or existing caravans, mobile homes or other forms of residential accommodation . . . to be occupied" on land adjacent to a Gypsy encampment in rural Cambridgeshire: *South Cambridgeshire District Council v Persons Unknown* [2004] 4 PLR 88 ("*South Cambs*"). The order restrained the persons so described from behaving in the manner set out in that description. Service of the claim form and the injunction was effected by placing them in clear plastic envelopes in a prominent position on the relevant land.

65 Several months later, Ms Gammell, without securing or applying for the necessary planning permission or making an application to set the injunction aside or vary its terms, proceeded to station her caravans on the land. She was therefore a newcomer within the meaning of that word as used in this appeal, since she was neither a defendant nor on notice of the application for the injunction nor on the site when the injunction was granted. She was served with the injunction and its effect was explained to her, but she continued to station the caravans on the land. On an application for committal by the local authority she was found at first instance to have been in contempt. Sentencing was adjourned to enable her to appeal against the judge's refusal to permit her to be added as a defendant to the proceedings, for the purpose of enabling her to argue that the injunction should not have the effect of placing her in contempt until a proportionality exercise had been undertaken to balance her particular human rights against the grant of an injunction against her, in accordance with *South Bucks District Council v Porter* [2003] 2 AC 558.

66 The Court of Appeal dismissed her appeal. In his judgment, Sir Anthony Clarke MR, with whom Rix and Moore-Bick 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).

(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).

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 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 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.

A 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 B 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.

C **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.

D **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 E 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 F 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 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 G 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 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 H not and would not without more constitute service on that offending driver (nor was the insurer directly liable); alternative service on the insurer could 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.

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.

(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 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.

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.

88 These arguments were addressed head-on by Longmore LJ, with whom the other members of the court agreed. He rejected the submission that a claimant could never sue persons unknown unless they were identifiable at the time the claim form was issued. He also rejected, as too absolutist, the submission that an injunction could not be granted to restrain newcomers from engaging in the offending activity, that is to say persons who might only form the intention to engage in the activity at some later date. Lord Sumption's categorisation of persons who might properly be sued was not intended to exclude newcomers. To the contrary, Longmore LJ continued, Lord Sumption appeared rather to approve the decision in *Bloomsbury* and he had expressed no disapproval of the decision in *Hampshire Waste Services*.

89 Longmore LJ went on tentatively to frame the requirements of an injunction against unknown persons, including newcomers, in a characteristically helpful and practical way. He did so in these terms (at para 34): (1) there must be a sufficiently real and imminent risk of a tort being committed to justify quia timet relief; (2) it is impossible to name the persons who are likely to commit the tort unless restrained; (3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order; (4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct; (5) the terms of the injunction must be sufficiently clear and precise as to enable

A 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*
B *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.

C **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,
D 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
E 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
F 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 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
G 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
H 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 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 animals. PETA was subsequently added to the proceedings as second defendant at its own request.

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

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

future protesters who were not parties to the proceedings at the time when the injunction was granted. He refused to grant a final injunction.

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

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

103 Thirdly, the Court of Appeal held (para 89) that a final injunction could not be granted in a protester case against persons unknown who were not parties at the date of the final order, since a final injunction operated only between the parties to the proceedings. As authority for that proposition, the court cited *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191 per Lord Oliver at p 224 (quoted at para 39 above). That, the court said, was consistent with the fundamental principle in *Cameron* [2019] 1 WLR 1471 that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard. It followed, in the court's view, that a final injunction could not be granted against newcomers who had not by that time committed the prohibited acts, since they did not fall within the description of "persons unknown" and had not been served with the claim form. This was not one of the very limited cases, such as *Venables* [2001] Fam 430, in which a final injunction could be granted against the whole world. Nor was it a case where there was scope for making persons unknown subject to a final order. That was only possible (and perfectly legitimate) provided the persons unknown were confined to those in the first category of unknown persons in *Cameron*—that is to say anonymous defendants who were nonetheless identifiable in some other way (para 91). In the Court of Appeal's view, the claimants' problem was that they were seeking to invoke the civil

A 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
B 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

C **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,
D 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
E 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
F paradox that a person becomes bound by an injunction only as a result of 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
G had been drawn in the earlier case law concerned with newcomer injunctions. 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
H earlier cases demonstrated and *Bromley* [2020] PTSR 1043 explained, the court needed to keep injunctions 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?

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.

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 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 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.

110 *Venables* has been followed in a number of later cases at first instance, where there was convincing evidence that an injunction contra mundum was necessary to protect a person from serious injury or death: see *X (formerly Bell) v O'Brien* [2003] EMLR 37; *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB); *A (A Protected Party) v Persons Unknown* [2017] EMLR 11; *RXG v Ministry of Justice* [2020] QB 703; *In re Persons formerly known as Winch* [2021] EMLR 20 and [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."

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

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

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

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

A 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
B 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
C *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
D 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
E 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 *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.
F 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
G 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
H other words, the identification of the unknown defendant can depend upon the availability of injunctions which are granted at a stage when that defendant remains unidentifiable. Furthermore, injunctions and other orders which operate contra mundum, to which (as we have already observed) newcomer injunctions can be regarded as analogous, raise issues lying beyond the scope of Lord Sumption's judgment in *Cameron.*

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

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

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

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

A 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
B 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
C 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
D 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
E 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
F 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
G 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
H 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."

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 Private 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 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 B 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 C 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.

D **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 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 E *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 F 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 G 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 H 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 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,

A 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.

B **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,
C 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
D 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 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
E 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
F 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
G 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,
H 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. A

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. B

(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. C

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

(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. E F

(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. G

(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. H

(viii) Nor is the injunction designed (like a freezing injunction, search order, *Norwich Pharmacal* or *Bankers Trust* order or even an anti-suit injunction) to protect from interference or abuse, or to enhance, some

related process of the court. Its purpose, and no doubt the reason for its recent popularity, is simply to provide a more effective, possibly the only effective, means of vindication or protection of relevant rights than any other sanction currently available to the claimant local authorities.

144 Cumulatively those distinguishing features leave us in no doubt that the injunction against newcomers is a wholly new type of injunction with no very closely related ancestor from which it might be described as evolutionary offspring, although analogies can be drawn, as will appear, with some established forms of order. It is in some respects just as novel as were the new types of injunction listed in para 143(viii) above, and it does not even share their family likeness of being developed to protect the integrity and effectiveness of some related process of the courts. As Mr Drabble KC for the appellants tellingly submitted, it is not even that closely related to the established quia timet injunction, which depends upon proof that a named defendant has threatened to invade the claimant's rights. Why, he asked, should it be assumed that, just because one group of Travellers have misbehaved on the subject site while camping there temporarily, the next group to camp there will be other than model campers?

145 Faced with the development by the lower courts of what really is in substance a new type of injunction, and with disagreement among them 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 e g *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 categories of injunctions that have been established and an acceptance that pursuant to general equitable principles injunctions may issue in new categories when this course appears appropriate."

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

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

150 Of greater relevance is the deep-rooted trigger for the intervention of equity, where it perceives that available common law remedies are inadequate to protect or enforce the claimant's rights. The equitable remedy of specific performance of a contractual obligation is in substance a form of injunction, and its availability critically depends upon damages being an inadequate remedy for the breach. Closer to home, the inadequacy of the common law remedy of a possession order against squatters under CPR Pt 55 as a remedy for trespass by a fluctuating body of frequently unidentifiable Travellers on different parts of the claimant's land was treated in *Meier* [2009] 1 WLR 2780 (para 67 above) as a good reason for the grant of an injunction in relation to nearby land which, because it was not yet in

A the occupation of the defendant Travellers, could not be made the subject of an order for possession. Although the case was not about injunctions against newcomers, and although she was thinking primarily of the better tailoring of the common law remedy, the following observation of Baroness Hale JSC at para 25 is resonant:

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

To the same effect is the dictum of Anderson J (in New Zealand) in *Tony Blain Pty Ltd v Splain* [1993] 3 NZLR 185 (para 130 above) at pp 499–500,
C cited by Sir Andrew Morritt V-C in *Bloomsbury* [2003] 1 WLR 1633 at para 14.

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

> "Courts of Equity make a distinction in all cases between that which is
D matter of substance and that which is matter of form; and if it find that by 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
E (discussed above) is that it illuminates the debate about the type of injunction with which the court is concerned, here enabling an escape from the twin silos of final and interim and recognising that injunctions against newcomers are all in substance without notice injunctions. The second is that it enables the court to assess the most suitable means of ensuring that a newcomer has a proper opportunity to be heard without being shackled to any particular procedural means of doing so, such as service of the
F proceedings.

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
G development of the search order, from its original form in *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55 to the much more sophisticated current form annexed to Practice Direction 25A supplementing CPR Pt 25 and which may be modified as necessary. To a lesser extent a similar process of careful, incremental design accompanied the development of the freezing injunction. The standard form now sanctioned by the CPR is a much more sophisticated version than the original used in *Mareva Cia Naviera SA v*
H *International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509. Of course, this flexibility enables not merely incremental development of a new type of injunction over time in the light of experience, but also the detailed moulding of any standard form to suit the justice and convenience of any particular case.

153 Fourthly, there is no supposed limiting rule or principle apart from justice and convenience which equity has regarded as sacrosanct over time. This is best illustrated by the history of the supposed limiting principle (or even jurisdictional constraint) affecting all injunctions apparently laid down by Lord Diplock in *The Siskina* [1979] AC 210 (para 43 above) that an injunction could only be granted in, or as ancillary to, proceedings for substantive relief in respect of a cause of action in the same jurisdiction. The lengthy process whereby that supposed fundamental principle has been broken down over time until its recent express rejection is described in detail in the *Broad Idea* case [2023] AC 389 and needs no repetition. But it is to be noted the number of types of injunctive or quasi-injunctive relief which quietly by-passed this supposed condition, as explained at paras 44–49 above, including *Norwich Pharmacal* and *Bankers Trust* orders and culminating in internet blocking orders, in none of which was it asserted that the respondent had invaded, or even threatened to invade, some legal right of the applicant.

154 It should not be supposed that all relevant general equitable principles favour the granting of injunctions against newcomers. Of those that might not, much the most important is the well-known principle that equity acts in personam rather than either in rem or (which may be much the same thing in substance) contra mundum. A main plank in the appellants' submissions is that injunctions against newcomers are by their nature a form of prohibition aimed, potentially at least, at anyone tempted to trespass or camp (depending upon the drafting of the order) on the relevant land, so that they operate as a form of local law regulating how that land may be used by anyone other than its owner. Furthermore, such an injunction is said in substance to criminalise conduct by anyone in relation to that land which would otherwise only attract civil remedies, because of the essentially penal nature of the sanctions for contempt of court. Not only is it submitted that this offends against the in personam principle, but it also amounts in substance to the imposition of a regime which ought to be the preserve of legislation or at least of byelaws.

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

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

157 Courts quietly make orders affecting third parties almost daily, in the form of the embargo upon publication or other disclosure of draft judgments, pending hand-down in public: see para 35 above. It cannot 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 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.

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 the utility of its future orders, may fairly be said to be the bedrock of many of equity's forays into new forms of injunction. Thus freezing injunctions are designed to make more effective the enforcement of any ultimate money judgment: see *Broad Idea* [2023] AC 389 at paras 11–21. This is what Lord Leggatt JSC there called the enforcement principle. Search orders are designed to prevent dishonest defendants from destroying relevant documents in advance of the formal process of disclosure. *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.

161 But internet blocking orders (para 49 above) stand in a different category. The applicant intellectual property owner does not seek assistance from internet service providers ("ISPs") to enable it to identify and then sue the wrongdoers. It seeks an injunction against the ISP because it is a much more efficient way of protecting its intellectual property rights than suing the numerous wrongdoers, even though it is no part of its case against the ISP

that it is, or has even threatened to be, itself a wrongdoer. The injunction is based upon the application of "ordinary principles of equity": see *Cartier* [2018] 1 WLR 3259 (para 20 above) per Lord Sumption JSC at para 15. Specifically, the principle is that, once notified of the selling of infringing goods through its network, the ISP comes under a duty, but only if so requested by the court, to prevent the use of its facilities to facilitate a wrong by the sellers. The proceedings against the ISP may be the only proceedings which the intellectual property owner intends to take. Proceedings directly against the wrongdoers are usually impracticable, because of difficulty in identifying the operators of the infringing websites, their number and their location, typically in places outside the jurisdiction of the court: see per Arnold J at first instance in *Cartier* [2015] Bus LR 298, para 198.

162 The effect of an internet blocking order, or the cumulative effect of such orders against ISPs which share most of the relevant market, is therefore to hinder the wrongdoers from pursuing their infringing sales on the internet, without them ever being named or joined as defendants in the proceedings or otherwise given a procedural opportunity to advance any defence, other than by way of liberty to apply to vary or discharge the order: see again per Arnold J at para 262.

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, 428–9 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 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:

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

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

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

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

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

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

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

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.

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.

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

175 In the present context notice of the application would not risk defeating its purpose, and there would usually be no such urgency as would justify applying without notice. The absence of notice is simply inherent in an application for this type of injunction because, quoad newcomers, the applicant has no idea who they might turn out to be. A practice requirement

to advertise the intended application, by notices on the relevant sites or on suitable websites, might bring notice of the application to intended newcomers before it came to be made, but this would be largely a matter of happenstance. It would for example not necessarily come to the attention of a Traveller who had been camping a hundred miles away and who alighted for the first time on the prohibited site some time after the application had been granted.

176 But advertisement in advance might well alert bodies with a mission to protect Travellers' interests, such as the appellants, and enable them to intervene to address the court on the local authority's application with focused submissions as to why no injunction should be granted in the particular case. There is an (imperfect) analogy here with representative proceedings (paras 27–30 above). There may also be a useful analogy with the long-settled rule in insolvency proceedings which requires that a creditors' winding up petition be advertised before it is heard, in order to give advance notice to stakeholders in the company (such as other creditors) and the opportunity to oppose the petition, without needing to be joined as defendants. We say more about this and how advance notice of an application for a newcomer injunction might be given to newcomers and persons and bodies representing their interests in the next section of this judgment.

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

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

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

A 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 trespass: see eg the *Gammell* case and the appeal in *Bromley London Borough Council v Maughan* heard at the same time. In such a case the potential procedural injustice of a without notice injunction might well be sufficient to require the local authority to proceed against the owners of the site on notice, in the usual way, not least because there would be known targets capable of being served with the proceedings, and any interim application made on notice. But the issue on this appeal is not whether 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. A

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. B

185 The point was made by Stephanie Harrison KC for Friends of the Earth (intervening because of the implications of this appeal for protesters) that the potential for a newcomer injunction to cause procedural injustice was not regulated by any procedure rules or practice statements under the CPR. Save in relation to certain statutory applications referred to in para 51 above this is true at present, but it is not a good reason to inhibit equity's development of a new type of injunction. A review of the emergence of freezing injunctions and search orders shows how the necessary procedural checks and balances were first worked out over a period of development by judges in particular cases, then addressed by text-book 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. C D E

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. F G

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, H

A 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.
B 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
C Gypsy and Traveller case must satisfy the court by detailed evidence that there is a compelling justification for the order sought. This is an overarching principle that must guide the court at all stages of its consideration (see para 167(i)).

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

(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
G 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* (1996) 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
H might be brought, whether for temporary purposes or for use as permanent residences, and in that way compensate for the closure of the commons. As a result, it became increasingly difficult for Travellers and Gypsies to pursue their nomadic way of life.

192 In the light of the problems caused by the CSCDA 1960, section 6 of the Caravan Sites Act 1968 ("CSA 1968") imposed on local authorities a

duty to exercise their powers under section 24 of the CSCDA 1960 to provide adequate accommodation for Gypsies and Travellers residing in or resorting to their areas. The appellants accept that in the years that followed many sites for Gypsies and Travellers were established, but they contend with some justification that these sites were not and have never been enough to meet all the needs of these communities.

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

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

(ii) General "needs" assessments

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

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

(iii) Planning policy

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

198 Indeed, in 1994, the government published planning advice on the provision of sites for Gypsies and Travellers in the form of Department of the Environment Circular 1/94 entitled *Gypsy Sites and Planning*. This explained that the repeal of the statutory duty to provide sites was expected to lead to more applications for planning permission for sites. Local planning authorities ("LPAs") were advised to assess the needs of Gypsies and Travellers within their areas and to produce a plan which identified suitable *locations* for sites (location-based policies) and if this could not be done, to explain the *criteria* for the selection of appropriate locations (criteria-based policies). Unfortunately, despite this advice, most attempts

A 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 B 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 independent examination and that the purpose of this examination is, C 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.

201 More specifically, in 2006 advice was issued in the form of the D 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 E 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 F 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 G 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 H base that reduces the need for long distance travelling and possible environmental damage caused by unauthorised encampments.

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

authority area, and an absence of sufficient transit sites in an area (or information as to where available sites may be found) may itself be a sufficient reason for refusing a newcomer injunction.

(iv) Consultation and co-operation

203 This is another matter of considerable importance, and it is one with which all local authorities should willingly engage. We have no doubt that local authorities, other responsible bodies and representatives of the Gypsy and Traveller communities would benefit from a dialogue and co-operation to understand their respective needs; the concerns of the local authorities, local charities, business and community groups and members of the public; and the resources available to the local authorities for deployment to meet the needs of these nomadic communities having regard to the wider obligations which the authorities must also discharge. In this way a deeper level of trust may be established and so facilitate and encourage a constructive approach to the implementation of proportionate solutions to the problems the nomadic communities continue to present, without immediate and expensive recourse to applications for injunctive relief or enforcement action.

(v) Public spaces protection orders

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

(vi) Criminal Justice and Public Order Act 1994

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

206 Section 61 of the CJPOA confers powers on the police to deal with two or more persons who they reasonably believe are trespassing on land with the purpose of residing there. The police can direct these trespassers to leave (and to remove any vehicles) if the occupier has taken reasonable steps to ask them to leave and they have caused damage, disruption or distress as those concepts are elucidated in section 61(10). Failure to leave within a

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

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

E (vii) Byelaws

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

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

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

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

213 Appropriate authorities are also given powers to make byelaws in relation to nature reserves by the National Parks and Access to the Countryside Act 1949 (as amended by the Natural Environment and Rural Communities Act 2006); in relation to National Parks and areas of outstanding natural beauty under sections 90 and 91 of the 1949 Act (as amended); concerning the protection of country parks under section 41 of the Countryside Act 1968; and for the protection and preservation of other open country under section 17 of the Countryside and Rights of Way Act 2000.

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. 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 persons unknown, including newcomers, in Gypsy and Traveller cases must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought (see para 167(i) above). There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further, the threat must be real and imminent. We have no doubt that local authorities are well equipped to prepare this evidence, supported by copies of all relevant documents, just as they have shown themselves to be in making applications for injunctions in this area for very many years.

219 The full disclosure duty is of the greatest importance (see para 167(iii)). We consider that the relevant authority must make full disclosure to the court not just of all the facts and matters upon which it relies but also and importantly, full disclosure of all facts, matters and arguments of which, after reasonable research, it is aware or could with reasonable diligence ascertain and which might affect the decision of the court whether to grant, maintain or discharge the order in issue, or the terms of the order it is prepared to make or maintain. This is a continuing obligation on any local authority seeking or securing such an order, and it is one it must fulfil having regard to the one-sided nature of the application and the substance of the relief sought. Where relevant information is discovered after the making of the order the local authority may have to put the matter back before the court on a further application.

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

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

221 The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in *Cameron* [2019] 1 WLR 1471, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only

permissible to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible.

(4) The prohibited acts

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

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

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

(5) Geographical and temporal limits

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

A whether there is any proper justification for its continuance; and whether and on what basis a further order ought to be made.

(6) Advertising the application in advance

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

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

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

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

(7) Effective notice of the order

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

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

is practicable; placing notices on appropriate websites and in relevant publications; and giving notice to relevant community and charitable and other representative groups.

(8) Liberty to apply to discharge or vary

232 As we have mentioned, we consider that an order of this kind ought always to include generous liberty to any person affected by its terms to apply to vary or discharge the whole or any part of the order (again, see para 167(ii) above). This is so whether the order is interim or final in form, so that a respondent can challenge the grant of the injunction on any grounds which might have been available at the time of its grant.

(9) Costs protection

233 This is a difficult subject, and it is one on which we have received little assistance. We have considerable concern that costs of litigation of this kind are way beyond the means of most if not all Gypsies and Travellers and many interveners, as counsel for the first interveners, Friends of the Earth, submitted. This raises the question whether the court has jurisdiction to make a protective or costs capping order. This is a matter to be considered on another day by the judge making or continuing the order. We can see the benefit of such an order in an appropriate case to ensure that all relevant arguments are properly ventilated, and the court is equipped to give general guidance on the difficult issues to which it may give rise.

(10) Cross-undertaking

234 This is another important issue for another day. But a few general points may be made at this stage. It is true that this new form of injunction is not an interim order, and it is not in any sense holding the ring until the final determination of the merits of the claim at trial. Further, so far as the applicant is a public body acting in pursuance of its public duty, a cross undertaking may not in any event be appropriate. Nevertheless, there may be occasions where a cross undertaking is considered appropriate, for reasons such as those given by Warby J in *Birmingham City Council v Afsar* [2019] EWHC 1619 (QB), a protest case. These are matters to be considered on a case-by-case basis, and the applicant must equip the court asked to make or continue the order with the most up-to-date guidance and assistance.

(11) Protest cases

235 The emphasis in this discussion has been on newcomer injunctions in Gypsy and Traveller cases and nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protesters who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2's land with the intention of disrupting construction. Each of these activities may, depending on all the circumstances, justify the grant of an injunction against persons unknown, including newcomers. Any of these persons who have notice of the order will be bound by it, just as effectively as the injunction in the proceedings the subject of this appeal has bound newcomer Gypsies and Travellers.

236 Counsel for the Secretary of State for Transport has submitted and we accept that each of these cases has called for a full and careful assessment of the justification for the order sought, the rights which are or may be interfered with by the grant of the order, and the proportionality of that interference. Again, in so far as the applicant seeks an injunction against newcomers, the judge must be satisfied there is a compelling need for the order. Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained.

(12) Conclusion

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

6. Outcome

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

(i) The court has jurisdiction (in the sense of power) to grant an injunction against "newcomers", that is, persons who at the time of the grant of the injunction are neither defendants nor identifiable, and who are described in the order only as persons unknown. The injunction may be granted on an interim or final basis, necessarily on an application without notice.

(ii) Such an injunction (a "newcomer injunction") will be effective to bind anyone who has notice of it while it remains in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action. It is inherently an order with effect contra mundum, and is not to be justified on the basis that those who disobey it automatically become defendants.

(iii) In deciding whether to grant a newcomer injunction and, if so, upon what terms, the court will be guided by principles of justice and equity and, in particular:

(a) That equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue.

(b) That equity looks to the substance rather than to the form.

(c) That equity takes an essentially flexible approach to the formulation of a remedy.

(d) That equity has not been constrained by hard rules or procedure in fashioning a remedy to suit new circumstances.

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

(iv) In deciding whether to grant a newcomer injunction, the application of those principles in the context of trespass and breach of planning control by Travellers will be likely to require an applicant:

(a) to demonstrate a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant.

(b) to build into the application and into the order sought procedural protection for the rights (including Convention rights) of the newcomers affected by the order, sufficient to overcome the potential for injustice arising from the fact that, as against newcomers, the application will necessarily be made without notice to them. Those protections are likely to include advertisement of an intended application so as to alert potentially affected Travellers and bodies which may be able to represent their interests at the hearing of the application, full provision for liberty to persons affected to apply to vary or discharge the order without having to show a change of circumstances, together with temporal and geographical limits on the scope of the order so as to ensure that it is proportional to the rights and interests sought to be protected.

(c) to comply in full with the disclosure duty which attaches to the making of a without notice application, including bringing to the attention of the court any matter which (after due research) the applicant considers that a newcomer might wish to raise by way of opposition to the making of the order.

(d) to show that it is just and convenient in all the circumstances that the order sought should be made.

(v) If those considerations are adhered to, there is no reason in principle why newcomer injunctions should not be granted.

Appeal dismissed.

COLIN BERESFORD, Barrister

Neutral Citation Number: [2024] EWHC 1277 (KB)

Case No: QB-2022-BHM-000044

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

Date: 24th May 2024

Before :

MR JUSTICE RITCHIE

- -

Between :

HIGH SPEED TWO (HS2) LIMITED [1]
THE SECRETARY OF STATE FOR TRANSPORT [2] — **Claimant**

- and –

(1) NOT USED — **Defendants**

(2) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANTS ON, IN OR UNDER THE HS2 LAND WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES

(3) PERSONS UNKNOWN OBSTRUCTING AND/OR INTERFERING WITH ACCESS TO AND/OR EGRESS FROM THE HS2 LAND IN CONNECTION WITH THE HS2 SCHEME WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT, WITH THE EFFECT OF DAMAGING AND/OR DELAYING AND/OR HINDERING THE CLAIMANTS, THEIR AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES AND/OR EMPLOYEES WITHOUT THE CONSENT OF THE CLAIMANTS

(4) PERSONS UNKNOWN CUTTING, DAMAGING, MOVING, CLIMBING ON OR OVER, DIGGING BENEATH OR REMOVING ANY ITEMS AFFIXED TO ANY TEMPORARY OR PERMANENT FENCING OR GATES ON OR AT THE PERIMETER OF THE HS2 LAND, OR DAMAGING, APPLYING ANY SUBSTANCE TO OR INTERFERING WITH ANY LOCK

OR ANY GATE AT THE PERIMETER OF THE HS2 LAND WITHOUT THE CONSENT OF THE CLAIMANTS

(5) MR ROSS MONAGHAN (AKA SQUIRREL / ASH TREE)

(6) MR JAMES ANDREW TAYLOR (AKA JIMMY KNAGGS / JAMES KNAGGS / RUN AWAY JIM)

(7-65) THE OTHER NAMED DEFENDANTS AS SET OUT IN ANNEX A HERETO

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Michael Fry & **Jonathan Welch** of Counsel (instructed by **DLA Piper Solicitors**) for the **Claimant**
Stephen Simblet KC (instructed by **Robert Lizar Solicitors**) for the **6th Defendant**

Hearing dates: 15th May 2024
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Approved Judgment

This judgment was handed down remotely at 10.30pm on Friday 24th May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Ritchie:

The Parties

1. The first Claimant is constructing the high speed railway from London to Crewe and was then planning to construct onwards to Manchester and Leeds. The second Claimant is the Secretary of State for Transport.

2. There are two types of Defendant. Persons Unknown (PUs) and named Defendants. The 6th Defendant (D6) attended the hearing. Many of the other named Defendants have been removed as parties to the proceedings as the claim has progressed. Most have been removed because they provided undertakings in similar format to the prohibitory interim injunctions granted to the Claimants. Some have been found in contempt of the CPL (Cotter J.) injunction and imprisoned.

Bundles

3. For the hearing I was provided with hard copy and digital bundles, beautifully prepared as follows: core bundles: A and B; supplementary bundles: A, B1 and 2, C; authorities bundles: main and supplementary. I was also provided with a skeleton argument by the Claimants and by D6 and a "Written Reasons" from D6 to amend the draft Order proposed by the Claimants.

The hearing

4. This was a review hearing of a routewide interim injunction granted to prohibit unlawful interference by known Defendants and PUs with the work being carried out by the Claimants to build the HS2 railway from London to Manchester and Leeds on land in HS2 possession. To understand the project as it stood when the claim was issued, it may help to see a simple map of it provided in evidence by the Claimants, which I set out below. There are three parts. Phase 1 is from London to the West Midlands and is shown in blue. Phase 2A was from West Midlands to Crewe and is shown in purple. Phase 2B is in orange, which takes the Western line from Crewe to Manchester and the Eastern line from West Midlands to Leeds. I shall refer to these phases both by colour and by the phase numbers.

The chronology

5. The HS2 project was authorised by Parliament through Acts dated 2017 and 2021. There were supporters of this project and there were objectors to it. Some of the objectors decided to take what they called direct action. Some of those taking direct action chose to break criminal and/or civil law as part of their direct action. Their publicly stated purposes included: causing huge expense to the Claimants by unlawful direct action on HS2 land through incurring security costs to deal with the direct action; delaying the construction of HS2 and thereby increasing the costs; persuading

Government to cease to build each and all of the phases set out above and saving the environments affected by the project. All such increased costs have been funded by UK taxpayers. It is not the role of this Courts to make any comment on any of those matters. In relation to civil unlawfulness, the Courts deal with applications and claims made by parties.

6. On 19 February 2018 Baring J. (PT 2018 000098) made an interim injunction protecting the Claimants' HS2 Harvil Road site from unlawful actions by PUs and named Defendants. Those included D28, 33, 36, and 39 in the action before me. I do not know how the claim progressed. This was renewed on 18 September 2020 by David Holland QC sitting as a Deputy High Court Judge.

7. On 23 March 2022 (QB 2022 BHM 000016) Linden J. made an interim injunction protecting the Claimants' HS2's contractor's land leased at Swynnerton, which was being used by Balfour Beatty (the contractor), which is very near to Cash's Pit Land (CPL) which the protesters called Bluebell Woods Camp. The interim injunction was to remain in force until further order and expired after 12 months. D6 in the action before me was a Defendant and appeared at that hearing. Directions were given for the claim to be pleaded out and for evidence to be filed and protection was given to PUs by the right to vary or set aside the order. I do not know how that claim progressed.

8. On 10 February 2021 (CO/361/2021) Steyn J. made an interim injunction order protecting the Claimants' HS2 land at Euston Square, London." On 28.3.2022 (QB 2021 004465) Linden J. made an interim injunction order protecting the Claimants' HS2 land at Euston Square, London. This was against Larch Maxey; Daniel Hooper (one of the Defendants in the case before me); Isla Sandford; J Stephenson-Clarke and B Croarkin. I do not know how that claim progressed.

9. The claim before me started by the issuing of the Claim Form on 28.3.2022. The Claimants sought possession of land at CPL and sought an injunction prohibiting PUs and named Defendants from trespassing and interfering with the construction of the project. They sought delivery up of possession of CPL, declaratory relief relating to possession of CPL, an injunction and costs.

10. The Claimants issued an application for urgent interim injunctions relating to CPL and routewide at the same time. D6 was represented at the hearing. Cotter J. made: (1) an order for possession of CPL against D6 and all the other Defendants, and (2) an interim injunction order against PUs and certain named Defendants who were believed to be occupying CPL (D5-20, 22, 31 and 63). The numbers and remaining Defendants' names (many have since been released from the claim) are set out in the Annex to this judgment. The original interim injunction was to last until trial or further order and expired on 24.10.2022 in any event.

11. On 20.9.2022 Julian Knowles J. handed down judgment on the Claimants' application in this action for a routewide interim injunction covering all HS2 land. At the hearing the Claimants had sought a final injunction. Julian Knowles J. noted that he was dealing not just with PUs but also with named Defendants and some of them might wish to dispute the claims against them, and indeed D6 objected to there being a final injunction. Thus, Knowles J. refused to make a final injunction and dealt with the application as one for an interim injunction (see para. 9 of his judgment). Knowles J. dealt with a wealth of evidence but no witness was cross-examined. I refer to and incorporate the chronology of events set out in the judgment. At para. 24 he set out the bit by bit litigation put in evidence before him which had preceded the routewide injunction application. He set out the Claimants' rights to the HS2 land; the Claimants' action for trespass and nuisance; the Defendants' clearly publicised intention to continue direct action protests against the construction of HS2 across the whole of the HS2 land; D6's submissions in opposition (lawful protest, no right to possession, lack of real and imminent risk, inadequate definition of PUs, inadequate constraint terms in the draft order, discretionary relief should not be granted, disproportionate exercise of power, breach of Art. 10 and 11 of the ECHR, challenges to service methods and other complaints). Julian Knowles J. set out the legal principles relating to trespass and nuisance and then covered the law relating to interim injunctions at paras. 91-102. In summary, he considered such injunctions were to "hold the ring pending the final hearing"; the Court was to apply the just and convenient test; adequacy of damages was to be considered; where wrongs had already been committed by the Defendant/s the quia timet threshold was lower and the evidential inference was that such infringements would continue until trial unless restrained; the Claimants had to show more than a real issue to be tried, he followed the principle in *Ineos v PUs* [2019] 4 WLR 100, at paras. 44-48, that the Court must be satisfied that the Claimants will likely obtain an injunction (preventing trespass) at the final hearing; and, for precautionary relief (what we fear, or quia timet), whether there was a sufficiently real and imminent risk of torts being committed which would cause harm sufficient to justify the relief. Knowles J. then set out the *Canada Goose* structural requirements for PU injunctions and considered the Defendants' ECHR rights. He then applied the law and made findings. He found that the Claimants had sufficient title to the HS2 land to make the claims. He accepted the Claimants' evidence of trespass and damage at CPL by PUs and Defendants "to the requisite standard at this stage" (para. 159). He found significant violence and criminality. He found that there was a real and imminent risk of continuing unlawfulness (para. 168). He rejected D6's submission that he had to find a risk of actual damage occurring on HS2 land and that there was no such risk. Knowles J. took account of the many past unlawful acts and the clearly expressed intention of many protesters to continue direct action by unlawful means. He found, at para. 177, that a precautionary interim injunction was appropriate and that to fail to grant one would be a licence for guerrilla tactics. These findings were not made on the "real issue to be tried" basis, but instead on the "likely to obtain the relief sought at trial" basis (para. 217); damages would not be an adequate remedy and the balance of convenience strongly favoured protecting the Claimants' HS2 land until trial. A helpful schedule of

the Defendants' responses was appended to the judgment. Some Defendants had put in defences; others had emailed or put in responses, submissions or witness statements.

12. D6 appealed the judgment of Knowles J. but permission was refused on 9.12.2022 by Coulson LJ.

13. The routewide interim injunction made by Julian Knowles J. in September 2022 was extended by me in May 2023 for another year. In para. 16 of that order and Schedule D to that order I made provision for any Defendant to apply to bring the proceedings to a final trial. This provided PUs and all named Defendants with the right to end being a party to the proceedings by that route. It provided each with the right to force the Claimants to prove their allegations on the balance of probabilities at trial, under cross-examination and after disclosure of relevant evidence and documentation. No Defendant has done so. Provisions were made for review of the interim injunction by May this year.

14. The Cotter J. version of the CPL interim injunction was breached by various Defendants back in 2022, who stayed at CPL despite the prohibitions therein. Committal proceedings were commenced and heard by me in July and September 2022. Two protestors who had been occupying CPL in treehouses gave undertakings and walked free: D62, (Leanne Swateridge, aka Flowery Zebra) and D31, (Rory Hooper). Five Defendants who had occupied tunnels were sentenced to imprisonment for contempt of Court, two of the sentences were suspended: D18, (William Harewood, aka Satchel/Satchel Baggins); D33 (Elliot Cuciurean, aka Jellytot); D61 (David Buchan, aka David Holliday); D64 (Stefan Wright); D65 (Liam Walters). One of these (Wright) never attended and is still at large.

The applications

15. Pursuant to the order I made in May 2023 the Claimants have faithfully applied for review of the interim injunction. By a notice of application dated 1.3.2024 they seek a 12 month extension of the routewide interim injunction, redefinition of the HS2 land plans; permission to update the definition of HS2 land and an extension of the prohibited acts to cover drone flying over their works on HS2 land.

16. The evidence in support of the application is set out in the following witness statements: James Dobson dated 28.2.2024; John Groves dated 28.2.2024; Julie Dilcock dated 28.2.2024 and Robert Shaw dated 27.2.2024.

17. The opposition to the application comes only from D6. Interestingly, now he submits that the Claimants should be required to progress the claim to a final hearing against all other Defendants, having submitted to Knowles J. that a final injunction should not be granted at that hearing. He wishes to be released from the claim himself. His counsel informed me at the hearing that he is crowd funded, that explains why he attends so

many of these HS2 hearings. The Claimants have never sought to enforce their costs against the crowd funding bank accounts or trustees.

The Issues

18. There were 5 substantive matters to be determined:
    18.1 Should the Claimants be required to take the claim to a final hearing?
    18.2 Should the duration of the routewide interim injunction be extended?
    18.3 Should the routewide injunction relating to the purple land be ended?
    18.4 Should the amendments to the details of the routewide injunction be permitted?
    18.5 Should D6 and 13 other Defendants be removed as parties to the claim?

The lay witness evidence

19. I have read the evidence from the Claimants' witnesses and from D6.

20. **James Dobson** is a security consultant and advisor to HS2. He reviewed the internal computer and documentary sources. He set out the Claimants' evidence. He asserted that the Claimants no longer considered 13 of the named Defendants to be a sufficient risk to the HS2 project for them to remain parties to the claim. These were D5, 6, 7, 22, 27, 28, 33, 36, 39, 48, 57, 58 and 59. After the removal of these Defendants, only 5 named Defendants would remain.

21. Mr Dobson informed the Court that since 17th March 2023 there had been no major direct action activist events or incidents targeting the HS2 project that had resulted in a delay of works by more than an hour. He considered there was direct evidence from activists that the reason the disruption to the HS2 project had stopped was the deterrent effect of the injunction and gave evidence by way of a few examples. However, he set out what he described as "minor incidences" of random trespasses to land which had not impacted on the works of the project. He asserted there were *increasing* incidences of unlawful occupation of phase 2 property and set these out. There were 24 events set out in a five column table. I summarise them below. Unfortunately he did not specify which was on phase 1 land and which was on phase 2 land. I have done my best to identify which is which in brackets below. In March 2023 urban explorers broke into the Grimstock Hotel in Birmingham (phase 1). The same month 10 caravans trespassed upon a business park in Saltley in Birmingham (phase 1) and, when challenged, left after about 10 hours. In May and June 2023 a group called Universal Law Community Trust occupied a building at Whitmore Heath, which is part of the phase 2A land. The description of the group paints them as debt buyers who control the debtors' behaviour after taking over their debt, for anarchic purposes. In May 2023 in Old Oak Common Road, London (phase 1), a man, who had previously trespassed on HS2 land, assaulted a security officer on a closed road. In July 2023 graffiti and some criminal damage had been done in Westbury Viaduct near Brackley (phase 1 land). In August 2023 three children set up a small campsite on HS2 land in Buckinghamshire (phase 1 land) and, when their parents were asked to remove them, they left. In the same month two people trespassed on land in Greatworth, Oxfordshire (phase 1) and interfered with some

machinery. In the same month a naked rambler walked onto an HS2 site in Western Cutting near Brackley (phase 1) and was escorted off. In the same month a local resident blocked access to an HS2 site at Washwood Heath in Birmingham (phase 1) but left when shown the injunction. In September 2023 D16 and another person entered HS2 land in Warwickshire (phase 1) and two other areas and took photographs which were posted on social media. The next day they went to two further HS2 sites in Warwickshire. The next day they went to one or two sites in Staffordshire (phase 2). In October 2023, at Addison Road, Calvert, (phase 1) fire extinguishers were discharged overnight. In the same month a group of urban explorers entered property at Drayton Lane, Tamworth (phase 1) and posted images. In the same month a group of urban explorers trespassed at Whitmore Heath, Whitmore (phase 2A) and shared photos with other urban explorers online. In the same month fireworks were fired towards security officers on HS2 land at Leather Lane, Great Missenden (phase 1). In November 2023 five members of a group called Unite The Union attended Old Oak Common Road, London (phase 1) with a megaphone but left when informed of the injunction. Later in November, a farm property at Swynnerton in Staffordshire (phase 2A) was entered by urban explorers. Later in November, 13 Unite The Union activists blocked access to HS2 logistics hubs at Channel Gate Road in London (phase 1). In December through to January 2024, D69 flew drones over multiple HS2 sites. However, he has given an undertaking which is satisfactory to the Claimants and so he is not being joined to the claim. In December 2023 vandalization occurred to a site in Aylesbury (phase 1). In January 2024 urban explorers entered an HS2 building at Birmingham Interchange (phase 1) and were escorted off site. Later that month urban explorers trespassed at Drayton Lane, Tamworth (phase 1). Finally, in February 2024 a person asserting to be a social media auditor flew drones over HS2 land at Victoria Road in London (phase 1) and caused a nuisance.

22. In his evidence Mr Dobson set out records of what he described as the displacement of activists to other causes and unlawful direct actions by them for other causes. He asserts that direct action protesters have transferred their interest to other causes including Palestine Action and Just Stop Oil. Mr Dobson asserts that activists will look for loopholes in injunction orders, relying on evidence that D6 made such a pronouncement in relation to Balfour Beatty and the injunction they obtained, which I have set out above, asserting that protesters would attack Balfour Beatty elsewhere, outside the scope of the injunction. Mr Dobson also sought to raise his concern that the group: Universal Law Community Trust had ties with protesters wishing to Stop HS2 because their occupation of a property owned by HS2 was mentioned on some anti HS2 websites. Mr Dobson also raised his concern about urban explorers.

23. Mr Dobson summarised an announcement by the Prime Minister on the 4th of October 2023 that phase two of the HS2 project had been abandoned but he did not set out the Prime Minister's words. Mr Dobson summarised various pronouncements about hit and run tactics published by Lousy Badger, social media threats to re-enter CPL and vague threats to “be back”. Overall, Mr Dobson asserted that the Claimants reasonably fear a

return to the levels of unlawful activity experienced prior to the interim injunction if it is allowed to lapse and asserts that the interim injunction has been remarkably successful in reducing direct unlawful action against HS2 land and saving taxpayers money.

24. John Groves is the chief security officer for HS2 and gave evidence that the costs of the unlawful direct action to date to the taxpayer, through HS2, have totalled £121,000,000. He asserted that the September 2022 interim routewide injunction had had a dramatic effect by reducing direct action, which diminished the quarterly security expenditure from over half a million down to just £100,000. He produced a forecast of the costs of future unlawful direct action of £7 million for phase two, ending in 2024, due to increased security. He said that activists had started campaigning for other causes but they may believe they can cancel the whole of the HS2 scheme. He asserted that unhappy land owners, whose land was taken away in phase 2, may get involved. He asserted that the Claimants need the deterrence of the injunction or the Claimants might need to spend another £12 million on protection. He was concerned about attacks on bridges over motorways as a potential weak spot in the project. He asserted that activity was still continuing despite the injunction but relied solely on the evidence of Mr Dobson.

25. Julie Dilcock, the in house lawyer for HS2, set out a history of the claims and then the rationale for the various alterations needed to the draft order. Robert Shaw gave evidence which assisted in various tidying up operations that are going to be needed.

26. I take into account what D6 set out in his written reasons. He was content to take no further part in the claim and agreed that the Claimants could no longer maintain an injunction against him. He asserted that, according to the Civil Procedure Rules, the Claimants had to issue notice of discontinuance, obtain the Court's permission and, by implication, pay his costs under CPR part 38, if they wished to discontinue against him. However, in my judgment, this was wanting his cake and to eat it. He asserted that, because he would still be bound by the injunction under the umbrella of the term "PU", he could still make submissions at the hearing and I permitted him to do so. His submissions were that the terms of the injunction should be modified so that it no longer covers the land relating to phase 2A of the project because the Prime Minister has announced that the project is not going ahead on phase 2 and therefore the protesters have achieved what they wanted. He suggested that the geographic scope of the injunction should be reduced so that it does not cover the purple land set out in the 2021 Act. He also raised the point that this is an interim injunction binding the world and that the Claimants were under a continuing, onerous, responsibility to disclose relevant matters to the Court as they arose. He asserted that the Claimants had failed, in a timely way, to inform the Court of the Prime Minister's announcement in October 2023 that phase 2 was being abandoned and therefore had failed in their responsibilities and that the sanction for this should be the discharge of the whole interim injunction.

27. I asked the Claimants' counsel to point the Court to the evidence, after the Prime Minister's announcement, that protesters were still going to take direct action against the HS2 land involved in phase 2A, the purple land, on which no construction work will be carried out in future because the project had been cancelled. The Claimants identified Core Bundle pages 152-155. This amounted to little more than announcements on social media of self-congratulation by a few campaigners (for instance Lousy Badger), a desire for a party at Bluebell Wood (CPL) and a call to continue to fight to persuade the Government to scrap phase 1 of the project.

The Law

28. I will set out the key points from the relevant case law put before me below. In *National Highways v PUs, Rodger and 132 Ors* [2023] EWCA Civ. 182, the claimant applied for summary judgment and final (quia timet, what we fear) injunctions, having obtained interim injunctions. The trial Judge granted summary judgment against various defendants found in contempt but not against 109 defendants who had not entered defences and were not individually identified as past tortfeasors. This was overturned on appeal. For an anticipatory injunction, whether interim or final, proof of a past tort by the individual Defendant is not a pre-requisite. The normal rules apply. So, for summary judgment, the normal application of CPR r.24.2 applied and for the quia timet (what we fear) injunction, the normal thresholds applied. The President of the KBD ruled thus:

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

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

29. In *TfL v Lee & PUs & Ors* [2023] EWHC 402, Cavanagh J. was considering renewal of a PU injunction about roads and Just Stop Oil protesters. He ordered an expedited trial. He then considered the extension of the interim injunction. He accepted and adopted Freeman J.'s judgment on the earlier review and asked himself this question:

> "20. … The real issue before me, therefore, is whether the evidence of events that have taken place since 31 October 2022 provides grounds for declining to extend the injunction on materially identical terms.
> 21. The answer is that there are no such grounds. The activities of JSO have continued, albeit with a change of tactics, and in my judgment the justification for interim injunctive relief to restrain unlawful activities on the JSO roads is as great as it has ever been."

30. Since the extension of the HS2 interim injunction in May 2023 the Supreme Court has passed judgment in *Wolverhampton City Council v London Gypsies* [2023] UKSC 47. This clarified that PU or newcomer injunctions can be granted on an interim or final basis subject to clear conditions and restraints. I summarised the guidance recently in *Valero Energy v PUs & Bencher & Ors* [2024] EWHC 134. I was considering both a summary judgment application and a final PU/named Defendants injunction. At paras. 57 – 60 I ruled thus:

> "57. I conclude from the rulings in Wolverhampton that the 7 rulings in *Canada Goose* remain good law and that other factors have been added. To summarise, in summary judgment applications for a final injunction against unknown persons ("PUs") or newcomers, who are protesters of some sort, the following 13 guidelines and rules must be met for the injunction to be granted. These have been imposed because a final injunction against PUs is a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future so must be used only with due safeguards in place.
> 58. **(A) Substantive Requirements**
> **Cause of action**
> (1) There must be a civil cause of action identified in the claim form and particulars of claim. The usual quia timet (since he fears) action relates to the fear of torts such as trespass, damage to property, private or public nuisance, tortious interference with trade contracts, conspiracy with consequential damage and on-site criminal activity.

Full and frank disclosure by the Claimant

(2) There must be full and frank disclosure by the Claimant (applicant) seeking the injunction against the PUs.

Sufficient evidence to prove the claim

(3) There must be sufficient and detailed evidence before the Court on the summary judgment application to justify the Court finding that the immediate fear is proven on the balance of probabilities and that no trial is needed to determine that issue. The way this is done is by two steps. Firstly stage (1), the claimant has to prove that the claim has a realistic prospect of success, then the burden shifts to the defendant. At stage (2) to prove that any defence has no realistic prospect of success. In PU cases where there is no defendant present, the matter is considered ex-parte by the Court. If there is no evidence served and no foreseeable realistic defence, the claimant is left with an open field for the evidence submitted by him and his realistic prospect found at stage (1) of the hearing may be upgraded to a balance of probabilities decision by the Judge. The Court does not carry out a mini trial but does carry out an analysis of the evidence to determine if it the claimant's evidence is credible and acceptable. The case law on this process is set out in more detail under the section headed "The Law" above.

No realistic defence

(4) The defendant must be found unable to raise a defence to the claim which has a realistic prospect of success, taking into account not only the evidence put before the Court (if any), but also, evidence that a putative PU defendant might reasonably be foreseen as able to put before the Court (for instance in relation to the PU s civil rights to freedom of speech, freedom to associate, freedom to protest and freedom to pass and repass on the highway). Whilst in *National Highways* the absence of any defence from the PUs was relevant to this determination, the Supreme Court's ruling in *Wolverhampton* enjoins this Court not to put much weight on the lack of any served defence or defence evidence in a PU case. The nature of the proceedings are "ex-parte" in PU cases and so the Court must be alive to any potential defences and the Claimants must set them out and make submissions upon them. In my judgment this is not a "Micawber" point, it is a just approach point.

Balance of convenience - compelling justification

(5) In interim injunction hearings, pursuant to *American Cyanamid v Ethicon* [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in PU cases, pursuant to *Wolverhampton*, this balance is angled against the applicant to a greater extent than is required usually, so that there must

be a "compelling justification" for the injunction against PUs to protect the claimant's civil rights. In my judgment this also applies when there are PUs and named defendants.

(6) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UK.SC 23, if the PUs' rights under the *European Convention on Human Rights* (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect the Claimants' right.

Damages not an adequate remedy

(7) For the Court to grant a final injunction against PUs the claimant must show that damages would not be an adequate remedy.

(B) Procedural Requirements - Identifying PUs

(8) The PUs must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (b) clearly defined geographical boundaries, if that is possible.

The terms of the injunction

(9) The prohibitions must be set out in clear words and should not be framed in legal technical terms (like "tortious" for instance). Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed

on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

The prohibitions must match the claim

(10) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form.

Geographic boundaries

(11) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

Temporal limits - duration

(12) The duration of the final injunction should be only such as is proven to be reasonably necessary to protect the claimant's legal rights in the light of the evidence of past tortious activity and the future feared (quia timet) tortious activity.

Service

(13) Understanding that PUs by their nature are not identified, the proceedings, the evidence, the summary judgment application and the draft order must be served by alternative means which have been considered and sanctioned by the Court. The applicant must, under the *Human Rights Act 1998* S.12(2), show that it has taken all practicable steps to notify the respondents.

The right to set aside or vary

> (14) The PUs must be given the right to apply to set aside or vary the injunction on shortish notice.
> **Review**
> (15) Even a final injunction involving PUs is not totally final. Provision must be made for reviewing the injunction in the future. The regularity of the reviews depends on the circumstances. Thus such injunctions are "Quasi-final" not wholly final.
> 59. Costs and undertakings may be relevant in final injunction cases but the Supreme Court did not give guidance upon these matters."

31. Before me is a quia timet interim injunction. The Claimants had to and still have to prove a real and imminent risk of serious harm caused by tortious or criminal activity on their land, see *Canada Goose v PUs* [2020] EWCA Civ. 303, per Sir Terence Etherton MR at para. 82(3) (approved in *Wolverhampton*).

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

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

34. In relation to the issue of whether final quia timet injunctions can be granted against PUs, the Court of Appeal in *Canda Goose* ruled that they could not be granted (para. 89) in a protester case against persons unknown who were not parties at the date of the final order, since a final injunction operated only between the parties to the proceedings. The Supreme Court in *Wolverhampton* overruled this decision. At para. 134 they together stated:

> "134. Although we do not doubt the correctness of the decision in Canada Goose, we are not persuaded by the reasoning at paras 89-93, which we summarised at para 103 above. In addition to the criticisms made by the Court of Appeal which we have summarised at para 107

above, and with which we respectfully agree, we would make the following points."

At para 143 they ruled as follows:

"143. The distinguishing features of an injunction against newcomers are in our view as follows:
(i) They are made against persons who are truly unknowable at the time of the grant, rather than (like Lord Sumption's class 1 in *Cameron*) identifiable persons whose names are not known. They therefore apply potentially to anyone in the world.
(ii) They are always made, as against newcomers, on a without notice basis (see para 139 above). However, as we explain below, informal notice of the application for such an injunction may nevertheless be given by advertisement.
(iii) In the context of Travellers and Gypsies they are made in cases where the persons restrained are unlikely to have any right or liberty to do that which is prohibited by the order, save perhaps Convention rights to be weighed in a proportionality balance. The conduct restrained is typically either a plain trespass or a plain breach of planning control, or both.
(iv) **Accordingly, although there are exceptions, these injunctions are generally made in proceedings where there is unlikely to be a real dispute to be resolved, or triable issue of fact or law about the claimant's entitlement, even though the injunction sought is of course always discretionary. They and the proceedings in which they are made are generally more a form of enforcement of undisputed rights than a form of dispute resolution.**
(v) Even in cases where there might in theory be such a dispute, or a real prospect that article 8 rights might prevail, the newcomers would in practice be unlikely to engage with the proceedings as active defendants, even if joined. This is not merely or even mainly because they are newcomers who may by complying with the injunction remain unidentified. Even if identified and joined as defendants, experience has shown that they generally decline to take any active part in the proceedings, whether because of lack of means, lack of pro bono representation, lack of a wish to undertake costs risk, lack of a perceived defence or simply because their wish to camp on any particular site is so short term that it makes more sense to move on than to go to court about continued camping at any particular site or locality.
(vi) By the same token the mischief against which the injunction is aimed, although cumulatively a serious threatened invasion of the claimant's rights (or the rights of the neighbouring public which the

> local authorities seek to protect), is usually short term and liable, if terminated, just to be repeated on a nearby site, or by different Travellers on the same site, so that the usual processes of eviction, or even injunction against named parties, are an inadequate means of protection.
> (vii**) For all those reasons the injunction (even when interim in form) is sought for its medium to long term effect even if time-limited, rather than as a means of holding the ring in an emergency, ahead of some later trial process, or even a renewed interim application on notice (and following service) in which any defendant is expected to be identified, let alone turn up and contest.**
> (viii) Nor is the injunction designed (like a freezing injunction, search order, Norwich Pharmacal or Bankers Trust order or even an anti-suit injunction) to protect from interference or abuse, or to enhance, some related process of the court. Its purpose, and no doubt the reason for its recent popularity, is simply to provide a more effective, possibly the only effective, means of vindication or protection of relevant rights than any other sanction currently available to the claimant local authorities.
> 144. Cumulatively those distinguishing features leave us in no doubt that the injunction against newcomers is a wholly new type of injunction with no very closely related ancestor from which it might be described as evolutionary offspring, although analogies can be drawn, as will appear, with some established forms of order. It is in some respects just as novel as were the new types of injunction listed in sub-paragraph (viii) above, and it does not even share their family likeness of being developed to protect the integrity and effectiveness of some related process of the courts." (My emboldening).

Furthermore at para. 167 they ruled that:

> "167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no 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."

35. It is clear from this passage that quia timet injunctions against PUs, relating to private land owned or possessed by a claimant, are different beasts from old fashion injunctions against known defendants which need to be taken to trial. They do not "hold the ring pending trial". They are an end in themselves for the short or the medium term and may

never lead to service of defences from the PUs, whether or not the PUs become crystallised as Defendants.

Changes in the law

36. Just before and since the interim injunction was extended, new offences relating to protesters and others were created as follows. They are in the *Public Order Act 2023.*

> **"6. Obstruction etc of major transport works**
>
> (1) A person commits an offence if the person—
>
> (a) obstructs the undertaker or a person acting under the authority of the undertaker—
>
> (i) in setting out the lines of any major transport works,
>
> (ii) in constructing or maintaining any major transport works, or
>
> (iii) in taking any steps that are reasonably necessary for the purposes of facilitating, or in connection with, the construction or maintenance of any major transport works, or
>
> (b) interferes with, moves or removes any apparatus which—
>
> (i) relates to the construction or maintenance of any major transport works, and
>
> (ii) belongs to a person within subsection (5).
>
> (2) It is a defence for a person charged with an offence under subsection (1) to prove that—
>
> (a) they had a reasonable excuse for the act mentioned in paragraph (a) or (b) of that subsection, or
>
> (b) the act mentioned in paragraph (a) or (b) of that subsection was done wholly or mainly in contemplation or furtherance of a trade dispute.
>
> (3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both.
>
> (4) In subsection (3) "the maximum term for summary offences" means—
>
> (a) if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, six months;
>
> (b) if the offence is committed after that time, 51 weeks.
>
> (5) The following persons are within this subsection—
>
> (a) the undertaker;
>
> (b) a person acting under the authority of the undertaker;
>
> (c) a statutory undertaker;
>
> (d) a person acting under the authority of a statutory undertaker.

(6) In this section "major transport works" means—

(a) works in England and Wales—

(i) relating to transport infrastructure, and

(ii) the construction of which is authorised directly by an Act of Parliament, or

(b) works the construction of which comprises development within subsection (7) that has been granted development consent by an order under section 114 of the Planning Act 2008.

(7) Development is within this subsection if—

(a) it is or forms part of a nationally significant infrastructure project within any of paragraphs (h) to (l) of section 14(1) of the Planning Act 2008,

(b) it is or forms part of a project (or proposed project) in the field of transport in relation to which a direction has been given under section 35(1) of that Act (directions in relation to projects of national significance) by the Secretary of State, or

(c) it is associated development in relation to development within paragraph (a) or (b)."

…

"7. Interference with use or operation of key national infrastructure

(1) A person commits an offence if—

(a) they do an act which interferes with the use or operation of any key national infrastructure in England and Wales, and

(b) they intend that act to interfere with the use or operation of such infrastructure or are reckless as to whether it will do so.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that—

(a) they had a reasonable excuse for the act mentioned in paragraph (a) of that subsection, or

(b) the act mentioned in paragraph (a) of that subsection was done wholly or mainly in contemplation or furtherance of a trade dispute.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court, to a fine or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months, to a fine or to both.

(4) For the purposes of subsection (1) a person's act interferes with the use or operation of key national infrastructure if it prevents the infrastructure from being used or operated to any extent for any of its intended purposes.

> (5) The cases in which infrastructure is prevented from being used or operated for any of its intended purposes include where its use or operation for any of those purposes is significantly delayed.
> (6) In this section "key national infrastructure" means—
> (a) road transport infrastructure,
> (b) rail infrastructure,
> (c) air transport infrastructure,
> (d) harbour infrastructure,
> (e) downstream oil infrastructure,
> (f) downstream gas infrastructure,
> (g) onshore oil and gas exploration and production infrastructure,
> (h) onshore electricity generation infrastructure, or
> (i) newspaper printing infrastructure.
> Section 8 makes further provision about these kinds of infrastructure."

Submissions

37. The Claimants submitted that the Act of 2021 (phase 2A) remains in force, despite the Government announcement on the 4th of October 2023 that construction would not go ahead on phase 2. In addition, the high speed rail link between Crewe and Manchester was covered by a bill that was still in the Parliamentary process. The second Claimant had acquired 60% of the phase 2A land and had not announced what it was going to do with it. The Claimants relied on the evidence from Mr Groves and Mr Dobson and asserted that the routewide injunction had reduced unlawful protests and reduced the wasted costs paid by the taxpayer from spending of around £100 million to spending of around £100,000. The Claimants accepted there had been no major direct action since the 17th of March 2023, there had only been isolated incidents, but they submitted this showed that the injunction was working not that it should be terminated. There were individual protests by urban explorers, drone flyers and some "freeman of the land" groups. It was submitted that the Claimants should not lose the protection of the injunction on the purple land just because the injunction had been effective, that would be self defeating.

38. In response, D6 submitted that circumstances had changed since the granting and renewal of the routewide injunction. Firstly, the Government announcement took away the very sub strata for the injunction covering the purple land of phase 2A. It was submitted that the campaigners had "won", that they had no continued interest in phase 2A and therefore the injunction should no longer cover it. No written evidence or submission was made that the injunction should not be renewed for the blue part of the track, phase 1, which is currently under construction, although an en-passant verbal attempt was so made in the hearing. Furthermore, D6 submitted that new criminal offences had been created in the *Public Order Act,* in sections 7 and 6, which meant

that there was no need for the continuation of the civil injunction. It was submitted that the Claimants had an alternative remedy through the *Public Order Act*. Thirdly, it was submitted that the Claimants had substantially broken their duty to the Court of full and frank disclosure, which is required during the life of an injunction which is anticipatory and against newcomers/PUs, because the Claimants had failed to inform the Court of the Prime Minister's announcement until finally making the application in March 2023. That failure, it was submitted, should lead the Court to refuse to deploy its equitable power to continue the injunction. Further, it was submitted that it was inappropriate for the Claimants to "warehouse" the action against the named Defendants and the PUs and to fail to seek a final hearing. It was submitted that warehousing is contrary to the Civil Procedure Rules and is an abuse of process. In addition, D6 submitted that the claim against D6 should be struck out because the Claimants now admitted that the Claimants had no continuing cause of action against D6 or any good reason to pursue the injunction any further. Alternatively, D6 submitted that the Claimants should have issued a notice of discontinuance under CPR Part 38 which would have led to a liability for costs under CPR rule 38.6, unless the Court ordered otherwise. No notice of discontinuance having been issued D6 submitted that the claim against D6 should be struck out.

Changes to material matters

39. In my judgment, there have been clear and obvious changes which are material to the interim injunction. Firstly, phase 2A to Crewe is no longer going ahead. Nor is 2B to Manchester and Leeds. This means that no construction will take place on the purple and the orange land. This takes away the primary objective of the anti-HS2 protesters in relation to that land. Secondly, there are new criminal offences which will deter and punish protesters taking direct action, with penalties including imprisonment. Thirdly, some HS2 protesters have been imprisoned for breaching the injunction. Fourthly, no protester has applied for a final hearing.

Applying the law to the facts

40. I shall consider each of the requirements for granting and, where necessary, continuing an interim injunction in turn.

(A) Substantive Requirements -

Cause of action

41. In this case there is a civil cause of action identified in the claim form and particulars of claim. A quia timet (since he fears) action is pleaded and relates to the fear of torts such as trespass, damage to property, private and public nuisance, potential tortious interference with trade contracts and on-site criminal activity. The Claimants have proven, to the satisfaction of previous judges, under the enhanced test for injunctive remedies against PUs, that previous torts (and potentially crimes) have been committed on HS2 land and proven that their fears were justified. Previous interim injunctions have been granted routewide. This condition is satisfied.

Full and frank disclosure by the Claimants

42. There has mostly been full and frank disclosure by the Claimants seeking the injunction renewal against the PUs, save that there has been delay informing the Court about the Prime Minister's announcement. That delay amounts to about 4 months. I must ask: what would the Court have done if informed in November or December about the announcement, alongside an application for a review hearing? It is likely that, taking into account the alternative service requirements necessary for PUs and Defendants, the hearing would have been listed before a High Court judge at some time in the late Winter of 2023 or Spring of 2024. In the event the application was made in March 2024 and listed in May 2024. Whilst not as serious as the default in *Ineos v PUs* [2022] EWHC 684 (Ch), this delay was inappropriate and I shall take it into account when considering the equitable remedy below.

No realistic defence

43. The Defendants have not yet been required to enter any formal defence, although some did before Knowles J. for the hearing of the application for the routewide interim injunction and many emailed their case to the Court. None have put forwards a defence to any of the past tortious or criminal actions. This, as anticipated or summarised by the Supreme Court in *Wolverhampton* is not unusual in protester PU injunction cases.

Sufficient evidence to prove the claim/likely to succeed at trial and compelling justification

44. The Claimants provided sufficient evidence to prove their claim before Knowles J. The test which I must apply when considering continuing the injunction is more than whether there is a serious issue to be tried. This is a contra mundum (against the world) PU injunction. So the test is whether the Claimants are likely to succeed at trial against the PUs and the Defendants and that there is a compelling reason for granting or continuing the interim injunction. I am aware, of course, that Julian Knowles J. has already made that finding on the evidence before him and that I renewed it in May 2023 using the same test, but that was then and this is now. This is a review. Circumstances have changed. I am not at all convinced that the Claimants will succeed at trial in relation to the purple land on the evidence before me. If the evidence had been sufficient, on the balance of probabilities, to find that the Claimants are likely to be awarded an injunction at trial over the purple land, this Court must then take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UK.SC 23. The PUs' rights under the *European Convention on Human Rights* (for instance under Articles 10(2) and 11(2)) are engaged and may be restricted by the extension of the injunction. Julian Knowles J. has also considered and ruled on that point. It is crucial to remember that I am dealing mainly but not wholly with private land. I take into account that the injunction must be necessary and proportionate to the need to protect the Claimants' rights. I take into account that the Government is no longer pursuing the purple route. I take into account that there are now specific criminal offences in S.s 6 and 7 of the *Public Order Act 2023* to punish and deter protesters

from interfering with national infrastructure, only one of which was in force when I last renewed the injunctions. Whether or not a protestor in future, entering phase 2A land on which no HS2 project construction is taking place or will ever again take place, but intent on causing loss by interfering with the effort to rewild or restore the land or to sell it, would be sufficient to justify a renewed injunction, will be a matter for another Judge dependent on the facts. I have no sufficient evidence before me which goes to show that the remaining 5 Defendants or any anti HS2 PUs wish to interfere with: rewilding or restoration, deconstruction of any HS2 construction, HS2 selling land back to previous or new owners or otherwise disposing of the purple or orange land. Quite the opposite. As the Claimants assert, many of the anti HS2 phase 2 protesters, who themselves consider that they have won, are engaged in supporting other causes. The situation is quite different for phase 1. There has been no question of any win for the anti HS2 protesters there.

45. I have carefully considered the evidence put before the Court by the Claimants. I summarised much of it, but not all, above. I also take into account the evidence accepted and found by Knowles J. Standing back, the current evidence consists of a recognition that the protestors feel that they have won in relation to stopping the construction on the purple land of phase 2A. Their motivation for using direct action against that has gone. Such future action will not delay any construction works. It is no longer a construction project on the purple land. In addition, the evidence of quia timet (what we fear) is watery, thin, scattered geographically (some of the relied on events were in London) and un-compelling. Naked ramblers, children setting up tented camps for a few hours, some graffiti and some anti-law/establishment groups are included, but these are hardly enough, in my judgment, to prove a substantial and real fear of imminent and serious harm through direct action on the purple land. I do not accept, even from experienced security experts, that the mere assertion of fear is enough. It must be logically based and it must be sufficiently evidenced. Nor do I consider that the postings of crowing or gloating by some protesters about their perceived success on phase 2A and the need to continue vaguely against HS2 generally, bites on the purple land sufficiently. The past and the recent evidence does however support the continued injunction covering the construction works in phase 1.

Damages not an adequate remedy

46. In my judgment the Claimants continue to show that damages would not be an adequate remedy in relation to their phase 1 construction work on the blue land. They have not shown that this threshold is still justified for the purple land upon which no construction is being carried out.

(B) Procedural Requirements -

Identifying PUs

47. In my judgment, in the draft injunction, the PUs are clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct mirrors the

torts claimed in the particulars of claim (as re-amended) and (b) clearly defined geographical boundaries. Subject to the purple land being excluded from the extended interim injunction this requirement is satisfied.

The terms of the injunction

48. In my judgment, the prohibitions remain set out in clear words and are not framed in legal technical terms. Further, they do not seek to prohibit conduct which viewed on its own is lawful. In my judgment they should be extended to cover drone flying which is likely to interfere with any construction work or operations carried out by the first Claimant and is dangerously close to such works.

The prohibitions must match the claim

49. In my judgment the prohibitions in the extended injunction mirror the torts claimed (or feared) in the re-amended particulars of claim. The pleading will need re amendment to cover drones.

Geographic boundaries

50. The prohibitions in the injunctions to be extended are defined by clear geographic boundaries, but shall be altered to cover only the phase 1 blue land, not the phase 2 purple land.

Temporal limits - duration

51. The duration of the injunction is to be extended by 12 months. In the light of the continued HS2 construction of phase 1, I am satisfied that it is proven to be compellingly necessary to protect the Claimants' legal rights in the light of the evidence of past hugely extensive tortious activity and the future feared (quia timet) tortious activity for the HS2 construction work on phase 1.

Service

52. Because PUs are, by their nature, not identified, the proceedings, the evidence, this judgment and the order will be served by the alternative means which have been previously considered and sanctioned by this Court. I consider that under the *Human Rights Act 1998* S.12(2), the Claimants have previously shown that they have taken all practicable steps to notify the Defendants.

The right to set aside or vary

53. The PUs are given the right to apply to set aside or vary the injunction on shortish notice by the existing interim injunction and this will continue.

Review

54. In the extended order I shall make provision for reviewing the injunction in the future. The regularity of the reviews depends on the circumstances and I consider that 12 months is the right length of time.

Conclusion on the extension application and balance of convenience

55. I do not consider that there are compelling reasons to continue the injunction over the purple land or that the balance of convenience test is satisfied for the purple land. For the reasons set out above I do not consider that the injunction should be extended in future in relation to the purple HS2 land acquired or possessed for the purposed of phase 2A. In summary, the reasons are that this part of the project has been abandoned; there are alternative remedies because the new *Public Order Act* provisions are in place; the evidence provided to the Court did not reach the required level to show a real and imminent need, in part because the protesters' motivation to take direct action against the purple land has gone and in part because taking direct action against purple land would not cause disruption to the construction works for the HS2 project, it would cause peripheral nuisance. In addition, the Claimants have failed fully to comply with their clear duty to inform the Court of material change which occurred when the Prime Minister announced phase 2A would not be built.

Removing various Defendants as parties.

56. Because none of the 13 Defendants to be released has made any submissions to this Court, despite due alternative service of the application and because the Claimants are content on their own information to release them and no further costs orders are sought against them, I give permission for the above listed 13 Defendants to be removed as parties to the proceedings, save in relation to D6 who I shall consider below. I dispense with the need for the Claimants to file a Notice of Discontinuance pursuant to CPR 38.3(1)(a) for the 13 Defendants and make an order under CPR 6.28 dispensing with service of a Notice of Discontinuance. I note that Morris J. took a different route in *Tfl v PUs & Ors* [2023] EWHC 1038, and took that into account.

Removing D6 as a party

57. Whilst in actions in which there are only a few Defendants the procedure in Part 38 should clearly be followed. In PU injunction claims with multiple defendants, different and more flexible procedures are being developed by the Courts to bind and yet to safeguard PUs, add and then release defendants and to streamline costs. So far, many Defendants have been deleted from this claim. Some have been added. Another 13 have just been deleted with my permission in the previous paragraph. D6, wishes to be different. He has objected to any more simple method. He requires the Claimants to serve a formal Notice of Discontinuance. His rationale was nothing more than the desire for his own costs of the claim to be paid. I suspect also a desire to increase the Claimants' costs. I dealt with the costs of the hearing at the hearing so, because D6 had succeeded on the purple land point, I awarded some costs to D6 against the Claimants. Inter alia I reduced counsel's brief fee (which included the skeleton) from £18,000 to £5,000. There was no need for a Notice of Discontinuance to enable this Court to award costs for succeeding on that issue. So, the rationale for the submission was without weight in relation to costs. CPR r.38.2 requires a claimant to seek the permission of the Court to discontinue where the Court has granted an interim injunction. This the Claimants did, via their witness statements and skeleton, a formal method but not in

accordance with CPR r.38.3, which sets out the procedure and is mandatory for discontinuance. A form N279 notice is required. In this case I do not consider that such formality assists. Of the 65 named Defendants, 60 have now been removed. It has been efficient to remove and add Defendants at the various reviews. So, to the extent that it is necessary, I grant the Claimants relief from sanctions and expressly permit the Claimants to delete D6 as a Defendant to the claim and the injunction without the need for a notice. D6 had notice in the application notice anyway. No other Defendant has objected. I also bear in mind that this Court could have removed D6 as a party at the start of the hearing and then heard argument on whether he should have been heard at all on the substantive issues, but I considered that it was helpful and just to have a voice for the Defendants and the PUs at the hearing. I therefore dispense with the need for the Claimants to file a Notice of Discontinuance pursuant to CPR 38.3(1)(a) in respect of D6 and make an order under CPR 6.28 dispensing with service of any Notice of Discontinuance.

Should the claim be brought to a final hearing?

58. There is no summary judgment application made by the Claimants. I set out the law above and in particular highlighted in bold passages from the Supreme Court on the nature of these injunctions concerning private land against PUs. I have carefully considered whether D6 was right, in submissions, to assert that such claims, against named Defendants (as distinct from PUs only claim) should be brought to trial with reasonable expedition. It was submitted that claims against named Defendants should not be left on the shelf or in the warehouse. However, no Defendant has made use of the power granted to them in the May 2023 Order I made to bring the case to trial. I take into account that it is normally the Claimants' responsibility to follow through to trial with the claim which they issued. However, in claims for possession of land where a final order for possession has been granted and the trespassers have been removed, there is no longer a need for another order. What then should be done about the interim injunction? Should it be brought to a final hearing? This would usually be answered: "yes". But in claims against PUs only and claims against named defendants and PUs, different factors apply. The Claimants have been and are required to keep the list of Defendants under review. When some have been (1) evicted, or (2) proven in contempt and imprisoned, or (3) have withdrawn or truthfully disavowed their previous intention to engage in unlawful direct action, the Claimants have properly released them from the action with this Court's permission. Others have given undertakings. Procedurally, it would be a nonsense to take the actions to a final hearing for a final injunction, based on the past tortious actions of the evicted ex-Defendants and proven contemnors, who have already been released as parties. As for the claims against the 5 remaining Defendants, if they had wished to be released from the action, they could have applied to bring the action to final determination, or asked the Claimants to be released, but have not. I see little point in requiring the Claimants to go to trial against them when the basis remains quia timet, only to have them submit at trial, that the released ex-Defendants were the tortfeasors, not them. The real mischief being addressed is the Claimants' need for protection from the PUs. That is fully satisfied on a continuing

basis already by the interim injunction. I would see the merit of requiring a final hearing if the test for the interim injunction was merely a "serious issue to be tried", but in these PU claims the test is higher. It is "likely to succeed at trial". So, in relation to the burden of proof, there is no injustice in the absence of a final injunction, so long as each Defendant has the right to apply for a final hearing. In addition, the reviews give each the opportunity to gain release from the action by applying for that.

59. I shall not be making a direction requiring the Claimants to bring the claim to trial or to finality through a summary judgment application or directing defences to be filed and served, disclosure and evidence. I do not see the need for it to achieve justice in this claim. I do not seek to lay down any general rule by this decision.

Variations to the terms of the injunction

60. Certain variations were requested to the terms of the injunction for the extension. I give permission for those which were not in dispute and are necessary.

61. The potential Defendant, D69, had been identified and there was a request to add him to the claim but he signed an undertaking so I do not have to consider that application.

62. There was a typing error in the May 2023 injunction relating to service of the review papers, which should be corrected.

Conclusion

63. I shall extend the interim injunction for 12 months. It will be limited to the phase 1 works and land. I do not consider that the Claimants should be required to bring the action to finality. D6 is released from the claim and the injunction. I invite the Claimants to draft the necessary orders and directions and to submit them before 31.5.2024.

ANNEX A

SCHEDULE OF DEFENDANTS 7-65

DEFENDANT NUMBER	NAMED DEFENDANTS
(7)	**Ms Leah Oldfield**
(8)	Not Used
(9)	Not Used
(10)	Not Used
(11)	Not Used
(12)	Not Used
(13)	Not Used
(14)	Not Used
(15)	Not Used

(16)	**Ms Karen Wildin (aka Karen Wilding / Karen Wilden / Karen Wilder)**
(17)	**Mr Andrew McMaster (aka Drew Robson)**
(18)	Not Used
(19)	Not Used
(20)	**Mr George Keeler (aka C Russ T Chav / Flem)**
(21)	Not Used
(22)	**Mr Tristan Dixon (aka Tristan Dyson)**
(23)	Not Used
(24)	Not Used
(25)	Not Used
(26)	Not Used
(27)	**Mr Lachlan Sandford (aka Laser / Lazer)**
(28)	**Mr Scott Breen (aka Scotty / Digger Down)**
(29)	Not Used
(30)	Not Used
(31)	Not Used
(32)	Not Used
(33)	**Mr Elliot Cuciurean (aka Jellytot)**
(34)	Not Used
(35)	Not Used
(36)	**Mr Mark Keir**
(37)	Not Used
(38)	Not Used
(39)	**Mr Iain Oliver (aka Pirate)**
(40)	Not Used
(41)	Not Used
(42)	Not Used
(43)	Not Used
(44)	Not Used
(45)	Not Used
(46)	Not Used
(47)	Not Used
(48)	**Mr Conner Nichols**
(49)	Not Used
(50)	Not Used
(51)	Not Used
(52)	Not Used
(53)	Not Used

(54)	Not Used
(55)	Not Used
(56)	Not Used
(57)	**Ms Samantha Smithson (aka Swan / Swan Lake)**
(58)	**Mr Jack Charles Oliver**
(59)	**Ms Charlie Inskip**
(60)	Not Used
(61)	Not Used
(62)	Not Used
(63)	**Mr Dino Misina (aka Hedge Hog)**
(64)	**Stefan Wright (aka Albert Urtubia)**
(65)	Not Used

END

Queen's Bench Division

Director of Public Prosecutions *v* Cuciurean

[2022] EWHC 736 (Admin)

2022 March 23; 30 Lord Burnett of Maldon CJ, Holgate J

Human rights — Freedom of expression and assembly — Interference with — Defendant trespassing on land with intention of obstructing or disrupting construction of railway — Defendant charged with aggravated trespass — Whether court required to be satisfied that defendant's conviction proportionate interference with his Convention rights — Criminal Justice and Public Order Act 1994 (c 33), s 68 — Human Rights Act 1998 (c 42), ss 3, 6, Sch 1, Pt I, arts 10, 11, Pt II, art 1

The defendant was charged with aggravated trespass, contrary to section 68 of the Criminal Justice and Public Order Act 1994[1], the prosecution case being that he had trespassed on land and dug and occupied a tunnel there with the intention of obstructing or disrupting a lawful activity, namely the construction of the HS2 high speed railway. The deputy district judge acquitted the defendant, finding that the prosecution had failed to prove to the requisite standard that a conviction was a proportionate interference with the defendant's rights to freedom of expression and to peaceful assembly guaranteed by articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms[2]. The prosecution appealed by way of case stated on the ground that, if the defendant's prosecution did engage his rights under articles 10 and 11, a conviction for the offence of aggravated trespass was intrinsically a justified and proportionate interference with those rights, without the need for a separate consideration of proportionality in the defendant's individual case.

On the appeal—

Held, allowing the appeal, that there was no general principle in criminal law, nor did section 6 of the Human Rights Act 1998 require, that where a defendant was being tried for a non-violent offence which engaged their rights under articles 10 and 11 of the Convention the court would always have to be satisfied that a conviction for that offence would be a proportionate interference with those rights; that, rather, the court would only have to be so satisfied where proportionality was an ingredient of the offence, which would depend on the proper interpretation of the offence in question; that if the offence was one where proportionality was satisfied by proof of the very ingredients of that offence, there would be no need for the court to consider the proportionality of a conviction in an individual case; that proportionality was not an ingredient of the offence of aggravated trespass contrary to section 68 of the Criminal Justice and Public Order Act 1994, which was compatible with articles 10 and 11 of the Convention without having to read in a proportionality ingredient pursuant to section 3 of the 1998 Act; that, in particular, (i) section 68 of the 1994 Act had the legitimate aim of protecting property rights in accordance with article 1 of the First Protocol to the Convention and, moreover, protected the use of land by a landowner or occupier for lawful activities and helped to preserve public order and prevent breaches of the peace, (ii) a protest which was carried out for the purposes of

[1] Criminal Justice and Public Order Act 1994, s 68: see post, para 10.
[2] Human Rights Act 1998, s 3: see post, para 29.
S 6: see post, para 30.
Sch 1, Pt I, art 10: see post, para 26.
Art 11: see post, para 27.
Pt II, art 1: see post, para 28.

A obstructing or disrupting a lawful activity, contrary to section 68, would not lie at the core of articles 10 and 11, even if carried out on publicly accessible land and (iii) articles 10 and 11 did not bestow any "freedom of forum" to justify trespass on land; that, therefore, proof of the ingredients of the offence of aggravated trespass set out in section 68 of the 1994 Act ensured that a conviction was proportionate to any article 10 and 11 rights that might be engaged; that it followed that it had not been open to the deputy district judge to acquit the defendant on the basis that the B prosecution had not satisfied her that the defendant's conviction of an offence of aggravated trespass contrary to section 68 was a proportionate interference with the defendant's rights under articles 10 and 11; and that, accordingly, the defendant's case would be remitted to the magistrates' court with a direction to convict (post, paras 57–58, 65–69, 73–81, 89–90).

Bauer v Director of Public Prosecutions [2013] 1 WLR 3617, DC, dicta of Lord Hughes JSC in *Richardson v Director of Public Prosecutions* [2014] AC 635, para 3, C SC(E) and *James v Director of Public Prosecutions* [2016] 1 WLR 2118, DC applied.

Appleby v United Kingdom (2003) 37 EHRR 38, ECtHR considered.

Director of Public Prosecutions v Ziegler [2022] AC 408, SC(E) distinguished.

Per curiam. It is highly arguable that articles 10 and 11 of the Convention are not engaged at all on the facts of the present case. There is no basis in the jurisprudence of the European Court of Human Rights to support the proposition that articles 10 and 11 include a right to protest on privately owned land or on publicly owned land D from which the public are generally excluded. The furthest that that 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 those rights by regulating property rights. 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 E rights protected by articles 10 and 11 would be destroyed. Legitimate protest can take many other forms (post, paras 45–46, 50).

The following cases are referred to in the judgment of the court:

Animal Defenders International v United Kingdom (Application No 48876/08) (2013) 57 EHRR 21, ECtHR (GC)

Annenkov v Russia (Application No 31475/10) (unreported) 25 July 2017, ECtHR

F *Appleby v United Kingdom* (Application No 44306/98) (2003) 37 EHRR 38, ECtHR

Barraco v France (Application No 31684/05) (unreported) 5 March 2009, ECtHR

Bauer v Director of Public Prosecutions [2013] EWHC 634 (Admin); [2013] 1 WLR 3617, DC

Blumberga v Latvia (Application No 70930/01) (unreported) 14 October 2008, ECtHR

Canada Goose UK Retail Ltd v Persons Unknown [2020] EWCA Civ 303; [2020] G 1 WLR 2802; [2020] 4 All ER 575, CA

City of London Corpn v Samede [2012] EWHC 34 (QB); [2012] EWCA Civ 160; [2012] PTSR 1624; [2012] 2 All ER 1039, CA

Dehal v Crown Prosecution Service [2005] EWHC 2154 (Admin); 169 JP 581

Director of Public Prosecutions v Ziegler [2019] EWHC 71 (Admin); [2020] QB 253; [2019] 2 WLR 1451; [2019] 1 Cr App R 32, DC; [2021] UKSC 23; [2022] AC 408; [2021] 3 WLR 179; [2021] 4 All ER 985; [2021] 2 Cr App R 19, SC(E)

H *Ezelin v France* (Application No 11800/85) (1991) 14 EHRR 362, ECtHR (GC)

Food Standards Agency v Bakers of Nailsea Ltd [2020] EWHC 3632 (Admin); [2020] CTLC 324, DC

Gifford v HM Advocate [2011] HCJAC 11; 2011 SCCR 751

Hammond v Director of Public Prosecutions [2004] EWHC 69 (Admin); 168 JP 601, DC

Hashman and Harrup v United Kingdom (Application No 25594/94) (1999) 30 EHRR 241, ECtHR (GC)
James v Director of Public Prosecutions [2015] EWHC 3296 (Admin); [2016] 1 WLR 2118, DC
Kudrevičius v Lithuania (Application No 37553/05) (2015) 62 EHRR 34, ECtHR (GC)
Kuznetsov v Russia (Application No 10877/04) (unreported) 23 October 2008, ECtHR
Lambeth London Borough Council v Grant [2021] EWHC 1962 (QB)
Norwood v Director of Public Prosecutions [2003] EWHC 1564 (Admin); [2003] Crim LR 888, DC
R v Brown (James Hugh) [2022] EWCA Crim 6; [2022] 1 Cr App R 18, CA
R v E [2018] EWCA Crim 2426; [2019] Crim LR 151, CA
R v R [2015] EWCA Crim 1941; [2016] 1 WLR 1872; [2016] 1 Cr App R 20, CA
R (AB) v Secretary of State for Justice [2021] UKSC 28; [2022] AC 487; [2021] 3 WLR 494; [2021] 4 All ER 777, SC(E)
R (Leigh) v Comr of Police of the Metropolis [2022] EWHC 527 (Admin); [2022] 1 WLR 3141
R (Ullah) v Special Adjudicator [2004] UKHL 26; [2004] 2 AC 323; [2004] 3 WLR 23; [2004] 3 All ER 785, HL(E)
Richardson v Director of Public Prosecutions [2014] UKSC 8; [2014] AC 635; [2014] 2 WLR 288; [2014] 2 All ER 20; [2014] 1 Cr App R 415, SC(E)
Taranenko v Russia (Application No 19554/05) (unreported) 15 May 2014, ECtHR

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

Connolly v Director of Public Prosecutions [2007] EWHC 237 (Admin); [2008] 1 WLR 276; [2007] 2 All ER 1012; [2007] 2 Cr App R 43, DC
Cuadrilla Bowland Ltd v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29, CA
Director of Public Prosecutions v Barnard [2000] Crim LR 371
Director of Public Prosecutions v Jones (Margaret) [1999] 2 AC 240; [1999] 2 WLR 625; [1999] 2 All ER 257; [1999] 2 Cr App R 348, HL(E)
Lashmankin v Russia (Application Nos 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12, 37038/13) (2017) 68 EHRR 1, ECtHR
Manchester City Council v Pinnock (Nos 1 and 2) [2010] UKSC 45; [2011] 2 AC 104; [2010] 3 WLR 1441; [2011] PTSR 61; [2011] 1 All ER 285, SC(E)
Manchester Ship Canal Developments Ltd v Persons Unknown [2014] EWHC 645 (Ch)
National Highways Ltd v Persons Unknown [2021] EWHC 3081 (QB)
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)
RMC LH Co Ltd v Persons Unknown [2015] EWHC 4274 (Ch)
Secretary of State for Transport v Cuciurean [2021] EWCA Civ 357, CA
Steel v United Kingdom (Application No 24838/94) (1998) 28 EHRR 603, ECtHR
Whitehead v Haines [1965] 1 QB 200; [1964] 3 WLR 197; [1964] 2 All ER 530, DC
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch); [2019] JPL 161

CASE STATED by Deputy District Judge Evans sitting at City of London Magistrates' Court

On 21 September 2021, after a trial before Deputy District Judge Evans in the City of London Magistrates' Court, the defendant, Elliott Cuciurean,

A was acquitted of the offence of aggravated trespass contrary to section 68(1) of the Criminal Justice and Public Order Act 1994. The prosecution appealed by way of case stated. The questions for the opinion of the High Court are set out in the judgment of the court, post, para 3.

The facts are stated in the judgment of the court, post, paras 2–9.

B *Tom Little QC* and *James Boyd* (instructed by *Crown Prosecution Service*) for the prosecutor.

Tim Moloney QC, *Blinne Ní Ghrálaigh* and *Adam Wagner* (instructed by *Robert Lizar Solicitors, Manchester*) for the defendant.

The court took time for consideration.

C 30 March 2022. **LORD BURNETT OF MALDON CJ** handed down the following judgment of the court.

Introduction

1 This is the judgment of the court to which we have both contributed. The central issue for determination in this appeal is whether the decision of
D the Supreme Court in *Director of Public Prosecutions v Ziegler* [2022] AC 408 requires a criminal court to determine in all cases which arise out of "non-violent" protest whether the conviction is proportionate for the purposes of articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") which protect freedom of expression and freedom of peaceful assembly respectively.

2 The defendant was acquitted of a single charge of aggravated trespass
E contrary to section 68 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") consequent upon his digging and then remaining in a tunnel in land belonging to the Secretary of State for Transport which was being used in connection with the construction of the HS2 railway. The deputy district judge, sitting at the City of London Magistrates' Court, accepted a submission advanced on behalf of the defendant that, before she
F could convict, the prosecution had "to satisfy the court so that it is sure that a conviction is a proportionate interference with the rights of Mr Cuciurean under articles 10 and 11". In short, the judge accepted that there was a new ingredient of the offence to that effect.

3 Two questions are asked of the High Court in the case stated:

> "1. Was is it open to me, having decided that the defendant's article 10
G and 11 rights were engaged, to acquit the defendant on the basis that, on the facts found, the claimant had not made me sure that a conviction for the offence under section 68 was a reasonable restriction and a necessary and proportionate interference with the defendant's article 10 and 11 rights applying the principles in *Ziegler*?
>
> "2. In reaching the decision in (1) above, was I entitled to take into
H account the very considerable costs of the whole HS2 scheme and the length of time that is likely to take to complete (20 years) when considering whether a conviction was necessary and proportionate?"

4 The prosecution appeal against the acquittal on three grounds:
(1) The prosecution did not engage articles 10 and 11 rights;

(2) If the defendant's prosecution did engage those rights, a conviction for the offence of aggravated trespass is—intrinsically and without the need for a separate consideration of proportionality in individual cases—a justified and proportionate interference with those rights. The decision in *Ziegler* did not compel the judge to take a contrary view and undertake a *Ziegler*-type fact-sensitive assessment of proportionality; and

(3) In any event, if a fact-sensitive assessment of proportionality was required, the judge reached a decision on that assessment that was irrational, in the *Wednesbury* sense of the term.

5 Before the judge, the prosecution accepted that the defendant's article 10 and 11 rights were engaged and that there was a proportionality exercise of some sort for the court to perform, albeit not as questions of the defendant suggested. In inviting the judge to state a case, the prosecution expressly disavowed an intention to challenge the conclusion that the Convention rights were engaged. It follows that neither ground 1 nor ground 2 was advanced before the judge.

6 The defendant contends that it should not be open to the prosecution to raise grounds 1 or 2 on appeal. He submits that there is no sign in the application for a case to be stated that ground 1 is being pursued; and that although ground 2 was raised, because it was not argued at first instance, the prosecution should not be allowed to take it now.

7 Crim PR r 35.2(2)(c) relating to an application to state a case requires: "The application must— . . . (c) indicate the proposed grounds of appeal . . ."

8 The prosecution did not include what is now ground 1 of the grounds of appeal in its application to the magistrates' court for a case to be stated. We do not think it appropriate to determine this part of the appeal, for that reason and also because it does not give rise to a clear-cut point of law. The prosecution seeks to argue that trespass involving damage to land does not engage articles 10 and 11. That issue is potentially fact-sensitive and, had it been in issue before the judge, might well have resulted in the case proceeding in a different way and led to further factual findings.

9 Applying well-established principles set out in *R v R* [2016] 1 WLR 1872, paras 53–54, *R v E* [2019] Crim LR 151, paras 17–27 and *Food Standards Agency v Bakers of Nailsea Ltd* [2020] CTLC 324, paras 25–31, we are prepared to deal with ground 2. It involves a pure point of law arising from the decision of the Supreme Court in *Ziegler* which, according to the defendant, would require a proportionality test to be made an ingredient of any offence which impinges on the exercise of rights under articles 10 and 11 of the Convention, including, for example, theft. There are many public protest cases awaiting determination in both the magistrates' and Crown Courts which are affected by this issue. It is desirable that the questions which arise from *Ziegler* are determined as soon as possible.

Section 68 of the Criminal Justice and Public Order Act 1994

10 Section 68 of the 1994 Act as amended reads:

> "(1) A person commits the offence of aggravated trespass if he trespasses on land and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does

A there anything which is intended by him to have the effect— (a) of intimidating those persons or any of them so as to deter them or any of them from engaging in that activity, (b) of obstructing that activity, or (c) of disrupting that activity."

"(2) Activity on any occasion on the part of a person or persons on land is 'lawful' for the purposes of this section if he or they may engage in the B activity on the land on that occasion without committing an offence or trespassing on the land.

"(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

"(4) [Repealed.]

C "(5) In this section 'land' does not include— (a) the highways and roads excluded from the application of section 61 by paragraph (b) of the definition of land in subsection (9) of that section; or (b) a road within the meaning of the Roads (Northern Ireland) Order 1993."

11 Parliament has revisited section 68 since it was first enacted. Originally the offence only applied to trespass on land in the open air. But D the words "in the open air" were repealed by the Anti-Social Behaviour Act 2003 to widen section 68 to cover trespass in buildings.

12 The offence has four ingredients, all of which the prosecution must prove (see *Richardson v Director of Public Prosecutions* [2014] AC 635, para 4):

"(i) the defendant must be a trespasser on the land; (ii) there must be a E person or persons lawfully on the land (that is to say not themselves trespassing), who are either engaged in or about to engage in some lawful activity; (iii) the defendant must do an act on the land; (iv) which is intended by him to intimidate all or some of the persons on the land out of that activity, or to obstruct or disrupt it."

13 Accordingly, section 68 is not concerned simply with the protection F of a landowner's right to possession of his land. Instead, it only applies where, in addition, a trespasser does an act on the land to deter by intimidation, or to obstruct or disrupt, the carrying on of a lawful activity by one or more persons on the land.

Factual background

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14 The defendant was charged under section 68 of the 1994 Act that between 16 and 18 March 2021, he trespassed on land referred to as Access Way 201, off Shaw Lane, Hanch, Lichfield, Staffordshire ("the Land") and dug and occupied a tunnel there which was intended by him to have the effect of obstructing or disrupting a lawful activity, namely construction works for the HS2 project.

H **15** The Land forms part of phase one of HS2, a project which was authorised by the High Speed Rail (London to West Midlands) Act 2017 ("the 2017 Act"). This legislation gave the Secretary of State for Transport power to acquire land compulsorily for the purposes of the project, which the Secretary of State used to purchase the Land on 2 March 2021.

16 The Land was an area of farmland. It is adjacent to, and fenced off from, the West Coast line. The Land was bounded in part by hedgerow and so it was necessary to install further fencing to secure the site. The Secretary of State had previously acquired a site immediately adjacent to the Land. HS2 contractors were already on that site and ready to use the Land for storage purposes once it had been cleared.

17 Protesters against the HS2 project had occupied the Land and the defendant had dug a tunnel there before 2 March 2021. The defendant occupied the tunnel from that date. He slept in it between 15 and 18 March 2021, intending to resist eviction and to disrupt activities of the HS2 project.

18 The HS2 project team applied for a High Court warrant to obtain possession of the Land. On 16 March 2021 they went on to the Land and found four protesters there. One left immediately and two were removed from trees on the site. On the same day the team found the defendant in the tunnel. Between 07.00 and 09.30 he was told that he was trespassing and given three verbal warnings to leave. At 18.55 a High Court enforcement agent handed him a notice to vacate and told him that he would be forcibly evicted if he failed to leave. The defendant went back into the tunnel.

19 The HS2 team instructed health and safety experts to help with the eviction of the defendant and the reinstatement of the Land. They included a "confined space team" who were to be responsible for boarding the tunnel and installing an air supply system. The defendant left the Land voluntarily at about 14.00 on 18 March 2021.

20 The cost of these teams to remove the three protesters over this period of three days was about £195,000.

21 HS2 contractors were unable to go onto the Land until it was completely free of all protesters because it was unsafe to begin any substantial work while they were still present.

The proceedings in the magistrates' court

22 On 18 March 2021 the defendant was charged with an offence contrary to section 68 of the 1994 Act. On 10 April 2021 he pleaded not guilty. The trial took place on 21 September 2021.

23 At the trial the defendant was represented by counsel who did not appear in this court. He produced a skeleton argument in which he made the following submissions:

(i) "*Ziegler* laid down principles applicable to all criminal charges which trigger an assessment of a defendant's rights under articles 10 and 11 [of the Convention]. It is of general applicability. It is not limited to offences of obstructing the highway";

(ii) *Ziegler* applies with the same force to a charge of aggravated trespass, essentially for two reasons;

(a) First, the Supreme Court's reasoning stems from the obligation of a court under section 6(1) of the Human Rights Act 1998 ("1998 Act") not to act in a manner contrary to Convention rights (referred to in *Ziegler* at para 12). Accordingly, in determining a criminal charge where issues under articles 10 and 11 of the Convention are raised, the court is obliged to take account of those rights;

A (b) Second, violence is the dividing line between cases where articles 10 and 11 apply and those where they do not. If a protest does not become violent, the court is obliged to take account of a defendant's right to protest in assessing whether a criminal offence has taken place. Section 68 does not require the prosecution to show that a defendant was violent and, on the facts of this case, the defendant was not violent;

B (iii) Accordingly, before the court could find the defendant guilty of the offence charged under section 68, it would have to be satisfied by the prosecution so that it was sure that a conviction would be a proportionate interference with his rights under articles 10 and 11. Whether a conviction would be proportionate should be assessed with regard to factors derived from *Ziegler* (at paras 71–78, 80–83 and 85–86). This required a fact-sensitive assessment.

C **24** The prosecution did not produce a skeleton for the judge. She recorded that they did not submit "that the defendant's article 10 and 11 rights could not be engaged in relation to an offence of aggravated trespass" or that the principles in *Ziegler* did not apply in this case (see para 10 of the case stated).

25 The judge made the following findings:

D "1. The tunnel was on land owned by HS2.

"2. Albeit that the defendant had dug the tunnel prior to the of transfer of ownership, his continued presence on the land after being served with the warrant disrupted the activity of HS2 because they could not safely hand over the site to the contractors due to their health and safety obligations for the site to be clear.

E "3. The act of defendant taking up occupation of the tunnel on 15 March, sleeping overnight and retreating into the tunnel having been served with the notice to vacate was an act which obstructed the lawful activity of HS2. This was his intention.

"4. The defendant's article 10 and 11 rights were engaged and the principles in *Ziegler* were to be considered.

F "5. The defendant was a lone protester only occupying a small part of the land.

"6. He did not act violently.

"7. The views of the defendant giving rise to protest related to important issues.

"8. The defendant believed the views he was expressing.

G "9. The location of the land meant that there was no inconvenience to the general public or interference with the rights of anyone other than HS2.

"10. The land specifically related to the HS2 project.

"11. HS2 were aware of the protesters were on site before they acquired the land.

"12. The land concerned, which was to be used for storage, is a very

H small part of the HS2 project which will take up to 20 years complete with a current cost of £billions.

"13. Taking into account the above, even though there was a delay of 2.5 days and total cost of £195,000, I found that the [prosecution] had not made me sure to the required standard that a conviction for this

offence was a necessary and proportionate interference with the defendant's article 10 and 11 rights." A

Convention rights

26 Article 10 of the Convention provides:

"*Freedom of expression*

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises. B

"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." C D

27 Article 11 of the Convention provides:

"*Freedom of assembly and association*

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. E

"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." F

28 Because section 68 is concerned with trespass, it is also relevant to refer to article 1 of the First Protocol to the Convention ("A1P1"):

"*Protection of property* G

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

"The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties" H

29 Section 3 of the 1998 Act deals with the interpretation of legislation. Subsection (1) provides that: "So far as it is possible to do so, primary

A legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."

30 Section 6(1) provides that "it is unlawful for a public authority to act in a way which is incompatible with a Convention right" unless required by primary legislation (section 6(2)). A "public authority" includes a court (section 6(3)).

B 31 In the case of a protest there is a link between articles 10 and 11 of the Convention. The protection of personal opinions, secured by article 10, is one of the objectives of the freedom of peaceful assembly enshrined in article 11 (*Ezelin v France* (1991) EHRR 362 at para 37).

32 The right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Accordingly, it should not be interpreted
C restrictively. The right covers both "private meetings" and "meetings in public places" (*Kudrevičius v Lithuania* (2015) 62 EHRR 34 at para 91).

33 Article 11 expressly states that it protects only "peaceful" assemblies. In *Kudrevičius*, the Grand Chamber of the European Court of Human Rights ("the Strasbourg court") explained that article 11 applies "to all gatherings except those where the organisers and participants have
D [violent] intentions, incite violence or otherwise reject the foundations of a democratic society" (para 92).

34 The defendant submits, relying on the Supreme Court judgment in *Ziegler* [2022] AC 408 at para 70, that an assembly is to be treated as "peaceful" and therefore as engaging article 11 other than: where protesters engage in violence, have violent intentions, incite violence or otherwise
E reject the foundations of a democratic society. He submits that the defendant's peaceful protest did not fall into any of those exclusionary categories and that the trespass on land to which the public does not have access is irrelevant, save at the evaluation of proportionality.

35 Public authorities are generally expected to show some tolerance for disturbance that follows from the normal exercise of the right of peaceful
F assembly in a *public place* (see eg *Kuznetsov v Russia* (Application No 10877/04) (unreported) 23 October 2008 at para 44, cited in *City of London Corpn v Samede* [2012] PTSR 1624 at para 43; *Kudrevičius* at paras 150 and 155).

36 The defendant relied on decisions where a protest intentionally disrupting the activity of another party has been held to fall within
G articles 10 and 11 (eg *Hashman and Harrup v United Kingdom* (1999) 30 EHRR 241, para 28). However, conduct deliberately obstructing traffic or seriously disrupting the activities of others is not at the core of these Convention rights (*Kudrevičius*, para 97).

37 Furthermore, intentionally serious disruption by protesters to ordinary life or to activities lawfully carried on by others, where the disruption is more significant than that involved in the normal exercise of the
H right of peaceful assembly *in a public place*, may be considered to be a "reprehensible act" within the meaning of Strasbourg jurisprudence, so as to justify a criminal sanction (*Kudrevičius* at paras 149 and 172–174; *Ezelin* at para 53; *Barraco v France* (Application No 31684/05) (unreported) 5 March 2009 at paras 43–44 and 47–48).

38 In *Barraco* the applicant was one of a group of protesters who drove their vehicles at about 10kph along a motorway to form a rolling barricade across all lanes, forcing the traffic behind to travel at the same slow speed. The applicant even stopped his vehicle. The demonstration lasted about five hours and three major highways were blocked, in disregard of police orders and the needs and rights of other road users. The court described the applicant's conduct as "reprehensible" and held that the imposition of a suspended prison sentence for three months and a substantial fine had not violated his article 11 rights.

39 *Barraco* and *Kudrevičius* are examples of protests carried out in locations to which the public has a right of access, such as highways. The present case is concerned with trespass on land to which the public has no right of access at all. The defendant submits that the protection of articles 10 and 11 extends to trespassory demonstrations, including trespass upon private land or upon publicly owned land from which the public are generally excluded (para 31 of skeleton). He relies upon several authorities. It is unnecessary for us to review them all. In several of the cases the point was conceded and not decided. In others the land in question formed part of a highway and so the decisions provide no support for the defendant's argument (e g *Samede* [2012] PTSR 1624 at para 5 and see Lindblom J (as he then was) in *Samede* [2012] EWHC 34 (QB) at [12] and [136]–[143]; *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802). Similarly, we note that *Lambeth London Borough Council v Grant* [2021] EWHC 1962 (QB) related to an occupation of Clapham Common.

40 Instead, we gain much assistance from *Appleby v United Kingdom* (2003) 37 EHRR 38. There the applicants had sought to protest in a privately owned shopping mall about the local authority's planning policies. There does not appear to have been any formal public right of access to the centre. But, given the nature of the land use, the public did, of course, have access to the premises for shopping and incidental purposes. The Strasbourg court decided that the landowner's A1P1 rights were engaged (para 43). It also observed that a shopping centre of this kind may assume the characteristics of a traditional town centre (para 44). None the less, the court did not adopt the applicants' suggestion that the centre be regarded as a "quasi-public space".

41 Instead, the court stated at para 47:

> "[Article 10], notwithstanding the acknowledged importance of freedom of expression, does not bestow any freedom of forum for the exercise of that right. While it is true that demographic, social, economic and technological developments are changing the ways in which people move around and come into contact with each other, the court is not persuaded that this requires the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property (government offices and ministries, for instance). Where, however, the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the court would not exclude that a positive obligation could arise for the state to protect the enjoyment of the Convention rights by regulating property rights. The corporate town where the entire

municipality is controlled by a private body, might be an example (see *Marsh v Alabama* [(1946) 326 US 501], cited at para 26 above)."

The court indicated that the same analysis applies to article 11 (see para 52).

42 The example given by the court at the end of that passage in para 47 shows the rather unusual or even extreme circumstances in which it *might* be possible to show that the protection of a landowner's property rights has the effect of preventing *any* effective exercise of the freedoms of expression and assembly. But in *Appleby* the court had no difficulty in finding that the applicants did have alternative methods by which they could express their views to members of the public (para 48).

43 Likewise, *Taranenko v Russia* (Application No 19554/05) (unreported) 15 May 2014 does not assist the defendant. At para 78 the court restated the principles laid down in *Appleby* at para 47. The protest in that case took place in the Administration Building of the President of the Russian Federation. That was a public building to which members of the public had access for the purposes of making complaints, presenting petitions and meeting officials, subject to security checks (paras 25, 61 and 79). The qualified public access was an important factor.

44 The defendant also relied upon *Annenkov v Russia* (Application No 31475/10) (unreported) 25 July 2017. There, a public body transferred a town market to a private company which proposed to demolish the market and build a shopping centre. A group of business-people protested by occupying the market at night. The Strasbourg court referred to inadequacies in the findings of the domestic courts on various points. We note that any entitlement of the entrepreneurs, and certain parties who were paying rent, to gain access to the market is not explored in the decision. Most importantly, there was no consideration of the principle laid down in *Appleby* and applied in *Taranenko*. Although we note that the court found a violation of article 11 rights, we gain no real assistance from the reasoning in the decision for the resolution of the issues in the present case.

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* 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* 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 are prescribed by law and necessary in a democratic society. Those limitations and restrictions include the law of trespass, the object of which is to protect property rights in accordance with A1P1. On the other hand, property rights might have to yield to articles 10 and 11 if, for example, a law governing the exercise of those rights and use of land were to destroy the essence of the freedom to protest. That would be an extreme situation. It has never been suggested that it arises in the circumstances of the present case, nor more generally in relation to section 68 of the 1994 Act. It would be fallacious to suggest that, unless a person is free to enter upon private land to stop or impede the carrying on of a lawful activity on that land by the landowner or occupier, the essence of the freedoms of expression and assembly would be destroyed. Legitimate protest can take many other forms.

47 We now return to *Richardson* [2014] AC 635 and the important statement made by Lord Hughes JSC at para 3:

> "By definition, trespass is unlawful independently of the 1994 Act. It is a tort and committing it exposes the trespasser to a civil action for an injunction and/or damages. The trespasser has no right to be where he is. Section 68 is not concerned with the rights of the trespasser, whether protester or otherwise. References in the course of argument to the rights of free expression conferred by article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms were misplaced. Of course a person minded to protest about something has such rights. But the ordinary civil law of trespass constitutes a limitation on the exercise of this right which is according to law and unchallengeably proportionate. Put shortly, article 10 does not confer a licence to trespass on other people's property in order to give voice to one's views. Like adjoining sections in Part V of the 1994 Act, section 68 is concerned with a limited class of trespass where the additional sanction of the criminal law has been held by Parliament to be justified. The issue in this case concerns its reach. It must be construed in accordance with normal rules relating to statutes creating criminal offences."

48 *Richardson* was a case concerned with the meaning of "lawful activity", the second of the four ingredients of section 68 identified by Lord Hughes JSC (see para 12 above). Accordingly, it is common ground between the parties (and we accept) that the statement was obiter. Nonetheless, all members of the Supreme Court agreed with the judgment of Lord Hughes JSC. The dictum should be accorded very great respect. In our judgment it is consistent with the law on articles 10 and 11 and A1P1 as summarised above.

49 The proposition which the defendant has urged this court to accept is an attempt to establish new principles of Convention law which go beyond the "clear and constant jurisprudence of the Strasbourg court". It is clear from the line of authority which begins with *R (Ullah) v Special Adjudicator* [2004] 2 AC 323 at para 20 and has recently been summarised by Lord Reed PSC in *R (AB) v Secretary of State for Justice* [2022] AC 487 at paras 54–59, that this is not the function of a domestic court.

A 50 For the reasons we gave in para 8 above, we do not determine ground 1 advanced by the prosecution in this appeal. It is sufficient to note that in light of the jurisprudence of the Strasbourg court it is highly arguable that articles 10 and 11 are not engaged at all on the facts of this case.

Ground 2

B 51 The defendant's case falls into two parts. First, Mr Tim Moloney QC submits that the Supreme Court in *Ziegler* [2022] AC 408 had decided that in any criminal trial involving an offence which has the effect of restricting the exercise of rights under articles 10 and 11 of the Convention, it is necessary for the prosecution to prove that a conviction would be proportionate, after carrying out a fact-sensitive proportionality assessment applying the factors set out in *Ziegler*. The language of the judgment in C *Ziegler* should not be read as being conditioned by the offence under consideration (obstructing the highway) which required the prosecution to prove that the defendant in question did not have a "lawful excuse". If that submission is accepted, ground 2 would fail.

52 Secondly, if that first contention is rejected, the defendant submits that the court cannot allow the appeal under ground 2 without going on to D decide whether section 68 of the 1994 Act, construed in accordance with ordinary canons of construction, is compatible with articles 10 and 11. If it is not, then he submits that language should be read into section 68 requiring such an assessment to be made in every case where articles 10 and 11 are engaged (applying section 3 of the 1998 Act). If this argument were accepted ground 2 would fail. This argument was not raised before the E judge in addition to direct reliance on the language of *Ziegler*. Mr Moloney has raised the possibility of a declaration of incompatibility under section 4 of the 1998 Act both in his skeleton argument and orally.

53 On this second part of ground 2, Mr Tom Little QC for the prosecution (but did not appear below) submits that, assuming that rights under articles 10 and 11 are engaged, a conviction based solely upon proof of the ingredients of section 68 is intrinsically proportionate in relation to F any interference with those rights. Before turning to *Ziegler,* we consider the case law on this subject, for section 68 and other offences.

54 In *Bauer v Director of Public Prosecutions* [2013] 1 WLR 3617, the Divisional Court considered section 68 of the 1994 Act. The case concerned a demonstration in a retail store. The main issue in the case was whether, in addition to the initial trespass, the defendants had committed an act G accompanied by the requisite intent (the third and fourth ingredients identified in *Richardson* at para 4). The Divisional Court decided that, on the facts found by the judge, they had and so were guilty under section 68. As part of the reasoning leading to that conclusion, Moses LJ (with whom Parker J agreed) stated that it was important to treat all the defendants as principals, rather than treating some as secondary participants under the law of joint enterprise; the district judge had been wrong to do so (paras 27–36). H One reason for this was to avoid the risk of inhibiting legitimate participation in protests (para 27). It was in that context that Liberty had intervened (para 37).

55 Liberty did not suggest that section 68 involved a disproportionate interference with rights under articles 10 and 11 (para 37). But Moses LJ

accepted that it was necessary to ensure that criminal liability is not imposed on those taking part in a peaceful protest because others commit offences under section 68 (referring to *Ezelin*). Accordingly, he held that the prosecution must prove that those present at and participating in a demonstration are themselves guilty of the conduct element of the crime of aggravated trespass (para 38). It was in this context that he said at para 39:

> "In the instant appeals the district judge, towards the end of his judgment, asked whether the prosecution breached the defendants' article 10 and 11 rights. Once he had found that they were guilty of aggravated trespass there could be no question of a breach of those rights. He had, as he was entitled to, concluded that they were guilty of aggravated trespass. Since no one suggests that section 68 of the 1994 Act is itself contrary to either article 10 or 11, there was no room for any further question or discussion. No one can or could suggest that the state was not entitled, for the purpose of preventing disorder or crime, from preventing aggravated trespass as defined in section 68(1)."

56 Moses LJ then went on to say that his earlier judgment in *Dehal v Crown Prosecution Service* (2005) 169 JP 581 should not be read as requiring the prosecution to prove more than the ingredients of section 68 set out in the legislation. If the prosecution succeeds in doing that, there is nothing more to prove, including proportionality, to convict of that offence (para 40).

57 In *James v Director of Public Prosecutions* [2016] 1 WLR 2118, the Divisional Court held that public order offences may be divided into two categories. First, there are offences the ingredients of which include a requirement for the prosecution to prove that the conduct of the defendant was not reasonable (if there is sufficient evidence to raise that issue). Any restrictions on the exercise of rights under articles 10 and 11 and the proportionality of those restrictions are relevant to whether that ingredient is proved. In such cases the prosecution must prove that any such restriction was proportionate (paras 31–34). Offences falling into that first category were the subject of the decisions in *Norwood v Director of Public Prosecutions* [2003] Crim LR 888, *Hammond v Director of Public Prosecutions* (2004) 168 JP 601 and *Dehal*.

58 The second category comprises offences where, once the specific ingredients of the offence have been proved, the defendant's conduct has gone beyond what could be regarded as reasonable conduct in the exercise of Convention rights. "The necessary balance for proportionality is struck by the terms of the offence-creating provision, without more ado." Section 68 of the 1994 Act is such an offence, as had been decided in *Bauer* (see Ouseley J at para 35).

59 The court added that offences of obstructing a highway, subject to a defence of lawful excuse or reasonable use, fall within the first category. If articles 10 and 11 are engaged, a proportionality assessment is required (paras 37–38).

60 *James* concerned an offence of failing to comply with a condition imposed by a police officer on the holding of a public assembly contrary to section 14(5) of the Public Order Act 1986. The ingredients of the offence which the prosecution had to prove included that a senior police officer

(a) had *reasonably* believed that the assembly might result in serious public disorder, serious damage to property or serious disruption to the life of the community or that the object of the organisers was to intimidate others into not doing something that they have a right to do, and (b) had given a direction imposing conditions appearing to him to be *necessary* to prevent such disorder, damage, disruption or intimidation. The Divisional Court held that where the prosecution satisfies those statutory tests, that is proof that the making of the direction and the imposition of the condition was proportionate. As in *Bauer*, proof of the ingredients of the offence laid down by Parliament is sufficient to be compatible with the Convention rights. There was no justification for adding a further ingredient that a conviction must be proportionate, or for reading in additional language to that effect, to render the legislation compatible with articles 10 and 11 (paras 38–43). *James* provides another example of an offence the ingredients of which as enacted by Parliament satisfy any proportionality requirement arising from articles 10 and 11 of the Convention.

61 There are also some instances under the common law where proof of the ingredients of the offence without more renders a conviction proportionate to any interference with articles 10 and 11 of the Convention. For example, in Scotland a breach of the peace is an offence involving conduct which is likely to cause fear, alarm, upset or annoyance to any reasonable person or may threaten public safety or serious disturbance to the community. In *Gifford v HM Advocate* 2011 SCCR 751, the High Court of Justiciary held that "the Convention rights to freedom of expression and freedom of assembly do not entitle protestors to commit a breach of the peace" (para 15). Lord Reed added at para 17:

> "Accordingly, if the jury are accurately directed as to the nature of the offence of breach of the peace, their verdict will not constitute a violation of the Convention rights under articles 10 and 11, as those rights have been interpreted by this court in the light of the case law of the Strasbourg court. It is unnecessary, and inappropriate, to direct the jury in relation to the Convention."

62 Similarly, in *R v Brown (James Hugh)* [2022] 1 Cr App R 18, the appellant rightly accepted that articles 10 and 11 of the Convention do not provide a defence to the offence of public nuisance as a matter of substantive criminal law (para 37). Essentially for the same reasons, there is no additional "proportionality" ingredient which has to be proved to convict for public nuisance. Moreover, the Court of Appeal held that a prosecution for an offence of that kind cannot be stayed under the abuse of process jurisdiction on the freestanding ground that it is disproportionate in relation to Convention rights (paras 24–39).

63 *Ziegler* was concerned with section 137 of the Highways Act 1980. This is an offence which is subject to a "lawful excuse" defence and therefore falls into the first category defined in *James*. Indeed, in *Ziegler* [2020] QB 253, paras 87–91, the Divisional Court referred to the analysis in *James*.

64 The second question certified for the Supreme Court in *Ziegler* [2022] AC 408 related to the "lawful excuse" defence in section 137 of the Highways Act (paras 7, 55–56 and 98–99). Lord Hamblen and Lord Stephens JJSC referred at para 16 to the explanation by the Divisional Court

about how section 137 should be interpreted compatibly with articles 10 and 11 in cases where, as was common ground, the availability of the "lawful excuse" defence "depends on the proportionality assessment to be made".

65 The Supreme Court's reasoning was clearly expressed solely in the context of the lawful excuse defence to section 137 of the Highways Act. The Supreme Court had no need to consider, and did not express any views about, offences falling into the second category defined in *James,* where the balance required for proportionality under articles 10 and 11 is struck by the terms of the legislation setting out the ingredients of the offence, so that the prosecution is not required to satisfy any additional case-specific proportionality test. Nor did the Supreme Court in some way sub silentio suggest that section 3 of the 1998 Act should be used to insert into no doubt myriad offences a proportionality ingredient. The Supreme Court did not consider, for example, *Bauer* [2013] 1 WLR 3617 or offences such as section 68. That was unnecessary to resolve the issues before the court.

66 Likewise, *Ziegler* was only concerned with protests obstructing a highway where it is well-established that articles 10 and 11 are engaged. The Supreme Court had no need to consider, and did not address in their judgments, the issue of whether articles 10 and 11 are engaged where a person trespasses on private land, or on publicly owned land to which the public has no access. Accordingly, no consideration was given to the statement in *Richardson* [2014] AC 635, para 3 or to cases such as *Appleby* 37 EHRR 38.

67 For these reasons, it is impossible to read the judgments in *Ziegler* as deciding that there is a general principle in our criminal law that where a person is being tried for an offence which does engage articles 10 and 11, the prosecution, in addition to satisfying the ingredients of the offence, must also prove that a conviction would be a proportionate interference with those rights.

68 The passages in *Ziegler* upon which the defendant relies have been wrenched completely out of context. For example, the statements in para 57 about a proportionality assessment at a trial, or in relation to a conviction, were made only in the context of a prosecution under section 137 of the Highways Act. They are not to be read as being of general application whenever a criminal offence engages articles 10 and 11. The same goes for the references in paras 39–60 to the need for a fact-specific enquiry and the burden of proof upon the prosecution in relation to proportionality. Paras 62–70 are entitled "deliberate obstruction with more than a de minimis impact". The reasoning set out in that part of the judgment relates only to the second certified question and was therefore concerned with the "lawful excuse" defence in section 137.

69 We are unable to accept the defendant's submission that section 6 of the 1998 Act requires a court to be satisfied that a conviction for an offence would be proportionate whenever articles 10 and 11 are engaged. Section 6 applies if both (a) Convention rights such as articles 10 and 11 are engaged and (b) proportionality is an ingredient of the offence and therefore something which the prosecution has to prove. That second point depends on the substantive law governing the offence. There is no need for a court to be satisfied that a conviction would be proportionate if the offence is one

A where proportionality is satisfied by proof of the very ingredients of that offence.

70 Unless a court were to be persuaded that the ingredients of a statutory offence are not compatible with Convention rights, there would be no need for the interpretative provisions in section 3 of the 1998 Act to be considered. It is through that provision that, in a properly argued, B appropriate case, a freestanding proportionality requirement might be justified as an additional ingredient of a statutory offence, but not through section 6 by itself. If, despite the use of all interpretative tools, a statutory offence were to remain incompatible with Convention rights because of the lack of a separate "proportionality" ingredient, the question of a declaration of incompatibility under section 4 of the 1998 Act would arise. If granted, it would remain a matter for Parliament to decide whether, and if so how, the C law should be changed. In the meantime, the legislation would have to be applied as it stood (section 6(2)).

71 Accordingly, we do not accept that section 6 imposes a freestanding obligation on a court to be satisfied that a conviction would be a proportionate interference with Convention rights if that is not an ingredient of a statutory offence. This suggestion would make it impossible D for the legislature to enact a general measure which satisfactorily addresses proportionality itself, to make case-by-case assessment unnecessary. It is well established that such measures are permissible (see eg *Animal Defenders International v United Kingdom* (2013) 57 EHRR 21).

72 It would be in the case of a common law offence that section 6 of the 1998 Act might itself require the addition of a "proportionality" ingredient if a court were to be satisfied that proof of the existing ingredients of that E offence is insufficient to achieve compatibility with Convention rights.

73 The question becomes, is it necessary to read a proportionality test into section 68 of the 1994 Act to render it compatible with articles 10 and 11? In our judgment there are several considerations which, taken together, lead to the conclusion that proof of the ingredients set out in section 68 of the 1994 Act ensures that a conviction is proportionate to any article 10 and F 11 rights that may be engaged.

74 First, section 68 has the legitimate aim of protecting property rights in accordance with A1P1. Indeed, interference by an individual with the right to peaceful enjoyment of possessions can give rise to a positive obligation on the part of the state to ensure sufficient protection for such rights in its legal system (*Blumberga v Latvia* (Application No 70930/01) G (unreported) 14 October 2008).

75 Secondly, section 68 goes beyond simply protecting a landowner's right to possession of land. It only applies where a defendant not merely trespasses on the land, but also carries out an additional act with the intention of intimidating someone performing, or about to perform, a lawful activity from carrying on with, or obstructing or disrupting, that activity. Section 68 protects the use of land by a landowner or occupier for lawful H activities.

76 Thirdly, a protest which is carried out for the purposes of disrupting or obstructing the lawful activities of other parties, does not lie at the core of articles 10 and 11, even if carried out on a highway or other publicly accessible land. Furthermore, it is established that serious disruption may

amount to reprehensible conduct, so that articles 10 and 11 are not violated. The intimidation, obstruction or disruption to which section 68 applies is not criminalised unless it also involves a trespass and interference with A1P1. On this ground alone, any reliance upon articles 10 and 11 (assuming they are engaged) must be towards the periphery of those freedoms.

77 Fourthly, 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. There is no basis for supposing that section 68 has had the effect of preventing the effective exercise of freedoms of expression and assembly.

78 Fifthly, one of the aims of section 68 is to help preserve public order and prevent breaches of the peace in circumstances where those objectives are put at risk by trespass linked with intimidation or disruption of lawful activities.

79 Sixthly, the Supreme Court in *Richardson* [2014] AC 635 regarded the private law of trespass as a limitation on the freedom to protest which is "unchallengeably proportionate". In our judgment, the same conclusion applies a fortiori to the criminal offence in section 68 because of the ingredients which must be proven in addition to trespass. The sanction of a fine not exceeding level 4 or a term of imprisonment not exceeding three months is in line with that conclusion.

80 We gain no assistance from para 80 of the judgment in *R (Leigh) v Comr of Police of the Metropolis* [2022] 1 WLR 3141, relied upon by Mr Moloney. The legislation considered in that case was enacted to address public health risks and involved a wide range of substantial restrictions on freedom of assembly. The need for case-specific assessment in that context arose from the nature and extent of those restrictions and is not analogous to a provision dealing with aggravated trespass and a potential risk to public order.

81 It follows, in our judgment, that section 68 of the 1994 Act is not incompatible with articles 10 or 11 of the Convention. Neither the decision of the Supreme Court in *Ziegler* [2022] AC 408 nor section 3 of the 1998 Act requires a new ingredient to be inserted into section 68 which entails the prosecution proving that a conviction would be proportionate in Convention terms. The appeal must be allowed on ground 2.

Ground 3

82 In view of our decision on ground 2, we will give our conclusions on ground 3 briefly.

83 In our judgment the prosecution also succeeds under ground 3.

84 The judge was not given the assistance she might have been with the result that a few important factors were overlooked. She did not address A1P1 and its significance. Articles 10 and 11 were not the only Convention rights involved. A1P1 pulled in the opposite direction to articles 10 and 11. At the heart of A1P1 and section 68 is protection of the owner and occupier of the Land against interference with the right to possession and to make use of that land for lawful activities without disruption or obstruction. Those lawful activities in this case had been authorised by Parliament through the 2017 Act after lengthy consideration of both the merits of the project and objections to it. The legislature has accepted that the HS2 project is in the

national interest. One object of section 68 is to discourage disruption of the kind committed by the defendant, which, according to the will of Parliament, is against the public interest. The defendant (and others who hold similar views) have other methods available to them for protesting against the HS2 project which do not involve committing any offence under section 68, or indeed any offence. The Strasbourg court has often observed that the Convention is concerned with the fair balance of competing rights. The rights enshrined in articles 10 and 11, long recognised by the common law, protect the expression of opinions, the right to persuade and protest and to convey strongly held views. They do not sanction a right to use guerrilla tactics endlessly to delay and increase the cost of an infrastructure project which has been subjected to the most detailed public scrutiny, including in Parliament.

85 The judge accepted arguments advanced by the defendant which, in our respectful view led her into further error. She concluded that there was no inconvenience to the general public or "interference with the rights of anyone other than HS2". She added that the Secretary of State was aware of the presence of the protesters on the Land before he acquired it (in the sense of before completion of the purchase). This last observation does not assist a proportionality assessment; but the immediate lack of physical inconvenience to members of the public overlooks the fact that HS2 is a public project.

86 In addition, we consider that the judge took into account factors which were irrelevant to a proportionality exercise for an offence under section 68 of the 1994 Act in the circumstances of this case. She noted that the defendant did not act violently. But if the defendant had been violent, his protest would not have been peaceful, so that he would not have been entitled to rely upon articles 10 and 11. No proportionality exercise would have been necessary at all.

87 It was also immaterial in this case that the Land formed only a small part of the HS2 project, that the costs incurred by the project came to "only" £195,000 and the delay was $2\frac{1}{2}$ days, whereas the project as a whole will take 20 years and cost billions of pounds. That argument could be repeated endlessly along the route of a major project such as this. It has no regard to the damage to the project and the public interest that would be caused by encouraging protesters to believe that with impunity they can wage a campaign of attrition. Indeed, we would go so far as to suggest that such an interpretation of a Human Rights instrument would bring it into disrespect.

88 In our judgment, the only conclusion which could have been reached on the relevant facts of this case is that the proportionality balance pointed conclusively in favour of a conviction under section 68 of the 1994 Act, (if proportionality were an element of the offence).

Conclusions

89 We summarise certain key conclusions arising from arguments which have been made about the decision in *Ziegler* [2022] AC 408:

(1) *Ziegler* does not lay down any principle that for all offences arising out of "non-violent" protest the prosecution has to prove that a conviction would be proportionate to the defendant's rights under articles 10 and 11 of the Convention;

(2) In *Ziegler* the prosecution had to prove that a conviction would be proportionate to the defendant's rights under articles 10 and 11 because the offence in question was subject to a defence of "lawful excuse". The same would also apply to an offence which is subject to a defence of "reasonable excuse", once a defendant had properly raised the issue. We would add that *Ziegler* made no attempt to establish any benchmark for highway cases about conduct which would be proportionate and conduct which would not. Strasbourg cases such as *Kudrevičius* 62 EHRR 34 and *Barraco* 5 March 2009 are instructive on the correct approach (see para 39 above);

(3) For other offences, whether the prosecution has to prove that a conviction would be proportionate to the defendant's rights under articles 10 and 11 solely depends upon the proper interpretation of the offence in question.

90 The appeal must be allowed. Our answer to both questions in the case stated is "no". The case will be remitted to the magistrates' court with a direction to convict the defendant of the offence charged under section 68(1) of the 1994 Act.

Appeal allowed.
Case remitted to magistrates' court with direction to convict.

JO MOORE, Barrister

Neutral Citation Number: [2023] EWHC 1038 (KB)

Case Nos: QB-2021-003841
and QB-2021-004122

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 May 2023

Before :

THE HONOURABLE MR JUSTICE MORRIS

- -

Between:

TRANSPORT FOR LONDON	**Claimant**
- and -	
(1) PERSONS UNKNOWN	
(2) MR ALEXANDER RODGER AND 137 OTHERS	**Defendants**

- -
- -

Andrew Fraser-Urquhart KC and Charles Forrest (instructed by **TfL**) for the **Claimant**
Barry Mitchell and **David Rinaldi** (Named Defendants 9 and 135) attended.
No attendance by or representation for the other **Defendants**

Hearing dates: 29 and 30 March 2023

- -

Approved Judgment

Mr Justice Morris :

Introduction

1. By this action Transport for London ("the Claimant") seeks a final injunction against 129 of the 138 named defendants ("the Named Defendants") and certain defined persons unknown ("Persons Unknown"). The Defendants, including the Persons Unknown, are supporters of, and activists connected with, "Insulate Britain" ("IB"). This is the final trial of the action.

2. The claims arise from disruptive protests on the highway since September 2021 under the auspices of IB and other affiliated groups. A very large proportion of those protests have involved protesters deliberately blocking roads by sitting down in the road, and often gluing themselves to its surface and/or "locking" themselves to each other to make their removal more time-consuming. The 129 Named Defendants are all alleged to have taken part in one or more IB protests.

3. By the final injunction, the Claimant seeks an order that prevents the blocking, for the purpose of protests, of roads and surrounding areas at 34 identified locations, referred to as the "IB Roads". The IB Roads are a very important part of the TfL Strategic Road Network (the "GLA Roads"). GLA Roads are, broadly speaking, the most important roads in Greater London, carrying a third of London's traffic, despite comprising only 5% of its road network length. The locations fall into two categories: first, bridges or junctions of great importance and their surrounding access roads; and secondly, certain longer protected stretches of road, such as the A4 and the North Circular Road.

4. This case is the latest in a number of similar "protest" cases which have come before this Court and the Court of Appeal. In particular, some of those cases concern protests under the auspices of a related group "Just Stop Oil" ("JSO"). In a number of those cases, written judgments have been handed down, covering issues, both legal and factual, similar to those in this case. In particular I have in mind the judgments of Bennathan J and the Court of Appeal in the case which I refer to as *NHL v IB*, reported at [2022] EWHC 1105 (QB) and [2023] EWCA Civ 182 respectively, and the judgments of Freedman J and Cavanagh J in the case which I refer to as *TfL v JSO*, reported at [2022] EWHC 3102 (KB) and [2023] EWHC 402 (KB) respectively. I also refer to the judgment of Lavender J in another NHL case dated 17 November 2021 [2021] EWHC 3081 (QB). In this judgment, I do not repeat all of the relevant factual and legal background; rather, where uncontroversial or where I agree, I cross-refer to, and adopt, certain passages in those judgments.

Summary conclusion

5. For the reasons set out in this judgment, I am satisfied that the Claimant has established its case and that it is appropriate to grant a final injunction against 129 of the Named Defendants and against Persons Unknown in the terms set out in the orders which I make today.

Brief procedural history

6. The Claimant has brought two actions, commenced, respectively, on 12 October 2021 and 8 November 2021. Interim injunctions in the two actions had already been granted

on an urgent and without notice basis, respectively, by May J on 8 October 2021 and by Jay J on 4 November 2021. At subsequent on notice hearings, these interim injunctions were extended, in some cases in varied form. On 11 October 2022 the interim injunctions which are currently in force were made by Cotter J. On the same occasion the judge ordered an expedited trial. Initially the Claimant intended to apply for summary judgment. However following the judgment of Bennathan J in *NHL v IB*, it decided to proceed instead to a final trial. That decision was made and the direction given before the Court of Appeal, more recently in February this year, granted full summary judgment in *NHL v IB*. In the course of the hearing before me, I indicated that the interim injunctions would remain in place until this judgment is handed down.

7. The final prohibitory injunction is sought against 129 Named Defendants and against Persons Unknown when acting for the purposes of protesting in the name of IB (as defined more specifically in the title to the claim). (The activities of the Named Defendants which are enjoined are not limited to them acting in the name of IB). The final order, as originally sought, was in terms very similar to the interim injunctions currently in force, and included provision both for alternative service and for third party disclosure from the Metropolitan Police. As matters developed at the hearing, the Claimant no longer seeks any order for third party disclosure: see further paragraph 62 below.

8. The Claimant's evidence for this trial comprises witness statements of Mr Abbey Ameen, the Claimant's principal in-house solicitor and Mr Glynn Barton, formerly the Claimant's Director of Network Management and now its Chief Operating Officer, both dated 27 February 2023. Each gave evidence in court verifying the contents of his statement. The former sets out at some considerable length, with extensive exhibits, detailed information about the various protest groups and the array of different proceedings brought by different parties (as set out below). He gave detailed evidence of the IB (and the JSO) protests that have taken place and of their effect, both in the London area and elsewhere, particularly around the M25. He also gave evidence of the service of documents and other steps taken to bring the proceedings to the attention of the Defendants and IB. Mr Barton's statement sets out the justification for the roads selected by the Claimant to be protected by the final injunction sought. He provides evidence as to why the IB Roads are so strategically important and why they should be protected. His evidence is that their strategic importance means that they are more likely to be targeted by IB protesters, whose intention is to cause maximum disruption and thus maximum damage is caused to other users of the highway and the wider public interest.

The Parties

The Claimant

9. The Claimant is a statutory corporation created by the Greater London Authority Act 1999. It is both the highway authority and the traffic authority for the GLA Roads. More detail of the Claimant's statutory functions, powers and duties in relation to the GLA Roads and the provisions under which it brings these proceedings are set out in Freedman J's judgment in *TfL v JSO* at §§8 and 9.

10. The Claimant makes this claim pursuant to its duties under section 130 Highways Act 1980 (power to take legal proceedings as part of performing the duty to assert and

protect the rights of the public to use and enjoy the highway) and on the basis that the conduct of the Defendants in participating in the IB protests constitutes (i) trespass, (ii) private nuisance and/or (iii) public nuisance.

The Named Defendants

11. The claim forms identify, at Annex 1, the 139 Named Defendants, each individually numbered from 1 to 139. The Named Defendants have all participated at IB protests (M25 or IB roads) or JSO protests.

12. Mr Ameen has explained in detail the steps taken to serve the Named Defendants with all relevant court documents in the course of the proceedings, following the making of earlier orders for alternative service. As regards this trial, the Named Defendants were sent, by first class post, the notice of hearing for this trial on 10 January 2023. It was also emailed to IB on 10 January 2023 and was put up on the TfL and Greater London Authority websites. In a further witness statement dated 2 April 2023, Mr Ameen has explained how all the written materials relevant to this trial were sent to the Named Defendants, including the evidence, draft final orders and skeleton argument, on dates between 28 February 2023 and 16 March 2023.

13. No defendant has acknowledged service or filed a defence. Up until the final trial, no defendant had attended any hearing in these claims since 12 November 2021; and no defendant has served any evidence or skeleton argument for this trial. However, at or leading up to this trial, four Named Defendants have made representations.

14. First, Matthew Tulley, Named Defendant 65, in advance of the hearing, offered an undertaking to the Court. In an email to Mr Ameen, he asserted that he has not breached the existing injunctions and that he has no intention of doing so. Secondly, Mr David Rinaldi, Named Defendant 135 both wrote to the Claimant and appeared on the first morning of the hearing. Thirdly, Mr Barry Mitchell, Named Defendant 9, also attended court on the first morning of the hearing. Each of these three Named Defendants has offered an undertaking in terms similar to the terms of the final injunction which I have decided to grant. Accordingly, whilst each remains a party to the claims, the final injunction is not made as against them and their names are now excluded from Annex 1 to the final injunction.

15. A fourth defendant, James Bradbury (Named Defendant 39), following notification on 10 January 2023, wrote to the Claimant on 16 January 2023, claiming that he had not blocked any TfL infrastructure and asking for clarification of the case against him. Following a rather general reply from the Claimant, he wrote again on 10 February 2023 maintaining his position and asking why his name had been added to the injunction. Following that email, the Claimant served all the trial materials on Mr Bradbury at his home address, which sets out the case against him both generally and the specific evidence against him individually. In this regard, and in response to my inquiry since the date of the hearing, Mr Ameen has provided a further witness statement dated 28 April 2023, explaining that the initial trial materials were sent to Mr Bradbury twice, by first class post on 28 February 2023 and by an email from him personally to Mr Bradbury sent on 8 March 2023 (responding in fact to Mr Bradbury's email of 16 January 2023). Mr Bradbury did not reply to that email. On 15 March 2023 further trial materials were sent by post to Mr Bradbury. He has not responded to

any of those materials sent to him. Absent any such response, I am satisfied that the final injunction is properly made against Mr Bradbury.

16. However, in relation to six Named Defendants, the Claimant seeks permission to discontinue the proceedings pursuant to CPR 38.2(2)(a)(i). In the case of five of those Defendants, the Claimant has not been able to effect service of documents upon them, due to the lack of a correct, or any, address for service. In addition, one further Defendant has, unfortunately, since died. I therefore grant permission to the Claimants to file a Notice of Discontinuance pursuant to CPR 38.3(1)(a) in respect of Named Defendants 8, 34, 91, 102, 108 and 112 and an order under CPR 6.28 dispensing with service of the Notice of Discontinuance on these six Named Defendants. I will order that the discontinuance of the proceedings against them will take effect on the date of the order of the Court; their names are thus excluded from Annex 1 to the final injunction. I will also order that these six Named Defendants will be entitled to their costs (if any).

17. In these circumstances, excluding these six Named Defendants and the two Named Defendants who appeared at the hearing, I was satisfied that it was appropriate to proceed to hear the trial in the absence of the remaining 131 Named Defendants, pursuant to CPR 39.3(1).

18. It further follows that the final injunction order is made against 129 Named Defendants as set out in Annex 1 to the order which I will make.

The Factual Background

Insulate Britain

19. Insulate Britain (IB) is an environmental activist group which takes direct protest action in furtherance of two demands: first, that the UK government immediately promises to fully fund and take responsibility for the insulation of all social housing in Britain by 2025; and secondly that the UK government immediately promises to produce within four months a legally binding national plan to fully fund and take responsibility for the full low-energy and low-carbon whole-house retrofit, with no externalised costs, of all homes in Britain by 2030 as part of a just transition to full decarbonisation of all parts of society and the economy. IB says doing so will provide warmer homes and contribute to reducing the UK's carbon emissions.

20. The Named Defendants are those who have been engaging in deliberately highly disruptive protests under the banner "Insulate Britain". All protests are peaceful. IB has repeatedly made un-retracted statements that its protests will continue until his demands are met.

Other groups: Extinction Rebellion and Just Stop Oil

21. There are two other similar groups: Extinction Rebellion and Just Stop Oil (JSO). Extinction Rebellion describes itself as an international movement that uses non-violent civil disobedience in an attempt to halt mass extinction and minimise the risk of social collapse through, inter alia, reducing greenhouse gas emissions to net zero by 2025. Extinction Rebellion has engaged in deliberately disruptive protests on, inter alia, public highways. However on 31 December 2022 it announced that it would

temporarily cease disruptive protests. IB was founded by six members of Extinction Rebellion.

22. JSO is a group, formed in December 2021, which has been demanding that the government halt all future licensing consents for the exploration, development and production of fossil fuels in the United Kingdom. There is an intersection between the groups Insulate Britain, JSO and Extinction Rebellion. In February 2022 IB joined the JSO coalition, although IB and JSO are not in formal coalition with each other. JSO has also repeatedly said that it will continue its deliberately disruptive protests until its demands are met. More detail about JSO is set out at §§19 to 21, and 23 to 26 of Freedman J's judgment in *TfL v JSO*.

23. Since September 2021, the courts have granted a number of other injunctions, similar in form to the interim injunctions granted in this case, against members and supporters of those organisations. These were obtained at the behest of other bodies, including National Highways Limited ("NHL") and HS2 Ltd. Many of the same named defendants appear in a number of the cases.

IB protests

24. Mr Ameen refers to a substantial number of IB protests. IB protests started in about September 2021. The last protest on the road solely under the IB banner was on 4 November 2021. Individual acts of IB protest took place up until April 2022. The last IB protest on the roads, as part of the JSO coalition, but retaining the IB identity took place on 12 October 2022. Mr Ameen's evidence is that the interim injunctions had been effective in reducing and/or pausing IB protests.

25. Despite this, in early 2023 IB made a public statement that it would continue with its protests, and despite the announcement from Extinction Rebellion. An article in The Guardian dated January 2023 reported as follows:

> *Insulate Britain and Just Stop Oil have doubled down on their commitment to disruptive climate "civil resistance" after Extinction Rebellion announced new tactics prioritising "relationships over roadblocks".*
>
> *Insulate Britain said its supporters remained prepared to go to prison. "Insulate Britain supporters remain committed to civil resistance as the only appropriate and effective response to the reality of our situation in 2023," its statement said.*
>
> *"In the UK right now, nurses, ambulance drivers and railway workers are on strike because they understand that public disruption is vital to demand changes that governments are not willing or are too scared to address."*

26. As of 30 March 2022, 174 people had been arrested, 857 times, during IB protests on public highways. Mr Ameen's evidence is that the IB and JSO protests have been very dangerous and disruptive, creating an immediate threat to life, putting at risk the lives of those protesting, those driving on the roads and those policing the protests. At times, the protests have also caused a risk of violence between protesters and ordinary users

of the highways; in some cases force has been used to remove protesters from the highway. He gives examples of particular such incidents.

JSO protests: April 2022 onwards

27. JSO protests started in March or April 2022. These protests have, until recently, largely involved protesters blocking highways with their physical presence, normally either by sitting down or gluing themselves to the road surface. There were protests daily by JSO between 1 October and 31 October 2022. During that period, there were, on a daily basis, large scale protests at key areas of largely the central London road system. On many occasions, JSO have been reported as saying that they will not cease their protests until their demands are met and that they will not be discouraged from doing so by injunctions from the court. The protests on roads in London have continued, even after interim injunctions were made and served. More detail of these JSO protests is set out at §§27 and 28 of Freedman J's judgment in *TfL v JSO*. Since November 2022 there have been further JSO protests, including a new tactic of "slow marches", as explained by §13 of Cavanagh J's judgment.

Other proceedings

The Claimant and GLA Roads: proceedings in relation to JSO

28. In addition to the current proceedings, in October 2022 the Claimant commenced proceedings in respect of JSO protests, *TfL v JSO*, and was granted an urgent without notice interim injunction against certain named defendants and persons unknown in connection with protests which involved JSO protesters sitting down in and blocking GLA Roads. This injunction was continued, on notice, on 31 October 2022 by Freedman J and again by Cavanagh J on 24 February 2023, who at the same time directed an expedited final trial and made an order under CPR 31.22. These are the judgments referred to at paragraph 4 above.

29. There is a large overlap between the defendants named in the *TfL v JSO* injunctions and the Defendants in this case. Of the 138 Named Defendants in this case, 65 are also named defendants in the *TfL v JSO* claim. As regards those 65 individuals the injunctions sought in this case and those granted (and now applied for) in *TfL v JSO* have precisely the same effect, since, in their case, the prohibition is not limited by reference to the banner under which any protest might take place. It follows that the final injunction against the Named Defendants in this case will also cover their participation in any future JSO protests on the IB Roads.

National Highways Limited and the M25 (SRN): IB and JSO

30. NHL has also obtained injunctions in respect of major parts of The Strategic Road Network, namely the M25 and feeder roads on to the M25. NHL initially obtained interim injunctions, and has now obtained a final anticipatory injunction against IB protesters – in part from Bennathan J on 9 May 2022 and then more extensively from the Court of Appeal recently on 14 March 2023. The judgments in this case are referred to in paragraph 4 above. Since autumn of 2022, NHL also has an ongoing claim against

JSO protesters protecting structures on the M25 such as overhead gantries. On 21 November 2022 Soole J granted an interim injunction in respect of such JSO protests.

The Issues

31. I consider the position of the Named Defendants and Persons Unknown in turn. The issues that fall for consideration are as follows

(1) *The Named Defendants:* whether the Court should grant a final injunction in the terms sought against the remaining Named Defendants. This involves consideration, in particular, of the following:

- the Claimant's underlying causes of action, in general;

- the conditions for the grant of a final anticipatory prohibitory final injunction, in general;

- the position under Articles 10 and 11 European Convention of Human Rights ("ECHR").

(2) *Persons Unknown:* whether the Court should grant a final injunction in the terms sought against Persons Unknown. This involves, additionally, consideration of the provision for alternative service and briefly, the now withdrawn application for a third party disclosure order. The three orders (as originally sought) - an injunction against Persons Unknown, an order for alternative service and a third party disclosure order – are closely interrelated. In general and in practice, to date, the Claimant (and others) have sought and obtained injunctions against persons unknown and at the same time obtained a direction for alternative service and third party disclosure orders against the police in order to identify persons hitherto unknown who had taken part in protests. Once the identity of those protesters was then disclosed, the Claimant was then able to serve the protesters with the relevant court documents, through the provision for alternative service.

(1) The grant of a final injunction against the Named Defendants

The relevant legal principles

The causes of action

32. In the present case, the Claimant's case is that its rights are or will be infringed by the Defendants committing one or more of the torts of trespass, public nuisance and private nuisance. The relevant principles applicable to each of these torts, particularly in the context of protests on the highway, are set out by Bennathan J in *NHL v IB* at §§28 to 31. See also *High Speed Two (HS2) Ltd v Persons Unknown* [2022] EWHC 2360 (KB) ("*HS2*") at §§74, 77-79, 84-90.

33. Trespass to land is the commission of an intentional act which results in the immediate and direct entry onto land in the possession of another without justification. If land is subject to a public right of way or similar, a person who unlawfully uses the land for any purpose other than that of exercising the right to which it is subject is a trespasser. However the public have a right of reasonable use of the highway which may include

protest. A protest involving obstructing the highway may be lawful by reason of Articles 10 and11 ECHR.

34. Private nuisance is any continuous activity or state of affairs causing a substantial and unreasonably interference with a claimant's land or his use or enjoyment of that land. In the case of an easement, such as a right of way, there must be a substantial interference with the enjoyment of it.

35. A public nuisance is one which inflicts damage, injury, or inconvenience on all the King's subjects or on all members of a class who come within the sphere or neighbourhood of its operation (*HS2* at §84). The position in relation to an obstruction of the highway for the purposes of public nuisance is stated in *Halsbury's Laws* Vol 55 (2019) at §354: (a) a nuisance with reference to a highway has been defined as 'any wrongful act or omission upon or near a highway, whereby the public are prevented from freely, safely and conveniently passing along it'; (b) whether an obstruction amounts to a nuisance is a question of fact; (c) an obstruction is caused where the highway is rendered impassable or more difficult to pass along by reason of some physical obstacle; but an obstruction may be so inappreciable or so temporary as not to amount to a nuisance; (d) generally, it is a nuisance to interfere with any part of the highway; and (e) it is not a 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.

The requirements for a final anticipatory injunction

36. The Claimant seeks a final anticipatory (also referred to as a precautionary or *quia timet*) prohibitory injunction against the Named Defendants. To grant such an order the Court must be satisfied that (1) there is a strong probability that that the defendants will imminently act to infringe the claimant's rights and (2) the ensuing harm would be so grave and irreparable that damages would be an inadequate remedy: see *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch) at §31(3)-(4). There is no requirement for the Claimant to prove that its rights have already been infringed; but only that there is a real and imminent risk that they will be infringed: *NHL v IB* (CA) at §§37-39 and 19. The question here therefore is whether there is a real and imminent risk that one or more of the three torts will be committed by the Defendants.

Articles 10 and 11 ECHR

37. A protest which obstructs the highway may be lawful by reason of Articles 10 and 11 ECHR. (Articles 10 and 11 ECHR are set out at §34 of Freedman J's judgment in *TfL v JSO*). If so, this provides a defence to the alleged torts of trespass (and private and public nuisance). The relevant principles are derived from *DPP v Ziegler* [2021] UKSC 23 approving *City of London Corp v Samede* [2012] EWCA Civ 160 at §§38-44. In summary, the issues which arise under Articles 10 and 11 require consideration of the following five questions:

    (1) Is what the defendant did in exercise of one of the rights in Articles 10 or 11?

    (2) If so, is there an interference by a public authority with that right?

    (3) If there is an interference, is it prescribed by law?

(4) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Article 10 or Article 11?

(5) If so, is the interference 'necessary in a democratic society' so that a fair balance was struck between the legitimate aim and the requirements of freedom of expression and freedom of assembly?

38. Question (5) is the requirement of "proportionality" – a fact-specific inquiry which requires evaluation of the circumstances in the individual case. Question (5) in turn requires consideration of four sub-questions as follows:

(1) Is the aim sufficiently important to justify interference with a fundamental right?

(2) Is there a rational connection between the means chosen and the aim in view?

(3) Are there less restrictive/intrusive alternative means available to achieve that aim?

(4) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

As regards sub-question (4), a non-exhaustive list of relevant factors is set out in *DPP v Ziegler* at §§59, 61, 70-78, 81-86 and 116.

Application to the facts of this case

39. I turn to apply these legal principles to the facts of this case.

The causes of action: the torts

40. On the evidence before me I am satisfied that, subject to the considerations arising under Articles 10 and 11 ECHR, the conduct, both in the past and threatened in the future, of the Defendants in protesting on the IB Roads by deliberately blocking and obstructing those roads, prima facie constitutes the torts of trespass, private nuisance and public nuisance. As to trespass, the protesters directly enter on to land in the possession of the Claimant and use the land for a purpose other than exercising a public right of way; whether they are justifiably exercising a right to protest turns upon the application of Articles 10 and 11. Secondly, as to private nuisance the protests causes a substantial and unreasonable interference with the enjoyment and exercise of the rights of way of other road users. Thirdly, as to public nuisance, as a result of the protests, the public are prevented from freely, safely and conveniently passing along the IB Roads (the highway); the protests deliberately cause a physical obstacle on the IB Roads rendering them impassable or more difficult to pass along. I consider in paragraphs 44 and 45 below, whether, nevertheless, the protests are lawful under Articles 10 and 11.

Requirements for grant of final anticipatory injunction

41. First, I am satisfied that, on the facts here, that there is a real and imminent risk of further protests (on the part of the Defendants) and that, subject to the Article 10 and 11 issues, those protests will infringe the Claimant's rights. The evidence of Mr Ameen demonstrates that the Named Defendants have repeatedly, deliberately and over a long

period carried out those protests in order to cause the maximum disruption to the Claimants and the public. IB has repeatedly stated that they will continue to protest and that they will not be discouraged by injunctions. Further the fact that, apart from those Defendants referred to in paragraphs 14 and 15 above, none of the Named Defendants has sought to engage with the proceedings suggests that there is no arguable defence to the Claimant's claim including its claim for a final anticipatory injunction; see *NHL v IB* (CA) at §§40 and 41. The final injunction sought *in relation to the Named Defendants* is not limited to protesting under the IB banner; it applies to them individually protesting under whatever banner they choose.

42. I have considered whether the fact that the last protest solely under the IB banner took place in November 2021 (and last joint protest in October 2022) affects my assessment of whether there is a real and imminent risk of further future IB protests on the IB Roads, such that an anticipatory injunction is not justified. I have concluded that nevertheless there is such a real and imminent risk. First, IB itself (and expressly in contrast to the position of Extinction Rebellion) continues to state that it will continue its protests and has so stated recently (see paragraph 25 above). Secondly, I accept that the level of IB protests since November 2021 is likely to have been affected by a combination of the effect of the interim injunctions granted in this case and colder weather in the winter months. It follows that in the summer months the prospect of protest activity is likely to increase. Moreover if no final injunction were to be granted, then the chilling effect of the court injunctions to date would be removed, increasing the risk of the resumption of protests. Thirdly, if no final injunction were to be granted in respect of protests under the IB banner, then, it might well be that the recent switch from protests under the IB banner to protests under the JSO banner would be reversed, not least because of the more recent imposition of interim injunctions in the *TfL v JSO* case. (I note that in *NHL v IB* both Bennathan J and CA granted injunctions "against IB", despite the fact that, by that time, the transition from IB to JSO had occurred). Finally, in the case of the Named Defendants, since the final injunction will apply to them, regardless of the banner under which they protest, I take account of the fact that JSO protests have been continuing and of JSO's recent statements of intent. This is particularly relevant in the case of the 65 Named Defendants who are also defendants in the *TfL v JSO* case.

43. Secondly, I am satisfied and find that the ensuing harm from further protests at IB Roads will be grave and irreparable. As demonstrated by the evidence relating to past protests, the deliberate blocking of roads so that vehicles of all types cannot pass would cause serious disruption to many people, risk to life and of violence, economic harm, nuisance and the diversion of public resources. Damages would be an inadequate remedy for such harm, in the light of the matters to which I have referred; first, because much of it will be unquantifiable; secondly because the Claimant could not recover for losses sustained by others; and thirdly, the Defendants would be unlikely to be able to pay such damages as might be quantifiable.

Articles 10 and 11 ECHR

44. In the present case the answers to the first four questions set out in paragraph 37 above are as follows:

    (1) By participating in IB protests on the public highway, the Defendants have been, and will be, exercising their rights to freedom of expression and freedom of

assembly in Articles 10 and 11 ECHR respectively: see Lavender J at §31(1) and Freedman J in *TfL v JSO* at §39.

(2) The grant of a final injunction would be an interference with those Article 10 and 11 rights.

(3) Any such interference is prescribed by law i.e. by the power contained in section 37 Senior Courts Act 1981, the case law which govern the exercise of that power and the Claimant's duties as a highway and traffic authority under section 130 Highways Act 1980: see Lavender J at §31(3) and *HS2* at §200.

(4) The interference is in pursuit of a legitimate aim, namely the protection of the rights and freedoms of others, such as other lawful highway users (under Article 11(2)) and in the interests of public safety and the prevention of disorder on the IB roads (under Articles 10(2) and 11(2)).

45. Turning then to question (5) - whether the interference is "necessary in a democratic society" - and each of the four sub-questions in paragraph 38 above, I find as follows:

(1) The aims of preventing the obstruction of the public using the important IB roads and preventing the violence and danger which occur when this is jeopardised are sufficiently important to justify the interference with the Defendants' rights. The evidence is that the IB protests have caused considerable disruption and a risk to safety (see paragraph 26 above).

(2) There is a rational connection between the means chosen (final injunctive relief) and the aim in view. The aim is to allow road users to exercise their right to use the road system and final injunctive relief would prohibit the deliberate obstruction of the IB Roads by protesters which prevents or hinders the exercise of that right. The grant of interim injunctions in this case and in other cases has been successful to date in reducing such deliberately obstructive protests on the highways: see paragraph 24 above.

(3) There are no less restrictive or alternative means to achieve these aims than a final injunction in the form sought. Damages would not prevent any further protests, for the reasons given in paragraph 43 above. Prosecutions for offences involved in protests can only be brought after the event and in any case are not a sufficient deterrent because IB (and JSO) protesters have said they protest in full knowledge of and regardless of this risk and many have returned to the roads multiple times having been arrested, bailed, prosecuted, and convicted. Other traditional security methods such as guarding or fencing of IB Roads are wholly impractical for resource and logistical reasons. Recent changes to the law in the form of the Policing, Crime, Sentencing and Courts Act 2022, which came into force in May and June 2022, have not changed the approach of protesters.

(4) Finally, as to sub-question (4) I find that making a final injunction strikes "a fair balance between the rights of the individual and the general interest of the community, including the rights of others". Applying the factors enumerated in *Ziegler*, the factors favouring the grant of the final injunction include the ten points referred to by Freedman J in *NHL v JSO* at §§43 to 51. Whilst in that case his findings were directed towards JSO protests, I am satisfied that they apply

with equal force to past and future IB protests. As regards the fourth point made by Freedman J (intention to block the highway), in the present cases, the locations of the IB protests have varied widely across London and have been chosen with a view to causing maximum disruption. Further a final injunction relating to the IB Roads does not prevent the Defendants from continuing to express their views at another location or near to the IB Roads provided they do not breach the terms of the injunction. In addition a failure to make a final injunction would encourage the continuation of IB's protests on the IB Roads which are liable to be targeted because of their strategic importance and the damage and disruption which would necessarily entail. IB has repeatedly and recently stated that it will continue to protest until its demands are met. On the other side of the balance, I have taken into account, to the appropriate degree, the sincerity of the protesters' views on what is an important matter of public interest, the nature of their message and objectives and the potential availability of alternative routes or modes of transport around the protest. As to the protesters' views, I refer to the observations of Lord Neuberger MR in *Samede* at §41. It is not appropriate for the Court to express agreement or disagreement with those views. Overall, and having myself considered all matters relevant to the balance under sub-question (4), in reaching this conclusion on the "fair balance", I have taken into account and endorse the final balance of points made by Freedman J at §61

46. In these circumstances I am satisfied that it is just and convenient for a final injunction to be made against the Named Defendants.

(2) The position of Persons Unknown, Alternative Service and Third Party Disclosure

47. I turn to consider whether the final injunction should also be granted against "persons unknown". On the present case, the "persons unknown" are identified specifically through an express link to Insulate Britain. The final injunction applies only to a "person unknown" who is protesting "on behalf of, in association with, under the instruction or direction of, or using the name of, Insulate Britain". (The position of Named Defendants is different in this regard: see paragraph 41 above). As explained in paragraph 31(2) above, this issue and the issues of alternative service (and third party disclosure) are interrelated to some extent.

An order against Persons Unknown in principle

The relevant legal principles

Barking and Dagenham LBC v Persons Unknown

48. In principle, "persons unknown" include both anonymous defendants who are identifiable at the time the proceedings commence, but whose names are unknown and also what have been referred to as "newcomers", that is to say people who at the relevant time of the issue of proceedings and at the time of the grant of the injunction are unknown and unidentified, but who in the future will join the protest and as a result with then fall within the description of the "persons unknown".

49. As regards the making of a final injunctive order against "newcomer" persons unknown, the relevant principles are contained in the decision of the Court of Appeal in *Barking and Dagenham London Borough Council v Persons Unknown* [2022]

EWCA Civ 13 [2022] 2 WLR 946 ("*Barking and Dagenham*") at §§75,77, 79-89, 91, 107-108, 117. The principles can be summarised as follows:

(1) The court has power to grant a final injunction that binds individuals who are not parties to the proceedings at that time, including against persons who at the time of the grant of the injunction are unidentified and unknown (i.e. "newcomers").

(2) A person unknown (newcomer) who subsequently *knowingly* acts in breach of the terms of the injunction thereby makes himself a party to the proceedings and is bound by the injunction. It is the act of infringing the order (with knowledge of the order) that makes the infringer a party. There is no need to serve formally that person with the proceedings in order for him or her to become a party to the proceedings and be bound by the injunction.

(3) Even after a final injunction is granted the court retains the right to supervise and enforce it; the proceedings are not at an end until the injunction is discharged.

(4) Where a newcomer breaches the injunction and thereby makes himself a new party to the proceedings, he can apply to set aside the injunction.

(5) Persons unknown must be described with sufficiently clarity to enable persons unknown to be served with proceedings.

(6) These principles apply to the tortious actions of protesters (as well as to persons unknown in other types of case, such as those setting up unauthorised encampments).

(7) All persons unknown injunctions, including final injunctions ought normally to have a fixed end point for review and it is good practice to provide for a periodic review.

An appeal to the Supreme Court in *Barking and Dagenham* was heard in February this year and judgment is now awaited. Nevertheless the foregoing represents the current state of the law: see *NHL v IB* (CA*)* at §42.

The Canada Goose guidelines

50. In the earlier case of *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303 at §82, the Court of Appeal set out seven guidelines for the grant of *interim* injunctions against persons unknown. These are set out at §84 of Freedman J's judgment in *TfL v JSO* and were applied to the facts in that case at §§85 to 91. Subject to necessary modifications and in so far as applicable, it appears that these guidelines apply also to the grant of a *final* injunction against persons unknown: see *Barking and Dagenham* at §89. I am satisfied that each of the seven guidelines are met in this case. Whilst he was considering *interim* relief in respect of *JSO* protests, in my judgment the analysis and reasoning of Freedman J at §§85 to 91 applies with equal force to persons unknown protesting under the IB banner. Taking each in turn:

(1) At the beginning of and during the course of these proceedings, identified defendants have been joined as Named Defendants and have been served with the Claim and subsequent documentation. As regards the future, the provisions for

the alternative service (see section on this below) ensure fairness for any newcomers who will, under the final injunction, have liberty to apply to the Court to vary or discharge the final injunction against him/her specifically or everyone.

(2) The identification of "Persons Unknown" is clear, precise and targets their conduct, and derives further clarity from the fact that the conduct in question has been ongoing for many months and is threatened to continue. The identification of Persons Unknown through the express link with IB provides further clarity and precision and limits the scope of Persons Unknown.

(3) In so far as this applies also to *final* anticipatory relief, there is a sufficiently real and imminent risk of a tort being committed: see paragraphs 41 and 42 above.

(4) The final injunction identifies the Named Defendants individually and, as regards persons unknown, the final injunction contains provisions for alternative service, which will enable them to be served with the order.

(5) The concern that the prohibited acts must correspond to the threatened tort is not acute in the present case; in both trespass and nuisance, defining the unlawful conduct is straightforward. It involves the deliberate interference with the free passage of the public along the highway by land for the purposes of protesting.

(6) The prohibited conduct and the description of persons unknown uses non-technical language without reference to any cause of action and is clear in its scope and application and capable of being understood by a defendant. Its reliance on personal intention (i.e. "deliberate" actions for "the purpose of protesting") can be proven without undue complexity and it is necessary to prevent capturing what may otherwise be lawful ordinary highway use, by Named Defendants or anyone else.

(7) The final injunction has a clear geographical limit, being restricted to the IB Roads which are select in number, of high strategic importance, and which are therefore also liable to be targeted by IB. The temporal limit is less acute in relation to final injunctions, but here it is satisfied by the time limit, review and liberty to apply provisions referred to in paragraph 52 below.

51. For these reasons I am satisfied that it is just and convenient to grant the final injunction against the Persons Unknown.

Time limit and review

52. In order to protect the public and the Claimant's rights, and given the extent and nature of the Defendants' disruptive protests and IB repeated statements that they will not stop protesting until their demands are met, the final injunction will last for a period of 5 years. In addition provision is made for a yearly review by the Court for supervisory purposes. A review provision was included in the final injunctions made by Bennathan J and the Court of Appeal in *NHL v IB*. This will also enable the Court to consider the implications, if any, of the Supreme Court judgment in the *Barking and Dagenham* case. In any event, the final injunction will provide for liberty for any Defendant (Named or Person Unknown) to apply to vary or discharge the injunction at any time.

Alternative service (and third party disclosure)

53. The Claimant seeks an order for alternative service, similar to that contained in the existing interim injunctions (and in many other NHL and TfL cases). It also sought an order for third party disclosure, again similar to that contained in the interim injunctions. In the course of the hearing, it withdrew that application for reasons I explain below.

54. The alternative service to be permitted is service of all documents by email to IB itself coupled with individual posting through the letterbox, or affixing to the front door, a package, with a notice in prominent writing. In principle, the underlying purpose of the provision for alternative service is to provide a method of ensuring that those who might breach its terms are made aware of the order's existence: see *NHL v IB* (Bennathan J) at §50 and *TfL v JSO* (Cavanagh J) at §32. I am satisfied that, for the reasons set out in Mr Ameen's witness statement and by Cavanagh J at §32, it is appropriate to permit alternative service in the terms proposed in the draft final injunction

55. In my judgment, there might appear to be a tension between the rationale for the provision for alternative service and the analysis in *Barking and Dagenham* in relation to persons unknown. On the one hand, it is said that alternative service is required so as to make a person aware of the proceedings and the injunction; on the other hand, *Barking and Dagenham* establishes that merely knowingly acting in breach of the injunction is sufficient to render a person party to the proceedings and automatically in breach and that formal service itself is not necessary.

56. I note that in the orders made in *NHL v IB* by both Bennathan J and the Court of Appeal there was express provision that persons who had not been served would not be bound by the terms of the injunction (and the fact that the order had been sent to the relevant organisation's website or otherwise publicised did not constitute service). Bennathan J explained at §52 that the effect of that provision was that anyone arrested at a protest could be served and risked imprisonment if they *thereafter* breached the terms of the injunction. The making of such a provision however seems to me to be inconsistent with the decision in *Barking and Dagenham* that merely *knowingly* acting in breach of the injunction is sufficient to render a person party to the proceedings and that service is not required to make such a person bound or in breach. This was picked up by Cavanagh J in *TfL v JSO* at §52 where he pointed out that (1) given the wide media coverage and publicity, it was "vanishingly unlikely" that anyone minded to take part in a protest was unaware that injunctions had been granted by the courts; (2) as a result it was not necessary to include an order in the terms made by Bennathan J; and (3) he noted TfL's stated intention of not commencing committal proceedings against a person unknown unless that person had previously been arrested and then served with the order.

57. In the present case Mr Fraser-Urquhart KC has indicated that the Claimant will continue to adopt this "two strike" practice: it would not seek to commit a person unknown who attends a prohibited protest (even with knowledge of the injunction) first time round, but would only do so if that person is then served with the injunction and attends a second prohibited protest. By that time, such a person would no longer be a Person Unknown.

58. In the light of this indication, I then questioned the purpose of the inclusion of Persons Unknown in the final injunction. Mr Fraser-Urquhart accepted that the Claimant's intended practice could be seen to dilute the deterrent effect of the Persons Unknown element of the final injunction. He nevertheless submitted that its inclusion would increase the preventative effectiveness of the final injunction by way of wider publicity; and further that an injunction limited only to Named Defendants would substantially weaken that wider deterrent effect. I accept these contentions. There is a distinction between, on the one hand, the making a final injunction against a newcomer and, on the other, the consequences of such a final injunction – i.e. whether a person unknown becomes a party and is subject to, and in breach of, the injunction, which depends on knowingly acting contrary to the terms of the final injunction. *Barking and Dagenham* is not authority for the proposition that the court can only grant a final injunction against a newcomer person unknown where the Court can be sure that the person unknown acting in breach of its terms in the future will know that he is acting in breach.

59. As a result, I do not consider that the Claimant's intended practice undermines the appropriateness of including Persons Unknown in the final injunction nor of making orders for alternative service.

60. One final point in this regard: since mere knowledge of the injunction on the part of a person unknown is sufficient to render him potentially bound by its terms, and in order to increase the preventative purpose of the injunction, I took the view that the Claimant should bolster the steps it takes to publicise more widely the making of the final injunction. As a result the Claimant has now included at paragraph 7b of the draft final injunction additional provisions: to email a copy of the order not only to IB, but also to JSO, and other environmental protest groups; to post on the Claimant's twitter feed; to notify the Press Association and to place a notice in the London Gazette. In this way the likelihood of someone minded to take part in protests being unaware of the Court's order will be further diminished.

Third party disclosure order

61. To date, in many cases, claimants have sought and obtained an order for third party disclosure under CPR 31.17 directing the police to disclose to the claimant details of those who have been arrested at protests. Such orders were made in the interim injunctions in the present case, providing, first, for disclosure of the name and address of any person arrested at an IB protest on the IB Roads and, secondly, for all arrest notes and footage relating to any breach or potential breach of the injunction or any predecessor injunctions. (The former provision concerned persons unknown and the latter was directed to support possible contempt proceedings against Named Defendants). Moreover, and significantly, those injunctions provided for those disclosure duties to be "continuing" duties, for as long as the injunction remained in force. Similar orders have been made in the *NHL v IB* and *TfL v JSO* cases.

62. In the present case, the Claimant sought the inclusion in the final injunction of a third party disclosure order in the same terms. In advance of the hearing, I raised with the Claimant questions in relation to this issue, and in particular as to the Court's jurisdiction to make an order in the terms sought (under CPR 31.17, s.34 Senior Court Act 1981 or otherwise), including whether there is power to order disclosure of documents/information which are/is not yet in existence, but which may only come into existence in the future (and if so, whether it should) – in other words, in relation to

protests which have not yet happened. Subsequently, in the course of argument, Mr Fraser-Urquhart informed the Court that the Claimant did not pursue the application for third party disclosure order. It did not require any information about protests which had already taken place. He indicated that the Claimant might come back to the Court and seek a disclosure order in the event that a further protest had occurred. I say no more about this issue, save to say that in my judgment, if it arises for consideration again, the Court would greatly be assisted by detailed submissions for and against the making of such an order.

Conclusion

63. In the light of my conclusions at paragraphs 46, 51 and 54 above, there will be judgment for the Claimant for a final injunction in the terms of the draft order submitted.

Neutral Citation Number: [2023] EWHC 1201 (KB)

Case No: KB-2022-003542

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday, 26th May 2023

Before :

MR JUSTICE EYRE

- -

Between :

TRANSPORT FOR LONDON	**Claimant**
- and -	
(1) PERSONS UNKNOWN	**Defendant**
(2) MS ALYSON LEE AND 167 OTHERS	

- -
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Andrew Fraser-Urquhart KC and Charles Forrest (instructed by **TfL**) for the **Claimant**
Benjamin Buse, Carole Caldwell, Joanna Blackman, Mair Bain, Anthony Harvey, James Green, Benjamin Larson, Matthew Parry and Rachel Payne (Named Defendants 8, 63, 65, 74, 102, 110, 140, 143, and 145) attended.
No attendance by or representation for the **other Defendants**

Hearing date: 4th May 2023

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Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00am on Friday 26th May 2023.

Mr Justice Eyre :

Introduction.

1. The Claimant is the highway authority and traffic authority for the GLA Roads. Those are roads in the Greater London area which were formerly trunk roads. Although the GLA Roads comprise only 5% of the length of London's road network they carry approximately one-third of the traffic in the Greater London area.

2. This judgment follows the trial of the Claimant's claim for a final injunction against 168 named defendants ("the Named Defendants") together with persons unknown. As will be seen below the Claimant no longer seeks an injunction against most of the Named Defendants. The Claimant seeks an injunction preventing certain forms of disruptive protest on a number of the GLA Roads against the remainder of the Named Defendants and against persons unknown. The claim is brought in response to actions taken as a part of the campaigning activity of Just Stop Oil ("JSO").

3. The background to these proceedings is set out in detail in the judgments of Freedman and Cavanagh JJ at [2022] EWHC 3102 (KB) and [2023] EWHC 402 (KB) respectively given when granting the Claimant interim injunctions in this matter. The general history of related protest activity undertaken as part of campaigns by Insulate Britain and Extinction Rebellion is summarised by Morris J in his judgment in *Transport for London v Persons Unknown & others* [2023] EWHC 1038 (KB) ("*Insulate Britain")*. I adopt the analysis of the history set out in those judgments and need only give the shortest of summaries here. After the trial of this matter Cotter J handed down his judgment in *National Highways Ltd v Persons Unknown & others* [2023] EWHC 1073 (KB) which primarily addressed matters arising out the activities of the Insulate Britain campaign but which also referred to aspects of the JSO campaign.

4. JSO is a campaigning group. Its particular demand is that the government should halt all licensing consents for the exploration, development, and production of fossil fuels in the United Kingdom. However, it lends its name to a wider coalition of campaigning groups with related aims and overlapping bodies of supporters. Those groups include Insulate Britain and Extinction Rebellion. Their campaigns arise out of environmental concerns and in particular out of beliefs as to the action needed to address the effects of climate change and/or to prevent further harmful effects from the use of fossil fuels. The failure of the government to take the measures or at the speed which the members and supporters of these groups regard as adequate caused a number of those persons to engage in protests.

5. The protest action with which I am concerned has taken the form of the blocking of roads. It has involved those protesting taking various steps to hinder their removal from the roads in question; to extend the duration of the road blockage; and to heighten the effect of those blockages. The methods used have included the linking together of those engaged in obstructing the highway; the affixing of persons or objects to the highway or to structures on the highway; and the damaging of such structures (examples have included the covering of signs). Latterly the protests have taken the form of slow marching namely walking slowly in a body on a road so as markedly to reduce the speed and flow of traffic along the road. Those actions have had and have been intended to have a significant disruptive effect on the use of the roads in question by other road users. That disruptive effect has not been limited to the roads actually obstructed nor to

the immediate vicinity of the obstruction as Freedman, Cavanagh, and Morris JJ have explained. Those speaking for JSO and individual members of the campaign have asserted their intention to continue with such protests until their objectives are achieved. The peak of the activity was in October 2022 when for a period roads were being obstructed daily in London though there was also a high level of such activity in November and December 2022. There has been some reduction in this disruptive activity since then. The Claimant says that this reduction is not the result of any change of belief or of approach on the part of those engaging in these campaigns but that it has been caused by a combination of the harsher weather during the winter months and of the interim injunctions which have been granted in this matter (together with other court orders in related proceedings).

6. The judgments of Freedman and Cavanagh JJ set out the history to February 2023. As disclosed by the updating evidence from the Claimant the activities of the JSO campaign since then have been largely confined to instances of slow marching on various roads. However, it is of note that those speaking for JSO have said that the group has been engaged in a campaign of civil disobedience since 24th April 2023 and that there appears to have been an increase in the instances of slow marching since then. There has been no renunciation by JSO or those speaking on its behalf of the previous forms of disruption. It is also to be noted that there have been repeated assertions by those speaking for JSO that the campaign of disruption will continue until the group's objectives have been achieved.

The Procedural History.

7. The claim form was issued on 20th October 2022.

8. On 18th October 2022 by an order sealed on 19th October 2022 Yip J granted an interim injunction. The injunction was with some modifications extended until the disposal of this matter by orders made by Freedman and Cavanagh JJ on 4th November 2022 and 27th February 2023 respectively. Those judges also gave various directions for the further conduct of the case.

9. There was some addition of further named defendants in the course of the proceedings. By the time of the trial before me there were 168 Named Defendants. However, the Claimant no longer sought relief in respect of two of those. They were Arne Springorum and Xavier Gonzalez Trimmer (Named Defendants 5 and 48 respectively): the former had not been served and the latter had sadly died in the course of the proceedings.

10. Nine of the Named Defendants attended the hearing. At the hearing eight of these gave undertakings in terms mirroring the injunction sought by the Claimant and the ninth, Joanna Blackman (Named Defendant 65) provided a signed form of undertaking subsequently. In light of that the Claimant no longer sought injunctive relief against those defendants.

11. With the exception of Joanna Blackman those Named Defendants who attended the hearing had sent written submissions to the court or to the Claimant. In the case of Anthony Harvey (Named Defendant 102) I was told that the submission had been approved by and was being made on behalf the other Named Defendants who attended the hearing (with the exception of Joanna Blackman) and further forty-two Named Defendants**.** I gave those Named Defendants who attended the hearing an opportunity

to address the court. A number of them did so while others chose to confirm that they stood by the contents of their written submissions. Those written and oral submissions explained the conduct and motivation of their makers and commented on the actions of JSO more generally. In addition they raised matters relevant to the assessment of the degree of risk of further conduct of the kind which the Claimant seeks to enjoin and of the proportionality of and need for relief by way of injunction. Although those Named Defendants who have given undertakings are no longer at risk of being subject to the injunction sought I have taken account of their submissions when considering the position of the other Named Defendants and of Persons Unknown in the ways I will explain below.

12. A further six of the Named Defendants did not attend but did send written submissions to the court or to the Claimant. Those were David Crawford (Named Defendant 15), Louise Lancaster (Named Defendant 30), Meredith Williams (Named Defendant 33), Jane Neece (Named Defendant 63), Christine Welch (Named Defendant 64), and Adrian Howlett (Named Defendant 71).

13. At the hearing I indicated that I would not hand down any judgment until after Friday 19th May 2023 to give further Named Defendants an opportunity to proffer undertakings. A considerable number of those defendants did so (including the six Named Defendants listed in the preceding paragraph) with the consequence that no further relief is sought against them. The consequence is that there only remain ten Named Defendants against whom the Claimant seeks a final injunction.

14. No other Named Defendant either attended the hearing or made any representations. I was, however, satisfied that there had been compliance with the directions for alternative service made by Cavanagh J and that it was appropriate to proceed with the trial in the absence of the other Named Defendants.

The Relief sought by the Claimant.

15. In the course of this action the Claimant has revised the relief it is seeking. It now seeks an injunction mirroring that granted by Morris J in *Insulate Britain.*

16. The proposed order would last for a period of five years with annual reviews. The Claimant seeks to enjoin the Named Defendants and persons unknown from blocking, slowing down, obstructing, or otherwise interfering with access to or the flow of traffic onto or along twenty-three specified roads or junctions for the purpose of protesting and from causing, assisting, or encouraging other persons to do so. The proposed order identifies a number of activities including locking onto other persons or to the roads or structures thereon which are within the proposed prohibition. However, it expressly provides that the prohibition does not extend to the practice of slow marching.

17. The Claimant says that these roads and junctions are of particular strategic importance to the London traffic network. It says that they were chosen to be the subject of the proposed order for two reasons. The first is that they are perceived because of that strategic importance to be at higher risk than other roads of being subject to protests in the form of obstruction of the flow of traffic on or along them. The second is the extent of the harm and disruption which would result from a blockage of the particular roads. It is said that in respect of each a blockage would have effects spreading more widely affecting the surrounding areas and potentially affecting the traffic network more

widely. Glynn Barton is the Claimant's Chief Operating Officer and he has provided a witness statement explaining the reasoning for the choice of each road. In respect of each road he has identified the volume of traffic involved; the effect which a blockage of the traffic at that point would be likely to have; and particular facilities, such as hospitals, which would be affected by such a blockage of traffic. Of the twenty-three roads or junctions eleven have previously been the subject of protests involving the disruption of traffic flow as part of the campaign by JSO and associated groups.

18. In enforcing the interim injunction against persons unknown the Claimant has adopted an approach of not seeking to commit a person breaching the injunction for contempt on the first occasion that such a person breaches the order. The Claimant's response to the first breach by a person who becomes a defendant by reason of such a breach has been to serve notice of the injunction on that person with an indication that the person in question would be at risk of committal proceedings in the event of a further breach. The Claimant says that it intends to continue that approach if the final injunction is granted in the terms sought. I have concluded that this cannot be a material factor in my consideration of the appropriateness or otherwise of the order sought. I have to consider whether it is appropriate to make the proposed injunction against persons unknown in circumstances where a single breach would suffice to put a person in breach at risk of committal proceedings.

The Applicable Law.

19. In his judgment in *Insulate Britain* at [33] - [35] Morris J explained the necessary elements of the three causes of action on which the Claimant relies thus:

> "33. Trespass to land is the commission of an intentional act which results in the immediate and direct entry onto land in the possession of another without justification. If land is subject to a public right of way or similar, a person who unlawfully uses the land for any purpose other than that of exercising the right to which it is subject is a trespasser. However the public have a right of reasonable use of the highway which may include protest. A protest involving obstructing the highway may be lawful by reason of Articles 10 and11 ECHR.
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> 34. Private nuisance is any continuous activity or state of affairs causing a substantial and unreasonably interference with a claimant's land or his use or enjoyment of that land. In the case of an easement, such as a right of way, there must be a substantial interference with the enjoyment of it.
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> 35. A public nuisance is one which inflicts damage, injury, or inconvenience on all the King's subjects or on all members of a class who come within the sphere or neighbourhood of its operation (*HS2* at §84). The position in relation to an obstruction of the highway for the purposes of public nuisance is stated in *Halsbury's Laws* Vol 55 (2019) at §354: (a) a nuisance with reference to a highway has been defined as 'any wrongful act or omission upon or near a highway, whereby the public are prevented from freely, safely and conveniently passing along it'; (b) whether an obstruction amounts to a nuisance is a question of fact; (c) an obstruction is caused where the highway is rendered impassable or more difficult to pass along by reason of some physical obstacle; but an obstruction may be so inappreciable or so temporary as not to amount to a nuisance; (d) generally, it is a nuisance to interfere with any part of the highway; and (e) it is not a 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."

20. The requirements which have to be satisfied before an anticipatory injunction can be granted are well-established. The effect of the decision of Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch), [2019] 4 WLR 2 and of the decision of the Court of Appeal in *National Highways Ltd v Persons Unknown & others* [2023] EWCA Civ 182 is that such an injunction will only be granted where there is a strong probability that unless restrained the defendant will act in breach of the claimant's rights and that the harm resulting from such a breach would so grave and irreparable that damages would not be an adequate remedy. At [31] Marcus Smith J identified a non-exhaustive list of factors relevant to that assessment. The words and actions of a defendant will be of particular significance in making that assessment. The court can be satisfied that there is a sufficiently strong probability of breach even in respect of a defendant who has not yet breached the claimant's rights (see the Court of Appeal's decision at [37] – [39]). However, as Julian Knowles J pointed out in *High Speed Two Ltd & another v Persons Unknown & others* [2022] EWHC 2360 (KB) at [95] – [96], as a matter of common sense rather than law the court may be more readily satisfied that there is sufficient probability that a defendant will act in breach a claimant's rights unless restrained when the defendant in question has already breached those rights. Again as a matter of common sense this will be all the more so where the defendant has not disavowed those past actions and still more where an intention of repetition has been expressed.

21. A protest on a highway may amount to an exercise of the protester's rights of freedom of expression and/or freedom of assembly under articles 10 and 11 of the European Convention on Human Rights. In those circumstances the effect of the decisions in *DPP v Zeigler* [2021] UKSC 23, [2022] AC 408, *City of London Corporation v Samede* [2012] EWCA Civ 160, [2012] PTSR 1624, and *Cuadrilla Bowland Ltd & others v Persons Unknown & others* [2020] EWCA Civ 9, [2020] 4 WLR 29 is that the court must consider five further questions namely:

    (1) Is what the defendant did in exercise of one of the rights in Articles 10 or 11?

    (2) If so, is there an interference by a public authority with that right?

    (3) If there is an interference, is it prescribed by law? The relevance of this requirement being that article 10 envisages the right to freedom of expression being subject to such restrictions as are prescribed by law and that article 11 provides that only such restrictions as are prescribed by law shall be placed on the right to freedom of assembly.

    (4) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Article 10 or Article 11?

    (5) If so, is the interference 'necessary in a democratic society' such that a fair balance is struck between the legitimate aim and the requirements of freedom of expression and freedom of assembly?

22. The fifth of those questions raises an issue of proportionality which requires the court to consider a further four sub-questions which are:

(1) Is the aim of the interference which would result from the injunction sufficiently important to justify interference with a fundamental right?

(2) Is there a rational connexion between the means chosen and the aim in view?

(3) Are there less restrictive or intrusive alternative means available to achieve that aim?

(4) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

23. The assessment of proportionality is a fact-specific exercise requiring close consideration of the circumstances of the particular case. Potentially relevant factors were identified by Lord Neuberger MR in *Samede* at [39] and following and by Lords Hamblen and Stephens in *Zeigler* at [71] – [78]. In addition to those matters it can, as explained by Leggatt LJ in *Cuadrilla* at [94] – [95], be relevant to consider whether the disruption resulting from a protest was a side-effect or an intended consequence of the actions in question and whether those engaged in a protest are seeking to persuade others or are attempting to compel those others to act or to desist from acting in a particular way.

24. The sincerity of the views of those protesting and the importance of the issue or issues being addressed are potentially relevant to the balancing exercise. Thus the freedom of expression rights of those genuinely seeking to raise concerns on matters of political or economic importance and of general concern will carry more weight than those of persons seeking to give vent to matters of more limited concern or of less importance. However, it is important to note both the limited weight that attaches to that factor and also that the court's agreement or disagreement with the views expressed by those protesting or with the outcome which the protesters wish to achieve is entirely irrelevant to that exercise and can play no part in the court's conclusion as to the grant or refusal of relief. It is not for the court to evaluate the views being expressed and still less to express agreement or disagreement with them: see the explanations given in *Samede* at [39] – [41]; by Freedman J in his judgment at the interim stage in this case at [53] – [55]; by Lavender J in *National Highways Ltd v Persons Unknown* [2021] EWHC 3081 (QB) at [34] – 37]; and by Cotter J in *National Highways Ltd v Persons Unknown* at [83] and [106] – [107].

25. I have had regard to the approach to the balancing exercise which Morris J adopted in the *Insulate Britain* case together with the decisions of Lavender J in *National Highways Ltd v Persons Unknown* and of Bennathan J in *National Highways Ltd v Persons Unknown & others* [2022] EWHC 1105 (QB). In doing so, however, I bear in mind that the balancing exercise is fact-specific and that regard must be had to the particular circumstances of the current case. It follows that those decisions illustrate factors which can be relevant and conclusions which can be reached as to where the applicable balance falls but that they cannot determine the outcome of the balancing exercise which I must undertake. I have also had regard to the judgments of Freedman and Cavanagh JJ in this case. In their judgments Freedman and Cavanagh JJ were considering the particular circumstances of this case as they were at the time of those judgments. It follows that the identification by those judges of the potentially relevant factors and of the proportionality of granting relief in this case must carry great weight. It is nonetheless to be remembered that Freedman and Cavanagh JJ were identifying

relevant factors and assessing proportionality at the interim stage. I have to assess the position at the stage of trial with a view to the making of a final injunction (with the Claimant seeking an injunction to run for five years). It is possible that the weight to be attached to particular factors might be different at the interim and final stages of the process and also possible that the conclusion as to proportionality might be different at those stages.

26. There are additional requirements which have to be satisfied before the court will grant an anticipatory injunction against persons unknown. As explained by Morris J in *Insulate Britain* at [50] the seven guidelines for the grant of an interim injunction against such persons unknown as identified by the Court of Appeal in *Canada Goose UK Retail Ltd & another v Persons Unknown & others* [2020] EWCA Civ 303, [2020] 1 WLR 2802 at [82] also govern the grant of final injunctions against persons unknown. I will address those guidelines below when considering the appropriateness or otherwise of the relief sought against Persons Unknown.

27. I turn now to the application of those requirements to the circumstances of this case. In respect of the Named Defendants it will be necessary to consider their positions individually though as will be seen they fall into three categories with substantially the same considerations applying to all of those in a particular category but with marked differences between the positions of those in each category. It is of note that none of the remaining Named Defendants have chosen to engage in the court or the Claimant in any way. I have taken account of the submissions and the statements made by those of the Named Defendants who gave undertakings when considering the issues of risk and proportionality more generally. In respect of the other remaining Named Defendants their decision not to participate in the proceedings whether by way of attendance or the provision of submissions is of considerable relevance as explained by the Court of Appeal in *National Highways Ltd v Persons Unknown & others* at [40]. At that point the Chancellor (delivering the judgment of the court) was addressing relevance for the purposes of summary judgment but the position is all the greater at trial. The failure of those Named Defendants to participate in the proceedings or to make submissions is to be taken as indicating that they have chosen not to challenge the case being asserted in relation to them. In addition a failure to engage with the court or with the Claimant can, particularly when combined with the failure to take an opportunity to resolve matters through the giving of an undertaking, give an insight into the intention of the defendant in question as to his or her future conduct (as Cotter J explained in his judgment at [121]).

The Causes of Action.

28. In *Insulate Britain* Morris J was satisfied that the actions in question would if committed be a breach of the Claimant's rights. With the substitution of the roads with which I am concerned for "the IB roads" the analysis in the following terms at [40] of Morris J's judgment applies here.

> "On the evidence before me I am satisfied that, subject to the considerations arising under Articles 10 and 11 ECHR, the conduct, both in the past and threatened in the future, of the Defendants in protesting on the IB Roads by deliberately blocking and obstructing those roads, prima facie constitutes the torts of trespass, private nuisance and public nuisance. As to trespass, the protesters directly enter on to land in the possession of the Claimant and use the land for a purpose other than exercising a public right of way; whether they are

> justifiably exercising a right to protest turns upon the application of Articles 10 and 11. Secondly, as to private nuisance the protests causes a substantial and unreasonable interference with the enjoyment and exercise of the rights of way of other road users. Thirdly, as to public nuisance, as a result of the protests, the public are prevented from freely, safely and conveniently passing along the IB Roads (the highway); the protests deliberately cause a physical obstacle on the IB Roads rendering them impassable or more difficult to pass along. …"

Is there a strong Probability that the Remaining Named Defendants and/or Persons Unknown will act in Breach of the Claimant's Rights?

29. I will first consider whether there is in general terms a risk of the resumption or initiation of the actions which the Claimant seeks to restrain at the locations with which I am concerned and then turn to address the positions of the particular Named Defendants.

30. I take account of the fact that during 2023 the principal tactic of those engaged in the JSO campaign has been that of slow marching, an activity which the Claimant does not seek to restrain. Nonetheless I am satisfied that in the absence of an injunction there is a strong probability that at least some of those engaged in that campaign will resume the blocking of roads along the lines of the action taken in October 2022 and immediately thereafter. In that regard I accept the Claimant's contention that the reduction in such activity has been in part due to weather conditions and also that it has been a consequence of the injunctions which have been imposed. It is highly likely that the onset of warmer weather combined with the discharge of the existing injunction would be followed by a resumption of the blocking of roads.

31. It is also of note that not only has there been no assertion by those speaking on behalf of JSO that there will be no resumption of its former activities but that rather on 24th April 2023 it was said that JSO was committed to a campaign of civil disobedience. There has, moreover, been an increase in the frequency of protests taking the form of slow marching since then.

32. Considerable caution is needed in taking account of the submissions made by those Named Defendants who did participate in the proceedings as a basis for conclusions about the intentions of those who did not. Nonetheless I do take account of those submissions as providing an insight into the state of mind of those associated with the JSO campaign. That is because I am satisfied that the submissions made by those of the Named Defendants who participated in the court process throw light on the state of mind of those who have associated themselves with the JSO campaign. This is particularly so as the picture which emerges from those submissions is consistent as between the submissions and is consistent also with the position as revealed by the other evidence. It is relevant that none of those making submissions disavowed the objectives or tactics of the JSO campaign and none of them said that the objectives of the campaign had been achieved such that protest action was no longer needed. Rather those persons have chosen for differing reasons to give undertakings rather than be subject to a continuing injunction and to the risks of liability for costs.

33. In those circumstances I am satisfied that there is a real and imminent risk that in the absence of an injunction there would be protests under the banner of the JSO campaign and taking the form of the blocking of roads at the locations identified by the Claimant.

I have taken account of the fact that not all of those locations have previously been the site of such protests. Nonetheless all are locations in London where the blocking of the road will be liable to cause substantial and widespread congestion. They are precisely the kind of location at which such protests have previously occurred and the fact that a particular location has not previously been targeted is not an indication of the absence of risk. That risk is not confined to the remaining Named Defendants but also extends to other persons both those whose identity is currently unknown but who have participated in such protests previously and those who join or associate themselves with the JSO campaign in the future. It follows that there is a real and imminent risk of obstruction of these locations by persons unknown.

34. I turn to the remaining Named Defendants. It was open to each of them to give an undertaking or to engage with the court process as the great majority of the other Named Defendants have done. There has been no response from these defendants to the proceedings let alone any indication that they do not intend to engage in the blocking of roads. As explained above such a failure to engage is to be seen as a deliberate decision on the part of the relevant defendants not to challenge the case advanced against them and as an indication of their intentions in terms of future conduct.

35. The remaining Named Defendants fall into three broad groups. The first is made up of those defendants who have at least once engaged in the blocking of roads or related actions in furtherance of the JSO and/or Insulate Britain campaigns and who have also participated at least once in further actions in the context of those protests. Several have done so repeatedly; a number have been subject to injunctions; and three have acted in breach of injunctions. That category comprises Named Defendants 3, 7, 20, 45, 46, 56, 84, and 137. The second category contains only Named Defendant 51 in respect of whom the case is simply that he has been subjected to two injunctions in other proceedings. The final category is made up of Named Defendant 142 who is said to have engaged on one occasion in the blocking of a road as part of the JSO activities in October 2022.

36. In Schedule 1 I have listed those Named Defendants in the first category and have summarised the matters which are said to justify the conclusion that there is a strong probability that they would, if unrestrained, act in breach of the Claimant's rights. Each of these defendants has engaged in JSO or Insulate Britain protests at least twice when at least one of those occasions has involved the blocking of roads. In the case of several of these defendants there have been multiple instances of such conduct combined with acting in breach of an injunction and/or the gluing of the defendant to court furniture. I have included Andrew Worsley Named Defendant 3 in this category because although only one instance of the blocking of a road is expressly put forward in his case he has been subject to two injunctions in connexion with JSO or Insulate Britain protests. One of those injunctions was that granted by the Court of Appeal in *National Highways v Persons Unknown* and as I will explain below the effect of that is that he had been found to have engaged in a protest in relation to the events leading up to that injunction. In circumstances where there has been no engagement with the court by any of these defendants and where none has disavowed the objectives or tactics of the JSO campaign I am satisfied that there is a strong probability that in the absence of an injunction each of these defendants would act in breach of the Claimant's rights by obstructing one or more of the roads with which I am concerned.

37. Ben Newman Named Defendant 51 falls into a different category. The justification advanced for including him as a named defendant is that he has been subject to two other injunctions in respect of protests as part of the JSO or Insulate Britain campaign. He was subject to the injunctions granted in *Thurrock Council & another v Adams & others* [2022] EWHC 1324 (QB) and to the injunction granted by the Court of Appeal in *National Highways v Persons Unknown.* The effect is that on two separate occasions the court has concluded that there is a sufficiently grave and imminent risk of this defendant engaging in protest activity to warrant the grant of an injunction against him. If the evidence went no further than that I would doubt whether this defendant's inclusion in the current injunction would be warranted. The fact that a court is satisfied that there is a risk of particular activity at a different location would not without more suffice to establish the necessary degree of risk that there would be protest activity at the locations with which I am concerned. However, on proper analysis the evidence does go further than that. It is apparent from paragraph 8 of HH Judge Simon's judgment in the *Thurrock Council* case and from paragraph 35 of Bennathan J's judgment in the *National Highways Ltd* case that in order to have been joined in those actions as a named defendant it was necessary that Mr Newman had been arrested in connexion with protest activity at the sites with which those injunctions were concerned. As Bennathan J noted it is possible that a particular arrest was mistaken or unjustified. The position, however, is that Mr Newman has twice been arrested in the context of JSO or Insulate Britain protest activity with the arrests being at different locations. Mr Newman has chosen not to participate in these proceedings. It would have been open to him to contend that his presence at the sites in question was unrelated to the protest activity or to disavow that activity. He has chosen not to take such a step and in those circumstances I am satisfied that the Claimant has established that there is a real and imminent risk of Mr Newman engaging in the obstruction of the roads in question here if not restrained.

38. Finally, Gregory Dring Named Defendant 142 was involved in obstructing one of the roads with which I am concerned on a single occasion as part of the protests by JSO in October 2022. I note that there has been no relevant protesting activity by him since October 2022 and in his case there was only one instance of such activity. I have reflected whether this conduct is sufficient to establish that there is a strong probability that if unrestrained this defendant will act in breach of the Claimant's rights. I am satisfied that such a strong probability is shown here. The balance is tipped in favour of that conclusion by the combination of the facts that he took part in a JSO protest on a relevant road; that he has chosen not to engage in the court process; and that he has neither disavowed the aims of the JSO campaign nor stated that he will no longer engage in the same.

39. It follows that the necessary strong probability that the defendant will act in breach of the Claimant's rights has been established in respect of each of the remaining Named Defendants.

Will such a Breach cause grave and irreparable Harm such that Damages will not be an adequate Remedy?

40. I am satisfied that the breach of the rights of the Claimant and of others by the blocking of roads at the locations in question here would cause grave and irreparable harm. I will address the nature and extent of the harm further when considering the question of proportionality below. It suffices at this stage to say that the blocking of these roads

will inevitably cause serious disruption to the lives of many people. The harm will be to their economic interests but also to their personal lives in ways which although not measurable in financial terms will be real and lasting. Some of those affected will be prevented from attending meetings or appointments or taking part in particular one-off activities in circumstances where the opportunity to participate which has been lost will never be regained. In addition there will be a substantial diversion of finite public resources from other tasks of public value.

41. In *Insulate Britain* at [43] Morris J explained that damages would not be an adequate remedy because much of the harm would be unquantifiable; the Claimant would not be able to recover for the losses sustained by others; and because the ability of the Defendants to pay such damages as could be quantified is questionable at best. The same considerations apply here and I adopt that analysis.

The first four *Zeigler* Questions.

42. These questions can be answered shortly and as will be seen I substantially adopt the approach taken by Freedman J in his judgment at the interim stage in this matter; by Lavender J at [31] in *National Highways Ltd v Persons Unknown*; and by Morris J in the *Insulate Britain* case at [44].

43. It was accepted by the Claimant that participation by the Named Defendants and by persons unknown in JSO protests on the public highway would be an exercise of their article 10 and article 11 rights of freedom of expression and assembly. I proceed on that basis.

44. The grant of a final injunction would clearly be an interference with the exercise of those rights.

45. The grant of an injunction would also clearly be an interference prescribed by law as being one flowing the court's powers under section 37 of the Senior Courts Act 1981 and by way of enforcement of the Claimant's rights and duties under the Highways Act 1980 and at common law.

46. The interference with the Defendants' article 10 and 11 rights would be in pursuit of a legitimate aim within the scope of those articles. That aim would be protection of the rights and freedoms of others being not just the Claimant but also those whose passage along and use of the highway would be impeded by the actions which the Claimant asks the court to restrain.

The Balancing Exercise and Consideration of whether the Interference with the Named Defendants' Article 10 and Article 11 Rights is Necessary and Proportionate.

47. The first three of the sub-questions forming part of the balancing exercise can be addressed shortly before I turn to the issue of proportionality and of the drawing of a fair balance between the Defendants' rights and those of others and the interests of the wider community. In the following analysis it will be seen that I have drawn heavily on the conclusions reached by Freedman J in his judgment at the interim stage in this matter and by Morris J in *Insulate Britain*.

48. The aim of protecting the rights of the Claimant and the rights and freedoms of others to use these important roads is of sufficient importance to warrant an interference with the Defendants' Convention rights provided that a proper balance is drawn and the interference is proportionate.

49. There is a clear rational connexion between the way in which there is an interference with the Defendants' rights and the aim of protecting the rights and freedom of others. The aim is to allow others to use the roads with which the court is concerned and the proposed injunction would prohibit the obstruction of those roads in such a way as to interfere with those rights.

50. I am satisfied that there are no less restrictive or intrusive ways in which that aim could be achieved. As I have already noted damages would be an inadequate remedy for the harm to the rights of the Claimant and of the public more generally. It is apparent that the risk of being liable for damages has not deterred those Named Defendants who have chosen not to give undertakings. In addition I adopt by reference to the roads with which I am concerned the analysis of Morris J [45(3)] that:

> "… Prosecutions for offences involved in protests can only be brought after the event and in any case are not a sufficient deterrent because IB (and JSO) protesters have said they protest in full knowledge of and regardless of this risk and many have returned to the roads multiple times having been arrested, bailed, prosecuted, and convicted. Other traditional security methods such as guarding or fencing of IB Roads are wholly impractical for resource and logistical reasons. Recent changes to the law in the form of the Policing, Crime, Sentencing and Courts Act 2022, which came into force in May and June 2022, have not changed the approach of protesters."

51. I turn then to the question of proportionality and the fair balance between the Defendant's Convention rights and the rights of others.

52. The following factors operate in particular against the granting of an injunction:

    i) Proper regard must be had to the importance of the Defendants' Article 10 and 11 rights. The court must not simply pay lip service to such rights but must give them real weight. In that context there is force in the contention that some degree of disruption to others is if not necessarily inherent in the right to protest then a likely corollary of many forms of protest.

    ii) The subject matter of the Defendants' protests is an issue of real seriousness and importance. In that regard it is of note that those engaging in the protests have not done so lightly and it is apparent that many of them feel that they are compelled to act in this way believing that no other action is effective to prevent future harm to others.

    iii) The protests are not violent. This was a point which was made in a number of the submissions put to me but in the context with which I am concerned it has only very limited weight. It is correct that those engaging in the obstruction of roads are not themselves violent to others but the purpose of their actions is to obstruct others. The persons affected by the obstruction of the roads are compelled to suffer that impact until those creating the obstruction choose to depart or are physically removed. Those involved in the JSO campaign do not depart from the roads which they have chosen to block voluntarily. Moreover,

in many instances their actions by way of linking themselves together or attaching themselves to structures are deliberately designed to hinder and delay their removal.

iv) It was said in the submissions made to me that those engaged in the JSO protests deliberately leave a "blue light" lane free or that they will voluntarily clear the road sufficiently to allow an ambulance or fire engine displaying its flashing lights to pass through an obstruction. This point was combined with an argument that the drivers of emergency vehicles are trained to deal with congestion and are experienced in working their way through congested streets. In addition the point was made that congestion can occur on London's roads as a consequence of accidents or road works or a host of other matters and that these are not generally regarded as thwarting the movement of emergency vehicles. I accept that those engaged in the protests will be prepared to allow through an emergency vehicle with flashing lights at the point of their obstruction of the road. However, when regard is had to the nature and effect of the obstructions this is of little weight. The effect of the obstruction of the roads with which I am concerned is to cause substantial congestion of traffic over a wide area. Indeed that is its objective. Such congestion will necessarily have an impact on the passage of emergency vehicles and will do so over an area extending beyond the immediate point of obstruction. Skilled and experienced though the drivers of such vehicles are their passage through congested traffic will inevitably be slower than their passage along roads which are not heavily congested. It barely needs stating that delay in the passage of emergency vehicles creates a risk of harm to health or property: that is why they are equipped with sirens and flashing lights and why other road users cede them right of way. The lifting of an obstruction at the point of obstruction to allow the passage of an emergency vehicle is only a minor amelioration of the effect on such vehicles and of the risk to those awaiting their arrival or travelling in them. There is similarly little force in the point that congestion can and does arise from other causes. That is because the congestion resulting from the obstruction of roads such as those in issue here is in addition to that occurring in the normal course of events. Moreover, the importance of these roads and junctions to the flow of traffic is such that their obstruction will cause more extensive congestion than that resulting from road works or accidents at other locations.

53. The following matters stand in the other side of the balance:

i) First is the extent and effect of the disruption which will be caused by the obstruction of these roads. As explained at [17] above the obstruction of the passage of traffic at the roads in question will have wide-ranging effects. There is likely as a consequence to be congestion of traffic across a wide area. In a number of instances there is no alternative or no practicable alternative to use of the roads in question. As Freedman J said, at [61], "the protesters choose where to protest, but they deprive other road users of any choice to avoid the protests and to avoid being held up for long periods of time with all the personal or economic consequences which may follow." Those personal and economic consequences will be varied but they will be real and will affect many people.

ii) Addressing the protests and dealing with the congestion resulting from the obstruction of these roads has occupied the time and resources of the police

service and of the Claimant as the highway authority. That time and those resources are finite and the time and money spent in addressing these matters cannot be used in other ways conducive to the public good. The harm resulting is necessarily difficult to identify with precision but it is nonetheless real and at the very lowest the consequence is that there is a delay in achieving the public goods which would otherwise be achieved by use of that time and those resources.

iii) Next it is significant that the objective of the blockage of the roads is the disruption of the lives of others and the diversion of resources to which I have just referred. The obstruction of others; the infliction on those others of the personal and economic consequences; and the diversion of public resources are not side-effects of these protests rather they are the objectives of the protest. This is apparent from the fact that the obstructions have taken place without warning and without cooperation with the police. Those obstructing the roads are not seeking thereby to persuade others of their arguments nor thereby to bring their arguments to the attention of others who would be otherwise unaware of them. This is not a case where the protesters are seeking to force others to stop acting in a way of which the protesters disapprove but their objective is nonetheless coercion rather than persuasion. Their objective is to put pressure on the government not by way of persuasion or democratic argument but by disrupting the lives of their fellow citizens and by the contention that the price to be paid for the ending of the disruption is implementation of the measures for which they are campaigning. In that regard it is of note that the locations in question are not connected with parliament or with government other than by chance. As Freedman J said, at [61], "the protests in this case are not directed at a specific location which the subject of the protest".

iv) Where inconvenience to others is a side-effect of a protest and particularly where the inconvenience is modest then the reaction to the protest of those subjected to the inconvenience can carry little weight in the balancing exercise. In many cases the anger of those inconvenienced cannot be a reason of substance for curtailing the Convention rights of others. Such modest inconvenience may be seen as inherent in a democratic society. However, the position is different where the inconvenience to others is the intended effect of the protest and where large numbers of persons are subjected to a significant interference with their lives. That is the position here and in those circumstances it is relevant, albeit still a factor of only limited weight, that the protest gives rise to a risk of public disorder. Those whose passage along these roads is obstructed and whose lives are as a consequence disrupted will in some instances be liable through anger and frustration to seek to remove the protesters themselves. The risk of the consequent disorder is a factor operating in favour of the injunction.

v) Next, as Freedman and Morris JJ both noted the injunction sought does not prohibit all protest. It prohibits protest of a particular kind at a limited number of locations. The Defendants will not be in breach of the injunction by protesting at other locations and even at the specified locations slow marching will not be prohibited by the injunction. Echoing the point made by Freedman J the Defendants will remain free to choose where to protest subject only to the exclusion of the locations covered by the injunction.

vi) Finally, just as proper regard must be had to the Defendants' Convention rights so proper regard must be had to the importance of the rights which the proposed injunction will protect. The importance of enabling large numbers of citizens to go about their normal lives and occupation and to pursue their personal and economic interests is a potent factor.

54. In those circumstances I am satisfied that the proposed injunction is proportionate and strikes a fair balance between the Convention rights of the Defendants and the rights of others including the community generally.

55. I will consider the duration of the injunction and the issue of whether it should be in the same terms against all the Named Defendants when I consider the form of the order below.

The Position in respect of Persons Unknown.

56. I have already explained that I am satisfied that there is a real and imminent risk of the obstruction of the roads with which I am concerned by persons in addition to the Named Defendant. In *Insulate Britain* Morris J set out at [47] –[51] the additional requirements for the grant of a precautionary injunction against Persons Unknown and explained why the requirements were satisfied on the facts of that case. I agree with and adopt his analysis of the applicable law. Similarly, for the same reasons as Morris J but with the substitution of JSO for IB I am satisfied that the requirements of the *Canada Goose* guidelines are met in this case and that it is just and convenient to grant the final injunction sought against Persons Unknown.

The Form of the Order.

57. The Claimant seeks an injunction lasting for five years with provision for annual reviews and for a Defendant or any other person affected by the order to apply on notice for its variation or discharge. In those respects the proposed order mirrors the terms of the order made by Morris J in *Insulate Britain*. I agree with Morris J for the reasons he gave in his judgment at [52] that an order of that duration is necessary for there to be adequate protection of the rights of the members of the public generally. I am also satisfied that an injunction of that duration is proportionate having regard to the balancing exercise I have explained above. However, because of the close relation between these proceedings and those leading to the *Insulate Britain* order and to avoid any confusion or uncertainty the injunction will run for five years from the date of the order made by Morris J in that action with the consequence that both will come to an end at the same time.

58. A number of the Named Defendants in this action are already subject to the injunction granted by Morris J in *Insulate Britain*. Those are Named Defendants 3, 7, 20, 45, 46, 51, and 56. That injunction applies to many of the roads and junctions in relation to which the Claimant has sought relief in this action. Of the twenty-three roads and junctions with which I am concerned only six are not also covered by Morris J's order. Those are Millbank, A4 Knightsbridge and Scotch Corner, St Georges Circus/Road, Shoreditch, Victoria Embankment, and Talgarth Road around Barons Court tube station.

59. The proceedings leading to Morris J's order were triggered by protests under the banner of the Insulate Britain campaign. However, Morris J made it clear that the terms of his order are such that obstructing the roads in the ways specified was prohibited regardless of the campaign of which the actions were a part. In particular Morris J spelt out that such actions would be a breach of the injunction if undertaken as part of the JSO campaign: see at [29] and [41].

60. For the Claimant Mr Fraser-Urquhart KC nonetheless contended that it was appropriate for me to grant an injunction in respect of all twenty-three locations against all the remaining Named Defendants even though it would mean that some of them were subject to two injunctions each granted to the Claimant and each prohibiting the same conduct at the same location. He said that this would be conducive of certainty and clarity because the focus of Morris J's order was the Insulate Britain campaign while the Claimant was seeking from me an order focussed on the JSO campaign. He also said that in practice the Claimant would only seek the committal of a defendant under one or other but not both of the injunctions. I do not accept that submission. In light of the terms of Morris J's order and of his judgment there is no uncertainty nor is there any scope for confusion. Indeed rather than being conducive of clarity there would be a risk of confusion as to the basis on which action was being taken against a defendant said to be in breach of the order if there were two orders in respect of the same conduct at the same location. Moreover, it cannot be said that injunctive relief in respect of obstructing the road at a particular location is necessary against a particular Named Defendant if that person is already subject to a final injunction in favour of the Claimant prohibiting the same behaviour at the same location.

61. Accordingly, in respect of those Named Defendants who are subject to the *Insulate Britain* order the injunction I will grant will be confined to the six locations which are not subject to Morris J's order. I will invite submissions in due course as to the appropriate form of order to achieve this result.

62. As explained above a large number of Named Defendants have signed undertakings which have been provided to the Claimant and which are in the course of being sent to the court. Initially I had concerns as to the steps which might be necessary for the court to be satisfied that those giving these undertakings understood the gravity of the step they were taking. However, I have reflected further on the terms of the undertakings and have considered the approach set out by Cotter J in his judgment at [116] – [118]. In light of those matters I am satisfied that the terms of the undertaking are clear and that the effect of a breach are sufficiently spelt out on the face of the undertaking such that there is no realistic risk that any Named Defendant who signs the undertaking will not understand the consequences of doing so. Accordingly, I will not require any further communication to the court from those who have signed the undertakings. I will in due course invite submissions as to the recording of the undertakings in the final order.

Alternative Service.

63. The provisions of the proposed order in relation to service mirror those of Morris J's *Insulate Britain* order. Morris J addressed these at [53] – [60] and the proposed order here includes the additional provisions identified by him at [60]. I agree with Morris J that these are appropriate and that they are sufficient to minimise the risk of a person who is minded to take part in protests at a relevant location being unaware of the court order.

64. It follows that an injunction in the terms proposed by the Claimant subject to the modifications indicated above is to be granted against the remaining Named Defendants and Persons Unknown.

Costs.

65. My provisional view subject to further submissions is that those Named Defendants against whom I have granted an injunction are to be ordered to pay the Claimant's costs.

SCHEDULE 1

Defendant Number	Name	Summary of Activity
3	Andrew Worsley	Subject to two injunctions and has also taken part in an Insulate Britain road blockage.
7	Ben Taylor	Subject to three injunctions; repeated involvement in the blocking of roads in the context of JSO and Insulate Britain protests including acting in breach of an injunction.
20	Emily Brocklebank	Repeated involvement in the blocking of roads in the context of JSO and Insulate Britain protests including acting in breach of an injunction.
45	Tessa-Marie Burns	Subject to two injunctions; multiple instances of involvement in the blocking of roads in the context of JSO protests.
46	Theresa Norton	Subject to two injunctions; in breach of two injunctions; two instances of involvement in the blocking of roads in the context of JSO protests; and one instance of gluing herself to court steps.
56	Samuel Johnson	Engaged in digging tunnels as part of a JSO protest and in blocking a road as part of an Insulate Britain protest.
84	Lora Johnson	Involved in blocking roads on two occasions in JSO protests in October 2022.
137	Tristan Strange	Involved on one occasion in blocking in a JSO protest in October 2022 and in one instance of gluing himself to a painting in a JSO protest.

IN THE HIGH COURT OF JUSTICE **Claim No. PT-2022-000303**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

CHANCERY DIVISION

PROPERTY TRUSTS AND PROBATE LIST

Before Mr Simon Gleeson (sitting as a Judge of the Chancery Division)

On 6 October 2023

B E T W E E N

(1) UNITED KINGDOM OIL PIPELINES LIMITED

(2) WEST LONDON PIPELINE AND STORAGE LIMITED

Claimants / Applicants

and

(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT CONSENT, AND IN CONNECTION WITH OR AFFILIATED TO THE EXTINCTION REBELLION CAMPAIGN OR THE JUST STOP OIL CAMPAIGN, ON LAND AND BUILDINGS AT AND COMPRISING PART OF (A) THE BUNCEFIELD OIL TERMINAL, HEMEL HEMPSTEAD, HERTFORDSHIRE (SHOWN FOR IDENTIFICATION SHADED RED ON THE ATTACHED SITE 1 PLAN) (B) THE KINGSBURY OIL TERMINAL, KINGSBURY, WARWICKSHIRE (SHOWN FOR IDENTIFICATION SHADED RED ON THE ATTACHED SITE 2 PLAN)

First Defendants/Respondents

(2) PERSONS UNKNOWN WITHOUT CONSENT, AND IN CONNECTION WITH OR AFFILIATED TO THE EXTINCTION REBELLION CAMPAIGN OR THE JUST STOP OIL CAMPAIGN, OBSTRUCTING OR INTERFERING WITH THE FIRST CLAIMANT'S ACCESS OVER PRIVATE ACCESS ROADS ADJACENT TO (A) THE BUNCEFIELD OIL TERMINAL, HEMEL HEMPSTEAD, HERTFORDSHIRE (SHOWN FOR IDENTIFICATION SHADED BLUE ON THE ATTACHED SITE 1 PLAN) (B) THE KINGSBURY OIL TERMINAL, KINGSBURY, WARWICKSHIRE (SHOWN FOR IDENTIFICATION SHADED BLUE ON THE ATTACHED SITE 2 PLAN)

Second Defendants/Respondents

ORDER AGAINST THE FIRST AND SECOND DEFENDANTS

(COLLECTIVELY "THE DEFENDANTS")

PENAL NOTICE

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

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS OR ANY OF THEM 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.

IMPORTANT NOTICE TO THE DEFENDANTS

This Order prohibits you from doing certain acts. You should read this Order very carefully. You are advised to consult a solicitor as soon as possible.

If you disobey this Order you may be found guilty of contempt of court and you may be sent to prison or your assets seized. You have the right to apply to the Court to vary or discharge this Order (which is explained below).

RECITALS

FURTHER to the Orders of Peter Knox QC (sitting as Deputy High Court Judge) sealed on 12 April and 21 April 2022 and the Order of The Honourable Mr Justice Rajah sealed on 21 April 2023

UPON the hearing of the Claimants' Application dated 7 July 2023

UPON hearing Myriam Stacey KC and Yaaser Vanderman for the Claimants and the Defendants not being represented or appearing

AND UPON READING the evidence recorded on the Court file (and set out in Schedule 1) as having been read

AND UPON the Claimants acknowledging that they do not intend to prohibit any lawful protest outside any of the sites referred to in this Order and that this Order is not intended to prohibit such lawful protest

AND UPON the Claimants being permitted to apply for summary judgment against the Defendants pursuant to CPR 24.4(1)

IT IS ORDERED THAT:

THE INJUNCTIONS

1. Until 23:59 hrs on 20 October 2028:

(a) BUNCEFIELD (SITE 1)

(i) The First Defendants and each of them are forbidden from (a) entering or remaining upon the land or buildings described in and defined as "**Buncefield (Site 1)**" in Schedule 2 to this Order and which are shown for illustration purposes shaded red on the plan annexed to Schedule 3 of this Order ("**the Site 1 Plan**"), or (b) from causing damage to Buncefield (Site 1) or (c) removing equipment from Buncefield (Site 1), without the consent of the Claimants.

(ii) The Second Defendants and each of them are forbidden from obstructing or otherwise interfering with the First Claimant's access over the private access road on the land adjoining Buncefield (Site 1) (the "**Site 1 Access Route**"), which is shown for illustration purposes shaded blue on the Site 1 Plan, for access and egress between Buncefield (Site 1) and the public highway.

(b) KINGSBURY (SITE 2)

(i) The First Defendants and each of them are forbidden from (a) entering or remaining upon the land or buildings described in and defined as "**Kingsbury (Site 2)**" in Schedule 2 to this Order and which are shown for illustration purposes shaded red on the plan annexed to Schedule 4 of this Order (the "**Site 2 Plan**") or (b) from causing damage to Kingsbury (Site 2) or (c) removing equipment from Kingsbury (Site 2), without the consent of the First Claimant.

(ii) The Second Defendants and each of them are forbidden from obstructing or otherwise interfering with the First Claimant's access over the private access road on the land adjoining Kingsbury (Site 2) (the "**Site 2 Access Route**"), which is shown for illustration purposes shaded blue on the Site 2 Plan, for access and egress between Kingsbury (Site 2) and the public highway.

VARIATION OF THIS ORDER

2. Anyone served or notified of this Order may apply to the Court at any time to vary or discharge this Order or so much of it as affects that person but they must first give the Claimants' solicitors 48 hours' notice of such application. If any evidence is to be relied upon in support of the application the substance of it must be communicated in writing to the Claimants' solicitors at least 24 hours in advance of any hearing.

3. Any person applying to vary or discharge this Order must provide their full name and address, an address for service and must also apply to be joined as a named defendant to the proceedings at the same time.

4. The Claimants have liberty to apply to extend or vary this Order or to seek further directions.

INTERPRETATION OF THIS ORDER

5. A Defendant who is ordered not to do something must not do it him/herself/themselves or in any other way. He/she/they must not do it through another acting on his/her/their behalf or on his/her/their instructions or with his/her/their encouragement.

SERVICE OF THIS ORDER

6. Pursuant to CPR 6.15, 6.27 and 81.4(2)(c) and (d), service of this Order shall be effected as follows:

(a) Posting the Order at the following web link: https://ukop.azurewebsites.net;

(b) Fixing copies thereof in clear transparent sealed containers at a minimum number of 2 prominent locations on the perimeter of each of the Sites;

(c) Fixing warning notices in the form set out in Schedules 5 and 6 as follows in not less than A2 size:

(i) In respect of **Buncefield (Site 1)** by affixing the form of site injunction notice (the "**Site 1 Notice**") in clearly visible locations (including at entranceways, access points, gates and attached to the perimeter fencing) around and comprising part of Buncefield (Site 1); and

(ii) In respect of **Kingsbury (Site 2)** by affixing the form of site injunction notice (the "**Site 2 Notice**") in clearly visible locations (including at entranceways, access points, gates and attached to the perimeter fencing) around and comprising part of Kingsbury (Site 2); and

(d) Sending an email to each of the following email addresses with the information that copies of the Order may be viewed at the web link referred to in paragraph 6(a) above:

(i) xr-legal@riseup.net;

(ii) juststopoilpress@protonmail.com;

(iii) info@juststopoil.org; and

(iv) juststopoil@protonmail.com.

7. Pursuant to CPR 6.15, 6.27 and 81.4(2)(c) and (d), the steps identified above shall stand as good service of the Order. For the avoidance of doubt, good service will have been effected once the initial posting, fixing and sending has taken place regardless of whether copies of the Order or warning notices are subsequently removed, for example, by the actions of third parties.

8. Pursuant to CPR 6.15(3), 6.27 and 81.4(2)(c) and (d), the Order will be deemed to be served on the latest date on which all of the methods of service referred to above have been completed, such date to be verified by the completion of a certificate of service.

ALTERNATIVE SERVICE PROVISIONS FOR FUTURE APPLICATIONS, ANY OTHER DOCUMENTS, AND ANY NOTICE OF HEARINGS BY THE CLAIMANTS IN THIS CLAIM

9. Pursuant to CPR 6.15, 6.27 and 81.4(2)(c) and (d), service of any future applications, and any other documents, any notice of hearings in this Claim by the Claimants and their evidence in support, shall be effected as follows:

(a) Posting copies of these documents at the following web link: https://ukop.azurewebsites.net; and

(b) Sending an email to each of the following email addresses with the information that copies of the documents may be viewed at the web link referred to in paragraph 9(a) above:

(i) xr-legal@riseup.net;

(ii) juststopoilpress@protonmail.com;

(iii) info@juststopoil.org; and

(iv) juststopoil@protonmail.com.

10. Pursuant to CPR 6.15(3), 6.27 and 81.4(2)(c) and (d), any documents served pursuant to the provision in paragraph 9 above will be deemed to be served on the latest date on which all of the methods of service referred to in paragraph 9 above have been completed in respect thereof, such date to be verified by the completion of a certificate of service.

11. Pursuant to CPR 6.15, 6.27 and 81.4(2)(c) and (d), the steps identified in paragraph 9 above shall stand as good service.

FURTHER DIRECTIONS

12. There shall be on or around the anniversary of this Order subject to Court availability for as long as this Order is in force, a hearing to review this final injunction Order with a time estimate of 2.5 hours plus reading time. The Claimants shall liaise with the Court to list any such hearings and provide the Defendants with the notice of hearing as soon as practicable in accordance with paragraph 9 above.

13. The Claimants shall have permission to file and serve any further evidence at least 14 days before the date of any review hearing.

14. The Claimants are to file the bundle for any review hearing not less than 7 days before the date of any review hearing.

15. The Claimants and any Defendants must file with the Court, and exchange to the extent that there are any named Defendants joined to the claim, skeleton arguments along with a bundle of authorities not less than 3 days before the date of any review hearing.

COSTS

16. Costs reserved.

COMMUNICATIONS WITH THE COURT

17. All communications about this Order should be sent to:

Court Manager
The Business and Property courts of England and Wales
7 Rolls Building, Ground Floor/Counter 9
Fetter London
EC4A 1NL

The telephone number is 020 7947 6690. The offices are open weekdays 10.00 a.m. to 4.30 p.m.

18. Name and address of the Claimants' legal representatives

Fieldfisher LLP
Riverbank House
2 Swan Lane
London
EC4R 3TT

Telephone: 0330 460 7000

Fax: 020 7488 0084

Reference: ADP/UK01.000162.00301

This Order shall be served by the Claimants on the Defendants. The Court has provided a sealed copy of this Order to the Claimants at:

Fieldfisher LLP
Riverbank House,
2 Swan Lane,
London
EC4R 3TT

Reference: ADP/000162

SCHEDULE 1

1. Witness Statement of Peter Davis dated 7 April 2022
2. Witness Statement of John Armstrong dated 7 April 2022
3. Witness Statement of Daniel Owen Christopher Talfan Davies dated 8 April 2022
4. Second Witness Statement of John Armstrong dated 14 April 2022
5. Second Witness Statement of Daniel Owen Christopher Talfan Davies dated 14 April 2022
6. Third Witness Statement of John Armstrong dated 5 April 2023
7. Second Witness Statement of Peter Davis dated 5 April 2023
8. Third Witness Statement of Daniel Owen Christopher Talfan Davies dated 14 April 2023
9. Fourth Witness Statement of John Armstrong dated 6 July 2023
10. Third Witness Statement of Peter Davis dated 5 July 2023
11. First Witness Statement of Antony Douglas Phillips dated 24 July 2023
12. Fifth Witness Statement of John Michael Armstrong dated 22 September 2023

SCHEDULE 2

THE SITES

Buncefield (Site 1)

1. The freehold land at:

   (a) Land and buildings on the south side of Cherry Tree Lane, Hemel Hempstead which is registered at the Land Registry under title number HD485114 and marked 1 on the Site 1 Plan;

   (b) Land to the north of Cherry Tree Lane, Hemel Hempstead which is registered at the Land Registry under title number HD485115 and marked 2 on the Site 1 Plan;

   (c) Land on the west side of Buncefield Lane, Hemel Hempstead which is registered at the Land Registry under title number HD485116 and marked 3 on the Site 1 Plan;

   (d) Land on the north east and south west side of Cherry Tree Lane, Hemel Hempstead registered at the Land Registry under title number HD485118 and marked 5 on the Site 1 Plan;

2. The leasehold land at:

   (a) Land on the north side of Cherry Tree Lane, Hemel Hempstead, as more particularly described by a lease dated 23 September 2013 made between (1) Total UK Limited and (2) United Kingdom Oil Pipelines Limited which is registered at the Land Registry under title number HD529733 and marked 4 on the Site 1 Plan.

Kingsbury (Site 2)

3. The freehold land at:

   (a) All that piece of land at Kingsbury in the County of Warwick comprising 4.96 acres or thereabouts as more particularly described by a conveyance dated 31 March 1967 and made between (1) Shell-Mex and B.P. Limited and (2) United Oil Kingdom Pipelines Limited and marked 1 on the Site 2 Plan;

   (b) Land on the south-east side of Trinity Road, Kingsbury, Tamworth which is registered at the Land Registry under title number WK468465 and marked 2 on the Site 2 Plan.

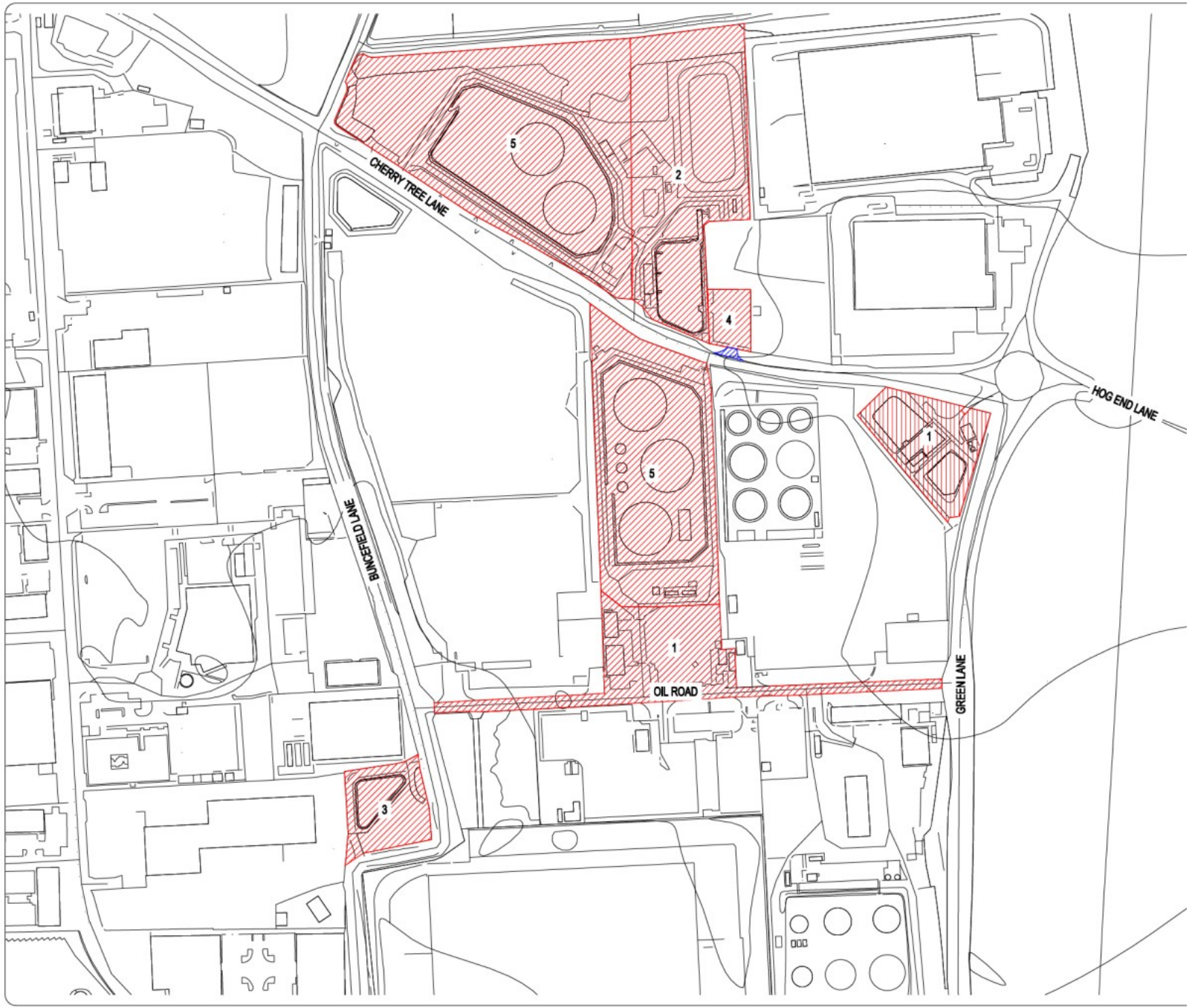
4. The leasehold land at:

   (a) the Fire-Water Pond and the Lagoon being land at Kingsbury in the County of Warwick, as more particularly described in a lease dated 3 November 2021 made between (1) Secretary of State for Defence and (2) United Kingdom Oil Pipelines Limited which is registered at Land Registry under title number WK522590 and marked 3 on the Site 2 Plan.

(together, the "**Sites**")

SCHEDULE 3

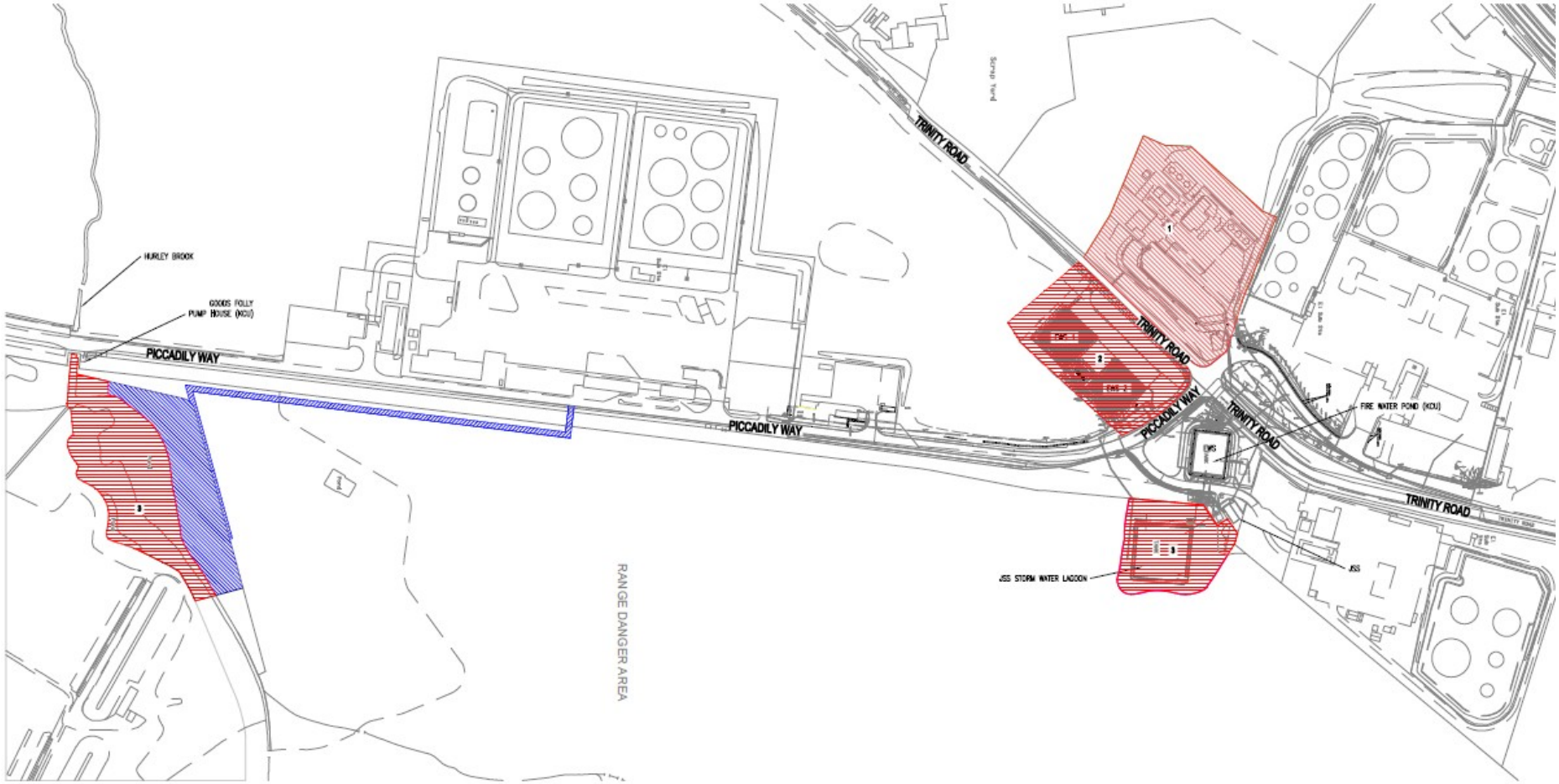
Plan of Buncefield (Site 1) (**"Site 1 Plan"**)


CHERRY TREE LANE
BUNCEFIELD LANE
HOG END LANE
GREEN LANE
OIL ROAD
1
2
3
4
5
5
1

AB/214

SCHEDULE 4

Plan of Kingsbury (Site 2) (**"Site 2 Plan"**)


N
HURLEY BROOK
GOODS FOLLY
PUMP HOUSE (KCU)
PICCADILY WAY
PICCADILY WAY
TRINITY ROAD
TRINITY ROAD
PICCADILY WAY
TRINITY ROAD
TRINITY ROAD
FIRE WATER POND (KCU)
JSS STORM WATER LAGOON
JSS
RANGE DANGER AREA
1
2
3
4
5

AB/216

SCHEDULE 5

SEE ATTACHED SITE 1 NOTICE

HIGH COURT CLAIM NO: PT – 2022 - 000303

HIGH COURT INJUNCTION IN FORCE

NOTICE OF HIGH COURT ORDER DATED [ ] 2023

TO: PERSONS UNKNOWN ACTING IN CONNECTION WITH OR AFFILIATED TO THE EXTINCTION REBELLION CAMPAIGN AND/OR THE JUST STOP OIL CAMPAIGN AND AS MORE PARTICULARLY DEFINED IN AND DESCRIBED AS THE FIRST DEFENDANT OR THE SECOND DEFENDANT IN THE ORDER (THE"DEFENDANTS")

FROM: (1) UNITED KINGDOM OIL PIPELINES LIMITED AND (2) WEST LONDON PIPELINE AND STORAGE LIMITED (THE "CLAIMANTS")

IF THE DEFENDANTS OR ANY OF YOU, DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS OR ANY OF THEM 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.

IT IS ORDERED THAT, UNTIL 23:59 HRS ON 20 OCTOBER 2028, THIS INJUNCTION PROHIBITS THE DEFENDANTS FROM:

- **ENTERING OR REMAINING UPON THE LAND SHADED RED ON THE PLAN SET OUT IN THIS NOTICE (THE "PLAN") OR FROM CAUSING DAMAGE TO, OR REMOVING EQUIPMENT FROM THE LAND SHADED RED ON THE PLAN WITHOUT THE CONSENT OF THE CLAIMANTS; AND**
- **OBSTRUCTING OR OTHERWISE INTERFERING WITH THE FIRST CLAIMANT'S ACCESS OVER THE PRIVATE ACCESS ROAD SHADED BLUE ON THE PLAN AND WHICH ADJOINS THE LAND SHADED RED, FOR ACCESS AND EGRESS BETWEEN THE LAND SHADED RED AND THE PUBLIC HIGHWAY.**

THIS MEANS THAT YOU MUST NOT GO BEYOND THIS NOTICE AND ENTER THIS SITE WITHOUT PERMISSION.

THIS ALSO MEANS THAT YOU MUST NOT OBSTRUCT OR OTHERWISE INTERFERE WITH THE FIRST CLAIMANT'S ACCESS OVER THE ACCESS ROAD SHADED BLUE. IF YOU DO, YOU MAY BE SENT TO PRISON, FINED OR HAVE YOUR ASSETS SEIZED.

REFERENCES TO THE 'CLAIMANT' OR 'CLAIMANTS' IN THIS ORDER MEANS ONE OR MORE OF THE AFOREMENTIONED CLAIMANTS AND EACH OF ITS AND THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, EMPLOYEES, PARTNERS, CONSULTANTS AND OTHER VISITORS.

Copies of the Court Order and other documents in the proceedings may be viewed at: https://ukop.azurewebsites.net

Claimants' solicitors: Fieldfisher LLP whose address is Riverbank House, 2 Swan Lane, London EC4R 3TT (Telephone number: 0207 861 4000; email address: UKOPinjunction@fieldfisher.com)

ANY FURTHER APPLICATIONS, NOTICE OF HEARINGS AND SUPPORTING EVIDENCE WILL BE SERVED IN THE WAYS SET OUT IN PARAGRAPH 9 OF THE ORDER.

The Claimants will make available to any person (who has provided their name(s), address(es) and proof of identity to the Claimants' solicitors) upon written application to the Claimants' solicitors (either in writing at their said offices or by email to UKOPinjunction@fieldfisher.com and in either case quoting reference ADP/UKOP), using an online file hosting service, the Court documents, witness evidence and exhibits.

Court communications: all communications about this Order should be sent to the Court Manager, High Court of Justice (details found at https://www.find-court-tribunal.service.gov.uk/courts/rolls-building-business-and-property-courts-of-england-wales)

AB/218

The freehold land at:

1. Land and buildings on the south side of Cherry Tree Lane, Hemel Hempstead which is registered at the Land Registry under title number HD485114 and marked 1 on the Plan above;

2. Land to the north of Cherry Tree Lane, Hemel Hempstead which is registered at the Land Registry under title number HD485115 and marked 2 on the Plan above;

3. Land on the west side of Buncefield Lane, Hemel Hempstead which is registered at the Land Registry under title number HD485116 and marked 3 on the Plan above; and

4. Land on the north east and south west side of Cherry Tree Lane, Hemel Hempstead registered at the Land Registry under title number HD485118 and marked 5 on the Plan above.

The leasehold land at:

1. land on the north side of Cherry Tree Lane, Hemel Hempstead, as more particularly described by a lease dated 23 September 2013 made between (1) Total UK Limited and (2) United Kingdom Oil Pipelines Limited which is registered at the Land Registry under title number HD529733 and marked 4 on the Plan above.

SCHEDULE 6

SEE ATTACHED SITE 2 NOTICE

HIGH COURT CLAIM NO: PT – 2022 - 000303

HIGH COURT INJUNCTION IN FORCE

NOTICE OF HIGH COURT ORDER DATED [ ] 2023

TO: **PERSONS UNKNOWN ACTING IN CONNECTION WITH OR AFFILIATED TO THE EXTINCTION REBELLION CAMPAIGN AND/OR THE JUST STOP OIL CAMPAIGN AND AS MORE PARTICULARLY DEFINED IN AND DESCRIBED AS THE FIRST DEFENDANT OR THE SECOND DEFENDANT IN THE ORDER (THE"DEFENDANTS")**

FROM: **(1) UNITED KINGDOM OIL PIPELINES LIMITED AND (2) WEST LONDON PIPELINE AND STORAGE LIMITED (THE "CLAIMANTS")**

IF THE DEFENDANTS OR ANY OF YOU, DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS OR ANY OF THEM 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.

IT IS ORDERED THAT, UNTIL 23:59 HRS ON 20 OCTOBER 2028, THIS INJUNCTION PROHIBITS THE DEFENDANTS FROM:

- **ENTERING OR REMAINING UPON THE LAND SHADED RED ON THE PLAN SET OUT IN THIS NOTICE (THE "PLAN") OR FROM CAUSING DAMAGE TO, OR REMOVING EQUIPMENT FROM THE LAND SHADED RED ON THE PLAN WITHOUT THE CONSENT OF THE CLAIMANTS; AND**
- **OBSTRUCTING OR OTHERWISE INTERFERING WITH THE FIRST CLAIMANT'S ACCESS OVER THE PRIVATE ACCESS ROAD SHADED BLUE ON THE PLAN AND WHICH ADJOINS THE LAND SHADED RED, FOR ACCESS AND EGRESS BETWEEN THE LAND SHADED RED AND THE PUBLIC HIGHWAY.**

THIS MEANS THAT YOU MUST NOT GO BEYOND THIS NOTICE AND ENTER THIS SITE WITHOUT PERMISSION.

THIS ALSO MEANS THAT YOU MUST NOT OBSTRUCT OR OTHERWISE INTERFERE WITH THE FIRST CLAIMANT'S ACCESS OVER THE ACCESS ROAD SHADED BLUE. IF YOU DO, YOU MAY BE SENT TO PRISON, FINED OR HAVE YOUR ASSETS SEIZED.

REFERENCES TO THE 'CLAIMANT' OR 'CLAIMANTS' IN THIS ORDER MEANS ONE OR MORE OF THE AFOREMENTIONED CLAIMANTS AND EACH OF ITS AND THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, EMPLOYEES, PARTNERS, CONSULTANTS AND OTHER VISITORS.

Copies of the Court Order and other documents in the proceedings may be viewed at: https://ukop.azurewebsites.net

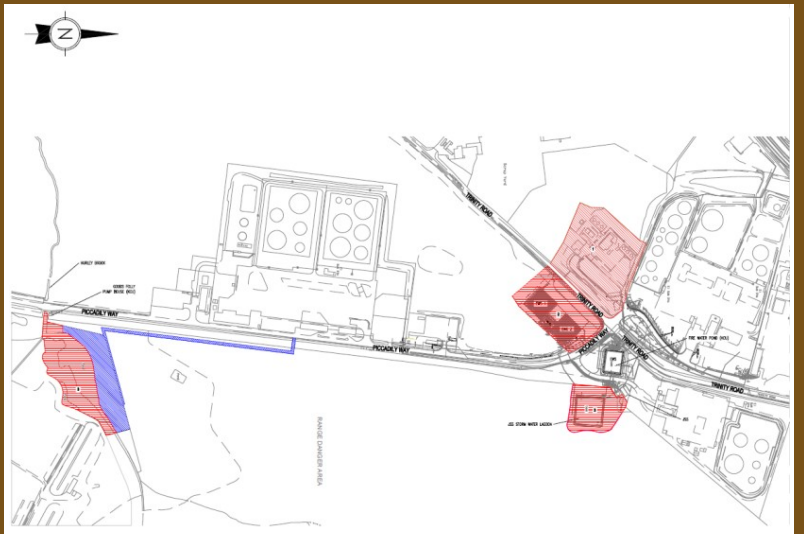
Claimants' solicitors: Fieldfisher LLP whose address is Riverbank House, 2 Swan Lane, London EC4R 3TT (Telephone number: 0207 861 4000; email address: UKOPinjunction@fieldfisher.com)

ANY FURTHER APPLICATIONS, NOTICE OF HEARINGS AND SUPPORTING EVIDENCE WILL BE SERVED IN THE WAYS SET OUT IN PARAGRAPH 9 OF THE ORDER.

The Claimants will make available to any person (who has provided their name(s), address(es) and proof of identity to the Claimants' solicitors) upon written application to the Claimants' solicitors (either in writing at their said offices or by email to UKOPinjunction@fieldfisher.com and in either case quoting reference ADP/UKOP), using an online file hosting service, the Court documents, witness evidence and exhibits.

Court communications: all communications about this Order should be sent to the Court Manager, High Court of Justice (details found at https://www.find-court-tribunal.service.gov.uk/courts/rolls-building-business-and-property-courts-of-england-wales)

AB/220



The freehold land at:

- All that piece of land at Kingsbury in the County of Warwick comprising 4.96 acres or thereabouts as more particularly described by a conveyance dated 31 March 1967 and made between (1) Shell-Mex and B.P. Limited and (2) United Oil Kingdom Pipelines Limited and marked 1 on the plan above; and
- Land on the south-east side of Trinity Road, Kingsbury, Tamworth which is registered at the Land Registry under title number WK468465 and marked 2 on the plan above.

The leasehold land at:

- The Fire-Water Pond and the Lagoon being land at Kingsbury in the County of Warwick, as more particularly described in a lease dated 11 March 2021 made between (1) The Secretary of State for Defence and (2) United Kingdom Oil Pipelines Limited registered which is registered at Land Registry under title number WK522590 and marked 3 on the plan above.