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, 9 July 2025

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/4/33-54]**
2. Judgment of Linden J, dated 18 July 2023 (the "Linden Judgment")**[TB/10/108-123]**
3. Order of Ellenbogen J, dated 29 January 2024 **[TB/16/159-171]**
4. Order of Tipples J, dated 10 July 2024 **[TB/14/150-153]**
5. Anthony Milne WS, dated 3 April 2022 **[TB/18/174-195]**
6. Stuart Sherbrooke Wortley WS, dated 4 April 2022 **[TB/19/196-204]**
7. Nawaaz Allybokus WS#3, dated 22 April 2022 **[TB/20/205-212]**
8. Martin Pullman WS, dated 27 February 2023 **[TB/21/213-224]**
9. Martin Pullman WS#2, dated 6 June 2023 **[TB/22/225-236]**
10. Holly Stebbing WS#3, dated 20 June 2024 **[TB/23/237-252]**
11. Holly Stebbing WS#5, dated 20 June 2025 **[TB/25/261-279]**
12. Holly Stebbing WS#6, dated 1 July 2025

Introduction

1. This is the second annual review of an injunction obtained originally in 2022, in response to the environmental protest campaigns which came to prominence at that time.

2. As explained in *Wolverhampton CC v. London Gypsies & Travellers* [2024] AC 983 ("*Wolverhampton*") ¶225 **[AB/4/156]**, the purpose of a review is that it:

> "225. …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."

3. That formulation assumes a "contested" review in which at least one person comes forward with objections to the order, or to aspects of the order. In practice, in the case of an un-contested review, the Courts have held that the primary focus for the Court on review is not to revisit the merits of the case as if *de novo* but, rather, to assimilate each matter sufficiently to take an informed view about whether the injunction has outlasted the compelling need which led to its being made in the first place, in view of any changed circumstances. For that summary, see the approaches taken by, and *dicta* of, the judges in (among other cases): *Valero v PU (2025 review)* [2025] EWHC 207 (KB) *per* Hill J at ¶¶20–30 **[AB/6/203]**; and *Rochdale MBC v Persons Unknown* [2025] EWHC 1314 ("***Rochdale***"), *per* Garnham J at ¶¶42–52 **[AB/11/356]**. That is really the only — and certainly the best — practical / proportionate way of dealing with these matters.

4. On 19 July 2023, Linden J granted "final" relief ("the Linden Order") with an injunction effective for 5 years, subject to annual review **[TB/11/124]**.

5. On 29 November 2024 the Supreme Court handed down its judgment in *Wolverhampton*. This is now the leading authority on injunctions against "Persons Unknown".

6. On 29 January 2024, Ellenbogen J reviewed the Linden Order (i.e., ahead of the first annual review), in order to assess what if any changes might be appropriate in light of *Wolverhampton*. She found that no changes were warranted 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 **[TB/16/159]**.

7. The first annual review hearing took place on 10 July 2024 before Tipples J. Tipples J directed herself primarily by reference to the question of whether there had been any material change of circumstances such as to warrant discharging the injunction. She held that there were no such circumstances **[TB/14/150]**. The injunction therefore continued unchanged. In respect of D4 and D5, the named Defendants: as before, they were "carved out" of the injunctions in light of assurances they had (or had previously) given.[1]

8. Of course, the world of environmental protest has not stood still. The evidence draws attention to its salient features so far as Cs are aware of them. Overall, however, Cs maintain

[1] The Ellenbogen #2 Order and the Tipples Order were amended under the slip rule on 21 January 2025 to correct a typographical error in relation to two of the Sites. The versions contained within the Hearing Bundle are the amended versions.

that there has been no relevant change in circumstances. A correct inference from the evidence is that campaigners remain active and opportunistic, seeking out fresh targets — including with a focus on those which are not protected by injunction, precisely because the injunction creates risks for them which are not felt elsewhere. 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 / notification

9. The hearing of this review hearing was notified to Persons Unknown by the various methods sanctioned in the Ellenbogen #2 Order, ¶15 **[TB/16/169]**: Stebbing WS#5, ¶8.1 **[TB/25/275]**. The deemed date of notification was, therefore, 10 April 2025.

10. The Notice of Hearing was also emailed to D4 and D5 on 10 April 2025, that method of service being permitted by the Order, dated 10 July 2023 **[TB/9/103-107]**: Stebbing WS#5, ¶8.2 **[TB/25/276]**. The deemed date of notification was, therefore, 10 April 2025.

The Sites

11. The injunction protects sites ("the Sites") which are shown in the Plans attached to the Ellenbogen #2 Order. They 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.

12. Cs' title was considered in extensive detail before Ellenbogen J in April 2022. In his judgment, Linden J stated **[TB/10/114]**:

> "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."

13. Nothing has changed on this point.

Background

14. The protests which took off mainly in 2022 are now common knowledge but the background is helpfully summarised in the Linden Judgment, ¶¶29-41 **[TB/10/114-116]**. This can be seen in greater detail in Milne WS ¶¶7.1–7.5 **[TB/18/177-178]**, ¶¶8.1–8.8 **[TB/18/178-180]**, 9.1–9.30 **[TB/18/180-186];** and, Wortley WS ¶¶40–41 **[TB/19/203-204]**.

15. 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/20/210]**; and Pullman WS ¶¶17–20 **[TB/21/217-219]**.

16. Cs now rely on Stebbing WS#5 to demonstrate the continuing threat of direct action.

Fourth and Fifth Defendants

17. D4 and D5 are not subject to the injunction contained within the Ellenbogen #2 Order, following undertakings and assurances given by them: see Ellenbogen #2 Order, ¶1. These undertakings and assurances are due to expire on 30 June 2025. As such, further undertakings/assurances have been sought from D4 and D5. D5 has returned a signed copy of a further undertaking to last until 31 July 2026 or the date of the next review hearing. D4 has not yet returned a signed copy but Cs continue to try and contact him: Stebbing WS#5 ¶¶10.1-10.4 **[TB/25/277-278]**.

Continued threat of direct action by Persons Unknown

18. As explained by Stebbing WS#5 ¶¶3.1-3.13 **[TB/25/263-271]**, the threat of direct action at and against the Sites continues.

19. 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* [2025] EWHC 207 (3 Feb 2025, Hill J) **[AB/6/199]** and *Exolum Pipeline Systems Ltd v Persons Unknown* (25 February 2025, Swift J) **[AB/7/207]**.

(3) An individual trespassed on the Fawley Site in December 2023 in order to film the layout of the Site by drone: Stebbing WS#3 ¶¶3.8-3.15 **[TB/23/240-242]**. 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: Stebbing WS#3 ¶¶3.2–3.7 **[TB/23/239-240]**.

(5) Extinction Rebellion and Just Stop Oil continue to focus their attention on the oil and gas sector: Stebbing WS#5 ¶3.3 **[TB/25/264]**. For example, in July-August 2024, multiple environmental activist groups, including Just Stop Oil, targeted airports in at least 6 different European Countries. Protesters were arrested at Heathrow and Manchester Airport, with further disruption at Gatwick Airport. In relation to the latter, Just Stop Oil stated that "*areas of key importance to the fossil fuel economy will be declared sites of civil resistance around the world*".

Furthermore, in October 2024, activists from Extinction Rebellion blockaded the entrance to the UK Oil & Gas plc oil production site in Horse Hill, Surrey. In January 2025, Extinction Rebellion occupied the Manchester office of the insurance broker, March. An Extinction Rebellion social media account stated that this was because the company was "*"funding our destruction" by insuring fossil fuel projects*".

(6) Direct action by other related groups has also continued to take place: Stebbing WS#5, ¶¶3.4-3.6 **[TB/5/265]**. For example, groups known as Shut the System and Youth Demand have carried out direct action in 2025 against major insurance companies and on the highway network, at least in part against oil and gas activities.

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

21. On 27 March 2025, Just Stop Oil issued a press release stating that it would be "*hanging up the hi vis"* at the end of April 2025. It referred to the Government policy "*to end new oil and gas"* and went on to state **[TB/26/340]**:

> "So it is the end of soup on Van Goghs, cornstarch on Stonehenge and slow marching in the streets. But it is not the end of trials, of tagging and surveillance, of fines, probation and years in prison. We have exposed the corruption at the heart of our legal system, which protects those causing death and destruction while prosecuting those seeking to minimize harm. Just Stop Oil will continue to tell the truth in the courts, speak out for our political prisoners and call out the UK's oppressive anti-protest laws. We continue to rely on small donations from the public to make this happen.
>
> This is not the end of civil resistance. Governments everywhere are retreating from doing what is needed to protect us from the consequences of unchecked fossil fuel burning. As we head towards 2°C of global heating by the 2030s, the science is clear: billions of people will have to move or die and the global economy is going to collapse. This is unavoidable. We have been betrayed by a morally bankrupt political class."

22. See, however, the "Note to Editors" on the same press release, which is hard to reconcile with an unequivocal, or final, renunciation of direct action. See also below.

23. On the evidence as it presently stands, there remains a real and imminent risk of direct action from Just Stop Oil: Stebbing WS#5, ¶3.7 **[TB/25/265-267]**. This on the bases that:

(1) Similar statements by Extinction Rebellion in the past have not been honoured: Stebbing WS#5, ¶3.7(a).

(2) Recordings of a Just Stop Oil meeting, as reported in the media, suggest they will return to direct action after a "*reset*": Stebbing WS#5, ¶3.7(c); see transcript at **[TB/26/347-355]** ("Speaker 1" refers to the news anchor and "Speaker 3" refers to the speaker in the JSO meeting).

(3) Subsequent statements made by Just Stop Oil are in tension with their statement that they would be "*hanging up the hi vis".* For example, on 19 May 2025, Just

Stop Oil posted a photo on social media stating "*JUST GETTING STARTED"* **[TB/26/356]**. Similarly, in June 2025, the Times reported that, "*Activists from the supposedly disbanded group, however, were playing a central role in recruiting new members to Youth Demand to help its goal of bringing London to a halt. Events were even advertised using the JSO logo*." **[TB/26//367]** Moreover, the same report referred to a collaboration between Youth Demand and Just Stop Oil and quoted an organiser as saying, "*This is an inhale before we breath out and expand into brand new territory, into something even bigger than we've tried before. This is the start of something genuinely thrilling.*" **[TB/26/369]**

(4) On 24 June 2025, Bourne J conducted the first annual review of 10 of the 13 airports which obtained newcomer injunctions last year. Perusal of the evidence filed in relation to that review (which is in the public domain and was referred to in open court on 24 June 2025) has brought to light further disquieting matters which are now addressed in Stebbing WS #6, ¶3.1.

24. Naturally, if the injunction remains in force against JSO following the review hearing, Cs will continue to keep matters under review, pursuant to their obligations to the Court, and will return to Court if they take the view that circumstances have altered sufficiently to make it reasonably arguable that the injunction has outlasted its need. There is a balance to be struck in this regard, between on the one hand bombarding the Court with a more-or-less continuous narrative of events as they unfold, "just in case" the Court might consider that they amount to a relevant change of circumstances, and on the other hand simply sitting back and waiting for the next review. To date, there is no reason for the Court to doubt that Cs have understood correctly the importance of their obligations — including the important principle that it is for the Court, not the parties, to judge whether any change in circumstances is "material" — or to suspect that they have got the balance wrong.

Harm

25. The direct action injuncted by the order now under review produces a variety of consequences, all of them harmful and many of them dangerous: see Milne WS ¶¶10.2 **[TB/18/187]** and 11.3–11.6 **[TB/18/188]**, and Pullman WS#2, ¶¶25-35 **[TB/22/233-235]**. 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.

Submissions

26. Cs submit that nothing material has changed since the Ellenbogen #2 Order to warrant discharge or amendment of the Ellenbogen #2 Order. There is a continued threat of direct action at the Sites for the reasons set out above. The injunction has not outlasted its need.

27. In particular, no issue has emerged which would require an "*expanded renewal hearing*" or a "*de novo*" hearing, e.g., so as to call for a full assessment by reference to the 15 *Valero* factors: *Rochdale*, ¶52 **[AB/11/358]**.

How effective has the order been?

28. The Ellenbogen #2 Order, as well as the Linden Order and interim orders granted before them, have been very effective, in the sense that there has been no direct action at the Sites for some years.

29. The evidence from Just Stop Oil itself is that the reason it has moved on to target other infrastructure, such as highways, is because of injunctions covering oil refineries: see ¶19(1) above.

Have any reasons or grounds for its discharge emerged?

30. The main factual development since the last review hearing is the announcement from JSO in March 2025 that it would be "*hanging up the hi vis*" at the end of April 2025. As the description of Persons Unknown includes the requirement for a connection to *either* the "Extinction Rebellion campaign" *or* the "Just Stop Oil campaign", the JSO announcement could only, in principle, affect the latter.

31. Cs submit that the JSO announcement is not a sufficient reason in itself to call for an amendment to the Ellenbogen #2 Order so as to remove the "Just Stop Oil campaign" from its scope. In particular: the evidence already summarised indicates that a real and imminent risk of direct action by JSO (or those connected with the JSO campaign) remains. Given, in particular, the amorphous nature of the group, the past experience of similar statements by Extinction Rebellion that were not honoured, and statements made by JSO since April 2025, it would be unsafe and premature for the Court to place reliance on the announcement made in March 2025. A preferable approach may be for the description of "Persons Unknown" to refer more broadly to "PERSONS UNKNOWN WHO, IN CONNECTION

WITH THE 'EXTINCTION REBELLION' CAMPAIGN OR THE 'JUST STOP OIL' CAMPAIGN OR OTHER ENVIRONMENTAL CAMPAIGN", as has been done in other recent cases: see, e.g., the London City Airport order (24 June 2025).[2]

32. So far as concerns legal developments: there has been no development in the law so far as concerns matters of substance, such as whether the Courts have been applying too low a threshold before granting relief, etc.

33. So far as concerns matters of procedure: there has been discussion in some recent cases about: (a) whether "Persons Unknown" ought to be described at all; and, (b) whether orders against Persons Unknown should include a requirement for permission to be granted before a contempt application may be brought.

34. As to (a): the description of "Persons Unknown", the Supreme Court in *Wolverhampton CC* stated **[AB/4/155]**:

> "221…Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible."

35. This reflected the established practice that had been developed over many years in this area. However, in *MBR Acres Ltd v Curtin* [2025] EWHC 331, Nicklin J said that it was "*no longer necessary, nor appropriate*" to restrain particular categories of defendants for *contra mundum* 'newcomer' injunctions. On the basis that these were truly *contra mundum* orders, he found that Persons Unknown did not need to be, and ought not to be, defined in any way: ¶¶356, 360 and 362 **[AB/8/300]**. At the initial stage in *University of Cambridge v Persons Unknown* [2025] EWHC 454, Fordham J adopted a similar approach ¶27 **[AB/9/326]**. On the return date, however, Soole J doubted this position and reverted to the orthodox approach: *University of Cambridge v Persons Unknown* [2025] EWHC 724, ¶7 **[AB/10/333]**. Although unreported, at the airports review held on 24 June 2025, Bourne J preferred to prioritise a more straightforward reading of ¶221 of *Wolverhampton* than had found favour with Nicklin J — but Bourne J held in any event that the point was one of procedure only and did not justify re-writing the orders on a review.

36. Cs submit that no amendment is required to the description of Persons Unknown in this case as: (i) it best follows the guidance in *Wolverhampton CC*, such identification as a class by reference to conduct being possible in this case; (ii) this orthodox approach has been

[2] The Order can be found here: https://assets.ctfassets.net/lmkdg513arga/405reN2GHJlnc8opC1amDO/c214f17ce3c837333af72787d976f310/Injunction_Order.pdf .

used in at least 20 High Court cases decided since *Wolverhampton CC*,[3] only one of which (*Valero*) appears to have been referred to in the *MBR Acres* judgment; (iii) if anything, it works conservatively in favour of potential protesters, narrowing the number of individuals who fall within the scope of the injunction; (iv) as Bourne J held in the airports review, it is preferable in point of principle for the Court — if satisfied that the Order should not be discharged — that it should modify existing orders as little as possible: individuals may already have read the existing orders and adjusted their conduct in reliance on what the Court has already ordered: they might not notice any change which is later made — and this might complicate enforcement, should this become necessary; (v) proportionality: while not a controlling factor, the Court should not be oblivious to the sheer expense and complexity involved in ensuring that any materially new order is adequately notified including by new posters on site, etc.

37. In relation to a requirement for permission from the Court before a contempt application may be brought, this was imposed in *MBR Acres Ltd v Curtin* [2025] EWHC 331, ¶¶47–48 **[AB/8/220]**, ¶390 **[AB/8/307]**, *University of Cambridge v Persons Unknown* [2025] EWHC 454, ¶30 **[AB/9/327]**, and *University of Cambridge v Persons Unknown* [2025] EWHC 724, ¶101 **[AB/10/347]**.

38. This, too, is a product of Nicklin J's approach in *MBR Acres*. It is well understandable why Nicklin J considered that this requirement was appropriate in the particular case before him, because the claimants had demonstrated by their conduct that they were not to be trusted to show proportionality in their approach to contempt proceedings: ¶¶47–48 **[AB/8/220]**. Nicklin J's experience of that particular case appears to have been a strong influencing factor in his suggestion that the requirement should be rolled out as a blanket requirement for all newcomer injunctions at least in protest cases: ¶390 **[AB/8/307]**.

39. The suggestion that a requirement to obtain permission before commencing committal proceedings should be rolled out as a blanket requirement in all newcomer cases at least

[3] *Valero Energy Ltd v PU* [2024] EWHC 134 (KB) (Ritchie J) (26 Jan 2024); *Exolum Pipeline Systems Ltd v PU* [2024] EWHC 1015 (Farbey J) (20 Feb 2024); *1 Leadenhall Group London v PU* [2024] EWHC 854 (8 Mar 2024); *HS2 v PU* [2024] EWHC 1277 (Ritchie J) (24 May 2024); *Jockey Club Racecourses Ltd v PU* [2024] EWHC 1786 (Sir Anthony Mann) (9 Jul 2024); *Leeds Bradford Airport Ltd v PU* [2024] EWHC 2274 (Ritchie J) (18 Jul 2024); *Manchester Airport v PU* [2024] EWHC 2247 (HHJ Coe KC) (24 Jul 2024); *Drax Power Ltd v PU* [2024] EWHC 2224 (Ritchie J) (25 Jul 2024); *Arla Foods v PU* [2024] EWHC 1952 (Jonathan Hilliard KC) (26 Jul 2024); *Tendring DC v PU* [2024] EWHC 2237 (Ritchie J) (31 Jul 2024); *N Warwickshire BC v PU* [2024] EWHC 2254 (HHJ E Kelly) (6 Sep 2024); *London City Airport Ltd v PU* [2024] EWHC 2557 (Julian Knowles J) (11 Oct 2024); *Thurrock Council v Adams* [2024] EWHC 2576 (Julian Knowles J) (11 Oct 2024); *Heathrow Airport Ltd v PU* [2024] EWHC 2599 (Julian Knowles J) (14 Oct 2024); *Shell UK Ltd v PU* [2024] EWHC 3130 (Dexter Dias J) (5 Dec 2024); ; *Teledyne UK Ltd v Gao* [2024] EWHC 3538 (Bourne J) (20 Dec 2024); *TfL v PU* [2025] EWHC 55 (Morris J) (16 Jan 2025); *Enfield LBC v PU* [2025] EWHC 288 (Jason Beer KC) (12 Feb 2025); University of Cambridge v Persons Unknown [2025] EWHC 724 (Soole J) (21 March 2025); *Rochdale MBC v PU* [2025] EWHC 1314 (Garnham J) (28 May 2025).

those involving protest, appears to have been a product of matters which were not in issue and were not argued. Additionally, it is *per incuriam* the relevant authorities, notably: *AG v Times Newspapers Ltd* [1974] AC 273, 312 (Lord Diplock) **[AB/1/42],** *Sectorguard plc v Dienne plc* [2009] EWHC 2693 (Ch) *per* Briggs J as he then was at ¶¶44–47 **[AB/2/68]** and *PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov* [2014] EWHC 4370 *per* Hamblen J as he then was at ¶¶21–22 **[AB/3/78]**. These show that the Courts are well aware of the danger of disproportionate committal applications and that they have an adequate armoury to meet the risk: it is already perfectly clear that a claimant makes a frivolous application to commit at its own peril.

40. At the airports review on 24 June 2025, Bourne J did not follow Nicklin J's suggestion.

41. In the present case, there is no need or justification to impose a requirement on the part of Cs to seek permission before commencing any committal applications: (i) notably, the Supreme Court in *Wolverhampton CC*, which sought carefully to balance the interests of landowners and Persons Unknown and, in relation to the latter, was careful to set out the procedural safeguards it considered necessary, did not impose it as a requirement: quite the reverse – the critically-important and controlling factor is that anyone has the right to apply to vary or discharge a "newcomer" injunction including on grounds that could have been argued previously; (ii) as far as Cs are aware, such a requirement has not been imposed in any other protest case involving Persons Unknown, of which there are many; (iii) there is no reason to believe that, in general, claimants are bringing trivial committal applications in cases of this sort; (iv) it may be that the facts of the three cases referred to above drove the Judges to take this approach. In *MBR Acres*, Nicklin J was certainly influenced by the trivial and inappropriate contempt applications that had previously been brought by the claimants and for which they were heavily criticised. In the first *Cambridge University* case, the permission filter was imposed in particular because of the specific "*procedural concerns*" in that case: ¶30 **[AB/9/327]**. In the second *Cambridge University* case, the Court may have been influenced by the submissions made by the interveners in that case that the injunction could catch practically innocuous methods of protest, such as a prayer vigil or merely wearing Palestinian symbols: ¶¶69-70 **[AB/10/342];** (v) the proportionality of such a requirement must be borne in mind: potentially, a heavy application which will take Court resources to consider, as to whether to grant permission; followed by a further potentially heavy hearing if permission be granted — or potentially an appeal if permission be refused: producing the unintended consequence that the experience may potentially be two or three times more stressful for potential defendants. It will usually be far better to leave all such matters to be addressed in one committal hearing with the potential for only one onward appeal, unless there is some specific reason based on the facts of the particular case, to suggest that a permission filter is appropriate.

Is there any proper justification for continuance of the injunction

42. We take this as a separate topic in the interest of completeness — but it is questionable whether, expressed as an isolated question in this way, this formulation really captures the essence of what the Supreme Court had in mind as being the essential purpose of a review: bearing in mind that the Supreme Court was envisaging a "contested" review with competing "parties": i.e., at least one person coming forward to object to the order or some aspect of it. We suggest that the intended "nuance" — as indicated, overall, by the later authorities we have already mentioned — is that there is no legal presumption of continuance; but nevertheless, certainly in an un-contested review,[4] the focus should not be (and cannot, proportionately, be) on conducting a *de novo* hearing or second-guessing the judgments formed by the judges who have made the substantive orders under review.

43. There remains a real and imminent risk of direct action at the Sites if they were to be left unprotected by an injunction. This was the view taken by multiple Judges in this claim over the last few years. It is also the view taken by multiple Judges in other similar claims over the last year: Stebbing WS#5, ¶3.10 **[TB/25/267-270]**. Other than potentially the JSO announcement, which has been dealt with above, nothing has changed in this regard. The direct action taken by environmental activists at other locations over the last year demonstrate this: see ¶19(5)-(6) above.

    (1) The harm caused by direct action at the Sites is substantial, particularly the health and safety risks to those who are not trained to understand the many hazards that exist.

    (2) The Defendants have no lawful reason to enter or remain upon the Sites, which constitute restricted and fenced-off private land, and would only do so in order to carry out unlawful direct action.

    (3) The evidence has demonstrated that the existence of criminal offences prohibiting the direct action has not been a sufficient deterrent to the Defendants.

Whether and on what basis a further order ought to be made

44. Cs ask that the Court make a similar order to that granted by Tipples J at the first review hearing – i.e. "*no order be made as to the continuing effect of the Ellenbogen Order*". As in *Rochdale*, ¶70, **[AB/11/361]** the basis for the continuation of the Ellenbogen #2 Order remain the same as that which justified the Linden Order being granted in the first place: see Linden Judgment **[TB/10/108-123]**.

Full and frank disclosure

45. In terms of full and frank disclosure, the Court will need to consider: (1) a year on from the

[4] Cs assume this review will be uncontested given that the previous annual review was uncontested and they have not received any indication from an individual or organisation that wishes to contest it.

previous review hearing, whether there remains a real and imminent risk of direct action; (2) the impact of the announcement by JSO in March 2025 in relation to real and imminent risk; and, (3) the effect of *MBR Acres Ltd v Curtin* [2025] EWHC 331, *University of Cambridge v Persons Unknown* [2025] EWHC 454, and *University of Cambridge v Persons Unknown* [2025] EWHC 724. These matters have already been considered in the body of the Skeleton Argument.

46. There is one final matter that needs to be drawn to the Court's attention. As set out in Stebbing #5, ¶¶9.2–9.4 **[TB/25/276-277]**, it came to the attention of Cs' solicitors that, at least for a period, 4 warning notices were not affixed at each of the Sites as required by the Ellenbogen #2 Order, ¶¶12.3. The position is now addressed in the supplemental statement of Stebbing WS #6, ¶¶2.1-2.9. In summary, it appears that for a few months between the Ellenbogen #2 Order and the review hearing before Tipples J, Avonmouth (2), Alton (2) and Purfleet (3) did not have all 4 warning notices affixed around their perimeter. This was promptly rectified. The Claimants apologise for this oversight but maintain that it did not cause prejudice to Persons Unknown as: (i) there were still at least 2 warning notices affixed around the perimeter; (ii) the other steps for notification had been completed; and, (iii) there was no breach of the Ellenbogen #2 Order during this time.

TIMOTHY MORSHEAD, KC
YAASER VANDERMAN
1 July 2025

IN THE HIGH COURT OF JUSTICE Claim No KB-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

AUTHORITIES

CASE LAW	
AG v Times Newspapers Ltd [1974] AC 273	**1.**
Sectorguard plc v Dienne plc [2009] EWHC 2693	**2.**
PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov [2014] EWHC 4370	**3.**
Wolverhampton CC v London Gypsies and Travellers [2024] 2 WLR 45 (SC)	**4.**
Valero Energy Ltd v Persons Unknown [2024] EWHC 134	**5.**
Valero Energy Ltd v Persons Unknown [2025] EWHC 207	**6.**
Order in *Exolum Pipeline Systems Ltd v Persons Unknown* (25 February 2025, Swift J)	**7.**
MBR Acres Ltd v Curtin [2025] EWHC 331	**8.**
University of Cambridge v Persons Unknown [2025] EWHC 454	**9.**
University of Cambridge v Persons Unknown [2025] EWHC 724	**10.**
Rochdale MBC v Persons Unknown [2025] EWHC 1314	**11.**

2

rather than the interpreting of particular mutual obligations. That distinction may not be easily expressed in words, but at any rate I would be reluctant to apply the *Watcham* doctrine to the construction of mercantile contracts. In the present case, such application is, in any event, in my view unnecessary. I would dismiss this appeal.

Appeal dismissed.

Solicitors: *Allen & Overy; Joynson-Hicks & Co. for Rotherham & Co., Coventry.*

J. A. G.

[HOUSE OF LORDS]

ATTORNEY-GENERAL . . . . . APPELLANT

AND

TIMES NEWSPAPERS LTD. . . . . RESPONDENTS

1973 May 8, 9, 10, 14, 15, 16, 17, 21, 22, 23; July 18, 25

Lord Reid, Lord Morris of Borth-y-Gest, Lord Diplock, Lord Simon of Glaisdale and Lord Cross of Chelsea

Contempt of Court—Pending proceedings—Prejudicing settlement—Matter of public interest—Drug manufactured by company causing deformity in children in utero—Actions begun within three-year limitation period settled in 1968—Writs issued in 261 cases after leave obtained ex parte for extended time—Negotiations in progress for settlement—Long delay—Newspaper seeking to publish article on company's development and marketing of drug—Whether publication contempt of court

Contempt of Court—Pending proceedings—Attorney-General—Whether proper person to move in civil proceedings

Between 1959 and 1961 a company made and marketed under licence a drug containing thalidomide. About 450 children were born with gross deformities to mothers who had taken that drug during pregnancy. In 1968, 62 actions against the company begun within 3 years of the births of the children were compromised by lump sum payments conditional on the allegations of negligence against the company being withdrawn. Thereafter leave to issue writs out of time was granted ex parte in 261 cases, but apart from a statement of claim in one case and a defence delivered in 1969 no further steps had been taken in those actions. A further 123 claims had been notified in correspondence. In 1971 negotiations began on the company's proposal to set up a £3½ million charitable trust fund for those children outside the 1968 settlement conditional on all the parents accepting the proposal. Five parents refused. An application to replace

those parents by the Official Solicitor as next friend was refused by the Court of Appeal in April 1972. Negotiations for the proposed settlement were resumed.

On September 24, 1972, a national Sunday newspaper published the first of a series of articles to draw attention to the plight of the thalidomide children. The company complained to the Attorney-General that the article was a contempt of court because litigation against them by the parents of some of the children was still pending. The editor of the newspaper justified the article and at the same time sent to the Attorney and to the company for comment an article in draft, for which he claimed complete factual accuracy, on the testing, manufacture and marketing of the drug. On the Attorney-General's motion, the Divisional Court of the Queen's Bench Division granted an injunction restraining publication on the ground that it would be a contempt of court.

After the grant of the injunction on November 17, 1972, and while the newspaper's appeal was pending, the thalidomide tragedy was on November 29 debated in Parliament and speeches were made and reported which expressed opinions and stated facts similar to those in the banned article. Thereafter there was a national campaign in the press and among the general public directed to bringing pressure on the company to make a better offer for the children and their parents; and the company in fact made a substantially increased offer.

The Court of Appeal having discharged the injunction, the Attorney-General appealed to the House of Lords:—

Held, that it was contempt of court to publish material which prejudged the isue of pending litigation or was likely to cause public prejudgment of that issue, and accordingly the publication of this article, which in effect charged the company with negligence, would constitute a contempt, since negligence was one of the issues in the litigation (post, pp. 299F, H—300A, G–H, 303H—304A, 307D–E, 310H—311A, 315A–B, 320C, 322F–H).

Per Lord Reid. As a general rule it may be permissible by fair and temperate comment and without any oblique motive to urge a party to litigation to forgo his legal rights (post, p. 299B–C).

Per Lord Morris of Borth-y-Gest. Full, free, yet temperate comment would have been permissible on the questions whether the legal principles touching the assessment of damages were not inadequate or unfair; whether it was the fault of the legal system if too much time elapsed before agreements or adjudications and whether the company, regardless of their legal liability, should make generous payments on the basis that what they had sold had produced unfortunate consequences (post, pp. 306F–G, 307A–B).

Per Lord Diplock and Lord Simon of Glaisdale. Contempt of court in a civil action is not restricted to conduct calculated to prejudice a fair trial by influencing the tribunal or the witnesses, but extends to conduct calculated to inhibit suitors from availing themselves of their constitutional right to have their legal rights determined by the courts by holding them up to public obloquy for doing so or exposing them to public and prejudicial discussion of the merits or the facts of the case before the action had been disposed of in due course of law. Yet if the discussion of topics of legitimate public concern has the indirect effect of bringing pressure to bear on a particular litigant to abandon his action, that must be borne because of the greater public interest of maintaining

freedom of discussion on matters of public concern (post, pp. 310F–H, 313A–B, 314C).

Per Lord Diplock. A distinction is to be drawn between private persuasion of a party not to insist on relying in pending litigation on claims or defences to which he is entitled under the existing law and public abuse of him for doing so (post, p. 313D–E).

Per Lord Simon of Glaisdale. Private pressure on a litigant is in general an impermissible interference with the course of justice and can only be justified within narrow limits as when there exists such a common interest that fair, reasonable and moderate personal representations would be appropriate, e.g., a genuine, unofficious and paramount concern for the welfare of the litigant (post, pp. 318A–B, 319A–B).

Per Lord Cross of Chelsea. It is not wrong to seek to influence a litigant; if the writer states the facts fairly and expresses his view temperately the fact that the publication might bring great pressure to bear on a litigant should not make it a contempt of court (post, p. 326C).

Observations in *Vine Products Ltd.* v. *Green* [1966] Ch. 484, 495–496 disapproved.

Per curiam. The Attorney-General has a right to bring before the court any matter which he thinks may amount to contempt and which he considers should, in the public interest, be brought before the court (post, pp. 293G–H, 306B, 311D–F, 321D, 326E–F).

Reg. v. *Hargreaves, Ex parte Dill*, The Times, November 4, 1953, D.C. considered.

Decision of the Court of Appeal [1973] Q.B. 710; [1973] 2 W.L.R. 452; [1973] 1 All E.R. 815 reversed.

The following cases are referred to in their Lordships' opinions:

Ambard v. *Attorney-General for Trinidad and Tobago* [1936] A.C. 322; [1936] 1 All E.R. 704, P.C.

Attorney-General v. *Butterworth* [1963] 1 Q.B. 696; (1962) L.R. 3 R.P. 327; [1962] 3 W.L.R. 819; [1962] 3 All E.R. 326, C.A.

Attorney-General v. *London Weekend Television Ltd.* [1973] 1 W.L.R. 202; [1972] 3 All E.R. 1146, D.C.

Bread Manufacturers Ltd., Ex parte (1937) 37 S.R.(N.S.W.) 242.

Conway v. *Rimmer* [1968] A.C. 910; [1968] 2 W.L.R. 998; [1968] 1 All E.R. 874, H.L.(E.).

Crown Bank, In re (1890) 44 Ch.D. 649.

Dawson, Ex parte [1961] S.R.(N.S.W.) 573.

Hooley, In re, Rucker's Case (1898) 79 L.T. 306.

Hunt v. *Clarke* (1889) 58 L.J.Q.B. 490, C.A.

Johnson, In re (1887) 20 Q.B.D. 68, C.A.

Lewis v. *James* (1887) 3 T.L.R. 527.

Ludlow Charities, In re; Lechmere Charlton's Case (1836) 2 My. & Cr. 316.

Lydeard, In re (1966) 130 J.P.Jo. 622.

Martin's Case (1747) 2 Russ. & M. 674.

Mulock, In re (1864) 33 L.J.P.M. & A. 205; 3 Sw. & Tr. 599.

Read and Huggonson, In re (St. James's Evening Post Case) (1742) 2 Atk. 469.

Reg. v. *Castro; Onslow's and Whalley's Case; Skipworth's Case* (1873) L.R. 9 Q.B. 219, D.C.

Reg. v. *Duffy, Ex parte Nash* [1960] 2 Q.B. 188; [1960] 3 W.L.R. 320; [1960] 2 All E.R. 891, D.C.

Reg. v. *Hargreaves, Ex parte Dill*, The Times, November 4, 1953, D.C.
Reg. v. *Martin* (1848) 5 Cox C.C. 356.
Rowden v. *Universities Co-operative Association Ltd.* (1881) 71 L.T.Jo. 373.
South Shields (Thames Street) Clearance Order 1931, In re (1932) 173 L.T.Jo. 76, D.C.
Taylor's Application, In re [1972] 2 Q.B. 369; [1972] 2 W.L.R. 1337; [1972] 2 All E.R. 873, C.A.
Tichborne v. *Tichborne* (1870) 39 L.J.Ch. 398.
Vine Products Ltd. v. *Green* [1966] Ch. 484; [1965] 3 W.L.R. 791; [1965] 3 All E.R. 58.
William Thomas Shipping Co. Ltd., In re [1930] 2 Ch. 368.

The following additional cases were cited in argument:

Alliance Perpetual Building Society v. *Belrum Investments Ltd.* [1957] 1 W.L.R. 720; [1957] 1 All E.R. 635.
Birmingham Vinegar Brewery v. *Henry* (1894) 10 T.L.R. 586, D.C.
Cheltenham and Swansea Railway Carriage and Wagon Co., In re (1869) L.R. 8 Eq. 580.
Church of Scientology of California v. *Burrell* (unreported), July 30, 1970, James J.
Coates (J. & P.) v. *Chadwick* [1894] 1 Ch. 347.
Daw v. *Eley* (1868) L.R. 7 Eq. 49.
"Finance Union," In re; Yorkshire Provident Assurance Co. v. *"Review" Publishers* (1895) 11 T.L.R. 167, D.C.
Ilkley Local Board v. *Lister* (1895) 11 T.L.R. 176.
Kitcat v. *Sharp* (1882) 52 L.J.Ch. 134.
Labouchere, In re; Kensit v. *Evening News Ltd.* (1901) 18 T.L.R. 208, D.C.
McLeod v. *St. Aubyn* [1899] A.C. 549, P.C.
Phillips v. *Hess* (1902) 18 T.L.R. 400, D.C.
Plating Co. v. *Farquharson* (1881) 17 Ch.D. 49, C.A.
Reg. v. *Gray* [1900] 2 Q.B. 36, D.C.
Reg. v. *Griffiths, Ex parte Attorney-General* [1957] 2 Q.B. 192; [1957] 2 W.L.R. 1064; [1957] 2 All E.R. 379, D.C.
Reg. v. *Odham's Press Ltd., Ex parte Attorney-General* [1957] 1 Q.B. 73; [1956] 3 W.L.R. 796; [1956] 3 All E.R. 494, D.C.
Reg. v. *Payne* [1896] 1 Q.B. 577, D.C.
Rex v. *Daily Mail (Editor), Ex parte Factor* (1928) 44 T.L.R. 303, D.C.
Rex v. *New Statesman (Editor), Ex parte Director of Public Prosecutions* (1928) 44 T.L.R. 301, D.C.
Rex v. *Tibbits* [1902] 1 K.B. 77.
Robson v. *Dodds* (1869) 20 L.T. 941.
Thomson v. *Times Newspapers Ltd.* [1969] 1 W.L.R. 1236; [1969] 3 All E.R. 648, C.A.

APPEAL from the Court of Appeal (Lord Denning M.R., Phillimore and Scarman L.JJ.) [1973] Q.B. 710.

This was an appeal by the Attorney-General from an order of the Court of Appeal dated February 16, 1973, whereby it was ordered that the appeal of the present respondents, Times Newspapers Ltd., from an order of the Divisional Court of the Queen's Bench Division (Lord Widgery C.J., Melford Stevenson and Brabin JJ.) dated November 17, 1972, be allowed and that the order of the Divisional Court, granting an

injunction restraining the respondents, their servants or agents or otherwise, until further order

> "from publishing or causing or authorising to be published or printed an article dealing with the distribution and use of the drug 'thalidomide'"

be set aside and the injunction be discharged; that the appellant do pay the costs of the appeal, and that leave to present a petition of appeal to the House of Lords be refused. The appellant was granted leave to appeal by the Appeals Committee of the House of Lords (Lord Pearson, Lord Diplock and Lord Simon of Glaisdale) on March 1, 1973.

The principal material facts relevant to the questions arising in the appeal are summarised as follows:

(a) Between 1958 and 1961 Distillers Co. (Biochemicals) Ltd. ("Distillers") manufactured and marketed in the United Kingdom drugs which contained an ingredient known as thalidomide which had initially been produced by a German manufacturing company. The drugs were prescribed as sedatives for, among others, expectant mothers. In the year 1961 a number of mothers to whom the drugs had been administered gave birth to children suffering from severe physical deformities. In the same year Distillers withdrew all drugs containing thalidomide from the market.

(b) Following that withdrawal, claims were made against Distillers in respect of the malformed children on the basis that the cause of the deformities was the effect on the foetus of thalidomide administered to the mother during pregnancy. Actions were also brought in respect of persons alleged to have suffered peripheral neuritis as a result of the use of the drugs. Between the years 1962 and 1966 the parents of 70 of the deformed children issued writs against Distillers on behalf of the children and on their own behalf alleging, inter alia, negligence in the production, manufacture and marketing of the drugs containing thalidomide. Distillers by their defences in each of the actions denied, inter alia, that they had been negligent and put in issue the legal basis of the claims. Extensive particulars of the claims were sought and given.

(c) Following negotiations between the parties' legal advisers, on February 19, 1968, Hinchcliffe J. approved terms of settlement in 62 cases involving living malformed children on the basis that Distillers paid 40 per cent. of the amount of damages to which each plaintiff would have been entitled if wholly successful in the proceedings. On July 30, 1969, by agreement between the parties, Hinchcliffe J. assessed damages in two representative actions on the assumption of full liability on the part of Distillers (*S.* v. *Distillers Co. (Biochemicals) Ltd.* [1970] 1 W.L.R. 114). Subsequently, damages in a further 56 out of the total of 62 cases were agreed and approved by the court. Of the remaining four cases, it was agreed in the case of one child that the deformities were not caused by thalidomide; one child died before the amount of damages could be approved by the court; and in two actions the amount of damages is still being negotiated.

(d) Of the other eight actions brought prior to 1968, three were

included in the settlement of 1968 but, since the children concerned had died before the date of settlement, the approval of the court was not required and the cases were not listed with the 62 actions brought before the court. The writs in the remaining five actions were not issued within the limitation period of three years, and accordingly those cases were not included in the 1968 settlement.

(e) Following the settlement of the actions in 1968 and the statement made in court on behalf of Distillers on that occasion, further claims were made against Distillers by the parents and guardians of other deformed children. In 261 cases leave to issue writs out of time was granted ex parte by the court on various dates pursuant to the Limitation Act 1963. These actions and the additional five actions referred to in paragraph (d) remained pending before the court. In addition to the 266 pending actions, claims on behalf of a further 123 children and their parents were advanced against Distillers but by agreement between the parties no writs were issued.

(f) In the latter part of 1971, Distillers, with a view to settlement of the 389 outstanding claims, put forward a scheme to establish a charitable trust fund to be administered for the benefit of the deformed children but subject to the condition that it was accepted by all the plaintiffs. The parents of all but five of the children concerned accepted the scheme and the terms of settlement offered by Distillers. The refusal of the parents of five children to agree to the scheme resulted in an application being made to the court to remove them from the office of next friend and to appoint the Official Solicitor in their respective places. On March 22, 1972, Hinchcliffe J. granted the application and substituted the Official Solicitor as next friend in each case. On April 12, 1972, the Court of Appeal (Lord Denning M.R., Edmund Davies and Lawton L.JJ.) reversed the decision of Hinchcliffe J. and reinstated each of the parents as next friend (*In re Taylor's Application* [1972] 2 Q.B. 369).

(g) Following the decision of the Court of Appeal in *In re Taylor's Application*, the five parents remained unwilling to accept the proposed scheme for establishing a charitable trust and this accordingly did not proceed. Further without prejudice negotiations ensued, however, with a view to reaching a settlement of the 389 claims and on June 29, 1972, Distillers put forward fresh proposals for settlement of the claims.

(h) In the summer and autumn of 1972, the present respondents began to publish in "The Sunday Times" a series of articles giving wide coverage to the thalidomide question, and, in particular, to the claims made against Distillers by the parents of children deformed as a result of the administration of the drug. Articles appeared in "The Sunday Times" on September 24 and on October 1, 8, 15, 22 and 29, 1972.

(i) Complaint was made to the present appellant by Distillers in respect of the article published in "The Sunday Times" on September 24, 1972. By letter dated September 27, 1972, the appellant invited the editor of "The Sunday Times" to submit his observations on the complaint that the publication amounted to a contempt of court. By

letter dated September 28, 1972, the editor replied justifying the publication of the article and enclosing a further draft article which it was proposed to publish in a future issue of the newspaper and said that he would be very grateful for any observations the appellant might have upon it. On October 11, 1972, after further correspondence and discussions on behalf of the parties hereto, the appellant caused the respondents to be informed that he had decided that the proper course was to issue proceedings for an injunction to restrain publication of the further draft article in order to obtain a judicial decision on the legality of the publication. By letter dated October 17, 1972, the respondents' legal adviser informed the Treasury Solicitor that the newspaper welcomed the decision of the appellant to take proceedings as one which was both sensible and constructive.

Sir Peter Rawlinson Q.C., *A.-G.*, *Gordon Slynn* and *Nicolas Bratza* for the appellant. This case involves a major branch of the law of contempt of court, which has not been considered by the House of Lords this century. The House is also invited to review the role of the Attorney-General in contempt proceedings.

The Court of Appeal confused his role as counsel for the Crown with his role of guardian of the public interest. The Attorney-General may appear as counsel for the Crown, e.g., for a government department, or in a constitutional role as guardian of the public interest (see *Edwards on The Law Officers of the Crown* (1964), pp. 295–305). In a matter involving contempt of court the public interest is clearly touched. The Attorney-General appears also in the case of charities and of relation actions. Here his intervention is on behalf of the court.

Comment on matters raised in legal proceedings pending before a court amount to contempt if the comment creates a real and substantial risk of the proceedings being interfered with by affecting the due and impartial administration of justice in prejudicing the free choice and conduct of a party to the proceedings.

Though the consequences of pressure applied to a litigant may be good in themselves, one must look beyond those immediate consequences and consider the principle. Even in a case like the present the rules of contempt of court and the principles of the administration of justice should not be bent at the expense of a party to the litigation.

A deliberate campaign at a time when proceedings covering the issue in dispute were pending could be a contempt. As to pending proceedings, see *Halsbury's Laws of England*, 3rd ed., vol. 8 (1954), pp. 7–9, para. 11. If there is a risk of affecting what ultimately happens in court, the issue of a writ or the imminence of its issue alters the whole position as to what may be published on the matter in controversy.

Take the instance of a fire at an hotel. At first controversy as to the responsibility is free, but, once one of the injured persons has issued a writ, a third party may not continue to assert that the hotel proprietor should pay up at once to compensate the injured persons. All comment is not excluded; the test is whether there is a real and substantial risk of prejudicing the proceedings. The decision of the Court of Appeal in the present case has introduced a qualification (i.e., balancing of public interest),

hitherto unknown in this country and contrary to the law long laid down. It would make the law of contempt unworkable. A

A discussion of moral obligations may affect the decision of the courts in a matter pending before them, though a detailed recital of the facts might not prejudice the proceedings. While a newspaper article might not touch on the trial of the action, it might, by mobilising public opinion, drive one of the parties to do something which he would not otherwise do in inducing him to abandon an available defence. Shaming someone so to B act would affect the trial of the action. Appealing to the world to bring pressure to bear on a particular party to litigation is a contempt of court, even though the legal rights of that party are conceded. If the intention is to get between the party and his conduct of the proceedings that is a contempt. The case of a friend advising him by persuasion to abandon his proceedings is different from that of a stranger publishing a criticism C to his disadvantage. One must distinguish between a person who gives friendly advice and a person who tries to interfere with legal proceedings. The law is correctly stated in *Borrie and Lowe, The Law of Contempt* (1973), p. 178.

One may without risk say things in Parliament, and be reported, which one could not lawfully say outside it. But the fact that what was said in Parliament about Distillers was widely reported does not mean that D there is no check on what may be published of them outside. The article now in question was directed to discussing the question of their negligence at law and goes further than trying to enforce a moral obligation. Such discussion before the trial of matters which it is for the court to decide is grossly unfair and amounts to a contempt of court. The article was intended to shame the defendants in the action, to accuse them before the E world of having perpetrated a very substantial civil wrong and to make them adopt towards the plaintiffs an attitude which they would not otherwise have adopted. The editor of the newspaper had formed a view and had decided to use the means at his disposal to further the interests of the people whom he was championing. The pressure reached the point of impropriety.

The court must look at each publication to see what it did and said and what effect it had: see *Attorney-General* v. *London Weekend Television Ltd.* [1973] 1 W.L.R. 202, 206, where the decision was that what was F published just fell within the line of what was permissible. What the effect of a publication will be must always be a matter of speculation.

Suppose the case of a villain who brings an action in respect of some small technical slip and a newspaper conducted a campaign to maintain that he had no moral right to bring the action; although that campaign G might be temperate, that would be something to be avoided. The same could apply to the case of an action by persons who had suffered injury in an accident if a campaign were initiated to maintain that morally the defendants ought to pay up. Although the motives might be sincere, such conduct would release on the administration of justice influences which ought not to be released.

One must distinguish the case of friendly advice to a litigant, e.g., H friendly advice given by one member of the Bar to another, and the case, say, of the Attorney-General as head of the Bar making a threat to penalise

him if he did not abandon his action or his defence. There is a difference between giving advice or persuading and making a threat, which, if made by a private person, would be a contempt.

Distillers are just as much entitled as anybody else to have the law enforced and to be protected from pressures which might make the enforcement of the law unpopular. A situation must not be created in which a litigant does not dare to take his case to court. Distillers would not be prejudiced if one person did not buy their goods but a newspaper campaign might prejudice them by loss of custom and in other respects. To withdraw custom from a trader so as to force him to drop litigation might in some circumstances be a contempt of court.

If a public controversy was going on (e.g., about landlord and tenant relations) and an action was started in that field, the controversy would not have to stop, provided the action was not attacked and the discussion continued in general terms.

The authorities on this aspect of contempt of court are *In re Read and Huggonson (St. James's Evening Post Case)* (1742) 2 Atk. 469, the fons et origo of the line of cases; *In re Cheltenham and Swansea Railway Carriage and Wagon Co.* (1869) L.R. 8 Eq. 580, discussed in *Borrie and Lowe, The Law of Contempt*, p. 87; *Tichborne* v. *Tichborne* (1870) 39 L.J.Ch. 398, 401 403; *Reg.* v. *Castro*; *Skipworth's Case* (1873) L.R. 9 Q.B. 219, 230, 234, 238; *J. & P. Coates* v. *Chadwick* [1894] 1 Ch. 347, 350; *Daw* v. *Eley* (1868) L.R. 7 Eq. 49; *Kitcat* v. *Sharp* (1882) 52 L.J.Ch. 134; *Hunt* v. *Clarke* (1889) 58 L.J.Q.B. 490; *In re Crown Bank* (1890) 44 Ch.D. 649; *Ilkley Local Board* v. *Lister* (1895) 11 T.L.R. 176; *In re William Thomas Shipping Co. Ltd.* [1930] 2 Ch. 368, 373–374 and *Vine Products Ltd.* v. *Green* [1966] Ch. 484, 489–490, 492–495, 496–497.

One must not comment on the merits of an action, even fairly and temperately, because the case is to be tried and a litigant is not to be driven from pressing his action in the courts. If it were permissible to pass a moral judgment no rogue would ever be able to bring an action, however well justified. Because the courts have been given the duty to try cases, they have a right to assure that the cases which come before them are tried by them and by no one else. The courts must safeguard the position of all suitors. Courts of all descriptions must protect those who give evidence before them or who are brought into court to participate in the administration of justice.

In this matter the courts must establish principles which can be understood by persons who may wish to comment on legal proceedings and which can be put into execution by the Law Officers of the Crown or by any person affected himself. This branch of the law of contempt is not concerned with the dignity of the court but with the conduct of the proceedings before the court. It is the process of law which must be protected. In the *Vine Products* case [1966] Ch. 484, 496, Buckley J. correctly applied those principles to the circumstances of that case.

It is a contempt when a newspaper decides issues which should be decided by the court. Even if the parties did not object, the court would object because of the effect on other cases and because of its concern for suitors generally: see *In re "Finance Union"; Yorkshire Provident Assurance Co.* v. *"Review" Publishers* (1895) 11 T.L.R. 167. The test is

always the substantial risk of interference with the course of justice: see *Reg.* v. *Castro; Onslow's and Whalley's Case* (1873) L.R. 9 Q.B. 219, 222, 224 et seq. and *Alliance Perpetual Building Society* v. *Belrum Investments Ltd.* [1957] 1 W.L.R. 720, 726–727. Each facet of these different cases reflects the heads set out in *Read and Huggonson*, 2 Atk. 469, the reason behind which was the need to keep the fountain of justice pure: see also *Reg.* v. *Payne* [1896] 1 Q.B. 577, 580.

In the present case because of the nature of the proceedings, if the court is satisfied that the test was fulfilled the order sought should be made because if the publication of the article in question would amount to a contempt there should be an injunction. If the article had been published the Attorney-General would have been entitled to an order. See also *Church of Scientology of California* v. *Burrell* (unreported), July 30, 1970.

In order to constitute a contempt there must be a real issue between the parties and if there is interference with the trial of that issue, there is a contempt; otherwise there is no contempt. Anyone is free to comment, provided it does not interfere with a fair trial. If there is interference, intention is irrelevant: see *Reg.* v. *Odham's Press Ltd., Ex parte Attorney-General* [1957] 1 Q.B. 73, 80. But in the present case it is clear that the article was intended to influence the proceedings. See also *Reg.* v. *Griffiths, Ex parte Attorney-General* [1957] 2 Q.B. 192; *Attorney-General* v. *Butterworth* [1963] 1 Q.B. 696, 722, 724 and *Borrie and Lowe, The Law of Contempt*, p. 78.

The subject of "Newspapers and Contempt of Court in English Law" was discussed in an article by Professor Goodhart (1935) 48 *Harvard Law Review*, pp. 885–886, 889–892, 895–898, 906–908; and see *Borrie and Lowe, The Law of Contempt*, pp. 106–108, 110–111, 148–150, 177–178 and, as to legal aid in contempt cases, pp. 275–277.

As to the role of the Attorney-General in contempt proceedings, see *Reg.* v. *Hargreaves, Ex parte Dill*, The Times, November 4, 1953, since when it has been common for the Attorney-General to be notified, if not invited to move. The modern trend is for the courts to look to the Attorney-General to bring matters of contempt before the court: see *Edwards on The Law Officers of the Crown*, pp. 42–43, 154–156, 222–223, 286.

A company which did not court publicity might prefer not to move for contempt but to leave the matter in the hands of the Attorney-General, although there is nothing to prevent private parties from moving. But in all criminal cases the appropriate practice is that proceedings should be brought by the Law Officers of the Crown. In civil cases the most appropriate practice is for the aggrieved party to ask the Attorney-General to intervene; but, if the Attorney-General refused to intervene, the party could do so himself.

In matters of contempt there must be a predominant element of public interest. Private interests may be considerably affected but it is most appropriate for the matter to be brought before the court by an independent officer, viz., the Attorney-General.

In commenting on a dispute what may not be done is to prejudice a fair trial. One may give a party to proceedings advice that it was not sensible to go on with the case or that it would be more discreet to pay

A up; but one may not intimidate him into not proceeding or hold him up to vilification in public.

In the present case, after the Parliamentary debate the newspapers were entitled to report it, as reflecting opinions in Parliament, and also to record the state of the negotiations. But a " pressurising " article might or might not be contempt according to the way in which it was written.

Once the process of law has been initiated the outsider's right to com-
B ment on the dispute ceases. This must be so if the person criticised has been indicted and also if a civil action has been commenced. The case of criminal proceedings, when someone has to answer a charge, demonstrates that newspaper comment must stop in the interests of a fair trial. The authorities have clearly laid it down that it is important, for the impartial administration of justice and the rights of the individual, not to allow comment in the championing of one side or the other by outsiders who
C may have great power to influence public opinion.

The test is whether there is a real and substantial risk of interfering with the impartial administration of justice or prejudicing the conduct of a party to the proceedings. The risk may be minimal or the comment too general to affect the trial. In each case the court must look at the particular facts surrounding the application made for committal, the particular publi-
D cation in relation to the particular trial. There is a difference between advising a person to drop his case and threatening him if he goes on with it. One must also assess whether a particular form of pressure will have a particular effect. One must look to the public interest of the administration of justice linked with the interest of a particular party: see *In re Labouchere*; *Kensit* v. *Evening News Ltd.* (1901) 18 T.L.R. 208; *Phillips* v. *Hess* (1902) 18 T.L.R. 400; *Rex* v. *Daily Mail (Editor)*, *Ex parte Factor*
E (1928) 44 T.L.R. 303; *Ex parte Dawson* [1961] S.R.(N.S.W.) 573, 575.

The purposes of the law of contempt are threefold: (1) To enable the parties to litigation and the witnesses to come before the court without outside interference; (2) To enable the courts to try cases without such interference; (3) To ensure that the authority and administration of the law are maintained. As to (1) the law of contempt must be as wide as is necessary
F (but no wider) to prevent conduct which interferes with or prejudices people in the conduct of their litigation, which they ought to be free to pursue as they wish or as their advisers advise, without outside interference. As to (2), the law must prevent conduct which interferes with or prejudices the mind of the court, i.e., the judge or the jury, so as to make it unlikely or impossible that a fair and impartial trial of the case, on the evidence and arguments submitted to the court at the trial, would be held. As to (3)
G the law must prevent conduct which reduces the court's authority or the respect paid to it or reflects on the proper administration of justice.

The test whether there is a real and substantial risk of interfering with the impartial administration of justice or prejudicing the conduct of a party to the proceedings does not in its application require that there should be actual interference or prejudice, e.g., statements likely to make a party
H abandon his claim or his defence would be covered. One must ask whether the act is likely to interfere or prejudice in the particular circumstances of the particular trial, so that the test is applied to the particular facts. To do something which is likely to deter a person from the exercise of his

rights in the conduct of the litigation is contempt. But, for example, a little paragraph in the " Tolpuddle Gazette " attacking a giant corporation would not be likely to affect its conduct in litigation and so would not be a contempt. On the other hand, it must not be assumed that a judge could not be influenced by a subtle campaign and there is always the possibility of juries being influenced in criminal trials. As to the position when an appeal is pending, see *Borrie and Lowe, The Law of Contempt*, pp. 146–148.

The administration of justice and the authority of the court are difficult areas in this context. This aspect of the law goes further than abuse of a judge. The role of the courts in deciding the facts and the law is often difficult. When particular facts touch on matters concerning politics or social policy popular interest and feeling may run high. If the result produced by litigation is politically unacceptable, Parliament may intervene to change the law, but the courts ought to be free to decide the matters with which they are entrusted according to law, even if the law ought to be changed, since the duty of a judge is to decide cases according to the law as it is. There is a very grave public interest that as a matter of public policy judges should be able to do this without rivalry from outside. This is quite apart from considerations of the danger of prejudicing the mind of the court. If outside bodies, such as a television panel, air their views, that can only detract from the authority of the court and reduce the respect for it. That authority should not be usurped, whether or not the usurper does so with balanced and temperate arguments. It is all the more culpable if it is done one-sidedly or as a campaign: see *Reg.* v. *Castro; Onslow's Case*, L.R. 9 Q.B. 219, 226; *Birmingham Vinegar Brewery* v. *Henry* (1894) 10 T.L.R. 586 and *Robson* v. *Dodds* (1869) 20 L.T. 941.

The injunction should be restored because the intended article would have objectionable characteristics on the principles laid down by the authorities.

Brian Neill Q.C. and *Edward Adeane* for the respondents. The discussion falls under five heads (1) the facts as they stood from 1962; (2) the law applicable; (3) the question whether an injunction should be granted; (4) the facts since the hearing of the case in the Divisional Court; (5) the role of the Attorney-General.

It is to be noted (a) that here nothing touches criminal proceedings; (b) that the discussion related not only to what the law is, but also what it should be; (c) that contempt of court is concerned only with one aspect of the public interest and in each case the court must find where the public interest lies.

As to the facts in November 1962 and after: (a) In 1961–62 a national tragedy occurred; some 400 deformed children were born. (b) No inquiry into the causes of that tragedy has ever been held. (c) Apart from some 60 children, to whom payments were made in accordance with the decision of Hinchcliffe J. in 1968, none has received compensation. (d) The children are now approaching adolescence. (e) In the cases settled account was not taken of actuarial considerations or of inflation. (f) If fresh proceedings are started public comment may be restrained indefinitely.

So far as the facts as to the pending actions is concerned, what Lord Denning M.R. said [1973] Q.B. 710, 738E–F is approximately accurate

as to the number of cases. As to pleadings, it was only in a small number of cases that defences were delivered.

In 1972 the position was that the claimants fell into many groups. The discussions taking place were on the basis that everybody would have a share in the fund to be provided. The question was not whether there would be any cake at all or who would share in it, but how large the cake would be. It was not a case in which the proceedings were going on in the normal way. After Hinchcliffe J. had approved the settlement there were discussions as to how the beneficiaries were to participate in the fund: see *In re Taylor's Application* [1972] 2 Q.B. 369, 377 et seq., which shows what the position was in the spring of 1972.

As to the law, the present case is concerned with pressure, not on the court or on witnesses, but on the parties to litigation, and with the effect of that pressure. On this aspect of the matter there is little direct authority. The Attorney-General conceded that friendly advice would be permissible, thus admitting a distinction between proper and improper pressure. The words " persuasion " or " influence " are preferable to " pressure."

There must be some persons who are entitled to influence a party in the conduct of his litigation, e.g., his solicitor. One must seek the justification of a person seeking to do so. A friend might advise a party to drop a case in his own interests and that would not be a contempt of court, since in contempt there must be an element of tainting justice. Any element of corruption would amount to contempt of court but that would not be present in the case of a friend advising a party from a proper motive. Remonstrance by a friend of a victim of oppression would also be proper, e.g., a representation that he was ill and should not be treated harshly.

Similarly, if a letter was written to a newspaper one would have to ask first what right the person doing so had to write at all. Suppose it related to the eviction of a tenant; that might be a ground for comment and one would have to consider whether the writer was exercising a right of fair comment on a matter of public concern. In considering whether the exercise of influence is proper or improper one must look both at the circumstances and at the means used.

Suppose that in the course of litigation over " squatters " two letters were written to the press, one saying that, whatever the result of the case in law, eviction should not be enforced, and the other analysing the legal position fairly on both sides and saying that the landlord should lose on legal grounds. Both letters would be unobjectionable.

If there is a concept of proper and improper influence, one must consider who is applying the pressure, to whom it is being applied, the means and the manner of doing so and the state of the proceedings. In the present case the justification of the article in question is the right to discuss and comment on matters of public concern.

A court, holding the balance, will give most weight to freedom of speech, in preference to the blanket of silence which the Attorney-General seeks to impose. It is not maintained that a newspaper is always entitled to discuss purely private litigation, but the right of comment and discussion of a matter of public concern may override other public interests. The fact that these children were not going to get compensation adequate to their needs was of necessity a matter of public concern. That must be weighed against the

general right of litigants not to be pressed in the conduct of their litigation. Reliance is placed on *Ex parte Bread Manufacturers Ltd.* (1937) 37 S.R. (N.S.W.) 242, 249–250, which opens up the possibility of drawing a balance. A

It is a matter of public concern that people should measure up to their social responsibilities, though in this contest, as in the law of libel, it is hard to define precisely what is a matter of public interest. The same approach would be proper in both cases in deciding what are matters in the public arena, so as to justify other people in discussing them and B commenting on them. Here is a great public company marketing on a wide scale drugs which are provided by prescription on National Health. The result has been a tragedy. Its operations are a matter of public concern in that it put on the market a product which had that result. The article is not dragging the company into the public arena; it is already there.

Discussion of a matter of public interest should not be inhibited merely because it is intended to influence a person in the conduct of litigation. C One may say in general that it is a pity that people should be turned out of their houses or one may be more specific in commenting on the plight of particular persons who are about to be turned out, say by the local authority. To write about it as a citizen to the town clerk is not a contempt of court. There are steps which it might be right to take in private but not in public and it is not in all litigation that the press is free to take sides. D In some cases there must be a balancing operation. Thus in *Conway* v. *Rimmer* [1968] A.C. 910 the House of Lords recognised that the right of a litigant to a fair trial had to be balanced against the right of the Crown not to produce some documents; two public interests were recognised. Again in the case of the reporting of committal proceedings there was a balance to be struck between the danger of prejudice to accused persons by the publicity and the right of people to know what was going on in the courts. E (The problem was dealt with by section 3 of the Criminal Justice Act 1967.) The section on "Balancing the Scales" in the report by *Justice* on Contempt of Court (1959), pp. 5–8 is adopted.

Private advice and public interest in open discussion may both provide a justification for intervention. In the latter case the scale of public concern will determine where the line should be drawn. Suppose that "The F Venetian Times" had commented on the case of Mr. Shylock saying that it was a pity he should enforce his rights in the way he intended; that would have been allowable. There may be cases of public concern in which only one litigant or "victim" is concerned. There is a right to urge a moral argument, temperately and reasonably, and one may go on to set out the detailed facts of the case. One may go on to say that on the facts the party in question may be under a liability and this may help to persuade G him to a compromise. It is a form of persuasion.

Suppose a local authority were evicting a lot of people as "squatters"; it would be permissible for the press to say that, whatever the rights and wrongs of the situation were in law, the evictions should stop. It might go on to say that the evicted persons might have a case under the Housing Acts. It would be hard to draw a line between the two, since in the realm H of persuasion there is no difference between them. However, a television programme in which each side of the qustion was presented by one person and a third person summed up might be objectionable if it was presented

just before a trial of the question, since it might possibly influence the court or the witnesses. These are questions of degree. As to the limitations on public comment, see the report of Lord Salmon's committee on The Law of Contempt as it affects Tribunals of Inquiry in 1969 (Cmnd. 4078), Chapter 5, para. 13, p. 7. But see also Professor Goodhart's article on "Newspapers and Contempt of Court in English Law" (1935) 48 *Harvard Law Review*, p. 897, referring to *In re South Shields (Thames Street) Clearance Order 1931* (1932) 173 L.T.Jo. 76.

In re William Thomas Shipping Co. Ltd. [1930] 2 Ch. 368, 377, relied on by the Attorney-General, turned on a misrepresentation of the facts. In *Vine Products Ltd.* v. *Green* [1966] Ch. 484, 495–496 also relied on by him the general statement of Buckley J. goes too far and is incorrect. There is no general principle that to attempt to influence a party to litigation is per se a contempt of court; one must investigate the circumstances in each case. It is not in every case that the right to free speech will be overridden.

In striking a balance one must place in one scale the public interest in securing that legal proceedings should be tried by an impartial tribunal and that litigants should have unimpeded access to the courts, together with their witnesses. In the other scale one must place the public interest in securing free discussion of matters of public concern, the standard of which is no lower than the "public interest" in the case of fair comment under the law of libel. In each individual case one must find whether the matters commented on are of public concern.

In the present case the matters of public concern are: (a) the extent of the legal liability of a company marketing drugs; i.e., whether that liability should be strict; (b) the moral responsibility of those who put drugs or other potentially dangerous goods on sale; (c) the question whether adequate provision will be made for these children; (d) the investigation of how this tragedy happened; (e) the fact that no inquiry has ever been held; (f) the means to avoid similar tragedies in the future. In the present case the time factor is important, the period during which the proceedings have been pending. There must be public concern that drugs should not be marketed with these results. Though, once legal proceedings are commenced involving that question, a new consideration is brought in, the public concern still remains. It is a relevant consideration whether the case will come on in a week or in a year or later still.

Admittedly intention can turn what would not be a contempt into a contempt, but there is here no attempted usurpation of the court's function. The courts can adequately protect the parties to litigation, not by creating a new kind of contempt but by applying the test: Is this going to influence the court or the witnesses? The court should be slow to introduce a new category of contempt. On established principles it is undesirable that discussion of the merits or the issues should be stopped. The report of the House of Commons Select Committee on Procedure referred to by Phillimore L.J. in the Court of Appeal [1973] Q.B. 710, 745 suggests a test which would be satisfactory, i.e., that if no influence was exerted on the court or on the witnesses in relation to the case there could be no contempt of court. That would be more satisfactory than this new concept of placing an embargo on all discussion once a writ was issued on the ground that the court was seised of the matter. But discussion only comes within the field

of contempt if it is likely to affect the court's decision. It is not wrong to seek to influence a party unless the means used are improper or unfair. A

Following *Reg.* v. *Odhams Press Ltd., Ex parte Attorney-General* [1957] 1 Q.B. 73 the law of contempt was amended by the Administration of Justice Act 1960.

As to technical contempts: see *Hunt* v. *Clarke*, 58 L.J.Q.B. 490 and the *Vine Products* case [1966] Ch. 484, 498. If it is legitimate for the court to strike a balance, there is no room for this concept because a publication B would either go beyond the permitted balance or it would not. If there is any distinction between a contempt which the court will intervene to deal with and one which is merely technical, this case is only concerned with the former. The definition of contempt must not be lower than something with which the court will interfere. See also *Plating Co.* v. *Farquharson* (1881) 17 Ch.D. 49, 54–55.

It is not satisfactory to have a definition of contempt so all-embracing C that a commentator must be in contempt. One should have regard to all the factors involved. Comment should not be the subject of contempt proceedings if there is only a very slight risk of embarrassing witnesses or if, as in the present case, there is only a very slight risk of affecting the court. If there is a real and substantial risk and there are no contravailing factors, then there is a contempt and punishment must be considered. Yet D regard may be had to apologies made which would justify punishment not being inflicted, although there had been a contempt.

If a controversy is proceeding on a matter of public importance the discussion cannot be stopped automatically by the issue of a writ: see *Thomson* v. *Times Newspapers Ltd.* [1969] 1 W.L.R. 1236, 1239–1240 with regard to " gagging " writs merely designed to stifle comment.

Impropriety would exist in the case of comment which might deter E witnesses from coming forward or affect their evidence or taint a jury, but it is too wide to lay down a general proposition that, while litigation is pending there must be no discussion of a topic of concern to the public. The test is the influencing of the tribunal or the witnesses, especially when the tribunal will comprise a lay element. The time within which the case is coming on for hearing is a factor. The importance attached to criminal F proceedings introduces factors not usually met with in civil proceedings and so the restraints imposed in the case of civil proceedings are less strict. Since freedom of discussion is regarded as important, interference with it will be cut down to a minimum in the case of civil proceedings. The mere fact of discussing in the press the issues of a case is not in itself contempt of court: see also *Reg.* v. *Payne* [1896] 1 Q.B. 577, 580, a criminal case.

The test is whether the matter complained of is calculated to interfere G with the course of justice and not whether that result was intended: see the *Odham's Press* case [1957] 1 Q.B. 73, 80; the *Vine Products* case [1966] Ch. 484, 497 and *Reg.* v. *Duffy, Ex parte Nash* [1960] 2 Q.B. 188, 193, 200. There is a great difference between a real risk of so interfering and a remote possibility, and a wide area lies between them. It is only when there is a real risk of interference that a contempt of court arises. H

In *Reg.* v. *Castro*; *Skipworth's Case*, L.R. 9 Q.B. 219, 236, Blackburn J. suggests that there is a separate head of contempt in seeking to influence the public mind; but see *Hunt* v. *Clark*, 58 L.J.Q.B. 490, which suggests

A that the mere fact of attempting to do so is not a contempt if the tribunal is not influenced. See also *McLeod* v. *St. Aubyn* [1899] A.C. 549, 561.

As to summary process in contempt, see *Borrie and Lowe, The Law of Contempt*, p. 254 (citing *Rex* v. *Tibbits* [1902] 1 K.B. 77): as to appeals, see p. 287.

As to the question whether an injunction should be granted in this case, the same standards should apply to ex post facto applications after the event B and to applications for an injunction, because, if the court is to intervene, either something has been done or is about to be done which is contrary to law. People should not be prevented from doing something for which they would not be punished after the event. Accordingly, there should be no injunction in the present case.

As to the facts known after the hearing in the Divisional Court, see the debate on the thalidomide children in the House of Commons on November C 29, 1972, reported in *Hansard's Parliamentary Debates*, columns 433–434, 464–465. See also the references to the matter in "The Daily Telegraph" on January 4, 5 and 8, 1973; "The Economist" on January 6, 1973; "The Sunday Telegraph" on January 7, 1973; and "The Daily Express" on January 8, 1973.

As to the role of the Attorney-General in contempt cases, that which he D seeks to adopt is helpful in that he seeks to filter complaints and discourage applications with no merits from being pursued so that there is a standard procedure enabling the press to know where it stands. But the Attorney-General has no special position in relation to civil contempt as distinct from criminal contempt. Before *Reg.* v. *Hargreaves, Ex parte Dill*, The Times, November 4, 1953, in the kind of contempt with which the case is concerned the action was by the parties but in cases of scandalising the court the action E was by the Attorney-General: *Rex* v. *New Statesman (Editor), Ex parte Director of Public Prosecutions* (1928) 44 T.L.R. 301, a case of scandalising the court, and *Reg.* v. *Gray* [1900] 2 Q.B. 36. If a party wishes to move the court that there has been interference with his witnesses, that should normally be done by the Attorney-General, but, if the Attorney-General refuses to intervene, then the party complaining will go to the court.

F Where contempt proceedings are brought against a person already receiving legal aid, it is doubtful whether the legal aid certificate will cover the contempt proceedings.

The main submissions for the respondent may be summarised as follows:

(1) The rules as to contempt of court impose a fetter on free speech and should therefore be as narrow in their scope as possible.

G (2) In any case where it is alleged that public comment on or discussion of pending civil proceedings amounts to a contempt of court, the court may have to weigh and balance two competing aspects of the public interest.

(3) On one side of the scale the court will place the public interest in securing that legal proceedings should be tried by an impartial tribunal and H that litigants should have unimpeded access to the courts. The court will, however, only take into account matters which give rise to a real and substantial risk of interfering with the proceedings.

(4) On the other side of the scale the court will place the public interest

in protecting free (provided bona fide) discussion of matters of public concern.

(5) In the present case the matters of public concern are: (a) the liability of drug companies for their products; (b) the moral responsibilities of those who put drugs or potentially dangerous goods on sale, and the moral responsibility of Distillers in the present case; (c) whether these children will be adequately provided for; (d) how this tragedy happened; (e) the fact that no inquiry has ever been held, notwithstanding that ten years have passed; (f) how similar tragedies can be avoided in the future; (g) if fresh proceedings are started public comment may be restrained indefinitely.

(6) In the present case the article is not objectionable on the basis that it may influence a party to litigation (a) because, having regard to the matters set out in (5) the balance is firmly in favour of discussion; and (b) because the article is in no way unlawful or unfair and does not include any distortion, threats or abuse.

(7) The discussion of the issues pending action will often be objectionable on the ground of contempt of court because it may influence, or appear to influence, the decision of the tribunal or may affect the minds of the witnesses. In the present case the argument for the appellant is not put on this basis, and, in any event, having regard to (a) the state of the proceedings; (b) the nature of the evidence; and (c) the matters set out in (5), the balance is firmly in favour of free discussion.

(8) There is no separate kind of contempt which can be described as usurpation of the functions of a court and no new heading of contempt should be introduced into the law. In any event, this article in no sense amounts to a usurpation, as it does not purport to reach any final decision or confer any enforceable rights. Its purpose is and was to strengthen the moral argument.

(9) The Divisional Court were wrong to impose an injunction in November 1972.

(10) Even if the Divisional Court were right, the Court of Appeal were right to discharge the injunction in March 1973, having regard to the circumstances at that time. A fortiori it would be wrong to impose a fresh injunction, having regard to the present circumstances.

Sir Peter Rawlinson Q.C., A.-G., in reply. It is in the interests of the public that there should be someone to fill the role which the Attorney-General fills in relation to contempt, but it would be a distortion of his role if he put the authority of the Crown behind all his activities. In *Borrie and Low, The Law of Contempt*, pp. 265–266, the question who can institute proceedings is discussed. *Reg.* v. *Duffy, Ex parte Nash* [1960] 2 Q.B. 188, 192 is cited and reference is made to observations of Sir Elwyn Jones Q.C., A.-G., in the House of Commons in 1969. In the *New Statesman* case, 44 T.L.R. 301, the action was taken on behalf of the Director of Public Prosecutions. In the present case the procedure is different and the Attorney-General is instructed by the Treasury Solicitor. Now, even in a criminal case, the instructions would be from the Treasury Solicitor.

Contempt of court is properly defined in *Oswald's Contempt of Court*, 3rd ed. (1910), p. 6. The procedure has a threefold object: (a) to enable the parties to come to the courts without interference;

(b) to enable the courts to try cases without interference; (c) to ensure that the authority and administration of the law is maintained. Comment influencing the parties to litigation or prejudging the issues arising in the proceedings amounts to contempt. The test is whether there is a real and substantial risk of interfering with the course of justice. There is all the difference in the world between demanding a change in the law and holding a person up to obloquy for availing himself of the present state of the law. Contempt is committed when a publication injures character or impedes justice: *Robson* v. *Dodds*, 20 L.T. 941.

There is no room for the balancing suggested by the respondents between the public interest in free discussion of matters of public concern and the public interest that judicial proceedings should not be interfered with. The claim that something is a matter of public concern is one which cannot be assessed by the court, since almost every case could be said to be a matter of public concern. A case which could be strictly said to be in the public domain would be very rare. Certainly it is not a matter of public concern whether particular defendants have been guilty of a breach of duty to particular plaintiffs and should be required to meet their needs. If the sole intention is to carry public opinion so as to use public discussion to put pressure on a party, there is nothing to put in the scale of a public interest in free discussion to be weighed against the public interest in the proper administration of justice. The proposed balancing process is not only without basis in authority but also would present the courts with insoluble problems.

The article in the present case is not a general article. It is directed to the issues in the particular litigation. Its specific purpose is frankly admitted in the editor's affidavit.

In *Kitcat* v. *Sharp*, 52 L.J.Ch 134, 135, Fry J. used the expression "calculated to interfere with the fair trial of the action . . . calculated to prejudice the plaintiff." In *In re Crown Bank*, 44 Ch.D. 649, 652, North J. used the words "might interfere with the course of justice." In the *Coates* case [1894] 1 Ch. 347, 349, Chitty J. spoke of words "calculated to prejudice the defendants in their defence." In *Reg.* v. *Payne* [1896] 1 Q.B. 577, 580, 581–582, Lord Russell of Killowen C.J. spoke of something "intended, or at least . . . calculated, to prejudice a trial which is pending" and Wright J. of a publication "calculated really to interfere with a fair trial." In the *William Thomas Shipping* case [1930] 2 Ch. 368, 374, 376, Maugham J. spoke of misrepresentations "which may tend to cause other parties who have a proper cause of action not to approach the court," of statements "likely to prejudice [a party] at the trial of the action" and of cases where the order of the court or future orders "are likely to be directly affected." In *Reg* v. *Duffy, Ex parte Nash* [1960] 2 Q.B. 188, 200, Lord Parker C.J. spoke of "a risk, as opposed to a remote possibility" of prejudicing a fair hearing. In the *Vine Products* case [1966] Ch. 484, 497 Buckley J. spoke of "a real and grave risk" that witnesses would be deterred or that the truth or content of their evidence would be affected. In the Divisional Court in the present case [1973] Q.B. 710, 725, Lord Widgery C.J. spoke of "a serious risk that the course of justice may be interfered with." Where there is a campaign directed at a particular

party and dealing with the legal issues, there must be a serious risk of prejudice to the fair hearing.

The administration of justice is entrusted to the judges. The courts have always jealously guarded the right of free access to them. It is the mark of a civilised country that the disputes of private citizens are resolved in that forum.

Thomson's case [1969] 1 W.L.R. 1236 did not mean that third parties are allowed to intervene, while a case is pending, with one-sided accounts of the issues involved. That was emphasised in *In re "Finance Union,"* 11 T.L.R. 167; see also *Reg.* v. *Castro; Skipworth's Case* L.R. 9 Q.B. 219, 232. Trial by newspaper is not to be allowed.

Their Lordships took time for consideration.

July 18. LORD REID. My Lords, in 1958 Distillers Co. (Biochemicals) Ltd. began to make and sell in this country a sedative which contained a drug thalidomide which had been invented and used in Germany. This product was available on prescription and was consumed by many pregnant women having been said to be quite safe for them. But soon there were cases of babies being born with terrible deformities. As such deformities do occasionally occur naturally, it took a little time to prove that these deformities were caused by the action of thalidomide in the unborn child at a certain stage of pregnancy. As soon as this was realised Distillers withdrew their product in 1961.

The matter attracted some publicity and the question arose whether Distillers were legally liable to pay damages in respect of these deformed children. Distillers denied liability and the first action against them was begun in 1962. Further publicity resulted in some 70 actions having been raised before 1968.

Claimants were faced by two difficulties. First there was a highly debatable legal question whether a person can sue for damage done to him before his birth. And secondly, an attempt to prove negligence by Distillers in putting this drug on the market would require long and expensive inquiries. The claimants combined to negotiate with Distillers, and early in 1968 a settlement was reached by which Distillers agreed to pay to each claimant 40 per cent. of the damages which he or she would recover if successful in establishing liability. Regarded from a purely legal point of view this appears to have been a very reasonable compromise.

Two cases were then tried by agreement to establish the proper measure of damages and ultimately 65 cases were settled, Distillers paying about a million pounds.

But many more cases gradually came to light. Leave to serve writs was now necessary and the first orders granting leave were made in July 1968. By February 1969, 248 writs had been served. A few more followed. And there were many cases where claims had been made but no writs served. It may be that there are still some cases where claims will be made. In all there appear to be more than 400 outstanding claims not covered by the 1968 settlement. Distillers proposed to settle these claims by setting up a trust fund of over £3 million. But they made it a condition of any settle-

ment that all claimants should agree to accept it. The great majority agreed but five refused to do so. One parent at least refused because payments out of the trust fund were to be based on need, and his financial position was such that his child would get no benefit from such a settlement.

An attempt was made to compel these five to agree by having the Official Solicitor appointed to look after the interests of their children. But the Court of Appeal in April, 1972, reinstated these five parents (*In re Taylor's Application* [1972] 2 Q.B. 369). In June 1972 Distillers made some new proposals but they were not accepted. There were then 389 claims outstanding and there seemed little prospect of an early settlement.

The editor of " The Sunday Times " took a keen interest in this matter. He collected a great deal of material and on September 24, 1972, that newspaper published a long and powerful article. Two general propositions were argued at some length: first whether those who put such drugs on the market ought to be absolutely liable for damage done by them, and secondly that in such cases the currently accepted method of assessing damages is inadequate. But the sting of the article lay in the following paragraph:

> " Thirdly, the thalidomide children shame Distillers. It is appreciated that Distillers have always denied negligence and that if the cases were pursued, the children might end up with nothing. It is appreciated that Distillers' lawyers have a professional duty to secure the best terms for their clients. But at the end of the day what is to be paid in settlement is the decision of Distillers, and they should offer much, much more to every one of the thalidomide victims. It may be argued that Distillers have a duty to their shareholders and that, having taken account of skilled legal advice, the terms are just. But the law is not always the same as justice. There are times when to insist on the letter of the law is as exposed to criticism as infringement of another's legal rights. The figure in the proposed settlement is to be £3·25 m., spread over 10 years. This does not shine as a beacon against pre-tax profits last year of £64·8 million and company assets worth £421 million. Without in any way surrendering on negligence, Distillers could and should think again."

Distillers immediately brought this to the attention of the Attorney-General maintaining that it was in contempt of court. The Attorney-General decided to take no action. But this did not in any way prevent Distillers from bringing the matter before the court if they chose to do so. However, they took no action.

I agree with your Lordships that the Attorney-General has a right to bring before the court any matter which he thinks may amount to contempt of court and which he considers should in the public interest be brought before the court. The party aggrieved has the right to bring before the court any matter which he alleges amounts to contempt but he has no duty to do so. So if the party aggrieved failed to take action either because of expense or because he thought it better not to do so, very serious contempt might escape punishment if the Attorney-General had no right to act. But the Attorney-General is not obliged to bring before the court every

prima facie case of contempt reported to him. It is entirely for him to judge whether it is in the public interest that he should act.

The editor of "The Sunday Times" had in mind to publish a further article of a different character. As a result of communications between him and the Attorney-General regarding the article of September 24, he sent the material for the further article to the learned Attorney and this time the Attorney-General took the view that he should intervene. By a writ of October 12, 1972, he claimed an injunction against the respondents, who own "The Sunday Times," restraining them from publishing the proposed article. The Divisional Court granted an injunction but the Court of Appeal on February 16, 1973, discharged the injunction. The Attorney-General now appeals to this House.

Before dealing with the arguments submitted to your Lordships I find it necessary to set out some general considerations which must govern the whole subject of contempt of court. It appears never to have come before this House; there is no recent review of the subject in the Court of Appeal; and the circumstances of cases which arise in practice are generally not such as to require any detailed analysis of the law. I cannot disagree with a statement in a recent report of *Justice* on "The Law and the Press" (1965) that the main objection to the existing law of contempt is its uncertainty. I think that we must try to remove that reproach at least with regard to those parts of the law with which the present case is concerned.

The law on this subject is and must be founded entirely on public policy. It is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the administration of justice and it should, in my judgment, be limited to what is reasonably necessary for that purpose. Public policy generally requires a balancing of interests which may conflict. Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there would be real prejudice to the administration of justice.

In *Ambard* v. *Attorney-General for Trinidad and Tobago* [1936] A.C. 322, 355 Lord Atkin said:

> "But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

I think that these words have an application beyond the particular type of contempt in that case.

Discussion of questions of contempt generally begins with the observations of Lord Hardwicke L.C. in *In re Read and Huggonson* (*St. James's*

Evening Post Case) (1742) 2 Atk. 469. Dealing with a case where there had been gross abuse of litigants he said, at p. 469:

> "Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the publick against persons concerned as parties in causes, before the cause is finally heard."

And later, at p. 471:

> "There are three different sorts of contempt. One kind of contempt is, scandalising the court itself. There may be likewise a contempt of this court, in abusing parties who are concerned in causes here. There may be also a contempt of this court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters."

I do not think that Lord Hardwicke L.C. intended this to be a universally applicable definition, although it has too often been treated as if it were. It is a good guide but it must be supplemented in cases of a type which he did not have in mind.

We are particularly concerned here with "abusing parties" and "prejudicing mankind" against them. Of course parties must be protected from scurrilous abuse: otherwise many litigants would fear to bring their cases to court. But the argument of the Attorney-General goes far beyond that. His argument was based on a passage in the judgment of Buckley J. in *Vine Products Ltd.* v. *Green* [1966] Ch. 484, 495–496:

> "It is a contempt of this court for any newspaper to comment on pending legal proceedings in any way which is likely to prejudice the fair trial of the action. That may arise in various ways. It may be that the comment is one which is likely in some way or other to bring pressure to bear upon one or other of the parties to the action, so as to prevent that party from prosecuting or from defending the action, or encourage that party to submit to terms of compromise which he otherwise might not have been prepared to entertain, or influence him in some other way in his conduct in the action, which he ought to be free to prosecute or to defend, as he is advised, without being subject to such pressure."

I think that this is much too widely stated. It is true that there is some authority for it but it does not in the least follow from the observations of Lord Hardwicke L.C. and it does not seem to me to be in accord with sound public policy. Why would it be contrary to public policy to seek by fair comment to dissuade Shylock from proceeding with his action? Surely it could not be wrong for the officious bystander to draw his attention to the risk that, if he goes on, decent people will cease to trade with him. Or suppose that his best customer ceased to trade with him when he heard of his lawsuit. That could not be contempt of court. Would it become contempt if, when asked by Shylock why he was sending no more business

his way, he told him the reason? Nothing would be more likely to influence Shylock to discontinue his action. It might become widely known that such pressure was being brought to bear. Would that make any difference? And though widely known must the local press keep silent about it? There must be some limitation of this general statement of the law.

And then suppose that there is in the press and elsewhere active discussion of some question of wide public interest, such as the propriety of local authorities or other landlords ejecting squatters from empty premises due for demolition. Then legal proceedings are begun against some squatters, it may be by some authority which had already been criticised in the press. The controversy could hardly be continued without likelihood that it might influence the authority in its conduct of the action. Must there then be silence until that case is decided? And there may be a series of actions by the same or different landlords. Surely public policy does not require that a system of stop and go shall apply to public discussion.

I think that there is a difference between direct interference with the fair trial of an action and words or conduct which may affect the mind of a litigant. Comment likely to affect the minds of witnesses and of the tribunal must be stopped for otherwise the trial may well be unfair. But the fact that a party refrains from seeking to enforce his full legal rights in no way prejudices a fair trial, whether the decision is or is not influenced by some third party. There are other weighty reasons for preventing improper influence being brought to bear on litigants, but they have little to do with interference with the fairness of a trial. There must be absolute prohibition of interference with a fair trial but beyond that there must be a balancing of relevant considerations.

I know of no better statement of the law than that contained in the judgment of Jordan C.J. in *Ex parte Bread Manufacturers Ltd.* (1937) 37 S.R.(N.S.W.) 242, 249–250:

> "It is of extreme public interest that no conduct should be permitted which is likely to prevent a litigant in a court of justice from having his case tried free from all matter of prejudice. But the administration of justice, important though it undoubtedly is, is not the only matter in which the public is vitally interested; and if in the course of the ventilation of a question of public concern matter is published which may prejudice a party in the conduct of a law suit, it does not follow that a contempt has been committed. The case may be one in which as between competing matters of public interest the possibility of prejudice to a litigant may be required to yield to other and superior considerations. The discussion of public affairs and the denunciation of public abuses, actual or supposed, cannot be required to be suspended merely because the discussion or the denunciation may, as an incidental but not intended by-product, cause some likelihood of prejudice to a person who happens at the time to be a litigant. It is well settled that a person cannot be prevented by process of contempt from continuing to discuss publicly a matter which may fairly be regarded as one of public interest, by reason merely of the fact that the matter in question has become the subject of litigation, or that a person whose conduct is being

publicly criticised has become a party to litigation either as plaintiff or as defendant, and whether in relation to the matter which is under discussion or with respect to some other matter":

Guidance with regard to the dividing line between comment about a litigant which is permissible and that which involves contempt, is to be found in the judgment of Maugham J. in *In re William Thomas Shipping Co. Ltd.* [1930] 2 Ch. 368. The company had suffered severely from the prevailing depression and debenture holders sought liquidation. Sir Robert Thomas, the governing director, gave a statement to a Liverpool newspaper which it published. The debenture holders sought an order on the ground that the statement was in contempt of court. Maugham J. rejected an argument that the statement might influence the judge dealing with the proceedings for liquidation. But he went on to consider, at p. 374, whether it is a contempt "to abuse the parties concerned in a pending cause or matter by injurious misrepresentations." He held that there was contempt for that reason but added, at p. 377:

> "I am not saying that if Sir Robert Thomas had fairly stated the result of the evidence on which the court made the order for the appointment of a receiver and manager, and had in a temperate manner expressed his opinion that another course ought to have been taken by the plaintiff, the court would have thought fit to interfere or could properly have interfered."

So the dividing line there drawn was between comment containing injurious misrepresentation which was contempt and fair and temperate criticism which would not have been. That is emphasised by the last paragraph of his judgment where he deals with the newspaper. Their fault was that they were in too much of a hurry and published a statement of a most misleading character. It must follow that Maugham J. thought that if a newspaper published fair and temperate criticism of a litigant, it is in general entitled to do so.

I would compare with that case the decision of Talbot and Macnaghten JJ. in *In re South Shields (Thames Street) Clearance Order 1931* (1932) 173 L.T.Jo. 76. The corporation had made a clearance order and the owners of property affected by it had taken the matter before the court. An article was published suggesting that the owners by their appeal were keeping the tenants out of new houses and hindering the progress of housing in the borough. The owners contended that this was contempt of court as tending to deter them and others from coming before the court. They relied on *In re William Thomas Shipping Co. Ltd.* [1930] 2 Ch. 368. But it was held that this would be an extension of the law of contempt beyond anything that could justify it. No reasons are given in the very brief report of the case but I think that the ground of judgment must have been that the article complained of did not go beyond fair and temperate comment on the owners' action. If the argument of the Attorney-General in the present case were right, I think that the case would have been wrongly decided. But it appears to me to have been rightly decided.

So I would hold that as a general rule where the only matter to be considered is pressure put on a litigant, fair and temperate criticism is

legitimate, but anything which goes beyond that may well involve contempt of court. But in a case involving witnesses, jury or magistrates, other considerations are involved: there even fair and temperate criticism might be likely to affect the minds of some of them so as to involve contempt. But it can be assumed that it would not affect the mind of a professional judge.

In some recent cases about influencing litigants the court has accepted the law as stated in the passage from the judgment of Buckley J. in the *Vine Products* case [1966] Ch. 484, but has held that there is no contempt unless there is a serious risk that the litigant will be influenced. Perhaps this was an attempt to mitigate the extreme consequences of that view of the law, but I think this test is most unsatisfactory. First, when considering whether the risk is serious do you consider the particular litigant so that what would be contempt if he is easily influenced would not be contempt if the particular litigant is so strong minded as not to be easily influenced? That would not seem right but if you have to imagine a reasonable man in the shoes of that litigant the test becomes rather unreal. And then are you to take that one comment alone or are you to consider the cumulative effect if others are free to say and probably will say the same kind of thing?

I think that this view of the law caused the court to give wrong reasons for reaching a correct decision in *Attorney-General* v. *London Weekend Television Ltd.* [1973] 1 W.L.R. 202. The respondent company had produced a television programme about the thalidomide tragedy on October 8, 1972. So far as I can judge from the report it seems to have had much the same object and character as " The Sunday Times " article of September 24. If the view which I take about that article is correct, then I think that for similar reasons the television programme was not in contempt of court.

But the court, following the judgment of the Divisional Court in the present case, held that the programme " bore many of the badges of contempt " (p. 209) and only dismissed the application on the ground that they were unable to say that the programme " would result in the creation of a *serious* " (their italics) " risk " [1973] 1 W.L.R. 202, 209) that the course of justice would be interfered with. They had said earlier: " . . . we find that the spoken words on this programme did not have that impact which its producer might have hoped that they would have had on the viewers " ([1973] 1 W.L.R. 202, 209). So the company only escaped because of their inefficiency. I cannot believe that the law could be left in such an unsatisfactory state.

I think, agreeing with Cotton L.J. in his judgment in *Hunt* v. *Clarke* (1889) 58 L.J.Q.B. 490, that there must be two questions; first, was there any contempt at all, and, secondly, was it sufficiently serious to require, or justify the court in making, an order against the respondent? The question whether there was a serious risk of influencing the litigant is certainly a factor to be considered in deciding what course to take by way of punishment, as is the intention with which the comment was made. But it is, I think, confusing to import this into the question whether there was any contempt at all or into the definition of contempt.

I think the true view is that expressed by Lord Parker C.J. in *Reg.* v.

Duffy, Ex parte Nash [1960] 2 Q.B. 188, 200, that there must be "a real risk, as opposed to a remote possibility." That is an application of the ordinary de minimis principle. There is no contempt if the possibility of influence is remote. If there is some but only a small likelihood, that may influence the court to refrain from inflicting any punishment. If there is a serious risk some action may be necessary. And I think that the particular comment cannot be considered in isolation when considering its probable effect. If others are to be free and are likely to make similar comments that must be taken into account.

The crucial question on this point of the case is whether it can ever be permissible to urge a party to a litigation to forgo his legal rights in whole or in part. The Attorney-General argues that it cannot and I think that the Divisional Court has accepted that view. In my view it is permissible so long as it is done in a fair and temperate way and without any oblique motive. "The Sunday Times" article of September 24, 1972, affords a good illustration of the difference between the two views. It is plainly intended to bring pressure to bear on Distillers. It was likely to attract support from others and it did so. It was outspoken. It said: "There are times when to insist on the letter of the law is as exposed to criticism as infringement of another's legal rights" and clearly implied that that was such a time. If the view maintained by the Attorney-General were right I could hardly imagine a clearer case of contempt of court. It could be no excuse that the passage which I quoted earlier was combined with a great deal of other totally unobjectionable material. And it could not be said that it created no serious risk of causing Distillers to do what they did not want to do. On the facts submitted to your Lordships in argument it seems to me to have played a large part in causing Distillers to offer far more money than they had in mind at that time. But I am quite unable to subscribe to the view that it ought never to have been published because it was in contempt of court. I see no offence against public policy and no pollution of the stream of justice by its publication.

Now I must turn to the material to which the injunction applied. If it is not to be published at this time it would not be proper to refer to it in any detail. But I can say that it consists in the main of detailed evidence and argument intended to show that Distillers did not exercise due care to see that thalidomide was safe before they put it on the market.

If we regard this material solely from the point of view of its likely effect on Distillers I do not think that its publication in 1972 would have added much to the pressure on them created, or at least begun, by the earlier article of September 24. From Distillers' point of view the damage had already been done. I doubt whether the subsequent course of events would have been very different in its effect on Distillers if the matter had been published.

But, to my mind, there is another consideration even more important than the effect of publication on the mind of the litigant. The controversy about the tragedy of the thalidomide children has ranged widely but as yet there seems to have been little, if any, detailed discussion of the issues which the court may have to determine if the outstanding claims are not settled. The question whether Distillers were negligent has been frequently referred to but, so far as I am aware, there has been no attempt to

assess the evidence. If this material were released now, it appears to me to be almost inevitable that detailed answers would be published and there would be expressed various public prejudgments of this issue. That I would regard as very much against the public interest.

There has long been and there still is in this country a strong and generally held feeling that trial by newspaper is wrong and should be prevented. I find, for example, in the report in 1969 of Lord Salmon's committee dealing with the Law of Contempt in relation to Tribunals of Inquiry (Cmnd. 4078) a reference to the "horror" in such a thing (p. 12, para. 29). What I think is regarded as most objectionable is that a newspaper or television programme should seek to persuade the public, by discussing the issues and evidence in a case before the court, whether civil or criminal, that one side is right and the other wrong. If we were to ask the ordinary man or even a lawyer in his leisure moments why he has that feeling, I suspect that the first reply would be—"well, look at what happens in some other countries where that is permitted." As in so many other matters, strong feelings are based on one's general experience rather than on specific reasons, and it often requires an effort to marshal one's reasons. But public policy is generally the result of strong feelings, commonly held, rather than of cold argument.

If the law is to be developed in accord with public policy we must not be too legalistic in our general approach. No doubt public policy is an unruly horse to ride but in a chapter of the law so intimately associated with public policy as contempt of court we must not be too pedestrian. It is hardly sufficient to ask what Lord Hardwicke L.C. meant in 1742 when he referred to prejudicing mankind against parties before a cause is heard.

There is ample authority for the proposition that issues must not be prejudged in a manner likely to affect the mind of those who may later be witnesses or jurors. But very little has been said about the wider proposition that trial by newspaper is intrinsically objectionable. That may be because if one can find more limited and familiar grounds adequate for the decision of a case it is rash to venture on uncharted seas.

I think that anything in the nature of prejudgment of a case or of specific issues in it is objectionable, not only because of its possible effect on that particular case but also because of its side effects which may be far reaching. Responsible "mass media" will do their best to be fair, but there will also be ill-informed, slapdash or prejudiced attempts to influence the public. If people are led to think that it is easy to find the truth, disrespect for the processes of the law could follow, and, if mass media are allowed to judge, unpopular people and unpopular causes will fare very badly. Most cases of prejudging of issues fall within the existing authorities on contempt. I do not think that the freedom of the press would suffer, and I think that the law would be clearer and easier to apply in practice if it is made a general rule that it is not permissible to prejudge issues in pending cases.

In my opinion the law was rather too narrowly stated in *Vine Products Ltd.* v. *Green* [1966] Ch. 484. There the question was what wines could properly be called sherry, and a newspaper published an article which

clearly prejudged the issue. In my view that was technically in contempt of court. But the fault was so venial and the possible consequences so trifling that it would have been quite wrong to impose punishment or, I think, even to require the newspaper to pay the costs of the applicant. But the newspaper ought to have withheld its judgment until the case had been decided.

There is no magic in the issue of a writ or in a charge being made against an accused person. Comment on a case which is imminent may be as objectionable as comment after it has begun. And a "gagging" writ ought to have no effect.

But I must add to prevent misunderstanding that comment where a case is under appeal is a very different matter. For one thing it is scarcely possible to imagine a case where comment could influence judges in the Court of Appeal or noble and learned Lords in this House. And it would be wrong and contrary to existing practice to limit proper criticism of judgments already given but under appeal.

Now I must deal with the reasons which induced the Court of Appeal to discharge the injunction. It was said that the actions had been dormant or asleep for several years. Nothing appears to have been done in court, but active negotiations for a settlement were going on all the time. No one denies that it would be contempt of court to use improper pressure to induce a litigant to settle a case on terms to which he did not wish to agree. So if there is no undue procrastination in the negotiations for a settlement I do not see how in this context an action can be said to be dormant.

Then it was said that there is here a public interest which counter-balances the private interests of the litigants. But contempt of court has nothing to do with the private interests of the litigants. I have already indicated the way in which I think that a balance must be struck between the public interest in freedom of speech and the public interest in protecting the administration of justice from interference. I do not see why there should be any difference in principle between a case which is thought to have news value and one which is not. Protection of the administration of justice is equally important whether or not the case involves important general issues.

Some reference was made to the debate in the House of Commons. It was not extensively referred to in argument. But so far as I have noticed there was little said in the House which could not have been said outside if my view of the law is right.

If we were only concerned with the effect which publication of the new material might now have on the mind of Distillers I might be able to agree with the decision of the Court of Appeal though for different reasons. But I have already stated my view that wider considerations are involved. The purpose of the law is not to prevent publication of such material but to postpone it. The information set before us gives us hope that the general lines of a settlement of the whole of this unfortunate controversy may soon emerge. It should then be possible to permit this material to be published. But if things drag on indefinitely so that there is no early prospect either of a settlement or of a trial in court then I think that there will have to be a reassessment of the public interest in a unique situation.

As matters stand at present I think that this appeal must be allowed.

LORD MORRIS OF BORTH-Y-GEST. My Lords, the phrase contempt of court is one which is compendious to include not only disobedience to orders of a court but also certain types of behaviour or varieties of publications in reference to proceedings before courts of law which overstep the bounds which liberty permits. In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted that their authority wanes and is supplanted. But as the purpose and existence of courts of law is to preserve freedom within the law for all well disposed members of the community, it is manifest that the courts must never impose any limitations upon free speech or free discussion or free criticism beyond those which are absolutely necessary. When therefore a court has to consider the propriety of some conduct or speech or writing, decision will often depend upon whether one aspect of the public interest definitely outweighs another aspect of the public interest. Certain aspects of the public interest will be relevant in deciding and assessing whether there has been contempt of court. But this does not mean that if some conduct ought to be stigmatised as being contempt of court it could receive absolution and be regarded as legitimate because it had been inspired by a desire to bring about a relief of some distress that was a matter of public sympathy and concern. There can be no such thing as a justifiable contempt of court.

Various types of behaviour which in the past have been brought to the notice of courts as involving "contempt" have furnished illustrations of circumstances which have been regarded by courts as requiring condemnation. A study of decided cases helps to show the attitude of courts at different times and a certain pattern emerges. I doubt whether it is either desirable or possible to frame any exact or comprehensive definition or to formulate any precise classifications. Nevertheless the cases illustrate certain general principles as to what is or is not permissible and courts have as a rule found no difficulty in deciding whether a complaint is or is not well founded. Certain examples may be given. Grossly irregular behaviour in court could never be tolerated. Nor could publications which would prejudice a fair trial. Thus if someone was awaiting trial on a criminal charge much harm could be done by the publication of matter which might influence potential jurors to the prejudice of the accused. There might be steps taken wrongfully to influence witnesses—as by methods of intimidation or of improper inducement. So also there might be conduct which was calculated so to abuse or pillory a party to litigation or to subject him to such obloquy as to shame or dissuade him from obtaining the adjudication of a court to which he was entitled. In all such situations a court would have to ascertain the precise facts and then, as was said in the Divisional Court, to consider them in the light of all the surrounding circumstances. The surrounding circumstances would

include all those relating to the nature of any pending litigation and the stage it had reached. A court would not be likely to listen to a complaint that lacked substance. Indeed when the Divisional Court referred to the question ([1973] Q.B. 710, 725) whether words complained of would "create a serious risk that the course of justice may be interfered with" or when Lord Denning M.R., at p. 739, said that "there must appear to be 'a real and substantial danger of prejudice' to the trial of the case or to the settlement of it" useful reminders were given of the fact that "contempt" is criminal conduct. According to the measure of its gravity it may call for punishment or penalty going beyond the payment of costs. A court will therefore only find "contempt" where the risk of prejudice is serious or real or substantial. If a court is in doubt whether conduct complained of amounts to "contempt" the complaint will fail.

Though on behalf of the respondents it was accepted that there must be no "scandalising" of a court nor conduct either in relation to the court or to the parties or to witnesses which amounts to interference with the course of justice it was contended that discussions of the issues in a pending action will only be objectionable if it appears that such discussions may influence or appear to influence the decision of the court or may affect the minds of witnesses. Here lies one of the central issues raised in the present case. To what extent may there be in the press or on television or, for example, in a public meeting a detailed discussion of and pronouncement upon the issues which are raised in pending proceedings? It is said that in some circumstances such discussions or such pronouncements could take place without affecting or influencing either the court or the parties or any witnesses. While this, in some circumstances, could be so it would be very difficult in any particular case to be sure that the effects of publicity were so limited and confined. Who could define with any confidence the boundaries of influence of a determined and sustained campaign in advancement of some particular issue between parties to litigation? But, apart from this, is it right and is it appropriate, when parties to a dispute have submitted their dispute and the issues raised within it to the arbitrament of the courts that there should be elaborate public debate and explicit expressions of opinions as to what the decision of the court ought to be and as to where the merits and the rights lie? For one thing it would usually be difficult, pending the findings of the court as to what were the material facts, to have any firm or satisfactory basis upon which to begin to form opinion. But, even apart from this, is it not contrary to the fitness of things that there should be unrestricted expressions of opinion as to whether the merits lie with one party to litigation rather than with another? Even if some expressions of opinion were the result of honestly attempted sound reasoning how easy it would be for later statements by others to amount simply to advocacy inspired by partisan motives for the cause of one party, and how difficult it would be then to stem the tide of public clamour for the victory of one side or the other. Though a judge would hope to be resistant to any pre-trial soundings of the trumpet it must surely be contrary to public policy to allow them full blast. Furthermore, not only is it from the public point of view unseemly that in respect of a cause awaiting the determination of a court there should be public advocacy in favour of one particular side

or some particular points of view but also the courts, I think, owe it to the parties to protect them either from the prejudices of prejudgment or from the necessity of having themselves to participate in the flurries of pre-trial publicity. In this connection I agree with Lord Denning M.R. when he said, at p. 460: "We must not allow 'trial by newspaper' or 'trial by television' or trial by any medium other than the courts of law."

Many judicial expressions of opinion illustrate the viewpoint that I have set out. Lord Hardwicke L.C. in *In re Read and Huggonson* (*St. James's Evening Post Case*) 2 Atk. 469, said that there was nothing

> "of more pernicious consequence, than to prejudice the minds of the publick against persons concerned as parties in causes, before the cause is finally heard."

The newspaper article which was under consideration in *In re Crown Bank* (1890) 44 Ch.D 649, was published after the presentation of a petition to wind up a company. In reference to it North J. said, at pp. 651–652:

> "But when, with notice that the petition had been presented, the newspaper deliberately took one side in the controversy, and took on itself to foretell what the result would be, in my opinion there was a gross contempt of court. It was doing what might interfere with the course of justice. Whether it actually would so interfere in any case, I do not know. Whether there is any person with a mind so constituted that he would be influenced by such a paragraph in a newspaper of this sort I cannot tell. The only object for which such a paragraph could be inserted must be to influence persons who might read it, and induce them to take one side. It was not, therefore, an impartial statement—even if that could be allowed—but it was a deliberate adoption of the view of one of the parties."

The particular publication in *Hunt* v. *Clarke* (1889) 58 L.J.Q.B. 490 was perhaps not very serious. A paragraph in a newspaper referred to an action which was to come on for trial in the special jury list and which it was said would present features of great interest to investors: the paragraph set out the names of the parties, recorded that there were claims for "alleged misrepresentation" and stated that "Mourners over the Moldacot fiasco are likely to hear a little inside history of the business." The Divisional Court held that the insertion of the paragraph did not amount to a contempt of court as likely to influence the judge or jury and was not calculated to prejudice the trial of the action. An application to commit was refused with costs. On appeal to the Court of Appeal the view was held that there had been a technical contempt and that it would have been better if the Divisional Court had dismissed the application without costs. The Court of Appeal dismissed the appeal but dismissed it without costs. Cotton L.J. said, at pp. 491–492, that in his opinion:

> ". . . it does technically become a contempt if pending a cause, or before a cause even has begun, any observations are made or published to the world which tend in any way to prejudice the parties in the case, ..."

Though Cotton L.J. said that contempt proceedings ought only to be brought in serious cases he said, at p. 492:

> "If any one discusses in a paper the rights of a case or the evidence to be given before the case comes on, that, in my opinion, would be a very serious attempt to interfere with the proper administration of justice. It is not necessary that the court should come to the conclusion that a judge or a jury will be prejudiced, but if it is calculated to prejudice the proper trial of a cause, that is a contempt, and would be met with the necessary punishment in order to restrain such conduct."

Fry L.J. said that the paragraph in question in the case suggested matters to the prejudice of the named defendant and suggested that he was mixed up with companies of doubtful character.

In that case the pending trial was to be one with a jury. That would not be so in the debenture holders action in *In re William Thomas Shipping Co. Ltd.* [1930] 2 Ch. 368, in which case Maugham J. dealt with the possible effect upon parties of a newspaper publication. He said that the jurisdiction of the court was not confined to cases where the orders of the court were likely to be directly affected. But he said, at p. 376:

> "I think that to publish injurious misrepresentations directed against a party to the action, especially when they are holding up that party to hatred or contempt, is liable to affect the course of justice, because it may, in the case of a plaintiff, cause him to discontinue the action from fear of public dislike, or it may cause the defendant to come to a compromise which he otherwise would not come to, for a like reason."

I pass to consider the circumstances that existed towards the latter part of 1972. Though many claims against Distillers had been settled in 1968 a large number of writs had subsequently been issued. Very many claims were pending in September 1972 and unless settlements were negotiated, adjudication could only be in court. The plight of many families and the distressing circumstances of many children came to the attention of the public. Inspired by the best of motives and guided by genuine humanitarian impulses the editor of "The Sunday Times" felt that sympathetic public attention ought to be drawn to the needs and the sufferings of those who had been afflicted. I have no doubt that matters of great public consequence were involved. The power of the press can so often be beneficently used to call attention to the needs of those in distress or to advocate some desirable changes in the law. So there resulted some moving articles of power and persuasiveness in "The Sunday Times." The Distillers company considered that the articles should not have been published and brought them to the attention of the Attorney-General. Some correspondence with the editor followed. The editor, whose good faith and candour have not been challenged, sent to the Attorney-General the draft of a further article which he wished to publish. He recognised that the projected article differed materially in its scope from that of the articles that had appeared. It was, he acknowledged, in a different "category" from that of the others. He said quite frankly that

> "in addition to presenting information which strengthened the moral

argument for a fairer settlement it included evidence which related to the issue of liability in the pending thalidomide proceedings." A

The projected article was the one that had to be considered by the Divisional Court. It has not yet been published but it became necessary for us to study its contents.

In the situation which presented itself I think that it was in accordance with desirable practice for the Attorney-General to be concerned and to consider what course in the public interest he should follow. It was for the Attorney-General to decide whether to bring proceedings either in respect of the published articles or to seek to restrain the publication of the projected article though it would have been open to the Distillers company to initiate proceedings had they so decided. In considering the matters raised an Attorney-General would with complete impartiality solely be considering the public interest of maintaining the due administration of justice in all its integrity. I do not consider that when an Attorney-General decides that he ought to bring a matter to the attention of and the consideration of a court he is in any way identifying himself or his office with the interests of a party to litigation. B C

The question whether the articles which were published exceeded the bounds is not directly before us. No proceedings in respect of them were brought. It was, however, clearly necessary and desirable that we should read and consider them. Speaking for myself, and having in mind the guidance given in decided cases, I consider that the Attorney-General was right in deciding that there was no necessity for him to bring the published articles to the attention of the court by way of complaint. D

At the time when it was desired to publish the projected article there were many matters of great public importance in regard to which full comment was entirely warranted. It is said that the facts concerning the luckless children and their parents showed that a national tragedy had occurred: the phrase does not seem to me to be intemperate. Many of the cases had been settled. I see no reason why there should not have been comment as to the amounts paid on settlement (which by approved agreement were on the basis of 40 per cent. of the sums that would have been paid had liability in law been proved or admitted) and why there should not have been full and free yet temperate discussion as to whether legal principles and practices in regard to the assessment of damages were not inadequate or unfair or unrealistic. Similar discussion would not have been improper as to whether it was the fault of the legal system if too much time was elapsing before agreements or adjudications were made. Likewise there could have been no objection to the forceful advocacy of a view that liability in such cases as those under consideration should not have to depend upon proof of negligence or fault. There were many claims outstanding. There were legal questions of difficulty both in regard to legal liability and in regard to the fact that time had passed before claims were made or writs issued. But I do not think that because examinations of the claims and negotiations as to them were taking priority over active preparation for trials the litigation ought to be regarded as having been dormant. E F G H

Beyond advocacy of such matters as those to which I have referred, I

consider that it would have been unobjectionable to call attention to the financial needs of those afflicted and to have inspired an appeal for national financial help or for public generosity. Also I see no reason why a temperate and reasoned appeal might not have been expressed inviting Distillers to consider whether, quite regardless as to whether they were in law in any way liable, they should make generous payments on the basis that it was as the result of purchases of that which they had sold that such unfortunate consequences had resulted.

The projected article went much beyond this. It was avowedly written with the purpose and object of arousing public sympathy with and support for the claims that were being made and in order to bring pressure upon Distillers to pay more. The editor said: "I admit that my purpose in seeking to publish the draft article is to try to persuade Distillers to take a fresh look at their moral responsibilities but I submit that this persuasion is in no way improper." He considered that the last hope for the parents who were dispirited and demoralised lay in the press "alerting public opinion to the truth": he thought that, unless Distillers could "be persuaded to increase their offer, parents and children will be forced to accept a settlement which bears no relation to their real needs."

In the pending litigation one of the issues was whether Distillers had been negligent. The projected article went too far because, with much elaboration of facts and suggestions, while not asserting a settled conclusion it, in effect, conveyed the message to all who would read the article that an examination of the issue as to negligence showed that there was a considerable case that could be presented against Distillers. As Lord Widgery C.J. expressed it the article was in many respects critical of Distillers and charged them with neglect in regard to their own failure to test the product or their failure to react sufficiently sharply to warning signs obtained from the tests by others.

In my view the Divisional Court came to a correct conclusion. While having in mind all that has happened since their decision I have not been persuaded that the time has yet arrived when the attitude of the court should be modified. Accordingly I would allow the appeal.

LORD DIPLOCK. My Lords, in any civilised society it is a function of government to maintain courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligations towards one another individually and towards the state as representing society as a whole. The provision of such a system for the administration of justice by courts of law and the maintenance of public confidence in it, are essential if citizens are to live together in peaceful association with one another. "Contempt of court" is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms.

One may leave aside for the purposes of the present appeal the mere disobedience by a party to a civil action of a specific order of the court made on him in that action. This is classified as a "civil contempt." The order is made at the request and for the sole benefit of the other

party to the civil action. There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity; but no sufficient public interest is served by punishing the offender if the only person for whose benefit the order was made chooses not to insist on its enforcement.

All other contempts of course are classified as "criminal contempts," whether the particular proceedings to which the conduct of the contemnor relates are themselves criminal proceedings or are civil litigation between individual citizens. This is because it is the public interest in the due administration of justice, civil as well as criminal, in the established courts of law that it is sought to protect by making those who commit criminal contempts of court subject to summary punishment. To constitute a contempt of court that attracts the summary remedy, the conduct complained of must relate to some specific case in which litigation in a court of law is actually proceeding or is known to be imminent. Conduct in relation to that case which tends to undermine the due administration of justice by the court in which the case will be disposed of, or which tends to inhibit litigants in general from seeking adjudication by the court as to their legal rights or obligations, will affect not only the public interest but also—and this more immediately—the particular interests of the parties to the case. In this respect criminal contempt of court resembles many ordinary criminal offences, such as theft or offences against the person or property, by which the interests of the victim himself are prejudiced more immediately than those of the public at large.

Just as in former times it was common to leave it to the victim of a criminal offence to take the initiative in prosecuting the offender, so in contempt of court it was left to a party to the case in relation to which the contempt was committed to take the initiative in applying for his summary punishment. With the establishment of regular police forces charged with the duty of preventing and detecting crime, private prosecutions have largely fallen into desuetude for ordinary criminal offences; but the practice of leaving it entirely to a party to the case in relation to which the contempt was committed to apply to the court for the summary remedy continued unchanged until 1953. There was no one charged with the responsibility for doing so as a matter of public duty. So in all except the most recent cases and a few earlier cases where the court, exceptionally, acted of its own motion, all applications for committal for contempt of court were made by a party to the particular litigation in relation to which the contempt was alleged to have been committed.

In the nature of things the applicant would be primarily concerned with the effect of the alleged contempt upon his own interests in that litigation, and the argument addressed to the court would be mainly directed to this. This is reflected in the judgments in the numerous cases on contempt of court which appear in the reports. With relatively few exceptions, they concentrate upon the particular prejudice likely to be caused to a party in that litigation itself by the particular conduct that is the subject of complaint. There is an abundance of empirical decisions upon particular instances of conduct which has been held to constitute contempt of court. There is a dearth of rational explanation or analysis of a general concept of

contempt of court which is common to the cases where it has been found to exist. This is not surprising since until the Administration of Justice Act 1960 there was no appeal in cases of criminal contempt. The decisions are those of courts of first instance whose main function is to reach decisions upon the particular facts presented to them in the particular case with which they are dealing.

The due administration of justice requires *first* that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; *secondly*, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and *thirdly* that, once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed is contempt of court.

The commonest kind of conduct to come before the courts on applications for committal for contempt of court has been conduct which has been calculated to prejudice the second requirement. This is because trial by jury has been, as it still is, the mode of trial of all serious criminal offences, and until comparatively recently has also been the mode of trial of most civil cases at common law which are likely to attract the attention of the public. Laymen, whether acting as jurymen or witnesses (or, for that matter, as magistrates), were regarded by the judges as being vulnerable to influence or pressure which might impair their impartiality or cause them to form preconceived views as to the facts of the dispute, or, in the case of witnesses, to be unwilling to give evidence with candour at the trial. The conduct most commonly complained of was the publication, generally in a newspaper, of statements or comments about parties to pending litigation or about facts at issue in the litigation; so the discussion in the judgments tends to be directed to consideration of the question whether the publication complained of involved a risk of causing someone who might be called upon to serve as a juror to be prejudiced against a party or to form a preconceived view of the facts before the evidence was adduced in court, or a risk of influencing someone who might be called as a witness to alter his evidence or to decline to testify.

Contempt of court, except the rare offence of scandalising the court after judgment, is committed before the trial is concluded. Whether in the result the publication will have had any influence upon jurors or witnesses is not known when the proceedings for committal for contempt of court are heard. The mischief against which the summary remedy for contempt of court is directed is not merely that justice will not be done but that it will not be manifestly seen to be done. Contempt of court is punishable because it undermines the confidence not only of the parties to the particular litigation but also of the public as potential suitors, in the due administration of justice by the established courts of law.

My Lords, to hold a party up to public obloquy for exercising his constitutional right to have recourse to a court of law for the ascertainment and enforcement of his legal rights and obligations is calculated to prejudice the *first* requirement for the due administration of justice: the unhindered access of all citizens to the established courts of law. Similarly, "trial by newspaper," i.e., public discussion or comment on the merits of a dispute which has been submitted to a court of law or on the alleged facts of the dispute before they have been found by the court upon the evidence adduced before it, is calculated to prejudice the *third* requirement: that parties to litigation should be able to rely upon there being no usurpation by any other person of the function of that court to decide their dispute according to law. If to have recourse to civil litigation were to expose a litigant to the risk of public obloquy or to public and prejudicial discussion of the facts or merits of the case before they have been determined by the court, potential suitors would be inhibited from availing themselves of courts of law for the purpose for which they are established.

It is only where a case is to be heard by a tribunal which may be regarded as incapable of being influenced by public criticism of the parties or discussion of the merits or the facts and any witnesses likely to be called are similarly immune, that conduct of this kind does not also offend against the *second* requirement for the due administration of justice; and it is this requirement that affects more directly the particular interests of the parties to the litigation by whom all motions for committal for contempt of court were brought until 1954. It is only rarely, therefore, that the judgments delivered on these motions refer to the *first* or *third* requirement as distinct from the second. The rare exceptions are to be found, I think exclusively, in relation to proceedings in Chancery or the Chancery Division of the High Court where the mode of trial has always been by judge alone. They begin with Lord Hardwicke L.C.'s judgment in the *St. James's Evening Post Case*, 2 Atk. 469 and end with the judgment of Buckley J. in *Vine Products Ltd.* v. *Green* [1966] Ch. 484. They have been cited by my noble and learned friends, Lord Reid and Lord Morris of Borth-y-Gest. I will not add to their citations.

In my view, these cases support the proposition I have already stated: that contempt of court in relation to a civil action is not restricted to conduct which is calculated (whether intentionally or not) to prejudice the fair trial of that action by influencing, in favour of one party or against him, either the tribunal by which the action may be tried or witnesses who may give evidence in it; it extends also to conduct that is calculated to inhibit suitors generally from availing themselves of their constitutional right to have their legal rights and obligations ascertained and enforced in courts of law, by holding up any suitor to public obloquy for doing so or by exposing him to public and prejudicial discussion of the merits or the facts of his case before they have been determined by the court or the action has been otherwise disposed of in due course of law.

I agree with all your Lordships that the publication of the article proposed to be published by "The Sunday Times" in respect of which an injunction is sought by the Attorney-General would fall within this latter category of conduct. As has already been sufficiently pointed out, it

discussed prejudicially the facts and merits of Distillers' defence to the charge of negligence brought against them in the actions before these have been determined by the court or the actions disposed of by settlement.

I agree also with all your Lordships that it makes no difference that the civil actions, in relation to which the publication of the article would have been contempt of court, are likely to be disposed by settlement (which will, however, require approval by the court) rather than by trial. Parties to litigation are entitled to the same freedom from interference in negotiating the settlement of a civil action as they are from interference in the trial of it. I also agree that it is wholly unrealistic to take the view, expressed in the judgments of the Court of Appeal, that the existence of the actions can be ignored because they are "dormant" pending the complicated negotiations for settlement. It would be pessimi exempli to discourage the settlement of civil actions, by suspending the right of the parties to any remedy for contempt of court, so long as negotiations for a settlement were pending. The Divisional Court was right to grant the injunction in November 1972 and I agree with your Lordships that what had occurred between then and February 1973 did not justify the Court of Appeal in dissolving it. Nor have there been any subsequent events that could justify this House in doing so, though the actual wording of the injunction, as is conceded, calls for some amendment.

My Lords, it will, I believe, have been apparent from what I have already said that, unlike the Court of Appeal, so far from criticising I commend the practice which has been adopted since 1954 as a result of the observations of Lord Goddard C.J. in *Reg.* v. *Hargreaves, Ex parte Dill*, The Times, November 4, 1953, whereby the Attorney-General accepts the responsibility of receiving complaints of alleged contempt of court from parties to litigation and of making an application in his official capacity for committal of the offender if he thinks this course to be justified in the public interest. He is the appropriate public officer to represent the public interest in the administration of justice. In doing so he acts in constitutional theory on behalf of the Crown, as do Her Majesty's judges themselves; but he acts on behalf of the Crown as "the fountain of justice" and not in the exercise of its executive functions. It is in a similar capacity that he is available to assist the court as amicus curiae and is a nominal party to relator actions. Where it becomes manifest, as it had by 1954, that there is a need that the public interest should be represented in a class of proceedings before courts of justice which have hitherto been conducted by those representing private interests only, we are fortunate in having a constitution flexible enough to permit of this extension of the historic role of the Attorney-General.

The role now assumed by the Attorney-General focuses attention upon what I believe to have been a source of some confusion in the law about contempt of court. Restraint of contempt of court, particularly where it takes the form of holding up litigants to public obloquy or "trial by newspaper," is a restriction on freedom of speech. The remedy for contempt of court after it has been committed is punitive; it may involve imprisonment, yet it is summary; it is generally obtained on affidavit evidence and it is not accompanied by those special safeguards in favour of the accused

that are a feature of the trial of an ordinary criminal offence. Furthermore, it is a procedure which if instituted by one of the parties to litigation is open to abuse, particularly in relation to so-called "gagging" writs issued for the purpose of preventing repetition of statements that are defamatory but true. The courts have therefore been vigilant to see that the procedure for committal is not lightly invoked in cases where, although a contempt has been committed, there is no serious likelihood that it has caused any harm to the interests of any of the parties to the litigation or to the public interest. Since the court's discretion in dealing with a motion for committal is wide enough to entitle it to dismiss the motion with costs, despite the fact that a contempt has been committed, if it thinks that the contempt was too venial to justify its being brought to the attention of the court at all, the distinction between conduct which is within the general concept of "contempt of court" and conduct included within that general concept, which a court regards as deserving of punishment in the particular circumstances of the case, is often blurred in the judgments in the reported cases. The expression "technical contempt" is a convenient expression which has sometimes been used to describe conduct which falls into the former but outside the latter category; and I agree with my noble and learned friend, Lord Reid, that, given conduct which presents a real risk as opposed to a mere possibility of interference with the due administration of justice, this is at very least a technical contempt. The seriousness of that risk is relevant only to the question whether the contempt is one for which the court, in its discretion, ought to inflict any punishment and, if so, what punishment it should inflict.

Where complaint is made to the Attorney-General of an alleged contempt, in deciding whether to move the court for committal of the contemner he is concerned, not with whether the conduct is a technical contempt but whether it falls into the category of contempts which the court would regard as deserving of some punishment. Since this involves anticipating the way in which the court would exercise its own wide discretion, there is clearly a considerable field for the exercise of his personal judgment. If he himself declines to move, the party complaining can bring the motion on his own behalf. He did in fact decline to move for committal of the editor of "The Sunday Times" for publishing the article of September 24, 1972, which contains, inter alia, the passage quoted by my noble and learned friend, Lord Reid. But so far as the present appeal is concerned this is relevant only as a matter of history, and any opinions expressed in this House will be obiter dicta only.

Although I do not criticise the way in which the Attorney-General exercised his judgment in respect of this article which had already been published by the time it was brought to his attention, I nevertheless feel that I ought to express my own opinion that it did amount to a contempt, since in company with my noble and learned friend, Lord Simon of Glaisdale, I differ regretfully in this respect from the opinions expressed by my noble and learned friends, Lord Reid and Lord Cross of Chelsea.

Except for the passage cited by my noble and learned friend, Lord Reid, this lengthy article was devoted to discussion of two topics of legitimate public concern aroused by the thalidomide tragedy: the legal basis of liability of suppliers of drugs which turn out to be dangerous and

the basis on which damages for personal injuries are assessed in the English courts. I entirely agree that discussion, however strongly expressed, on matters of general public interest of this kind is not to be stifled merely because there is litigation pending arising out of particular facts to which general principles discussed would be applicable. If the arousing of public opinion by this kind of discussion has the indirect effect of bringing pressure to bear on a particular litigant to abandon or settle a pending action, this must be borne because of the greater public interest in upholding freedom of discussion on matters of general public concern.

Even a deliberate attempt in private to influence a party in his conduct of litigation is not of itself even a technical contempt of court. It would be as legitimate for me to seek to dissuade Antonio from relying upon a strained construction of his bond to evade repayment of money which he had admittedly borrowed as it would for my noble and learned friend, Lord Reid, to seek to dissuade Shylock from enforcing the harsh terms of his bond; and in either case to do so by informing them that if they did not desist they could no longer look forward to our custom as lender or borrower as the case might be. But if Venice had been England and the Doge a judge in an English court of law it would have been contempt of court to hold either Shylock or Antonio to public obloquy on the Rialto because he was seeking to enforce in a court of competent jurisdiction legal rights to which he was entitled under the law as it existed at that time.

In my opinion, a distinction is to be drawn between private persuasion of a party not to insist on relying in pending litigation on claims or defences to which he is entitled under the existing law, and public abuse of him for doing so. The former, so long as it is unaccompanied by unlawful threats, is not, in my opinion, contempt of court; the latter is at least a technical contempt, and this whether or not the abuse is likely to have any effect upon the conduct of that particular litigation by the party publicly abused. For the public mischief in allowing a litigant to be held up to public obloquy for availing himself in a court of justice of rights to which he is entitled under the law as it stands at the time, lies in the inhibiting effect which it might have upon all potential suitors if it were to become the common belief that to have recourse to the established courts of law for the ascertainment and enforcement of their legal rights and obligations would make them a legitimate target of public abuse. If laws are unjust they ought to be changed. Under our constitution it is for Parliament to decide whether any change is needed. A campaign to change them should be directed to persuading parliament of the need, not to vilifying individual litigants for exercising their rights under the law as it stands. If a campaign directed to the latter object were to succeed in deterring litigants from enforcing their legal rights in courts of law which are under a constitutional duty to enforce them, the practical result would be to substitute government by the "media" for government by Parliament in the particular field of legislation with which the campaign was concerned.

In my view, on a fair reading of the passage in the article of September 24, 1972, which is quoted by my noble and learned friend, Lord Reid, it does hold Distillers up to public obloquy for their conduct in the actions pending against them in the High Court on behalf of the thalidomide children, in relying upon the defence, available to them under the law as it

stands, that they were not guilty of any negligence. And that, in any view, constitutes a contempt of court if it were no more.

This does not mean that I think that the Attorney-General ought to have taken any action on it himself. It was a short passage in a long and trenchant article which was otherwise unobjectionable. To draw renewed public attention to it by a motion for committal for contempt might well have done more harm than good. But I have no doubt that the publication of the subsequent article which is the subject of the present appeal would have been a grave contempt of court, though for a different reason, and that it was the duty of the Attorney-General in the public interest to seek to prevent its publication.

I would therefore allow this appeal.

LORD SIMON OF GLAISDALE. My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Diplock. I admiringly agree with his elucidation of the basis of the law of contempt of court and his analysis of its concepts; and (as will appear) I only have reservation on one matter (namely, whether private pressure can constitute contempt), which does not affect the outcome of the appeal.

The thalidomide cases first brought were settled on the basis of payment of 40 per cent. of the damages which would have been payable (according to the currently established legal mode of assessing damages) on the establishment of full liability, which depended on a number of doubtful matters of law and fact. It must be considered as a realistic assessment of what it would be in the children's interest to accept under the existing law. (The later cases faced the additional legal hazard of the operation of the Limitation Acts.)

But the editor of "The Sunday Times" took the view that Distillers were morally responsible for the disabilities from which the children suffered and should therefore (whatever their legal liability might be) provide full compensation for those disabilities, so far as money could do so. He was specific—it was the children's lifelong "needs" which should be provided for—and by Distillers. The resources of the newspaper were mobilised to bring pressure on Distillers in order to achieve this object. The dire plight of the children was vividly represented. Distillers' massive financial resources were effectively juxtaposed. Their profitable products—the luxuries of the fortunate, but vulnerable to economic boycott—were pictorially represented. All this was designed to rally public opinion against Distillers, in order to encourage or coerce them to comply with what the editor saw as their duty. As part of this campaign the article of September 24, 1972, was written. So far as the law of contempt is concerned, I do not think that objection could properly be taken to other than the following:

> "... the thalidomide children shame Distillers ... there are times when to insist on the letter of the law is as exposed to criticism as infringement of another's legal rights. The figure in the proposed settlement is to be £3·25 million, spread over 10 years. This does not shine as a beacon against pre-tax profits last year of £64·8 million and company assets worth £421 million. Without in any way surrendering on negligence, Distillers could and should think again."

This article and others failing apparently to secure the editor's objective, he proposed to publish a further article—the one in question in this appeal—which he, acting with great responsibility, sent to the Attorney-General for prior consideration. The article set out at length matters to suggest that Distillers were lacking in reasonable care in marketing thalidomide. This, if proved, would not, of course, mean that they were liable to the infant plaintiffs in the actions in negligence; it would still be necessary for the infant plaintiffs to prove that at the material time Distillers owed them a duty of care: it would, though, affect the chances of success and thus the figure of realistic settlement. The article was a detailed discussion of one of the crucial issues in the actions; and its purpose must have been to bring further moral pressure to bear on Distillers to settle the actions on the terms that the editor thought appropriate. Although others had joined in the campaign and there was talk of an economic boycott, the only question before your Lordships is whether this proposed article would constitute a contempt of court.

Inevitably, emotive language has been used in arguing the appeal—"national tragedy," "the horror of trial by newspaper," "remonstration with Shylock to discourage him from seeking his pound of flesh," "Robin Hood relieving the rich of wealth for the benefit of the poor." I am far from holding that a judicial decision should be arrived at solely by an abstract juridical dialectic, without regard to those reasons of the heart of which the reason has at best but an indifferent understanding. But this seems to me to be a case where rhetoric and emotive language should, if possible, be avoided. In the first place, extremely important and general public issues are involved; and dwelling on the peculiar horror of this particular case is apt to cloud judgment. Secondly, the general public interests tend to resolve themselves ultimately into two, which are apt to conflict, but which should so far as possible be reconciled and otherwise be held in careful balance. Thirdly, the rhetoric is apt to cancel itself out: the "national tragedy" is matched by "the horror of trial by newspaper," the chivalry of Sherwood is devalued by a sneer about vicarious generosity, Shylock's proposed cruelty is countered by the cruelty of his utter ruin and forced apostacy.

The first public interest involved is that of freedom of discussion in democratic society. People cannot adequately influence the decisions which affect their lives unless they can be adequately informed on facts and arguments relevant to the decisions. Much of such fact-finding and argumentation necessarily has to be conducted vicariously, the public press being a principal instrument. This is the justification for investigative and campaign journalism. Of course it can be abused—but so may anything of value. The law provides some safeguards against abuse; though important ones (such as professional propriety and responsibility) lie outside the law.

The law as to contempt of court is not one of the legal safeguards against abuse of the public's right (arising from the very necessities of democratic government) to be informed and to hear argument before arriving at a decision. The law of contempt of court is a body of rules which exists to safeguard another, quite different, institution of civilised society. It is the means by which the law vindicates the public interest in due administration of justice—that is, in the resolution of disputes, not by force or by private

or public influence, but by independent adjudication in courts of law according to an objective code. The alternative is anarchy (including that feudalistic anarchy which results from arrogation to determine disputes by others than those charged by society to do so in impartial arbitrament according to an objective code). A

The objective code may well be defective, either generally or in particular circumstances—indeed, since it is a human product, it is inherently likely to be defective in at least some circumstances. Its method of application, also being subject to human fallibility, is likely to be less than perfect. Nevertheless it is the essence of the due administration of justice that this objective code should be allowed to be applied by those charged by society with applying it, until it, or its method of application, is duly changed. B

The foregoing seems to me to arise from the very nature of the judicial process and its function in society. But it is powerfully supported by judicial authority. My noble and learned friend, Lord Diplock, has dealt with the nature of the reported cases. Exceptionally, Blackburn J. in *Reg.* v. *Castro; Skipworth's Case* (1873) L.R. 9 Q.B. 230, 232 et seq., went to the basis and very justification of this branch of law, though I cite only three sentence (pp. 232–233): C

> "When a case is pending, whether it be civil or criminal, in a court it ought to be tried in the ordinary course of justice, fairly and impartially. . . . Now, it may happen, and in many cases does happen, that persons interfere for the purpose of preventing that ordinary course of justice." D

Blackburn J. made it clear that by "the ordinary course of justice" he meant "the ordinary and unimpeded course of legal proceedings"; for, after citing some of the ways in which persons may interfere to prevent the ordinary course of justice, he said: E

> ". . . in all those ways great mischief may be done by interfering with the due and ordinary course of law, and causing justice, whether criminal or civil, not to be administered in the way which is ordinarily pursued."

See also Lord Cottenham L.C. in *In re Ludlow Charities; Lechmere Charlton's Case* (1836) 2 My. & Cr. 316, 342: ". . . to obtain a result of legal proceedings different from that which would follow in the ordinary course." F

The interference may be physical or moral. Physical assault on judge or juryman in their judicial capacities, or on party or witness in relation to legal proceedings, needs no expatiation. Their moral equivalents are easy to discern; apart from cases of bribery (to which I refer later), they were described by Lord Hardwicke L.C. in the *St. James's Evening Post Case*, 2 Atk. 469, 471, in words that have frequently been cited and applied: G

> "There are three different sorts of contempt. One kind of contempt is, scandalising the court itself. There may be likewise a contempt of this court, in abusing parties who are concerned in causes here. There may be also a contempt of this court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence, than to keep the streams of justice clear and H

A pure, that parties may proceed with safety both to themselves and their characters."

By " proceed " the Lord Chancellor meant " proceed to judgment according to law." And I emphasise the words " safety . . . to . . . their characters."

There is an incidental, specific, aspect of the general public interest in the administration of justice which is relevant to this appeal. Most civil B actions which are initiated do not come to trial; they are settled out of court, either on a compromise of rival contentions, or on an estimate of the likely outcome if they did come to trial, or (most frequently) on a combination of these two factors. Such settlement of litigation is very much in the public interest. The sooner and more placably disputes within it are resolved, the better in general for society. The reported cases on contempt of court are naturally most often concerned with interference with the actual course of C litigation; but, both on the foregoing considerations and on authority, interference with negotiations towards the settlement of a pending suit is no less a contempt of court than interference, physical or moral, with a procedural situation in the strictly forensic sense. If a third party were to enter a room where rival litigants were in negotiation towards a settlement and punch one of the litigants on the nose because he was insisting on some term which reflected his legal right, that would, in my judgment, be just as much an D interference with the due course of justice as if that third party physically obstructed the litigant to prevent his going to court, there to vindicate his right. The holding of a litigant up to execration with the object of preventing his vindicating his legal right in negotiations on the basis of the law which would be applied should the case come to trial must be equally capable of being an interference with the due course of justice as the holding E of him up to execration to deter him from vindicating those same rights at the trial itself. As Maugham J. said in *In re William Thomas Shipping Co. Ltd.* [1930] 2 Ch. 368, 376:

> " I think that to publish injurious misrepresentations directed against a party to the action, especially when they are holding up that party to hatred or contempt, is liable to affect the course of justice, because it may, in the case of a plaintiff, cause him to discontinue the action F from fear of public dislike, *or it may cause the defendant to come to a compromise which he otherwise would not come to*, for a like reason." (Emphasis supplied.)

(The reference to misrepresentation was called for by the particular circumstances of that case; it is not a necessary element: see *Skipworth's Case*, L.R. 9 Q.B. 230.)

G I cannot, therefore, agree with the Court of Appeal that the proposed newspaper article did not constitute contempt of court because the litigation in which it was seeking to interfere was " dormant." Even though no procedural step in the action was being currently taken, the parties were in negotiation towards a settlement; and interference with such negotiation, by holding one of the parties up to obloquy in order to cause him to H abandon some position which the law vouchsafes him (however unsatisfactorily on a certain view), would, in my judgment, amount to interference with the due course of justice; since the due course of justice includes negotiation towards a settlement on the basis of the ordained law. Indeed,

before your Lordships virtually no attempt was made to support the view of the Court of Appeal based on "dormancy."

Instead, counsel for the respondents asked why, if private persuasion is permissible, should public persuasion not be so. This is putting in elegant rhetorical form a question like: when did you stop beating your wife? The premise is not sound. Private pressure to interfere with the due course of justice will only be acceptable within narrow limits. If there is a public interest recognised by law that disputes should without interference be settled according to law in due process of law (whether by trial or by settlement on the basis of the law which would be applied at the trial), in my view it is not only immaterial whether the interference is physical or moral, but also whether the moral interference is, on the one hand, by holding the tribunal or litigant or witness up to public detestation or, on the other, by bringing private pressure to bear (unless such pressure can be justified). It is the fact of interference, not the particular form that it may take, that infringes the public interest. As Bowen L.J. explained in *In re Johnson* (1887) 20 Q.B.D. 68, 74:

> "The law has armed the High Court of Justice with the power and imposed on it the duty of preventing . . . any attempt to interfere with the administration of justice. It is on that ground, and not on any exaggerated notion of the dignity of individuals that insults to judges are not allowed. It is on the same ground that insults to witnesses or to jurymen are not allowed."

Thus it is a contempt to attempt to bribe a judge (*Martin's Case* (1747) 2 Russ. & M. 674) or a juryman (*Borrie and Lowe, Law of Contempt* (1973), p. 231: embracery is automatically contempt) or a witness (*Lewis* v. *James* (1887) 3 T.L.R. 527; *In re Hooley, Rucker's Case* (1898) 79 L.T. 306) or a party (*Borrie and Lowe*, op. cit., p. 224). It is a contempt even privately to threaten a judge (not necessarily with violence) (*In re Ludlow Charities; Lechmere Charlton's Case*, 2 My. & Cr. 316) or a juryman (*Reg.* v. *Martin* (1848) 5 Cox C.C. 356, where the threat—in fact, of violence—was after the trial was over) or a witness (*Rowden* v. *Universities Co-operative Association Ltd.* (1881) 71 L.T.Jo. 373) or a party (*In re Mulock* (1864) 3 Sw. & Tr. 599). The threat there, by someone who "had no interest whatever in the matter," was to "publish the full truth" unless a petition were withdrawn. Sir James Wilde, Judge Ordinary, said, at p. 601: ". . . she [the petitioner] claims the right to approach this court, free from all restraint or intimidation. It is a right that belongs to all suitors." In all these cases the communications were private. As Lord Cottenham L.C. said in *In re Ludlow Charities; Lechmere Charlton's Case*, 2 My. & Cr. 316, 339: "Every writing, letter, or publication which has for its object to divert the course of justice is a contempt of the court." Thus, if the chairman of a social club threatened a judge with expulsion unless a certain forensic result ensued, it would, in my opinion, unquestionably be contempt of court. So, too, if an employer threatens a witness or a juryman with dismissal, whether before, pending or after trial (*Rowden* v. *Universities Co-operative Association Ltd.*; *Attorney-General* v. *Butterworth* (1962) L.R. 3 R.P. 327; [1963] 1 Q.B. 696; Melford Stevenson J. at Lewes Assizes in *In re Lydeard* (1966) 130 J.P.Jo. 622.) Similarly, in general, with any

A private pressure on a litigant to deter him from exercising his legal rights. The only difference is that private pressure on a litigant (in contradistinction to violence or bribery or public execration) might sometimes be justifiable, while private pressure on the tribunal or witness never would be so. The justification for private pressure on a litigant might be such a common interest that fair, reasonable and moderate personal representations would be appropriate. Such common interest would not necessarily have to be monetary; a genuine, unofficious and paramount concern for the real welfare of the litigant would, in my view, be sufficient. In contrast, merely by way of example, if parents are in dispute over the custody of a young child, it is in the public interest that such a dispute should (in default of agreement) be settled by impartial adjudication with the child's welfare as the first and paramount consideration: such public interest would be prejudiced if an adult child of the family were to say to one parent, "Unless you instruct your solicitor to withdraw your case, I shall never speak to you again"—no less than by a public campaign which holds such parent up to odium.

Your Lordships, then, are concerned with two public interests, which are liable to conflict in particular situations—in freedom of discussions, on the one hand, and in unimpeded settlement of disputes according to law on the other. I agree with Lord Denning M.R. that the law must hold these two interests in balance. It is true that there is no English reported case on contempt of court which puts the matter exactly in this way. But there is some Australian authority which supports it (*Ex parte Bread Manufacturers Ltd.* (1937) 37 S.R.(N.S.W.) 242; *Ex parte Dawson* [1961] S.R.(N.S.W.) 573), and in any case it seems to me to be inherent in the very fact that there are two public interests which are liable to conflict. There is an analogy in "Crown privilege," where the law holds in balance two public interests which are liable to conflict—in the administration of justice, on the one hand (that all relevant evidence should be adduced to a court of law) and in administrative propriety, on the other (that certain officially confidential material should not be exposed to public scrutiny: see *Conway* v. *Rimmer* [1968] A.C. 910). Similarly analogous, perhaps, is the balance which has to be struck, by virtue of the Obscene Publications Act 1959, between the public interest that calls for the suppression of material which is liable to deprave or corrupt, on the one hand, and the public interest, on the other, which calls for the currency of material of, say, literary or scientific value.

To attempt to strike anew in each case the balance between the two public interests involved in the instant appeal—in freedom of discussion and in due administration of justice—would not be satisfactory. The law would then be giving too uncertain a guidance in a matter of daily concern, and its application would tend to vary with the length of the particular judge's foot. The law must lay down some general guide lines. Nor is it sufficient to say that, under our constitution, freedom of discussion is itself a creature of the rule of law, and that the administration of justice must therefore be paramount in every situation of actual or potential conflict. Each is a genuine interest of society, and neither can be held to be universally paramount over the other; nor is it really difficult, when the

rationale of each is borne in mind, to decide which ought to have paramountcy at any particular moment.

The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves. The public thus has a permanent interest in the general administration of justice and the general course of the law. This is recognised by justice being openly administered and its proceedings freely reported, by public debate on the law and on its incidence. But, as regards particular litigation, society, through its political and legal institutions, has established the relevant law as a continuing code, and has further established special institutions (courts of law) to make the relevant decisions on the basis of such law. The public at large has delegated its decision-making in this sphere to its microcosm, the jury or judge. Since it would be contrary to the system for the remit to be recalled pendente lite, the paramount public interest pendente lite is that the legal proceedings should progress without interference.

But once the proceedings are concluded, the remit is withdrawn, and the balance of public interest shifts. It is true that the pan holding the administration of justice is not entirely cleared. The judge must go on to try other cases, so the court must not be scandalised. Further juries must be empanelled, so the departing jurors must not be threatened. Witnesses in future cases must be able to give honest and fearless testimony, so witnesses in past cases must not be victimised. But, these things conceded, the paramount interest of the public now is that it should be fully apprised of what has happened (even being informed, if appropriate, of relevant evidence that could not lawfully be adduced at the trial), and hear unhampered debate on whether the law, procedure and institutions which it had ordained have operated satisfactorily or call for modification. It was asked rhetorically in the instant appeal: if the 60 cases which were settled in 1968 could be freely discussed, why not the outstanding cases, in which most of the issues are the same? The answer is that once a case is concluded, but not until then, the balance of public interest shifts. The litigation being concluded, the public interest in freedom of discussion becomes paramount, since there are now unremitted decisions for the public itself to make—especially as to whether the law and its institutions need modification in the light of what has happened. The only legal rider is that the discussion of concluded cases must not be made a pretence for interference with pending cases. Professional responsibility may, over and above this, self-impose some limitation on the discussion of past cases when they may be relevant to pending cases, so as to ensure that individuals are not unfairly prejudiced. But the law itself must draw a line for general guidance—and it does this at the point when, in general, the balance of public interest shifts, namely, at the conclusion of a case. It is true that thereby a litigant may be affected in his conduct of litigation by the knowledge that, once the litigation is over, his conduct of it will be open to public criticism. But the law has given him full protection during the pendency of the litigation. It cannot do more without jeopardising the public's interest in matters which are of its general concern and as to which

it is therefore, in a democratic society, entitled to influence the decisions, which it cannot do intelligently without information and debate.

There is one particular situation where the law might strike the balance between the competing interests either way, but in fact strikes it in favour of freedom of discussion. This is where a matter is already under public debate when litigation supervenes which the continuance of the debate might interfere with. The situation of public debate involves that there is probably at stake some matter of which the public has a legitimate interest to be informed; and the law, in pragmatic judgment, says that conditionally the debate may continue. This is how it was put in the Australian case of *Ex parte Dawson* [1961] S.R.(N.S.W.) 573, 575:

> "The discussion of public affairs . . . cannot be required to be suspended merely because the discussion . . . may, as an incidental *but not intended* by-product, cause some likelihood of prejudice to a person who happens at the time to be a litigant."

But, as the Divisional Court noted, that does not cover the instant case: this is because of the words which I have italicised.

I agree with what my noble and learned friends have said about the role of the Attorney-General and the relevance of parliamentary discussion, and there is nothing for me to add. I would, however, wish to say something of three other matters which were debated at the Bar before your Lordships.

First, technical contempt. I think that this is conduct which is on the face of it an interference with the due course of law, but which is not intended, nor in fact operates, as such. The publication in *Vine Products Ltd.* v. *Green* [1966] Ch. 484 was, in my view, a technical contempt in this sense. On the other hand, I think that the article of September 24, 1972, was more than a technical contempt; since, by at least the passage I have cited, it was intended to interfere with the terms of settlement by holding Distillers up to execration: though I do not say that the Attorney-General is to be criticised for deciding that, considering the article as a whole, it did not call for his own intervention. The concept of the technical contempt overlaps, but is to be distinguished from, the concept of the contempt which does not call for punishment—there are many factors which will affect what, if any, penalty should be imposed. An advantage of recognising the useful role of the Attorney-General in the administration of the law of contempt is that it should tend to spare the courts from being burdened with adjudication on many purely technical contempts.

Secondly, appeals. Appellate proceedings, both in principle and on authority (*Borrie and Lowe*, op. cit., pp. 146–151), may be the subject matter of contempt. It would, for example, undoubtedly be contempt to assault an appellate judge in protest against his judgment, or to attempt to bribe him. But any contempt by way of public comment is the more likely to be technical with the absence of jury or witnesses; and, indeed, any comment on pending appellate proceedings could only rarely be intrinsically an interference with the due course of law. For example, scholarly discussion in the legal journals of decisions which may be the subject of appeal could not appropriately be described as interference with the due course of law.

Finally, TV discussion of matters which are the subject matter of

pending or imminent litigation. Even when the discussion is carefully balanced (and this cannot always be guaranteed) it is unlikely that all the safeguards of a trial at law can be observed, so there is an inherent danger of interference with the due course of justice. The Divisional Court in *Attorney-General* v. *London Weekend Television Ltd.* [1973] 1 W.L.R. 202 had the advantage of seeing and hearing a recording of the discussion in question there; but, from its description in the judgment, I should have thought that there was at least a technical contempt. And powerful statements, even if carefully counter-balanced, may have an inordinate effect if made against the background of a one-sided campaign that is being concurrently waged.

I respectfully agree with the Divisional Court that the instant appeal concerns a simple and clearcut case of contempt, and I would allow the appeal.

LORD CROSS OF CHELSEA. My Lords, I have had the advantage of reading the speech prepared by my noble and learned friend, Lord Reid. I agree with him that this appeal should be allowed: but I also agree with him that some of the submissions as to the scope of the law of contempt made by the Attorney-General and apparently accepted by the Divisional Court should be rejected.

"Contempt of court" means an interference with the administration of justice and it is unfortunate that the offence should continue to be known by a name which suggests to the modern mind that its essence is a supposed affront to the dignity of the court. Nowadays when sympathy is readily accorded to anyone who defies constituted authority the very name of the offence predisposes many people in favour of the alleged offender. Yet the due administration of justice is something which all citizens, whether on the left or the right or in the centre, should be anxious to safeguard. When the alleged contempt consists in giving utterance either publicly or privately to opinions with regard to or connected with legal proceedings, whether civil or criminal, the law of contempt constitutes an interference with freedom of speech, and I agree with my noble and learned friend that we should be careful to see that the rules as to "contempt" do not inhibit freedom of speech more than is reasonably necessary to ensure that the administration of justice is not interfered with. The proposed article which is the subject of this appeal consists of a detailed examination of the question whether or not Distillers were guilty of negligence in putting thalidomide on the market at the time, and in the circumstances in which they did. That is, of course, one of the issues in the pending actions and, again, I agree with my noble and learned friend that we should maintain the rule that any "prejudging" of issues, whether of fact or of law, in pending proceedings—whether civil or criminal—is in principle an interference with the administration of justice although in any particular case the offence may be so trifling that to bring it to the notice of the court would be unjustifiable.

It is easy enough to see that any publication which prejudges an issue in pending proceedings ought to be forbidden if there is any real risk that it may influence the tribunal—whether judge, magistrates or jury, or any of those who may be called upon to give evidence when the case comes to be heard. But why, it may be said, should such a publication be pro-

hibited when there is no such risk? The reason is that one cannot deal with one particular publication in isolation. A publication prejudging an issue in pending litigation which is itself innocuous enough may provoke replies which are far from innocuous but which, as they are replies, it would seem unfair to restrain. So gradually the public would become habituated to, look forward to, and resent the absence of, preliminary discussions in the "media" of any case which aroused widespread interest. An absolute rule—though it may seem to be unreasonable if one looks only to the particular case—is necessary in order to prevent a gradual slide towards trial by newspaper or television.

One submission which counsel for the respondents made in support of the decision of the Court of Appeal was that, as criminal cases are normally disposed of fairly quickly whereas civil cases often take a long time to come on for trial, a distinction should be drawn between them, and that whereas in criminal cases the rule should be that any "prejudging" of the issue should be prohibited from the time when the bringing of a charge was imminent until the disposal of the case, in civil cases a line should be drawn at the date when the case was set down for trial. Quite apart from the general objections to any prejudging of issues which I have outlined, such a rule would be, to my mind, altogether unacceptable. The suggested line is quite arbitrary and in any given case an article published shortly before the case was "set down" might be calculated to prejudice the particular trial very seriously. Moreover, in many cases—as in this case—the parties are trying in the early stages of the litigation to reach a settlement based on the views entertained by their lawyers as to their respective chances of success. Just as it is undesirable that articles should be published suggesting by inference that unless the case is decided in a certain way it will have been decided wrongly, so it is undesirable that articles should be published which suggest by inference that unless a case is settled on certain terms the lawyers cannot have known their business.

But counsel's main submission was that there must be exceptions to any rule and that here the circumstances were so exceptional that the proposed article ought not to be regarded as a contempt of court even though it canvassed one of the issues in the pending actions—or that even if it would have constituted a contempt at the time when the case was heard by the Divisional Court circumstances had changed so greatly by the time that it was before the Court of Appeal that that court was right in holding that its publication should be authorised. In this connection it was submitted in the first place that an exception should be made because this case was one of exceptional public interest. "Public interest" is an ambiguous phrase, for many cases—*Tichborne* v. *Tichborne* (1870) 39 L.J.Ch. 398 for example—may interest the public very much but yet not raise any issues of legitimate public concern. But this case is undoubtedly one which not only interests the public but also raises wider issues—over and above the issues in the proceedings—which are of public concern. It raises, for example, the question whether traders who seek to make money by the sale of drugs should not be absolutely liable for all damage caused to those who use them, even though they were not in any way negligent in putting them on the market, and the question whether the methods employed by the court in assessing damages in cases of personal injury are satisfactory. The fact that proceedings are pend-

ing in which damages are being claimed from Distillers in respect of their alleged negligence in marketing this drug affords no ground whatever for inhibiting discussion of these wider issues, but all that we are concerned with is discussion of the particular issue whether Distillers was negligent. Then it was submitted that the case was exceptional in that although the tragic effects of the taking of thalidomide by pregnant mothers became known as long as 12 years ago and the question how the tragedy came about might have been expected to have formed the subject of some public inquiry, no such inquiry in or out of court had yet been held. In considering that argument one must bear in mind that neither side is to blame for the fact that the actions have not yet been either brought to trial or settled. The members of the Court of Appeal appear to have regarded the proceedings as in some sense "dormant" and Lord Denning M.R. went so far as to say that the actions ". . . ought to have been brought to trial . . . or . . . settled long ago . . ." ([1973] Q.B. 710, 740). With all respect there is no justification whatever for that view. The settlement of the original actions was of necessity a very lengthy process since those advising the plaintiffs were faced with the task of collecting and evaluating such evidence as might support the view that Distillers had been negligent and they had to get the terms of settlement which they thought to be fair approved by a large number of clients. When the terms on which the original actions were settled became known a great many fresh actions were started in the latter part of 1968 and the early months of 1969 and negotiations for the settlement of those actions were being actively pursued at the time when "The Sunday Times" began to interest itself in the case. It may be, of course, that if the Government had known in 1961 that it would take as long as it has taken for the legal claims to be disposed of it would have caused some public inquiry to be held as to the circumstances in which thalidomide came to be put on the market even though the holding of such an inquiry during the pendency of the legal proceedings might have been a source of embarrassment to the parties, their legal advisers and the court. But the fact that no such inquiry was held affords no justification for allowing the press to conduct an inquiry itself while the proceedings are still pending. Nor can I see that anything which has happened since the hearing before the Divisional Court has altered the position. The discussions in Parliament on which much stress is laid in the judgments in the Court of Appeal concentrated, so far as I can see, almost entirely on the moral obligations of Distillers. There is, therefore, no need to consider whether, if Members of Parliament had taken it on themselves to discuss the legal issues in the case, that fact ought to have affected the attitude of the courts to similar discussion in the press. What, of course, can be said—and this was to my mind by far the most plausible way of putting the respondents' case—is that the pressure exerted on Distillers by the press campaign started by the article of September 24 (which, in my judgment, was not a contempt of court) and the subsequent discussion in Parliament, has resulted in Distillers offering to pay a sum which all but their most hostile critics consider to be adequate, that the actions will all soon be settled, that the publication of the projected article now cannot possibly harm Distillers in any way and that the respondents should have the same liberty to publish the article which they would have if the proceedings had been formally disposed of. But although

it is highly likely that all the claims will be settled out of court it is, on such information as was given to us, by no means certain that this will be so, for it appears that there are a number of further outstanding claims in respect of which leave to issue writs may or may not be granted. So in all the circumstances I think that the injunction granted by the Divisional Court should be restored—though the respondents will be at liberty to apply to have it discharged if they consider that in the light of the facts then existing they can persuade the court that there is no longer any warrant for continuing it. I would add, on this aspect of the case, that I agree with my noble and learned friend that the publication which was the subject of the proceedings in the *Vine Products* case [1966] Ch. 484, was technically a contempt, although had the plaintiffs asked the Attorney-General to take the matter up he would certainly have refused to do so and the order made by Buckley J. dismissing the application with costs was right. I also agree with what he has said with regard to appellate proceedings.

But the Attorney-General was not content to rest his case on the ground that the projected article prejudged one of the issues in the pending actions. He founded his argument on the passage in the judgment of Buckley J. in the *Vine Products* case which is set out in the speech of my noble and learned friend and submitted that when legal proceedings are pending any comment which is likely to influence one or other of the parties in the conduct of the proceedings is a contempt of court. If that is the law, then it follows, as I see it, that the article of September 24, 1972, was a serious contempt of court. It is true that a large part of that article was taken up with a discussion of what I have called the "wider issues" raised by the thalidomide case but in the forefront of the article there was the passage set out in the speech of my noble and learned friend which said that, whatever the legal position might be, Distillers should be "ashamed" to pay only such sum as fairly represented their legal liability and should recognise that "justice" required that they pay a far larger sum. The purpose of the article was to drive that point home and in fact it achieved its purpose since it was the starting point of a campaign waged in the press and in Parliament which led to Distillers being forced to offer in settlement of the claims in the pending actions five or six times as much as they had been offering previously. The Attorney-General—though he steadfastly refused to recognise his uncomfortable position—was in fact impaled on the horns of a dilemma. If his submissions were right his decision not to take action in respect of the article of September 24 must have been wrong. If, on the other hand, that decision was right, his submissions must be wrong. I have no doubt that the latter is the true view. Even if one limits the doctrine to public as opposed to private pressure—and I doubt whether it would be easy or logical to draw such a distinction—to accept the passage in the judgment of Buckley J. in the *Vine Products* case [1966] Ch. 484 as an accurate statement of the law would entail consequences which, as the example of the "squatters" given by my noble and learned friend shows, would be absurd. "Justice" is an ambiguous word. When we speak of the administration of justice we mean the administration of the law, but often the answer which the law gives to some problem is regarded by many people as unjust. To say that there must be no prejudging of the issues in a case is one thing. To say that no one must in any circumstances exert

any pressure on a party to litigation to induce him to act in relation to the litigation in a way in which he would otherwise not choose to act is another and a very different, thing. A layman who reflected on the matter might well be prepared to agree that a rule that the issues in pending proceedings should not be prejudged by discussions in the media was justifiable; but I am sure that he would consider that a rule prohibiting the publication of any statement likely to influence a party in the conduct of litigation, even though it did not relate to the issues in the action, was an unwarranted interference with freedom of expression. "Surely," he would say, "it ought to depend on the way in which the influence is exerted." That is, I think, in fact the legal position. To seek to dissuade a litigant from prosecuting or defending proceedings by threats of unlawful action, by abuse, by misrepresentation of the nature of the proceedings or the circumstances out of which they arose and such like, is no doubt a contempt of court; but if the writer states the facts fairly and accurately, and expresses his view in temperate language the fact that the publication may bring pressure—possibly great pressure—to bear on the litigant should not make it a contempt of court. As my noble and learned friend points out, the dividing line can be seen by comparing the decision of Maugham J. in *In re William Thomas Shipping Co. Ltd.* [1930] 2 Ch. 368 with the decision of the Divisional Court in *In re South Shields (Thames Street) Clearance Order* 1931, 173 L.T.Jo. 76. The language used by Buckley J. in the *Vine Products* case [1966] Ch. 484 appears to have been derived from the submissions made to him by Sir Andrew Clark (see counsel's argument at p. 490), and in my judgment it states the law too widely.

In conclusion I would say that I disagree with the views expressed by Lord Denning M.R. and Phillimore L.J. as to the "role" of the Attorney-General in cases of alleged contempt of court. If he takes them up he does not do so as a Minister of the Crown—"putting the authority of the Crown behind the complaint" [1973] Q.B. 710, 738—but as "amicus curiae" bringing to the notice of the court some matter of which he considers that the court shall be informed in the interests of the administration of justice. It is, I think, most desirable that in civil as well as in criminal cases anyone who thinks that a criminal contempt of court has been or is about to be committed should, if possible, place the facts before the Attorney-General for him to consider whether or not those facts appear to disclose a contempt of court of sufficient gravity to warrant his bringing the matter to the notice of the court. Of course, in some cases it may be essential if an application is to be made at all for it to be made promptly and there may be no time for the person affected by the "contempt" to put the facts before the Attorney before moving himself. Again the fact that the Attorney declines to take up the case will not prevent the complainant from seeking to persuade the court that notwithstanding the refusal of the Attorney to act the matter complained of does in fact constitute a contempt of which the court should take notice. Yet again, of course, there may be cases where a serious contempt appears to have been committed but for one reason or another none of the parties affected by it wishes any action to be taken in respect of it. In such cases if the facts come to the knowledge of the Attorney from

some other source he will naturally himself bring the matter to the attention of the court.

Appeal allowed.

July 25. The House considered the question of costs and the form of the order to be made.

Gordon Slynn for the Attorney-General. In the ordinary way the Attorney-General would have asked for costs in the House of Lords and in the court below, but he has taken into account two factors: (1) The article was sent to him for his opinion and guidance, and, because he considered that its publication would be a contempt of court, he referred the matter to the court. "The Sunday Times" welcomed this step and has given every co-operation. (2) The appeal has raised issues of considerable public importance in relation to the law of contempt in general. The subject had not been considered by the House of Lords for a long time. It has accordingly been agreed that each party should pay their own costs.

No observations were added on behalf of the respondents.

The House made the following order: That the cause be remitted to the Divisional Court with a direction to grant an injunction in the following terms:

> "That the defendants, Times Newspapers Ltd., by themselves, their servants, agents or otherwise, be restrained from publishing, or causing or authorising or procuring to be published or printed, any article or matter which prejudges the issues of negligence, breach of contract or breach of duty, or deals with the evidence relating to any of the said issues arising in any actions pending or imminent against Distillers Co. (Biochemicals) Ltd. in respect of the development, distribution or use of the drug 'thalidomide,'"

with liberty to apply to that court. That, by consent, each party do bear and pay their own costs here and below.

Solicitors: *Treasury Solicitor; James Evans.*

F. C.

Neutral Citation Number: [2009] EWHC 2693 (Ch)

Case Numbers: HC09C00984
HC09C03666

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/11/2009

Before :

MR JUSTICE BRIGGS

Between:

SECTORGUARD PLC

Claimant

-and -

DIENNE PLC

Defendant

And Between:

(1) JOHN HARE
(2) DIENNE PLC

-and- **Claimants**

(1) LEGION GROUP PLC
(FORMERLY KNOWN AS SECTORGUARD PLC)
(2) MARK HIGGINS
(3) CHARLES CLEVERLY **Defendants**

Mr Robert Deacon (instructed by **Rosenblatt Solicitors, 9-13 St Andrews Street, London EC4A 3AF**) for the Claimant in the First Claim and for the Defendants in the Second Claim
Mr Thomas Grant & Mr Jonathan Allcock (instructed by **Clintons, 55 Drury Lane, Covent Garden, London WC2B 5RZ**) for the Defendant in the First Claim and for the Claimants in the Second Claim
Hearing dates: 22nd & 23rd October 2009

Judgment

Mr Justice Briggs :

1. There are before me a number of applications in two vigorously contested and related proceedings, to which I will refer as "the First Claim" and "the Second Claim". Both complain of the misuse of confidential information.

2. In the First Claim, issued on 30th March 2009, the Claimant Sectorguard plc ("Sectorguard") complains of the misuse by the Defendant Dienne plc ("Dienne") of confidential information consisting primarily of the names and addresses of Sectorguard's customers, and the prices being charged to them. It is alleged that two former consultants to Sectorguard and three of its former employees now manage and/or control Dienne, and, at least by implication, that they were principally responsible for the wrongful obtaining and use by Dienne of Sectorguard's confidential information. The consultants in question were two brothers, John and Paul Hare. It is common ground that John Hare ("Mr Hare") is and has at all material times been a director of Dienne.

3. By the Second Claim, issued on 9th October 2009, Mr Hare and Dienne allege misuse of the contents of and enclosures to their confidential, including privileged, emails both by Sectorguard (since renamed Legion Group plc), and by a Mr Mark Higgins and a Mr Charles Cleverly, two directors of Sectorguard. In short, the allegation is that, upon his enforced departure from Sectorguard on 30th October 2008, Mr Hare inadvertently left in operation an automatic email re-direction system by which private emails concerning his own and Dienne's affairs were automatically routed to an email address accessible within Sectorguard, and that, after his departure, and until he had the automatic re-direction cancelled with expert assistance in June 2009, Sectorguard personnel, in particular Mr Higgins and Mr Cleverly, had taken active steps to read those emails, to open attachments to them, and to pass private and confidential information therein contained to third parties. It is alleged in the Second Claim that the private material thus read and used by the Defendants included privileged material, consisting of communications between, on the one hand, Dienne and Mr Hare, and, on the other hand, Dienne's solicitors instructed in the First Claim, Messrs Clintons, including legal advice in connection with the First Claim.

4. The applications before me in the First Claim all arise from an interim order made by Lewison J on 6th April 2009 ("the April Order"), and from a witness statement dated 3rd April 2009 made by Mr Hare in response to the interim application pursuant to which the April Order was made.

5. The April Order included the following undertaking by Dienne:

> "The Defendant shall within 7 days of the date of this order disclose on oath the identity of all the Claimant's customers it has contacted (whether by its directors, officers, servants or agents) as a result of having misused the Claimant's confidential customer list and/or the Claimant's CASH system and the precise nature of the contact and of any business the Defendant has conducted with such customers."

I shall refer to that undertaking, by reference to its number, as "Undertaking 5".

6. The gist of the relevant part of the 3rd April witness statement of Mr Hare was that the only allegedly confidential information of Sectorguard of which use had been made by Dienne consisted of the contents of a customer list placed in Mr Hare's car by an employee of Sectorguard, together with other papers, upon his summary ejection from Sectorguard's offices in October 2008, that no other former employee of Sectorguard who had transferred to Dienne had been involved in any breach of confidence or provided any information to Dienne relating to Sectorguard's customers, and that the customer list to which I have referred was used by Dienne for sending a mail shot to approximately 500 customers of Sectorguard.

7. On 18th May 2009 Sectorguard issued and shortly thereafter served an application notice, addressed to Dienne and Mr Hare seeking, by paragraph (1) the sequestration of Dienne's assets and/or committal to prison of all of its directors for contempt of court in failing to comply with Undertaking 5 and, by paragraph (2), permission pursuant to CPR 32.14 for the making of an application to commit Mr Hare to prison for making false statements in the relevant part of his 3rd April witness statement. The application notice sought further relief by paragraphs 3 and following, not material to the matters before me. I shall refer to it as the Committal Application.

8. On 3rd June 2009 Dienne applied for a variation, modification or release of Undertaking 5, and on 10th June Dienne and Mr Hare applied to strike out paragraph 1 of the Committal Application. In the meantime, on 5th June, Proudman J directed that Sectorguard's application for permission to commit, Dienne's application to vary Undertaking 5 and Dienne's (then contemplated) strike out application should all be heard together before a judge on the first available date after 22nd June 2009, with a time estimate of one day, and she gave directions for the completion of any necessary evidence. Those are the three applications in the First Claim now before me.

9. In the Second Claim, Mr Hare and Dienne applied by Application Notice dated 9th October 2009 for interim injunctive relief. It became common ground that the Application needed to be adjourned to permit the Defendants to file evidence in response. In the meantime I granted interim relief in terms which, to the limited extent that they were opposed, are explained in an extempore judgment given on the second day of the hearing.

10. In his response to the Committal Application, Mr Hare made reference in a second affidavit sworn on 3rd June 2009, at paragraph 29, to an apprehension that Sectorguard was motivated by personal bad feelings rather than any genuine desire to enforce Undertaking 5 and, as part of what he described in a sub-heading as The Wider Background, he referred at paragraph 26(2) to a belief, referred to in an exhibited email of his, that Mr Higgins had been unlawfully opening and reading his (Mr Hare's) private emails. Most of the evidence served in support of the interim injunction application in the Second Claim sought to prove the truth of that allegation, both in relation to Mr Higgins, Mr Cleverly and Sectorguard generally, and has been relied upon by Mr Hare and Dienne in connection with the applications before me in the First Claim. That evidence was, subject to one exception, all served on the Defendants to the Second Claim on 9th October. The exception consisted of an expert's report ("the Kroll Report"), which was served only on 13th October.

ADJOURNMENT

11. At an early stage in the two day hearing before me, which began on 22nd October, I asked Mr Deacon, who appeared for Sectorguard in the First Claim and for all the Defendants in the Second Claim, whether he sought an adjournment of the strike out application and permission application in the First Claim, to enable Sectorguard to answer the evidence served mainly on 9th October, in relation to the alleged reading of Mr Hare's private and privileged emails since, for reasons which I shall later explain, it appeared to me that that evidence might be of real relevance to both those applications. Mr Deacon said that he did not seek an adjournment, and was content to deal with both those applications on the evidence as it stood.

12. At the beginning of the second day of the hearing, by which time Mr Deacon was more than half way through his submissions in response to Mr Grant on the strike out application, but before he had opened Sectorguard's permission application, he applied for a substantial adjournment for precisely that purpose, having, as he frankly acknowledged, changed his mind in view of the way in which the hearing had developed, and the central importance placed by Mr Grant on the evidence of misuse of Mr Hare's private and in particular privileged emails.

13. Initially, Mr Deacon's application was for an adjournment of all three applications in the First Claim but, during the course of argument, and after hearing Mr Grant's submissions in opposition, Mr Deacon abandoned his attempt to have the strike out application adjourned. I ruled against any adjournment of the release application, but adjourned the permission application on terms as to costs, stating, in order to save time, that I would give my reasons for those decisions as part of this reserved judgment. This I now do.

14. My reason for declining to adjourn the release application can be shortly stated. It is, simply, that the question whether or not Sectorguard, Mr Higgins and/or Mr Cleverly had been reading and making improper use of the contents of Mr Hare's private emails is of no relevance whatever to that application. Release from, or variation of, Undertaking 5 is sought entirely on the basis that it was, unbeknown to Dienne or Mr Hare when the undertaking was given, impossible of performance, and has remained impossible ever since. Mr Deacon did not realistically suggest that the outcome of the release application could be in any way affected by the contents of any response to the allegation about misuse of private emails.

15. My reasons for permitting the adjournment of the permission application notwithstanding Dienne and Mr Hare's opposition are less straightforward. It is well settled that proceedings for contempt of court for which permission has to be obtained under CPR 32.14(2)(b) are public law proceedings, so that when considering whether to give permission for contempt proceedings to be taken in any particular case the court must have regard to the public interest alone: see KJM Superbikes Ltd v. Hinton [2008] EWCA Civ 1280 per Moore-Bick LJ at paragraphs 9 and 16. The court must consider, without pre-judging the application on its merits, whether the alleged contempt is of sufficient gravity to warrant such punishment, not least because, "If the courts are seen to treat serious examples of false evidence as of little importance, they run the risk of encouraging witnesses to regard the statement of truth as a mere formality": (paragraph 23). Against that, "There is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass

persons against whom they have a grievance, whether justified or not…" (paragraph 17). In that context, the court must bear in mind, in the case of a serious alleged contempt by the making of a false statement, that there is an alternative wholly independent applicant, namely Her Majesty's Attorney General, although it is not to be assumed that the most appropriate course is normally to direct that the matter be referred to her: (paragraph 15).

16. In the present case, it is obvious both from the evidence of the respondents to the application, from Mr Grant's skeleton argument on the application, and from the central thrust of his oral submissions on the related strike out application, that a central plank of the case against permitting Sectorguard to have the conduct of a committal application based upon alleged false statements by Mr Hare will be precisely that, on the strength mainly of the evidence served on 9th October, the application is being pursued as part of a campaign by Sectorguard and Mr Higgins in particular to get Mr Hare put in prison at any cost, for reasons which are alleged to pre-date the commencement of the First Claim, and which are alleged to be, in part, racially motivated.

17. Furthermore, it is obvious from Mr Grant's written and oral submissions on the strike out application (in which he refers to the probability that Sectorguard's officers had been reading the written legal advice given by Clintons to Mr Hare and Dienne even in relation to the committal proceedings), that Mr Hare will rely upon Sectorguard's use of private and privileged material in his emails as a self-sufficient reason why that company could not be entrusted with the conduct of public interest litigation.

18. Allegations that contempt proceedings, including an application for permission under CPR 32.14, are motivated by a personal vendetta, or racially motivated, and allegations that a party had been making deliberate use of its opponent's legal advice are, plainly, of the utmost gravity. The allegation of racial motivation appeared for the first time in the evidence served on 9th October. By contrast, the allegation that Mr Hare's private emails were being improperly used was first made by Mr Hare himself in an email to Mr Higgins on 11th March 2009, repeated (as I have said) in Mr Hare's Second Affidavit on 3rd June, mentioned in open court before Proudman J on 5th June, and made the subject of a letter before action (ahead of the Second Claim) on 11th August.

19. Remarkably to my mind, this serious allegation has yet to be admitted or denied by Sectorguard, Mr Higgins and Mr Cleverly either in correspondence (including emails), in evidence, or even by the giving of instructions to Mr Deacon with which he could respond to my invitation to assist the court as to his clients' case. Most remarkably of all, after having been unable to state, at the end of the first day of the hearing, whether this allegation was admitted or denied, Sectorguard served a witness statement on the second day of the hearing, which condescended to set out some details of Sectorguard's case, (and which Mr Deacon had told me had taken until 4.30 in the morning to prepare) which still remained studiously silent as to whether the allegation of improper use (rather than receipt) of Mr Hare's private emails was admitted or denied.

20. Mr Grant submitted that I should not permit an adjournment of the permission application because I should conclude that Sectorguard's remarkable prevarication about this important issue should lead to the inference that the allegation was true.

Even if there were aspects of the evidence served on and after 9th October which might take time to reply to in detail, Mr Grant submitted that Sectorguard had been given, but decided not to use, a more than fair opportunity to deny that allegation, if it could.

21. There is much force in Mr Grant's submission. If the question whether to permit contempt proceedings to be brought against Mr Hare was a purely private matter between the parties, I might well have concluded that Mr Hare was, as a matter of fairness and justice, entitled to have the permission application decided now, rather than left hanging over his head during a further adjournment. I am just persuaded however, since the question whether to give or refuse permission is a public interest matter, that the court should not refuse permission now without giving an opportunity to Sectorguard to respond, in evidence, to the very serious allegations which, if true, would weigh heavily in the balance against granting permission. It is sufficient for me to say, without in any way pre-judging the outcome of the permission application, let alone the outcome of any committal proceedings brought with permission, that the alleged contempt constituted by the alleged falsehoods of Mr Hare might justify the grant of permission if the serious allegations of vendetta, racial prejudice and misuse of private and privileged information were satisfactorily answered, in such a way as to place the fitness of Sectorguard to be entrusted with the conduct of public interest proceedings beyond realistic doubt.

22. For those reasons, Sectorguard's application for permission stands adjourned, on terms as to the completion of evidence which have, in the event, been arrived at by discussion and agreement.

THE STRIKE OUT APPLICATION

23. Paragraph 5 of the Practice Direction to RSC Order 52 enables the court to strike out a committal application on three alternative grounds, which may be summarised as:

i) no reasonable ground for committal;

ii) abuse of process; and

iii) procedural default.

Dienne and Mr Hare rely upon all three grounds, but have placed their emphasis on the first and second. I will deal with those two grounds for strike out separately in due course, but must first describe the present state of the evidence, and in particular Dienne's case for the submission that compliance with Undertaking 5 was always impossible. The same evidence is of central relevance to the release application.

24. Dienne's and Mr Hare's case may be summarised as follows:

i) At all times until he gave the undertaking on behalf of himself and Dienne on 6th April 2009, Mr Hare believed that, upon his instructions, all Sectorguard's customers on the customer list which Dienne had obtained had been sent letters in broadly standard form, so that he could comply with Undertaking 5 by stating that every customer named on that list had been contacted.

ii) Two of Dienne's employees, a Mr Price and a Ms Eyles had been given a loose leaf copy of the customer list (with the names and addresses of about a dozen customers on each page) together with a standard pro-forma letter to be sent to each one, with instructions to complete it with the particular names and prices relevant to that customer.

iii) Prior to giving Undertaking 5, Mr Hare instructed Mr Price and Ms Eyles to destroy any copies of the customer list in their possession, not for any improper purpose, but to comply with Sectorguard's demand that there should be no further improper use of it.

iv) Having given Undertaking 5, Mr Hare discovered in further discussion with Mr Price and Ms Eyles that, not only had they not written to all the customers on the list, but also that they had not, as they went along, kept any record of those to whom they had written, either in a separate document for that purpose, or by retaining copies of the letters, or the address labels used on the envelopes. Their operating procedure had been to write to customers named on a particular page of their loose leaf copy of the customer list, and having done so, to throw away that page, keeping only pages containing names and addresses of customers not yet written to, for the purpose of completing their task. Their procedure in relation to address labels was to overwrite new addresses upon old ones, thereby obliterating the latter on their computers. Once instructed to destroy their copies of the customer list, they had neither the means of identifying those to whom they had written, nor those to whom they had not yet written. Thus, by destroying the remaining sheets of their loose leaf copy of the customer list pursuant to Mr Hare's instruction, they inadvertently destroyed Sectorguard's only means (by a process of elimination) of identifying the customers who had by then been written to.

v) By the time the matter had been fully considered, in particular by Mr Price and Ms Eyles, the best they could do, by reference to a rough attempt to recall how far through their non-urgent task they had proceeded before being told to stop, was that about 200 out of some 700 customers on the list had been written to. Because their loose leaf copy of the list was not in alphabetical order, they could not even hazard a guess as to which particular names had been included among that 200.

25. That evidence, provided initially by Mr Hare, but corroborated fully and in considerable detail both by Mr Price and Ms Eyles, would if accepted support two conclusions by way of analysis. First, Undertaking 5 was incapable of being complied with by Dienne or Mr Hare at any time from the moment when it was given. Secondly, the cause of Dienne's giving of an impossible undertaking was carelessness on Mr Hare's part in failing to check in advance whether it could be complied with, compounded by an inadvertent instruction to destroy the only documents (namely the sheets identifying the customers not yet written to) by reference to which the identity of the customers contacted could, by a process of elimination, have been ascertained.

26. Mr Deacon's response to that case, on behalf of Sectorguard, was first that he wished to challenge Dienne's account by cross-examination of Mr Hare, Mr Price and Ms Eyles and secondly, even if that account proved to be true, that the offering of an impossible undertaking without due prior inquiry was itself a contempt of court. Mr

Deacon did not suggest either that Mr Hare's instruction to Mr Price and Ms Eyles to destroy their copy of the customer list was for any improper purpose, or that Mr Hare knew that Undertaking 5 was impossible when he authorised it to be given on behalf of Dienne. On the contrary, the Committal Application asserted in terms, in the grounds for committal under paragraph 1, that Dienne must have believed that it was able to comply with Undertaking 5, when given.

No reasonable ground for alleging contempt

27. Paragraph 5(1) of the Committal Practice Direction provides that the court may strike out a committal application if it appears to the court:

> "That the committal application and the evidence served in support of it disclose no reasonable ground for alleging that the respondent is guilty of a contempt of court."

28. Mr Grant submitted that paragraph 1 of the Committal Application should be struck out under this ground against both Dienne and Mr Hare, first because Undertaking 5 should be construed only as a best endeavours undertaking, and the Committal Application did not allege a failure to use best endeavours. Secondly and alternatively, he submitted that since Undertaking 5 was impossible of performance, a failure to perform it, although possibly a breach of the undertaking, was not a contempt.

29. Taking those submissions in turn, I am not persuaded that Undertaking 5 was only a best endeavours undertaking. The question is, what would the undertaking be understood to mean by a reasonable addressee with the same awareness of the relevant background as the parties: see Attorney General of Belize v. Belize Telecom Limited [2009] UKPC 10, at paragraphs 16 to 18.

30. Even accepting Mr Grant's submission that any ambiguity in a court order or undertaking should, in connection with a committal application, be resolved in favour of the alleged contemnor, I consider it clear that Undertaking 5 was given in unqualified terms, for the following reasons. First, the difference between an unqualified undertaking and a best endeavours undertaking is very well understood by the legal profession, such that the recipient of an undertaking which does not contain the qualifying words "best endeavours" may reasonably assume that the giver of the undertaking has been advised of the consequence of their omission.

31. Secondly, I reject Mr Grant's submission that no sensible business would give an unqualified undertaking to identify every customer on its competitor's customer list contacted during a specified period, lest an uncertainty about, say, one person in five hundred would render performance impossible. In my judgment it is a reasonable assumption that a competent business organisation will retain reliable records of the persons to whom it has written soliciting business. Thirdly, the immediate context of the giving of Undertaking 5 was that Mr Hare had, only three days previously, made a witness statement on Dienne's behalf in which, at paragraphs 12 to 14, he identified the approximate number of customers who had been contacted, and expressed no uncertainty about their identity.

32. By contrast, I accept the thrust of Mr Grant's second submission that failure to perform an impossible undertaking is not a contempt. The mental element required of a contemnor is not that he either intends to breach or knows that he is breaching the court order or undertaking, but only that he intended the act or omission in question, and knew the facts which made it a breach of the order: see Adam Phones v. Goldschmidt [1999] 4 All ER 486 at 492j to 494j.

33. Nonetheless, even a mental element of that modest quality assumes that the alleged contemnor had some choice whether to commit the relevant act or omission. An omission to do that which is in truth impossible involves no choice at all. Failure to comply with an order to do something, where the doing of it is impossible, may therefore be a breach of the order, but not, in my judgment, a contempt of court.

34. The difficulty with Mr Grant's attempt to rely upon impossibility under this ground for strike out is that it is not something which emerges either from the Committal Application or from the evidence in support. It emerges from Dienne's and Mr Hare's evidence in response. The relevant part of the particulars of the Committal Application are as follows:

> "a. The Defendant freely gave, under advice from its legal representatives the undertaking to the court recorded at paragraph 5 of Order which at the time it represented and must have believed it was able to comply with.
>
> b. The defendant has not referred to any change in circumstances occurring between 6th April 2009 when it gave the undertaking to the Court and 11th April 2009 when Mr John Hare swore an affidavit on its behalf in which he stated that, "the Defendant cannot specify which persons were contacted as it has not kept this information".
>
> c. The Defendant is therefore in breach of its undertaking to the Court.
>
> d. No application has been made by the Defendant to be released from this undertaking."

35. The evidence in support, consisting of an affidavit of Mr Cleverly sworn on 18th May 2009 referred, at paragraph 13, to the statement of the defendant quoted in sub-paragraph (b) of the Particulars, and continued, at paragraph 14:

> "Nothing of this sort was mentioned previously. Be that as it may the defendant is in breach of its undertaking."

Beyond that, it added or subtracted nothing from the substance of the Particulars in the Committal Application. The use of the phrase "be that as it may" does however suggest an attitude of mind on the part of Sectorguard and its advisers that, for the purposes of establishing a contempt, it mattered not whether performance of Undertaking 5 was impossible. Such an attitude is mistaken, for the reason which I have given.

36. Confirmation that this was, at least until the hearing before me, Sectorguard's attitude is to be found first, from the fact that at no time before Mr Deacon's oral submissions did Sectorguard give any indication that it intended to cross-examine Mr Hare, Mr Price and Ms Eyles as to the truth of their assertion of impossibility, or challenge it by any reply evidence of their own beyond a general assertion that Mr Hare's evidence was generally untrustworthy. Secondly, Sectorguard made no attempt by way of any proposed amendment of the Committal Application to suggest that it might advance the alternative case that the giving of the undertaking, in the absence of proper prior inquiry as to whether it could be complied with, was itself a contempt. The first indication of such an allegation appeared in paragraph 4 of a written summary of the law relating to breach of undertakings submitted by Mr Deacon as a supplement to his skeleton argument for the hearing.

37. Nonetheless Mr Cleverly's affidavit in support did assert that Sectorguard's purpose in seeking compliance with Undertaking 5 by the Committal Application was to enable it to perform its own Data Protection Act obligations to its customers. The implication of that assertion, if accepted at face value, is that Sectorguard did not accept that Undertaking 5 was incapable of performance.

38. In those circumstances I am not persuaded that it would be appropriate to strike out paragraph 1 of the Committal Application on the ground that, taken together with the evidence in support, it discloses no reasonable ground for alleging contempt against Sectorguard. Whether the application has any real prospect of success in the light in particular of Mr Price's and Ms Eyles' evidence is a different question. I will consider it under the heading of abuse of process.

39. I must first consider a separate submission under this first heading, namely that the Committal Application and supporting evidence disclose no reasonable ground for alleging contempt against Mr Hare personally. Mr Grant submitted that, for a director to be liable in contempt for his company's breach of a court order required either proof of aiding and abetting, or proof of his wilful failure to take reasonable steps to ensure that the company obeyed the order in question. Liability for aiding and abetting is an ordinary aspect of the common law. Liability based on a wilful failure to take reasonable steps arises under RSC Ord 45 rule 5(1)(b)(iii), as interpreted by the Court of Appeal in Attorney General for Tuvalu v. Philatelic Distribution Corp Limited [1990] 1 WLR 926, per Woolf LJ at 936E-F, as follows:

> "In our view where a company is ordered not to do certain acts or gives an undertaking to like effect and a director of that company is aware of that order or undertaking he is under a duty to take reasonable steps to ensure that the order or undertaking is obeyed, and if he wilfully fails to take those steps and the order or undertaking is breached he can be punished for contempt. We use the word "wilful" to distinguish the situation where the director can reasonably believe some other director or officer is taking those steps."

40. Mr Grant submitted that, since the Committal Application sought, in terms, the committal to prison of all Dienne's directors and made no specific allegation of wilful default against any one or more of them, it was defective as a case against Mr Hare,

who is mentioned in the Particulars only as the writer of Dienne's letter referred to in sub-paragraph (b) (quoted above).

41. Relying upon BIBA Limited v. Stratford Investments Limited [1973] Ch 281, Mr Deacon submitted that a committal application relying on a breach of an undertaking by a company automatically disclosed a case to answer against all its directors, however passive their role, so that it was for any director served with the application to show why he should not be regarded as responsible for the contempt under RSC Order 45 rule 5.

42. In my judgment the BIBA case establishes no such principle, although there are dicta which, if taken out of context, might be thought to suggest it. The issue in that case was whether a breach of an undertaking gave rise to the same consequences under RSC Order 45 rule 5 as the breach of an order. I consider that the effect of the Tuvalu case is that an applicant for the committal of a company director who relies upon a breach by the company of an order or an undertaking must disclose in the committal application a case for the establishment of responsibility on the part of that director, either on the grounds of aiding and abetting or wilful failure to take reasonable steps to ensure that the order or undertaking is obeyed.

43. In the present case the Committal Application sufficiently identifies Mr Hare as the person who took it upon himself to procure Dienne's compliance with Undertaking 5, by showing at sub-paragraph (b) of the Particulars that it was he who swore the allegedly offending affidavit on Dienne's behalf. In my judgment that is, whether by accident or design, just a sufficient identification of Mr Hare as a director with relevant responsibility for the alleged contempt by Dienne to avoid a strike out of the application as against him, on the first ground.

Abuse of process

44. It is now well established, in the light of the new culture introduced by the CPR, and in particular with the requirements of proportionality referred to in CPR 1.1(2) as part of the overriding objective, that it is an abuse of process to pursue litigation where the value to the litigant of a successful outcome is so small as to make the exercise pointless, viewed against the expenditure of court time and the parties' time and money engaged by the undertaking: see Jameel v. Dow Jones & Co [2005] QB 946 per Lord Phillips at paragraphs 54, 69 and 70 (conveniently extracted in note 3.4.3.4 on page 73 of the 2009 White Book).

45. The concept that the disproportionate pursuit of pointless litigation is an abuse takes on added force in connection with committal applications. Such proceedings are a typical form of satellite litigation, and not infrequently give rise to a risk of the application of the parties' and the court's time and resources otherwise than for the purpose of the fair, expeditious and economic determination of the underlying dispute, and therefore contrary to the overriding objective as set out in CPR 1.1. The court's case management powers are to be exercised so as to give effect to the overriding objective and, by CPR 1.4(2)(h) the court is required to consider whether the likely benefit of taking a particular step justifies the cost of taking it. Furthermore, paragraph 5 of the Contempt Practice Direction makes express reference to the court's case management powers in the context of applications to strike out committal proceedings.

46. It has long been recognised that the pursuit of committal proceedings which leads merely to the establishment of a purely technical contempt, rather than something of sufficient gravity to justify the imposition of a serious penalty, may lead to the applicant having to pay the respondent's costs: see Adam Phones v. Goldschmidt (*supra*) per Jacob J at 495 to 6, applying Bhimji v. Chatwani [1991] 1 All ER 705. Jacob J concluded, by reference to that case:

> "Since that judgment the Civil Procedure Rules have come into force. Their emphasis on proportionality and on looking at the overall conduct of the parties emphasises the point that applications for committal should not be seen as a way of causing costs when the defendant has honestly tried to obey the court's order."

47. Committal proceedings are an appropriate way, albeit as a last resort, of seeking to obtain the compliance by a party with the court's order (including undertakings contained in orders), and they are also an appropriate means of bringing to the court's attention serious rather than technical, still less involuntary, breaches of them. In my judgment the court should, in the exercise of its case management powers be astute to detect cases in which contempt proceedings are not being pursued for those legitimate ends. Indications that contempt proceedings are not so being pursued include applications relating to purely technical contempt, applications not directed at the obtaining of compliance with the order in question, and applications which, on the face of the documentary evidence, have no real prospect of success. Committal proceedings of that type are properly to be regarded as an abuse of process, and the court should lose no time in putting an end to them, so that the parties may concentrate their time and resources on the resolution of the underlying dispute between them.

48. In my judgment, viewed in that light, the application to commit Dienne and Mr Hare for breach of Undertaking 5 is just such an abuse. My reasons follow. First and foremost, it is apparent from the evidence now served on both sides that the application has no real prospect of success. The application was, for the reasons which I have given, apparently launched on the mistaken assumption that it did not matter whether or not Undertaking 5 was capable of performance, providing that it could be shown (as it obviously could) that it had not been complied with. Thus, when detailed evidence from three witnesses explaining cogently why the undertaking could never have been complied with from the date when it was given was served on Sectorguard, no response in terms of a reasoned basis for rejecting that evidence, or an intention to cross-examination all three witnesses, was forthcoming.

49. The best which Mr Deacon could do on his feet when this point was raised in argument was to say first, that he wished to cross-examine all three witnesses, secondly that in any event there might have been other ways of identifying the customers contacted (although he could not explain what they might be), and thirdly that even if impossibility was proved, it merely demonstrated that a contempt had been committed by the giving of the undertaking in the first place. In relation to that final suggestion, no attempt has been at any stage to amend the Committal Application by the insertion of that new case, or to explain how it could be pursued consistently with the positive averment in sub-paragraph (a) of the Particulars, that the

defendant must have believed when giving Undertaking 5 that it was able to comply with it.

50. While there might have been real force in a submission that an uncorroborated assertion by Mr Hare of reasons why Undertaking 5 could not be complied with should be viewed with suspicion (having regard in particular to his admission that other parts of his evidence had been untrue), I was given no explanation at all why I should conclude that Sectorguard had a real prospect of undermining the detailed corroborative evidence of Mr Price and Ms Eyles, the persons most directly concerned in the process of contacting customers on the list, with no apparent motive to do otherwise than tell the truth about their rather disorganised compliance with Mr Hare's instruction to send a mail-shot to all customers. Such a cross-examination would, as it seems to me, be based on nothing more than a Micawberish hope that something helpful might turn up.

51. Nor was Mr Deacon able to provide any explanation why the court might conclude that, having asserted prior to giving the undertaking that Dienne had contacted all customers on the list, the respondents to the application should then untruthfully have asserted an inability to identify the names of a smaller number of customers actually contacted, if the means to do so still existed. It would on the face of it be a motiveless offence, and therefore one most unlikely to be proved to the requisite criminal standard of proof.

52. In this context, I make it clear that my conclusion that the application stands no real prospect of success does not involve any weighing of competing evidence on the same factual issue. That would not be an appropriate task at this stage, any more than it would at the hearing of a summary judgment application. In the present case, the evidence of Mr Hare, Mr Price and Ms Eyles is all to the same effect, namely that Undertaking 5 was incapable of performance from the moment when it was given. The committal application is based purely on Mr Hare's conduct, in first authorising the giving of Undertaking 5, and then in swearing an affidavit stating that it could not be complied with, due to the absence of the necessary records. No documentary or other evidence has been adduced to the contrary. Thus, the evidence is all one way and Sectorguard's hopes of rebutting what is, in effect, a defence of impossibility, rests upon cross-examination, coupled only with the *prima facie* unlikelihood that a company would give an undertaking with which it could not comply. That *prima facie* unlikelihood is fully dispelled by the evidence of the three witnesses, and in particular that of Mr Price and Ms Eyles. The conclusion that the application has no real prospect of success therefore involves no weighing of conflicting evidence in relation to any factual issue.

53. My conclusion that the application has no real prospect of success is of itself sufficient to render its further prosecution an abuse. Nonetheless there is a second reason pointing in the same direction. It is that, on the evidence as a whole, I consider it more likely than not that the application is being prosecuted otherwise than for the legitimate motive of seeking enforcement of Undertaking 5, or bringing to the court's attention a serious rather than purely technical contempt. In that context, I bear in mind that as I have described, Sectorguard twice considered whether to seek an adjournment of the strike out application so as to answer the evidence served on 9th October, and twice decided not to do so. By contrast with the permission application,

I have therefore been invited to decide the strike out application on the evidence as it stands.

54. The application to commit for breach of Undertaking 5 was launched without any prior warning or complaint. It followed correspondence from Sectorguard suggesting various other alleged contempts, none of which has at any time been pursued. The impression thereby created was that Sectorguard was searching around for some tenable basis for prosecuting committal proceedings, and alighted upon the breach of Undertaking 5 as a stick with which to beat its opponents, including Mr Hare personally, rather than as a genuine means of enforcing compliance, notwithstanding its protestations to the contrary in Mr Cleverly's affidavit in support.

55. That impression is reinforced first by the pursuit of the contempt proceedings upon the assumption that it did not matter whether compliance with Undertaking 5 had always been, or had become, impossible, and by the failure by Sectorguard, until the matter was raised in argument at the hearing, to address the question how Mr Price and Ms Eyles' evidence was to be undermined.

56. The same impression is powerfully fortified by the evidence served on 9th October, which includes material from four different sources to the effect that, on different occasions, Mr Higgins and Mr Cleverly had expressed a wish to have Mr Hare put in prison, whether for contempt or for other alleged misconduct, by any means available. While I pay due regard to the fact that this evidence is of comparatively recent origin, no application has been made for an adjournment of the strike out application during which to rebut it by evidence in response.

57. I have considered whether my adjournment of the permission application, so as to give Sectorguard time to answer (among other things) the allegation that its application is part of a racially motivated vendetta against Mr Hare, is inconsistent with a conclusion, on the strike out application, that it is probable that the contempt application based upon Undertaking 5 has been pursued for illegitimate reasons. In my judgment there is a tension between those two outcomes, but not an inconsistency. The application for permission engages the public interest, in circumstances where it has not been shown that committal proceedings based upon Mr Hare's alleged untruths have no real prospect of success. Furthermore, I acceded to an invitation to adjourn the permission application for that purpose, whereas I was invited by Sectorguard to determine the strike out application on the evidence as it stood, rather than to permit an adjournment to answer recent evidence strongly suggestive of an improper motive.

58. If there is such a tension, it is therefore the consequence of the differing bases upon which Sectorguard has invited me to determine the two applications. For the reasons already given I would have concluded that it was probable that Sectorguard was pursuing the Committal Application in relation to Undertaking 5 for illegitimate reasons, even without recourse to the evidence served on 9th October, because of the obvious improbability that it would succeed, and the manner in which it had been launched. Paragraph 1 of Sectorguard's Notice of Application dated 18th May 2009 must therefore be struck out as an abuse of process.

THE RELEASE APPLICATION

59. My conclusion that Sectorguard has no real prospect of showing that, contrary to Dienne's evidence, Undertaking 5 was capable of being complied with leads inevitably to the conclusion that it ought to be released. The principle upon which the court acts on an application for a release of an undertaking given to it is to ascertain whether good cause for such a release is shown: see Re Hudson [1966] 1 Ch 209, at 214 C to D, and Arlidge Eady & Smith on Contempt (3rd edition) page 955 at paragraph 12-188.

60. Mr Deacon submitted that I should not do more at this stage than suspend Undertaking 5, against the possibility that it might be shown in due course that Dienne's impossibility case was wrong. If I had decided to permit the continued prosecution of the Committal Application based upon a breach of Undertaking 5, a suspension might well have been the appropriate course. Since I have however struck out that application, there is no basis merely to suspend rather than to release Undertaking 5, since there are now no pending proceedings in which Dienne's case as to impossibility can successfully be challenged.

61. Impossibility of performance is plainly a good cause for the release of an undertaking. If the court had known that Undertaking 5 was impossible of performance when it was proffered, it would not have accepted it, nor made an order to the same effect. It must therefore now be released, at least in relation to the obligation to identify customers contacted. I will hear argument as to whether the obligation to disclose business done with any customer on the list should remain, since that would not on the face of it be hindered by the impossibility thus far relied upon.

Case No: 2013-FOLIO 57

Neutral Citation Number: [2014] EWHC 4370 (Comm)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building,Fetter Lane, London, EC4A 1NL

Date: 19/12/2014

Before :

MR JUSTICE HAMBLEN

- -

Between :

PUBLIC JOINT STOCK COMPANY VSEUKRAINSKYI AKTSIONERNYI BANK	**Claimant**
- and -	
(1) SERGEY MAKSIMOV & others	**Defendant**

- -
- -

The **Claimant** was not represented at the hearing
Mr Davies (instructed by **McGuireWoods London LLP**) for the **First Defendant**

Hearing date: 19 December 2014

- -

Judgment

Mr Justice Hamblen :

1. This judgment concerns the appropriate costs order to make following my judgment of 17 November 2014.

2. The full background is set out in my judgment. In summary, the Claimant Bank ("the Bank") applied to commit the First Defendant ("Mr Maksimov") to prison for contempt of court in breaching worldwide freezing orders made by Cooke J dated 16 January 2013 ("the Cooke Order") and Field J dated 2 May 2013 ("the Field Order"). By the time of the hearing the Bank relied on the following alleged Grounds of Contempt:

   (1) *Ground (1)* - Mr Maksimov's admitted failed to provide disclosure of his assets and an affidavit verifying that disclosure in accordance with paragraphs 10(1) and 11 of the Cooke Order.

   (2) *Grounds (2) and (3)* – Mr Maksimov caused or procured the 22nd Defendant, United Overseas Sales Corporation ("United"), to deal with its assets by transferring its shareholding in the 6th Defendant, Bauman Trade LLC ("Bauman") in breach of paragraph 6(3) of the Cooke Order and/or thereby knowingly assisted in or permitted a breach of the order by those companies in breach of paragraph 17 of the Field Order.

   (3) *Ground (4)* - Mr Maksimov caused the shares owned by United and the 26th Defendant, Davidson Distribution Ltd ("Davidson") in the 9th Defendant, Kyivrichport PJSC ("KRP") to be disposed of or dealt with and thereby knowingly assisted in or permitted a breach of the order by those companies in breach of paragraph 17 of the Field Order.

   (4) *Ground (5)* – Bauman, United, Davidson, the 15th Defendant, Dyrect Investment LLC ("Dyrect"), the 20th Defendant, Citilink Distribution Ltd ("Citilink"), and the 23rd Defendant, Inmodal Company Ltd ("Inmodal") failed to provide disclosure of their assets and Mr Maksimov, thereby knowingly assisted in or permitted a breach of the order by those companies in breach of paragraph 17 of the Field Order.

   (5) *Ground (7)* – Mr Maksimov failed to disclose his shares in the 25th Defendant, Cascade Ventures Ltd ("Cascade") in breach of paragraphs 10(1) and/or 11 of the Cooke Order.

3. In my judgment I rejected all the alleged Grounds of Contempt other than Ground (1), which had already been admitted in January 2014, and Ground (5). I also made various findings relating to the admitted contempt under Ground (1).

4. The hearing of consequential matters was adjourned since it was considered by the parties that there would be insufficient time to deal with them at the time of hand down. At that time the Bank was still represented by Mr Samek

QC and Mr D'Cruz instructed by Eversheds LLP. On 17 December 2014 Eversheds came off the record and the Bank has not been represented at the resumed hearing. There is some evidence that the Bank has been classified as insolvent and is under temporary administration.

5. The costs incurred in relation the Banks' contempt proceedings are very considerable. The Bank's own costs schedule for costs up to 22 October 2014 shows total costs of £733,638.03, of which £600,864.53 relate to costs incurred after 14 January 2014. Mr Maksimov's total costs for the period after 14 January 2014 are £514,999.02. The case has also occupied significant periods of court time during that period, including hearings before Andrew Smith J on 14 March 2014; Teare J on 12 May 2014; Andrew Smith J on 4 August 2014; myself on 23 September 2014 followed by the four day hearing on 20-23 October 2014.

6. Leaving aside the already admitted contempt under Ground (1), the end result of that considerable expenditure of time and cost has been a single finding of contempt under Ground (5), which I described as being a "technical" contempt in paragraph 129 of the judgment in which I said as follows:

> "Although I have found Mr Maksimov to be in contempt, the contempt may be said to be of a technical nature in that the Bank has had disclosure of these companies' assets through Mr Maksimov's own asset disclosure, as confirmed in Mr Maksimov's 7th witness statement. What is lacking is a separate asset disclosure statement by the companies."

7. In these circumstances Mr Maksimov submits that he should be paid 90% of his costs since 14 January 2014.

8. The vast bulk of the time and costs since 15 January 2014 has been taken up by:

   (1) The Bank's two major disputed allegations of dealings in breach of the freezing order (in relation to Bauman and the Kiev River Port shares) which were both rejected in the judgment;

   (2) The Bank's unsuccessful efforts to persuade the court that Mr Maksimov's admitted breach of the Cooke Order in failing to provide asset disclosure on time was dishonest (and therefore meriting a severe and immediate custodial sentence).

   (3) The question of adjournment and whether the hearing could properly go ahead without Mr Maksimov's attendance and cross examination by video link.

9. As to (1), Mr Maksimov was successful on this issue. Further, the Bank aggressively pursued a case of dishonesty in relation to the transfer of the legal interest in the Bauman shares in circumstances where the objective facts, which were well-known to the Bank, did not support an inference of dishonesty. In particular, Mr Maksimov openly disclosed his interest in the Bauman shares in his asset disclosure on 13 January 2014 and it was

inherently unlikely that, had he been engaged in a dishonest plan to conceal that interest, he would have done so. It is also the case that information as to the ownership of Bauman is publicly available in the Ukraine, meaning that there would be little purpose served by any such dishonest concealment.

10. As to (2), Mr Maksimov was successful on this issue also. Mr Maksimov admitted contempt in relation to Ground 1 shortly after instructing English solicitors in January 2014. Since that time, the Bank aggressively pursued a case that the reasons given by Mr Maksimov for not complying with the asset disclosure obligations in the Cooke Order were false and dishonest and that Mr Maksimov had been in deliberate and flagrant breach of the court's orders. This was no doubt done in order to persuade the court to impose a lengthy term of imprisonment on Mr Maksimov. In its September 2014 skeleton argument, the Bank argued that:

> "… it is legitimate to infer from Mr Maksimov's misconceived reliance on the privilege against self-incrimination that he was attempting to rely on the same in order deliberately to seek to avoid giving disclosure and to seek also to conceal assets in breach of the Court's orders…
>
> (paragraph 105(3))

That was also the thrust of the case put to Mr Maksimov in his cross-examination.

11. As to (3), it was legitimate and proper for Mr Maksimov to insist on his right to participate in the hearing and to give oral evidence in his own defence. Further, as set out in my judgment, for the purposes of resolving the contempt application I have to proceed on the basis that there has been a threat to Mr Maksimov's life as set out in his evidence. I accept that significant costs in this case have been incurred because the Bank wished to force the substantive hearing to go ahead without Mr Maksimov being able to participate. For example, following the adjournment of the 14 January 2014 hearing, the matter was re-listed before Andrew Smith J on 14 March 2014. The threat to Mr Maksimov's life emerged before this hearing and, on 12 March 2014, Mr Maksimov applied for an adjournment. This application was opposed by the Bank for the reasons set out in a Note dated 13 March 2014. The Bank's position was that the hearing should go ahead either with Mr Maksimov being cross-examined by telephone or else on the basis that Mr Maksimov would not give oral evidence at all and submissions would be made as to the weight to be attached to his evidence. Andrew Smith J granted Mr Maksimov's adjournment application (and required the Bank to amend its Grounds of Contempt so that any further allegations of contempt were specifically pleaded). The matter then came back before Teare J on 22 May 2014 for a case management conference. The substantive contempt hearing was then listed for two days on 18/19 June 2014. Mr Makismov had once again applied for an adjournment of the substantive application in circumstances where the threat to his life was continuing and that was again opposed by the Bank. The adjournment application was granted by Teare J and the matter was re-listed to September 2014 with a longer estimate. That

hearing too was part adjourned due to alleged funding issues and I ordered that Mr Maksimov was to pay the Bank any costs thrown away as a result of the adjournment.

12. In relation to the issues at the contempt hearing I accordingly accept that Mr Maksimov was the substantially successful party. I also accept that, save in relation to the September 2014 hearing, the Bank has some responsibility for the need for those adjournments and that they do not provide a reason for departing from an approach that the costs should follow the event of the contempt hearing itself.

13. There are, however, wider issues which arise which provide further reasons why a costs order should be made in favour of Mr Maksimov.

14. As Mr Maksimov points out, when asset disclosure was provided by Mr Maksimov on 13 January 2014 the Bank had a range of options as to how it could proceed:

> (1) It could have raised any queries in relation to that asset disclosure in the inter-solicitor correspondence;
>
> (2) It could have made a more formal request for further information about assets and sought an order that such further information be provided if it was not forthcoming;
>
> (3) It could have applied for permission to cross-examine Mr Maksimov on his assets.

15. These are the typical responses of a claimant who seeks to challenge the defendant's asset disclosure under a freezing order. The Bank, however, decided not to pursue any of these avenues. Instead it immediately took the position that Mr Makismov had not "purged" his contempt but had instead given false and dishonest information about his assets and concealed alleged dealings in breach of the order and should therefore be sentenced to a lengthy term in prison.

16. Indeed, the Bank claimed it was entitled to pursue such a course without making further and properly particularised allegations of contempt. The Bank's position prior to the 14 March hearing was that it was entitled to cross-examine Mr Maksimov on all its additional allegations of dishonesty and contempt as matters going to sentencing without amending its Grounds of Contempt. It was only when Andrew Smith J indicated on 14 March that the further allegations of contempt had to be properly pleaded that the Bank amended its Grounds of Contempt to include all the new grounds.

17. Thereafter the Bank pursued all of those amended grounds with considerable aggression, challenging almost every explanation given by Mr Maksimov. Some of the allegations were dropped, but only at a very late stage (for example, the other Ground 7 allegations in relation to alleged non-disclosure of assets).

18. What is particularly striking is that the allegations that Mr Maksimov had failed to disclose assets, usually the centre-piece of a case of this type, were downplayed and eventually almost completely abandoned. The only such allegation that was pursued in closing submissions was in relation to Cascade and that allegation was rejected by the court.

19. This was not therefore a normal asset disclosure case. The claimant's central concern is usually that there is a pool of assets that the defendant has failed to disclose and the contempt proceedings are the means of both punishing the claimant for his past breaches of the order and effectively forcing the defendant to come clean and disclose his full assets.

20. Here, there was a striking absence of any real identified prejudice to the Bank. Neither the Bauman shares nor the Kiev River Port shares had been placed out of reach. Nor was there ever any real evidence that meaningful assets had been concealed.

21. In *Sectorguard plc v Dienne plc* [2009] EWHC 2693 (Ch) Briggs J stated as follows at [44] to [47]:

> "44. It is now well established, in the light of the new culture introduced by the CPR, and in particular with the requirements of proportionality referred to in CPR 1.1(2) as part of the overriding objective, that it is an abuse of process to pursue litigation where the value to the litigant of a successful outcome is so small as to make the exercise pointless, viewed against the expenditure of court time and the parties' time and money engaged by the undertaking: see *Jameel v. Dow Jones & Co* [2005] QB 946 per Lord Phillips at paragraphs 54, 69 and 70 (conveniently extracted in note 3.4.3.4 on page 73 of the 2009 White Book).
>
> 45. The concept that the disproportionate pursuit of pointless litigation is an abuse takes on added force in connection with committal applications. Such proceedings are a typical form of satellite litigation, and not infrequently give rise to a risk of the application of the parties' and the court's time and resources otherwise than for the purpose of the fair, expeditious and economic determination of the underlying dispute, and therefore contrary to the overriding objective as set out in CPR 1.1. The court's case management powers are to be exercised so as to give effect to the overriding objective and, by CPR 1.4(2)(h) the court is required to consider whether the likely benefit of taking a particular step justifies the cost of taking it. Furthermore, paragraph 5 of the Contempt Practice Direction makes express reference to the court's case management powers in the context of applications to strike out committal proceedings.
>
> 46 It has long been recognised that the pursuit of committal proceedings which leads merely to the establishment of a purely technical contempt, rather than something of sufficient gravity to justify the imposition of a serious penalty, may lead to the applicant having to pay the respondent's

costs: see *Adam Phones v. Goldschmidt* (*supra*) per Jacob J at 495 to 6, applying *Bhimji v. Chatwani* [1991] 1 All ER 705. Jacob J concluded, by reference to that case:

> "Since that judgment the Civil Procedure Rules have come into force. Their emphasis on proportionality and on looking at the overall conduct of the parties emphasises the point that applications for committal should not be seen as a way of causing costs when the defendant has honestly tried to obey the court's order."

47. Committal proceedings are an appropriate way, albeit as a last resort, of seeking to obtain the compliance by a party with the court's order (including undertakings contained in orders), and they are also an appropriate means of bringing to the court's attention serious rather than technical, still less involuntary, breaches of them. In my judgment the court should, in the exercise of its case management powers be astute to detect cases in which contempt proceedings are not being pursued for those legitimate ends. Indications that contempt proceedings are not so being pursued include applications relating to purely technical contempt, applications not directed at the obtaining of compliance with the order in question, and applications which, on the face of the documentary evidence, have no real prospect of success. Committal proceedings of that type are properly to be regarded as an abuse of process, and the court should lose no time in putting an end to them, so that the parties may concentrate their time and resources on the resolution of the underlying dispute between them."

22. I respectfully endorse those comments. An increasing amount of this court's time is being taken up with contempt applications. Claimants should give careful consideration to proportionality in relation to the bringing and continuance of such proceedings. In appropriate cases respondents should give consideration to applying to strike out such applications for abuse of process. The court should be astute to detect when contempt proceedings are not being pursued for legitimate aims. Adverse costs orders may follow where claimants bring disproportionate contempt applications.

23. There is no application to strike out for abuse of process in this case. Nor is this a case in which the contempt application had no real prospect of success. However, it is a case in which the pursuit of the proceedings has merely led to the establishment of a technical contempt rather than something of sufficient gravity to justify the imposition of a serious penalty.

24. In such circumstances, as made clear by *Bhimji v. Chatwani* [1991] 1 All ER 705, *Adam Phones v. Goldschmidt* [1999] 4 All ER 486 and *Sectorguard plc v Dienne plc,* the claimant may well be ordered to pay the respondent's costs. In the present case that is a further reason why the Bank should pay Mr Maksimov's costs.

25. For all these reasons I am satisfied that this is a case in which the Bank should be ordered to pay the bulk of Mr Maksimov's costs since 14 January 2014.

26. Mr Maksimov recognises that he should recover less than 100% of his costs. This is because it is accepted that:

    (1) the relevant information and documents in relation to the dealing allegation and certain aspects of Mr Maksimov's asset disclosure came in stages rather than all being provided in Mr Maksimov's initial witness evidence; and

    (2) the Bank was successful on Ground 5, albeit that this was not a matter which took up any significant time and was ultimately of a somewhat technical nature since the Bank already has disclosure of the assets of the relevant companies through Mr Maksimov's personal asset disclosure.

27. To that I would add that Mr Maksimov was at fault in relation to the adjournment of the September 2014 hearing and was ordered to pay the costs thrown away as a result.

28. In all the circumstances I consider that the appropriate costs order to make in the exercise of my discretion is that the Bank should pay 80% of Mr Maksimov's costs since January 2014.

29. The total costs claimed on that basis is £411,999.38. I consider that it is appropriate that there should be an order for interim payment. That should take into account the fact that Mr Maksimov remains liable for costs claimed of £66,313.50 in respect of the period up to January 2014. In such circumstances I consider the appropriate sum for interim payment to be £175,000.

A

Supreme Court

Wolverhampton City Council and others *v* London Gypsies and Travellers and others

[On appeal from *Barking and Dagenham London Borough Council v Persons Unknown*]

B

[2023] UKSC 47

2023 Feb 8, 9; Nov 29

Lord Reed PSC, Lord Hodge DPSC, Lord Lloyd-Jones, Lord Briggs JJSC, Lord Kitchin

C *Injunction — Trespass — Persons unknown — Local authorities obtaining injunctions against persons unknown to restrain unauthorised encampments on land — Whether court having power to grant final injunctions against persons unknown — Whether limits on court's power to grant injunctions against world — Senior Courts Act 1981 (c 54), s 37*

With the intention of preventing unauthorised encampments by Gypsies or Travellers within their administrative areas, a number of local authorities issued D proceedings under CPR Pt 8 seeking injunctions under section 37 of the Senior Courts Act 1981[1] prohibiting "persons unknown" from setting up such camps in the future. Injunctions of varying length were granted to some 38 local authorities, or groups of local authorities, on varying terms by way of both interim and permanent injunctions. After the hearing of an application to extend one of the injunctions which was coming to an end, a judge ordered a review of all such injunctions as remained in force and which the local authority in question wished to maintain. E The judge discharged the injunctions which were final and directed at unknown persons, holding that final injunctions could only be made against parties who had been identified and had had an opportunity to contest the order sought. The Court of Appeal allowed appeals by some of the local authorities and restored those final injunctions which were the subject of appeal, holding that final injunctions against persons unknown were valid since any person who breached one would as a consequence become a party to it and so be entitled to contest it.

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

Held, dismissing the appeal, (1) that although now enshrined in statute, the court's power to grant an injunction was, and continued to be, a type of equitable remedy; that although the power was, subject to any relevant statutory restrictions, unlimited, the principles and practice which the court had developed governing the proper exercise of that power did not allow judges to grant or withhold injunctions purely on their own subjective perception of the justice and convenience of doing so G in a particular case but required the power to be exercised in accordance with those equitable principles from which injunctions were derived; that, in particular, equity (i) sought to provide an effective remedy where other remedies available under the law were inadequate to protect or enforce the rights in issue, (ii) looked to the substance rather than to the form, (iii) took an essentially flexible approach to the formulation of a remedy and (iv) was not constrained by any limiting rule or principle, other than justice and convenience, when fashioning a remedy to suit new H circumstances; and that the application of those principles had not only allowed the general limits or conditions within which injunctions were granted to be adjusted over time as circumstances changed, but had allowed new kinds of injunction to be formulated in response to the emergence of particular problems, including

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

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

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

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

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

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

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

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

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

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

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.

The following cases are referred to in the judgment of Lord Reed PSC, Lord Briggs JSC and Lord Kitchin:

A (A Protected Party) v Persons Unknown [2016] EWHC 3295 (Ch); [2017] EMLR 11

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

Adair v The New River Co (1805) 11 Ves 429

Anton Piller KG v Manufacturing Processes Ltd [1976] Ch 55; [1976] 2 WLR 162; [1976] 1 All ER 779, CA

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

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

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

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)

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)

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; [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); [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, HL(E)
Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd [1993] AC 334; [1993] 2 WLR 262; [1993] 1 All ER 664, HL(E)
Chapman v United Kingdom (Application No 27238/95) (2001) 33 EHRR 18, ECtHR (GC)
Commerce Commission v Unknown Defendants [2019] NZHC 2609
Convoy Collateral Ltd v Broad Idea International Ltd [2021] UKPC 24; [2023] AC 389; [2022] 2 WLR 703; [2022] 1 All ER 289; [2022] 1 All ER (Comm) 633, PC
Cuadrilla Bowland Ltd v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29, CA
D v Persons Unknown [2021] EWHC 157 (QB)
Dresser UK Ltd v Falcongate Freight Management Ltd (The Duke of Yare) [1992] QB 502; [1992] 2 WLR 319; [1992] 2 All ER 450, CA
EMI Records Ltd v Kudhail [1985] FSR 36, CA
ESPN Software India Pvt Ltd v Tudu Enterprise (unreported) 18 February 2011, High Ct of Delhi
Earthquake Commission v Unknown Defendants [2013] NZHC 708
Ernst & Young Ltd v Department of Immigration 2015 (1) CILR 151
F (orse A) (A Minor) (Publication of Information), In re [1977] Fam 58; [1976] 3 WLR 813; [1977] 1 All ER 114, CA
Financial Services Authority v Sinaloa Gold plc [2013] UKSC 11; [2013] 2 AC 28; [2013] 2 WLR 678; [2013] Bus LR 302; [2013] 2 All ER 339, SC(E)
Fourie v Le Roux [2007] UKHL 1; [2007] 1 WLR 320; [2007] Bus LR 925; [2007] 1 All ER 1087, HL(E)
Friern Barnet Urban District Council v Adams [1927] 2 Ch 25, CA
Guaranty Trust Co of New York v Hannay & Co [1915] 2 KB 536, CA
Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site [2003] EWHC 1738 (Ch); [2004] Env LR 9
Harlow District Council v Stokes [2015] EWHC 953 (QB)
Heathrow Airport Ltd v Garman [2007] EWHC 1957 (QB)
Hubbard v Pitt [1976] QB 142; [1975] 3 WLR 201; [1975] ICR 308; [1975] 3 All ER 1, CA
Ineos Upstream Ltd v Persons Unknown [2019] EWCA Civ 515; [2019] 4 WLR 100; [2019] 4 All ER 699, CA
Iveson v Harris (1802) 7 Ves 251
Joel v Various John Does (1980) 499 F Supp 791
Kingston upon Thames Royal London Borough Council v Persons Unknown [2019] EWHC 1903 (QB)
M and N (Minors) (Wardship: Publication of Information), In re [1990] Fam 211; [1989] 3 WLR 1136; [1990] 1 All ER 205, CA
MacMillan Bloedel Ltd v Simpson [1996] 2 SCR 1048
McPhail v Persons, Names Unknown [1973] Ch 447; [1973] 3 WLR 71; [1973] 3 All ER 393, CA
Manchester Corpn v Connolly [1970] Ch 420; [1970] 2 WLR 746; [1970] 1 All ER 961, CA
Marengo v Daily Sketch and Sunday Graphic Ltd [1948] 1 All ER 406, HL(E)
Mareva Cia Naviera SA v International Bulkcarriers SA [1975] 2 Lloyd's Rep 509, CA

Maritime Union of Australia v Patrick Stevedores Operations Pty Ltd [1998] 4 VR 143
Mercedes Benz AG v Leiduck [1996] AC 284; [1995] 3 WLR 718; [1995] 3 All ER 929, PC
Meux v Maltby (1818) 2 Swans 277
Michaels (M) (Furriers) Ltd v Askew [1983] Lexis Citation 198; The Times, 25 June 1983, CA
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
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 (The Siskina) [1979] AC 210; [1977] 3 WLR 818; [1977] 3 All ER 803, HL(E)
Smith v Secretary of State for Housing, Communities and Local Government [2022] EWCA Civ 1391; [2023] PTSR 312, CA
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, 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 [1986] Lexis Citation 644; The Times, 14 October 1986
Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908
Winch, Persons formerly known as, In re [2021] EWHC 1328 (QB); [2021] EMLR 20, DC; [2021] EWHC 3284 (QB); [2022] ACD 22, DC
Wykeham Terrace, Brighton, Sussex, In re, Ex p Territorial Auxiliary and Volunteer Reserve Association for the South East [1971] Ch 204; [1970] 3 WLR 649
X (A Minor) (Wardship: Injunction), In re [1984] 1 WLR 1422; [1985] 1 All ER 53
X (formerly Bell) v O'Brien [2003] EWHC 1101 (QB); [2003] EMLR 37
Z Ltd v A-Z and AA-LL [1982] QB 558; [1982] 2 WLR 288; [1982] 1 All ER 556, CA

The following additional cases were cited in argument:

A v British Broadcasting Corpn [2014] UKSC 25; [2015] AC 588; [2014] 2 WLR 1243; [2014] 2 All ER 1037, SC(Sc)
Abortion Services (Safe Access Zones) (Northern Ireland) Bill, In re [2022] UKSC 32; [2023] AC 505; [2023] 2 WLR 33; [2023] 2 All ER 209, SC(NI)
Astellas Pharma Ltd v Stop Huntingdon Animal Cruelty [2011] EWCA Civ 752; The Times, 11 July 2011, CA
Birmingham City Council v Nagmadin [2023] EWHC 56 (KB)
Cambridge City Council v Traditional Cambridge Tours Ltd [2018] EWHC 1304 (QB); [2018] LLR 458
Cameron v Liverpool Victoria Insurance Co Ltd (Motor Insurers' Bureau intervening) [2019] UKSC 6; [2019] 1 WLR 1471; [2019] 3 All ER 1, SC(E)
Crédit Agricole Corporate and Investment Bank v Persons Having Interest in Goods Held by the Claimant [2021] EWHC 1679 (Ch); [2021] 1 WLR 3834; [2022] 1 All ER 83; [2022] 1 All ER (Comm) 239
High Speed Two (HS2) Ltd v Persons Unknown [2022] EWHC 2360 (KB)
Hillingdon London Borough Council v Persons Unknown [2020] EWHC 2153 (QB); [2020] PTSR 2179
Kudrevičius v Lithuania (Application No 37553/05) (2015) 62 EHRR 34, ECtHR (GC)
MBR Acres Ltd v McGivern [2022] EWHC 2072 (QB)
Mid-Bedfordshire District Council v Brown [2004] EWCA Civ 1709; [2005] 1 WLR 1460, CA
Porter v Freudenberg [1915] 1 KB 857, CA
R (Laporte) v Chief Constable of Gloucestershire Constabulary [2006] UKHL 55; [2007] 2 AC 105; [2007] 2 WLR 46; [2007] 2 All ER 529, HL(E)
R (M) v Secretary of State for Constitutional Affairs and Lord Chancellor [2004] EWCA Civ 312; [2004] 1 WLR 2298; [2004] 2 All ER 531, CA
Redbridge London Borough Council v Stokes [2018] EWHC 4076 (QB)
Secretary of State for Transport v Cuciurean [2021] EWCA Civ 357, CA
Winterstein v France (Application No 27013/07) (unreported) 17 October 2013, ECtHR

APPEAL from the Court of Appeal

On 16 October 2020 Nicklin J, with the concurrence of Dame Victoria Sharp P and Stewart J (Judge in Charge of the Queen's Bench Civil List), ordered a number of local authorities which had been involved in 38 sets of proceedings each obtaining injunctions prohibiting "persons unknown" from making unauthorised encampments within their administrative areas, or on specified areas of land within those areas, to complete a questionnaire with a view to identifying those local authorities who wished to maintain such injunctions and those who wished to discontinue them. On 12 May 2021, after receipt of the questionnaires and a subsequent hearing to review the injunctions, Nicklin J [2021] EWHC 1201 (QB); [2022] JPL 43 held that the court could not grant final injunctions which prevented persons who were unknown and unidentified at the date of the order from occupying and trespassing on local authority land and, by further order dated 24 May 2021, discharged a number of the injunctions on that ground.

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

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.

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

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

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

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

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

It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard: see *Porter v Freudenberg* [1915] 1 KB 857, 883, 887–888, *Barton v Wright Hassall LLP* [2018] 1 WLR 1119, para 8 and *Cameron*, paras 17–18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In both GRT cases (where article 8 rights are involved) and in protest cases (where articles 10 and 11 are involved) an individual assessment of proportionality is required. In the former context, there is a clear line of Strasbourg authority emphasising the strictness of the proportionality test when imposing measures which affect the GRT community, such as injunctions to prevent encampments. A potential breach of planning authorisation, for example, will not be enough: see *Winterstein v France* (Application No 27013/07) (unreported) 17 October 2013. Consideration must be given to individualised matters such as the length of time of the encampment, the consequences of removal and the risk of becoming homeless. Similar considerations apply in protester cases: see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417, para 136 and *Kudrevičius v Lithuania* (2015) 62 EHRR 34, paras 145, 155. This applies not just to Convention rights, but to fundamental common law rights such as the right to a home, to respect for one's ethnic identity and to freedom of expression.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Drabble KC replied.

The court took time for consideration.

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

1. Introduction

(1) The problem

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

2 In these circumstances, the appeal raises the question whether (and if so, on what basis, and subject to what safeguards) the court has the power to grant an injunction which binds persons who are not identifiable at the time

A when the order is granted, and who have not at that time infringed or threatened to infringe any right or duty which the claimant seeks to enforce, but may do so at a later date: "newcomers", as they have been described in these proceedings.

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

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

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

F

(2) The factual and procedural background

6 Between 2015 and 2020, 38 different local authorities or groups of local authorities sought injunctions against unidentified and unknown persons, which in broad terms prohibited unauthorised encampments within their administrative areas or on specified areas of land within those areas. G The claims were brought under the procedure laid down in Part 8 of the Civil Procedure Rules 1998 ("CPR"), which is appropriate where the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact: CPR r 8.1(2). The claimants relied upon a number of statutory provisions, including section 187B of the Town and Country Planning Act 1990, under which the court can grant an injunction to restrain an actual or apprehended breach of planning control, and in some H cases also upon common law causes of action, including trespass to land.

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

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

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

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

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

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

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

12 Twelve of the claimants appealed to the Court of Appeal. In its decision, set out in a judgment given by Sir Geoffrey Vos MR with which Lewison and Elisabeth Laing LJJ agreed, the court held that "the judge was
B wrong to hold that the court cannot grant final injunctions that prevent persons, who are unknown and unidentified at the date of the order, from occupying and trespassing on land": *Barking and Dagenham London Borough Council v Persons Unknown* [2023] QB 295, para 7. The appellants appeal to this court against that decision.

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

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

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

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

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

F *2. The legal background*

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

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

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

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

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

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

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

(1) The jurisdiction to grant injunctions

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

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

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

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:

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

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

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.

D E F G

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

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> "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

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

26 If, then, newcomers are not parties to the proceedings at the time when the injunctions are granted, it follows that newcomer injunctions depart from the court's usual practice. The ordinary rule is that "you cannot
E have an injunction except against a party to the suit": *Iveson v Harris* (1802) 7 Ves 251, 257. That is not, however, an absolute rule: Lord Eldon LC was speaking at a time when the scope of injunctions was more closely circumscribed than it is today. In addition to the undoubted jurisdiction to grant interim injunctions prior to the service (or even the issue) of proceedings, a number of other exceptions have been created in response to
F the requirements of justice. Each of these should be briefly described, as it will be necessary at a later point to consider whether newcomer injunctions fall into any of these established categories, or display analogous features.

(i) Representative proceedings

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

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

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

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

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

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

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

(ii) Wardship proceedings

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

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

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

The non-party's right to apply to the court is now reflected in CPR r 40.9, B which provides: "A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied." A non-party can also apply to become a defendant in accordance with CPR r 19.4.

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

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

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

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

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

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

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

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

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

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 B 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 C needed: see *Ashworth Hospital Authority v MGN Ltd* [2002] 1 WLR 2033.

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

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

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

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

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

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

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

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

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

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

C **56** Conventional methods of service may be impractical where defendants cannot be identified. However, alternative methods of service can be permitted under CPR r 6.15. In exceptional circumstances (for example, where the defendant has deliberately avoided identification and substituted service is impractical), the court has the power to dispense with service, under CPR r 6.16.

D

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

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

F

(1) Bloomsbury

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

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

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

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

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

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

(2) Hampshire Waste Services

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

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

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

(3) Gammell

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

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

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

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. The claimant then brought an action for damages against the registered keeper, but it transpired that that person had not been driving the vehicle at the time of the accident. In addition, although there was an insurance policy in force in respect of the vehicle, the insured person was fictitious. The claimant could not sue the insurers, as the relevant legislation required that the driver was a person insured under the policy. The claimant could have sought compensation from the Motor Insurers' Bureau, which compensates the victims of uninsured motorists, but for reasons which were unclear she applied instead to amend her claim to substitute for the registered keeper the person unknown who was driving the car at the time of the collision, so as to obtain a judgment on which the insurer would be liable under section 151 of the Road Traffic Act 1988 ("the 1988 Act"). The judge refused the application.

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

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

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

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

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

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

E

(7) Ineos

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

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

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

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

89 Longmore LJ went on tentatively to frame the requirements of an injunction against unknown persons, including newcomers, in a characteristically helpful and practical way. He did so in these terms (at para 34): (1) there must be a sufficiently real and imminent risk of a tort being committed to justify quia timet relief; (2) it is impossible to name the persons who are likely to commit the tort unless restrained; (3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order; (4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct; (5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and (6) the injunction should have clear geographical and temporal limits.

(8) Bromley

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

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

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

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

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

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

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

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

(9) Cuadrilla

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

(10) Canada Goose

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

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

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

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

F **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 G (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 H persons unknown. The court was therefore justified in discharging the interim injunction.

103 Thirdly, the Court of Appeal held (para 89) that a final injunction could not be granted in a protester case against persons unknown who were not parties at the date of the final order, since a final injunction operated

only between the parties to the proceedings. As authority for that proposition, the court cited *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191 per Lord Oliver at p 224 (quoted at para 39 above). That, the court said, was consistent with the fundamental principle in *Cameron* [2019] 1 WLR 1471 that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard. It followed, in the court's view, that a final injunction could not be granted against newcomers who had not by that time committed the prohibited acts, since they did not fall within the description of "persons unknown" and had not been served with the claim form. This was not one of the very limited cases, such as *Venables* [2001] Fam 430, in which a final injunction could be granted against the whole world. Nor was it a case where there was scope for making persons unknown subject to a final order. That was only possible (and perfectly legitimate) provided the persons unknown were confined to those in the first category of unknown persons in *Cameron*—that is to say anonymous defendants who were nonetheless identifiable in some other way (para 91). In the Court of Appeal's view, the claimants' problem was that they were seeking to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters (para 93).

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

(11) The present case

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

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

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

107 Among the points made by the Master of the Rolls, the following should be highlighted. No meaningful distinction could be drawn between interim and final injunctions in this context (para 77). No such distinction had been drawn in the earlier case law concerned with newcomer injunctions.
B It was unrealistic at least in the context of cases concerned with protesters or Travellers, since such cases rarely if ever resulted in trials. In addition, in the case of an injunction (unlike a damages action such as *Cameron*) there was no possibility of a default judgment: the grant of an injunction was always in the discretion of the court. Nor was a default judgment available under Part 8 procedure. Furthermore, as the facts of the earlier cases demonstrated and *Bromley* [2020] PTSR 1043 explained, the court needed to keep injunctions
C against persons unknown under review even if they were final in character. In that regard, the Master of the Rolls made the point that, for as long as the court is concerned with the enforcement of an order, the action is not at an end.

4. A new type of injunction?

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

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

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

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

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."

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

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

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

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

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

117 We also have difficulty in fitting the unnamed defendants in *Bloomsbury* [2003] 1 WLR 1633 within Lord Sumption's class of identifiable persons who in due course could be served. It is true that they would have had to identify themselves as the persons referred to if they had sought to do the prohibited act. But if they learned of the injunction and decided to obey it, they would be no more likely to be identified for service than the hit and run driver in *Cameron.* The *Bloomsbury* case also illustrates the somewhat unstable nature of Lord Sumption's distinction between anonymous and unidentifiable defendants. Since the unnamed defendants in *Bloomsbury* were unidentifiable at the time when the claim was commenced and the injunction was granted, one would have thought that the case fell into Lord Sumption's second category. But the fact that the unnamed defendants would have had to identify themselves as the persons in possession of the book if (but only if) they disobeyed the injunction seems to have moved the case into the first category. This implies that it is too absolutist to say that a claimant can never sue persons unknown unless they are identifiable at the time the claim form is issued. For these reasons also, it seems to us that the classification of cases as falling into one or other of Lord Sumption's categories (or into a third category, as suggested by the Court of Appeal in *Canada Goose,* para 63, and in the present case, para 35) may be a distraction from the fundamental question of whether service on the defendant can in practice be effected so as to bring the proceedings to his or her notice.

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

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

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

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

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

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

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

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

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

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

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

> "In each of these appeals the appellant became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case . . . In the case of KG she became both a person to whom the injunction was addressed and the defendant when she caused or permitted her caravans to occupy the site. In neither case was it necessary to make her a defendant to the proceedings later."

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

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

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

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

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

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

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

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

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

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

134 Although we do not doubt the correctness of the decision in *Canada Goose*, we are not persuaded by the reasoning at paras 89–93, which we summarised at para 103 above. In addition to the criticisms made by the Court of Appeal which we have summarised at para 107 above, and with which we respectfully agree, we would make the following points.

135 First, the court's starting point in *Canada Goose* was that there were "some very limited circumstances", such as in *Venables*, in which a final injunction could be granted contra mundum, but that protester actions did not fall within "that exceptional category". Accordingly, "The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 224" (para 89). The problem with that approach is that it assumes that the availability of a final injunction against newcomers depends on fitting such injunctions within an existing exclusive category. Such an approach is mistaken in principle, as explained in para 21 above.

136 The court buttressed its adoption of the "usual principle" with the observation that it was "consistent with the fundamental principle in *Cameron* . . . that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard" (ibid). As we have explained, however, there are means of enabling a person who is affected by a final injunction to be heard after the order has been made, as was discussed in *Bromley* and recognised by the Master of the Rolls in the present case.

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

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

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

139 The developing arguments about the propriety of granting injunctions against newcomers, set against the established principles re-emphasised in *Fourie v Le Roux* and *Cameron*, and then applied in *Canada Goose*, have displayed a tendency to place such injunctions in one or other of two silos: interim and final. This has followed through into the framing of the issues for determination in this appeal and has, perhaps in consequence, permeated the parties' submissions. Thus, it is said by the appellants that the long-established principle that an injunction should be confined to defendants served with the proceedings applies only to final injunctions, which should not therefore be granted against newcomers. Then it is said that since an interim injunction is designed only to hold the ring, pending trial between the parties who have by then been served with the proceedings, its use against newcomers for any other purpose would fall outside the principles which regulate the grant of interim injunctions. Then the respondents (like the Court of Appeal) rely upon the *Gammell* solution (that a newcomer becomes a defendant by acting in breach of the interim injunction) as solving both problems, because it makes them parties to the proceedings leading to the final injunction (even if they then take no part in them) and justifies the interim injunction against newcomers as a way of smoking them out before trial. In sympathy with the Court of Appeal on this point we consider that this constant focus upon the duality of interim and final injunctions is ultimately unhelpful as an analytical tool for solving the problem of injunctions against newcomers. In our view the injunction, in its operation upon newcomers, is typically neither interim nor final, at least in substance. Rather it is, against newcomers, what is now called a without notice (i e in the old jargon ex parte) injunction, that is an injunction which, at the time when it is ordered, operates against a person who has not been served in due time with the application so as to be able to oppose it, who may have had no notice (even informal) of the intended application to court for the grant of it, and who may not at that stage even be a defendant served with the proceedings in which the injunction is sought. This is so regardless of whether the injunction is in form interim or final.

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

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

141 In considering whether injunctions of this type comply with the standards of procedural and substantive fairness and justice by which the courts direct themselves, it is the compliant (law-abiding) newcomer, not the contemptuous breaker of the injunction, who ought to be regarded as the paradigm in any process of evaluation. Courts grant injunctions on the assumption that they will generally be obeyed, not as stage one in a process intended to lead to committal for contempt: see para 129 above, and the cases there cited, with which we agree. Furthermore the evaluation of potential injustice inherent in the process of granting injunctions against newcomers is more likely to be reliable if there is no assumption that the newcomer affected by the injunction is a person so regardless of the law that they will commit a breach of it, even if the grant necessarily assumes a real risk that they (or a significant number of them) would, but for the injunction, invade the claimant's rights, or the rights (including the planning regime) of those for whose protection the claimant local authority seeks the injunction. That is the essence of the justification for such an injunction.

142 Recognition that injunctions against newcomers are in substance always a type of without notice injunction, whether in form interim or final, is in our view the starting point in a reliable assessment of the question whether they should be made at all and, if so, by reference to what principles and subject to what safeguards. Viewed in that way they then need to be set against the established categories of injunction to see whether they fall into an existing legitimate class, or, if not, whether they display features by reference to which they may be regarded as a legitimate extension of the court's practice.

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

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

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

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

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

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

(v) Even in cases where there might in theory be such a dispute, or a real prospect that article 8 rights might prevail, the newcomers would in practice be unlikely to engage with the proceedings as active defendants, even if joined. This is not merely or even mainly because they are newcomers who may by complying with the injunction remain unidentified. Even if identified and joined as defendants, experience has shown that they generally decline to take any active part in the proceedings, whether because of lack of means, lack of pro bono representation, lack of a wish to undertake costs risk, lack of a perceived defence or simply because their wish to camp on any particular site is so short term that it makes more sense to move on than to go to court about continued camping at any particular site or locality.

(vi) By the same token the mischief against which the injunction is aimed, although cumulatively a serious threatened invasion of the claimant's rights (or the rights of the neighbouring public which the local authorities seek to protect), is usually short term and liable, if terminated, just to be repeated on a nearby site, or by different Travellers on the same site, so that the usual processes of eviction, or even injunction against named parties, are an inadequate means of protection.

(vii) For all those reasons the injunction (even when interim in form) is sought for its medium to long term effect even if time-limited, rather than as a means of holding the ring in an emergency, ahead of some later trial process, or even a renewed interim application on notice (and following service) in which any defendant is expected to be identified, let alone turn up and contest.

(viii) Nor is the injunction designed (like a freezing injunction, search order, *Norwich Pharmacal* or *Bankers Trust* order or even an anti-suit injunction) to protect from interference or abuse, or to enhance, some related process of the court. Its purpose, and no doubt the reason for its recent popularity, is simply to provide a more effective, possibly the only effective, means of vindication or protection of relevant rights than any other sanction currently available to the claimant local authorities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H **154** It should not be supposed that all relevant general equitable principles favour the granting of injunctions against newcomers. Of those that might not, much the most important is the well-known principle that equity acts in personam rather than either in rem or (which may be much the same thing in substance) contra mundum. A main plank in the appellants'

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

A the purpose of preventing abuse, they work in rem or contra mundum in much the same way as an anti-trespass injunction directed at newcomers pinned to a post on the relevant land. The only difference is that the property protected by the former is intangible, whereas in the latter it is land. In relation to any such newcomer (such as the journalist) the embargo is made without notice.

B **159** It is fair comment that a major difference between those types of order and the anti-trespass order is that the latter is expressly made against newcomers as "persons unknown" whereas the former (apart from the exceptional *Venables* type) are not. But if the consequences of breach are the same, and equity looks to the substance rather than to the form, that distinction may be of limited weight.

C **160** Protection of the court's process from abuse, or preservation of the utility of its future orders, may fairly be said to be the bedrock of many of equity's forays into new forms of injunction. Thus freezing injunctions are designed to make more effective the enforcement of any ultimate money judgment: see *Broad Idea* [2023] AC 389 at paras 11–21. This is what Lord Leggatt JSC there called the enforcement principle. Search orders are designed to prevent dishonest defendants from destroying D relevant documents in advance of the formal process of disclosure. *Norwich Pharmacal* orders are a form of advance third party disclosure designed to enable a claimant to identify and then sue the wrongdoer. Anti-suit injunctions preserve the integrity of the appropriate forum from forum shopping by parties preferring without justification to litigate elsewhere.

E **161** But internet blocking orders (para 49 above) stand in a different category. The applicant intellectual property owner does not seek assistance from internet service providers ("ISPs") to enable it to identify and then sue the wrongdoers. It seeks an injunction against the ISP because it is a much more efficient way of protecting its intellectual property rights than suing the numerous wrongdoers, even though it is no part of its case against the ISP that it is, or has even threatened to be, itself a wrongdoer. The injunction is F based upon the application of "ordinary principles of equity": see *Cartier* [2018] 1 WLR 3259 (para 20 above) per Lord Sumption JSC at para 15. Specifically, the principle is that, once notified of the selling of infringing goods through its network, the ISP comes under a duty, but only if so requested by the court, to prevent the use of its facilities to facilitate a wrong by the sellers. The proceedings against the ISP may be the only proceedings G which the intellectual property owner intends to take. Proceedings directly against the wrongdoers are usually impracticable, because of difficulty in identifying the operators of the infringing websites, their number and their location, typically in places outside the jurisdiction of the court: see per Arnold J at first instance in *Cartier* [2015] Bus LR 298, para 198.

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

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

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

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

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

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

167 These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immoveable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. B 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 C planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.

D (ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see E 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 F 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 G 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 H 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Compelling justification for the remedy

188 Any applicant for the grant of an injunction against newcomers in a Gypsy and Traveller case must satisfy the court by detailed evidence that

A there is a compelling justification for the order sought. This is an overarching principle that must guide the court at all stages of its consideration (see para 167(i)).

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

D

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

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

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

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

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

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

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

(ii) General "needs" assessments

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

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

(iii) Planning policy

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

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

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

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

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

B

201 More specifically, in 2006 advice was issued in the form of the Office of the Deputy Prime Minister Circular 1/06 *Planning for Gypsy and Traveller Caravan Sites*. The 2006 guidance was replaced in March 2012 by *Planning Policy for Traveller Sites* ("PPTS 2012"). In August 2015, a revised version of PPTS 2012 was issued ("PPTS 2015") and this is to be read with the National Planning Policy Framework. There has recently been a

C challenge to a decision refusing planning permission on the basis that one aspect of PPTS 2015 amounts to indirect discrimination and has no proper justification: *Smith v Secretary of State for Housing, Communities and Local Government* [2023] PTSR 312. But for present purposes it is sufficient to say (and it remains the case) that there is in these policy documents clear advice that LPAs should, when producing their local plans, identify and

D update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets to address the needs of Gypsies and Travellers for permanent and transit sites. They should also identify a supply of specific, developable sites or broad locations for growth for years 6–10 and even, where possible, years 11–15. The advice is extensive and includes matters to which LPAs must have regard including, among other things, the presumption in favour of sustainable development;

E the possibility of cross-authority co-operation; the surrounding population's size and density; the protection of local amenities and the environment; the need for appropriate land supply allocations and to respect the interests of the settled communities; the need to ensure that Traveller sites are sustainable and promote peaceful and integrated co-existence with the local communities; and the need to promote access to appropriate health services

F and schools. The LPAs are also advised to consider the need to avoid placing undue pressure on local infrastructure and services, and to provide a settled base that reduces the need for long distance travelling and possible environmental damage caused by unauthorised encampments.

202 The availability of transit sites (and information as to where they may be found) is also important in providing short-term or temporary

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

(iv) Consultation and co-operation

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

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

(v) Public spaces protection orders

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

(vi) Criminal Justice and Public Order Act 1994

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

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

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

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

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

(vii) Byelaws

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

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

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

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

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

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.

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

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

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

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

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

F

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

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

(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;

A the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant's rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained.

(12) Conclusion

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

6. Outcome

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

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

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

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

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

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

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

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

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

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

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

(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 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

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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 Edward dock, Avonmouth BS11 9BT (shown outlined red on the plan G in Schedule 1 to the Order made by Bourne J on 28.7.2023);

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

Bundles

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

Summary

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

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

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

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

The Issues

10. The issues before me were as follows:

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

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

10.3 What should the terms of any such injunction be?

The ancillary applications

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

Pleadings and chronology of the action

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

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

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

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

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

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

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

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

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

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

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

The lay witness evidence

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

Service evidence

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

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

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

Substantive evidence

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

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

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

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

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

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

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

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

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

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

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

Tuesday 5th April 2022

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

Thursday 7th April 2022

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

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

Saturday 9th April 2022

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

Sunday 10th April 2022

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

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

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

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

Friday 15th April 2022

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

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

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

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

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

Tuesday 26th April 2022

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

Wednesday 27th April 2022

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

Thursday 28th April 2022

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

Wednesday 4th May 2022

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

Thursday 12th May 2022

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

Monday 22nd August 2022

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

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

Tuesday 23rd August 2022

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

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

Wednesday 14th September 2022

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

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

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

30. In his 5th witness statement the main threats identified by Mr Blackhouse were; (1) 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.

(A) Substantive Requirements

Cause of action

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

Full and frank disclosure

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

Sufficient evidence to prove the claim

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

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

No realistic defence

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

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

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

Balance of convenience – compelling justification

67. In my judgment the balance of convenience and justice weigh in favour of granting the final injunction. The balance tips further in the Claimants' favour because I consider that there are compelling justifications for the injunction against the named Defendants and the PUs to protect the Claimants' 8 Sites 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.

(B) Procedural Requirements

Identifying PUs

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

The terms of the injunction

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

The prohibitions must match the claim

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

Geographic boundaries

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

Temporal limits - duration

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

Service

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

The right to set aside or vary

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

Review

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

Conclusions

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

END

Neutral Citation Number: [2025] EWHC 207 (KB)

Case No: QB-2022-000904

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/02/2025

Before :

MRS JUSTICE HILL DBE

- - - - - - - - - - - - - - - - - - - -

Between :

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

- and -

Defendant

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

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

OVER AND ACROSS THE ROADS IN THE VICINITY OF THE 8 SITES

(3) MRS ALICE BRENCHER AND 16 OTHERS

- -
- -

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

Hearing date: 24 January 2025
- -

Approved Judgment

This judgment was handed down remotely at 12:00pm on 3rd February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MRS JUSTICE HILL

Mrs Justice Hill DBE:

Introduction

1. The Claimants are three companies who are part of a large petrochemical group called the Valero Group. They own or have a right to possession of a series of sites in England and Wales which include oil refineries and terminals, defined for the purposes of this litigation as the "8 Sites".

2. The Defendants are Persons Unknown connected with Just Stop Oil, Extinction Rebellion, Insulate Britain and Youth Climate Swarm (defined as the "4 Organisations") who (i) trespass or stay on the 8 Sites; (ii) block access to the 8 Sites or otherwise interfere with the access to the sites by the Claimants, their servants, agents, licensees or invitees; and (iii) who have been involved in suspected tortious behaviour or whom the Claimants fear will be involved in tortious behaviour at the 8 Sites and the relevant access roads.

3. On 26 January 2024, Ritchie J granted the Claimants a final injunction against the Defendants to last 5 years, for the detailed reasons he gave in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134.

4. Ritchie J's order, amended under the slip rule on 5 February 2024, made provision for the injunction to be reviewed once a year, no later than the anniversary of the 26 January 2024 order, or as close to that date as was convenient to the court.

5. By an application notice dated 21 November 2024, the Claimants sought a review hearing. The application was argued by the Claimants' counsel at a hearing before me on 24 January 2025. None of the Defendants attended or were represented at the hearing.

The factual background

6. Ritchie J set out the factual background in detail in his judgment at [1]-[45].

7. In summary, between 1 and 7 April 2022 a number of environmental activists undertook direct action at the Kingsbury Terminal (one of the 8 Sites: see Ritchie J's judgment at [4]) and on the adjoining access roads. This led to approximately 48 individuals being arrested by the Warwickshire Police at and around that site. Further protest activity took place at and around the Kingsbury Terminal between 9 and 15 April 2022, leading to around 38 arrests.

8. This conduct was part of a nationwide campaign. Similar direct action occurred at a number of other oil terminals and refineries as well as associated sites. These actions were combined with statements demonstrating a commitment to disrupt indefinitely the oil industry until the Defendants' demands were met.

9. As a result, injunctions were granted to a number of other entities involved in the energy industry. Since these injunctions have been granted, the direct action has largely ceased. Instead, environmental activists have turned their attention to other related targets which are not protected by injunctions.

10. The Claimants brought this claim to avoid the potentially very serious health and safety and environmental consequences of the Defendants' actions, as well as other serious consequences for the public. They relied on witness statements from, among others, David Blackhouse (European regional security manager for Valero International Security), David McLoughlin (a director employed by the Valero Group responsible for directing operations and logistics across all of the 8 Sites) and Emma Pinkerton (one of their solicitors). Ritchie J accepted all the evidence provided by the Claimants: see his judgment at [22], [25]-[44] and [46]-[37].

Service issues

11. The third witness statement of Jessica Hurle dated 29 February 2024 explained how Ritchie J's order had been served.

12. In respect of the First and Second Defendants and those named Defendants for whom the Claimants did not have a postal address, the order was served by the Claimants using the alternative methods set out in the order. In respect of those named Defendants for whom the Claimants did have a postal address, the order was served pursuant to the usual methods set out in CPR Part 6.

13. The First and Second Defendants were deemed served on 15 February 2024. Those named Defendants in respect of whom the Claimants did not have a postal address were deemed served on 9 February 2024. Those named Defendants in respect of whom the Claimants did have a postal address were served between 10 and 14 February 2024.

14. The sixth witness statement of Anthea Adair dated 15 January 2025 described how the documents relating to the review application (namely the application notice and supporting evidence and the hearing notice, together with a cover letter confirming where various documents could be found) were served.

15. In respect of the First and Second Defendants and those named Defendants for whom the Claimants did not have a postal address, these documents were served by the Claimants using the alternative methods set out in the order of Master Cook dated 7 June 2023. In respect of those named Defendants for whom the Claimants did have a postal address, they were served pursuant to the usual methods set out in CPR Part 6.

16. The First and Second Defendants were deemed served on 9 January 2025. Those named Defendants in respect of whom the Claimants did not have a postal address were deemed served on 7 January 2025. Those named Defendants in respect of whom the Claimants did have a postal address were served between 3 and 9 January 2025.

17. Ritchie J ordered that the hearing bundle for a review hearing must be served not less than 7 days before the review hearing. The order of Master Eastman sealed on 1 December 2023 provided alternative methods for serving the hearing bundles.

18. The hearing bundle for this review hearing was served and filed on 16 January 2025. There was a question mark over whether it had, in fact, been filed 2 minutes late. Out of an abundance of caution the Claimants filed an application for relief from sanctions dated 22 January 2025. This was supported by the seventh witness statement of Anthea Adair of the same date.

19. For the reasons given in an *ex tempore* judgment at the start of the hearing, to the extent that the Claimants required relief from sanctions I granted it. I did so, in summary, because, applying the well-known test in *Denton and ors v TH White Ltd and ors* [2014] EWCA Civ 906, [2014] WLR 3926 at [40], this was neither a serious nor significant failure; it occurred due to some technical issues with the uploading process due to the size of the bundle; and it had not caused any prejudice to the Defendants or impacted on the litigation.

The legal framework

20. In *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2024] 2 WLR 45 at [225] the Supreme Court observed that review hearings of this kind:

> "…will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been: whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for continuance; and whether and on what a basis a further order ought to be made."

21. In *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), Ritchie J considered how the Court should approach its task at such a hearing:

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

22. In *Arla Foods v Persons Unknown* [2024] EWHC 1952 at [128], Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) described the annual review process as:

> "…allow[ing] a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate."

23. Earlier this year, in *Transport for London v Persons Unknown and Others* [2025] EWHC 55 (KB) ("*TfL*") at [54]-[57], Morris J took a similar approach. At [55], he observed that:

> "TfL has already provided detailed evidence at a full trial and the Court has, on two occasions, already made a full determination of the issue of risk and the balance of interests. In my judgment, in those circumstances there needed to be some material change in order to justify a conclusion that the Final Injunctions should not continue."

The evidence, submissions and decision

24. In support of the application the Claimants relied on the evidence filed to date, set out in some detail in Ritchie J's judgment, as well as updating evidence in the form of the sixth witness statement of Mr Blackhouse dated 20 November 2024 ("DB6") and the sixth witness statement of Ms Pinkerton dated 19 November 2024 ("EP6").

25. Ritchie J made the following finding as to the level of risk on the basis of the evidence available to him on 26 January 2024:

> "64. In my judgment the evidence shows that the Claimants have a good cause of action and fully justified fears that they face a high risk and an imminent threat that the remaining 17 named Defendants (who would not give undertakings) and/or that UPs [Unknown Persons] will commit the pleaded torts of trespass and nuisance at the 8 Sites in connection with the 4 Organisations".

26. He went on to find that the Defendants did not have a realistic defence to the claim; that the balance of convenience and justice weighed in favour of granting the final injunction to the Claimants; and that damages would not be an adequate remedy for the Claimants: [65]-[70].

27. He was also satisfied that the various procedural requirements set out in the case law were satisfied by the injunction proposed: [71]-[78].

28. I take these findings as my starting point, in accordance with the legal framework summarised above.

29. The updating evidence served in support of the review application, which I accept, makes clear that there exists a continued threat of trespass and nuisance at the 8 Sites.

30. Mr Blackhouse provided further evidence of the continuing threat, vulnerability and risks, in particular at paragraphs 4.1-5.4 of DB6. For example, he referred to the fact that from his regular meetings with the police and local resilience forums in the areas where the Claimants have assets, his understanding is that the threat remains the same.

He also referred to information received from the National Police Coordination Centre to the effect that the threat level remains the same.

31. As Ms Pinkerton explained in paragraphs 5.1-5.7 of EP6, none of the Defendants have contacted the Claimants to say that they no longer intend to carry out direct action at the Sites. There have also been many instances of direct action by environmental activists, notably Just Stop Oil and Extinction Rebellion, across the country in relation to the energy industry. This included a nationwide campaign planned and orchestrated by Just Stop Oil to carry out direct action at airports in the summer of 2024. Statements have continued to be made about the need for direct action and related conduct in respect of fossil fuel extraction and production.

32. Ms Pinkerton highlighted that courts have continued to grant or renew injunctions on the basis of the same continuing threat: see, for example, *Shell v Persons Unknown* [2024] EWHC 3130 (KB) at [101]-[113], where on 5 December 2024 Dexter Dias J held that that there remained a real and imminent risk of direct action by the named Defendants and Persons Unknown in relation to Shell's Haven oil refinery and other sites.

33. In light of this evidence, I accept the Claimants' submission that nothing material has changed in the evidence since Ritchie J made his order. In particular, as explained above, there remains a continued threat of direct action at the 8 Sites. This is supported by the fact that, as far as the Claimants are aware, no injunction originally granted to an energy company as a result of the direct action in April 2022 has been discharged on the basis of a finding that the level of threat has diminished

34. The evidence suggests that direct action at the 8 Sites has diminished. However the courts have repeatedly held in this context that evidence of this kind is not evidence that the threat has dissipated; rather, it is evidence that the injunctions have had their intended effect: see, for example, Ritchie J's judgment in this case at [64] and *Shell* at [111]-[112].

35. There has been no material change in the case law since Ritchie J's judgment.

36. As to new legislation, Ritchie J considered the new offences in the Public Order Act 2023 before making the order: see his judgment at [66]. In any event, courts have repeatedly accepted that these offences do not materially alter the position or serve to diminish the threat of continued action: see, for example, *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (KB), at [24] and [28] (Ritchie J); *North Warwickshire Borough Council v Persons Unknown* [2024] EWHC 2254 (KB) at [88] (HHJ Emma Kelly, sitting as a Judge of the High Court); and *TfL* at [37]-[38] and [58]–[67] (Morris J).

37. In accordance with her duty of disclosure Ms Holland KC drew my attention to the fact that in *Shell*, Dexter Dias J observed that the new legislation is a "material change". However, he went on to hold that it remains "evidentially unclear what material impact it has on deterring future protest and to what extent it operates on the minds of those who would protest against Shell"; and that the mere existence of the new offences in and of themselves could not affect the analysis on risk of continued threat: [132] and [140].

Conclusion

38. I have reviewed and used as my starting point the findings Ritchie J made and the evidence that was before him, as he made "a full determination of the issue of risk and the balance of interests" (*TfL* at [55]).

39. Having considered the updating evidence and more recent legal developments, I am satisfied that nothing material has changed. The risk still exists as before and the Claimants remain rightly and justifiably fearful of unlawful attacks. Procedural and legal rigour has been "observed and fulfilled" (*HS2* at [32]).

40. For all these reasons, I approve the draft order sought by the Claimants. Ritchie J's order will remain in effect, to be reviewed again in one year.

IN THE HIGH COURT OF JUSTICE. **CLAIM No: QB-2022-001142**

KING'S BENCH DIVISION

BEFORE THE HONOURABLE MR JUSTICE SWIFT

24 February 2025

BETWEEN :

EXOLUM PIPELINE SYSTEM LIMITED
[and others more fully described in the Claim Form]

Claimants

and

PERSONS UNKNOWN
[more fully described in the Claim Form]

Defendants

ORDER

UPON a further review of the order of Bennathan J dated 29 April 2022 ("the 2022 Order") pursuant to the terms of the 2022 Order

AND FURTHER to the review of the 2022 Order at a hearing before Soole J and the order then made on 20 January 2023 (sealed on 23 January 2023) ("the 2023 Order")

AND FURTHER to the review of the 2023 Order at a hearing before Farbey J and the order then made on 20 February 2024

AND UPON a hearing held in person on 24 February 2025

AND UPON hearing leading counsel for the Claimants and no other person appearing

AND UPON reading the witness statements of Mark Ernest O'Neill dated 6/4/2022, 26/4/2022, 16/1/2023, 15/2/2024 and 17/2/2025 and the witness statement of David John Cook dated 18/2/2025

AND UPON the Court being satisfied having reviewed the 2022 Order that it should not be discontinued

IT IS ORDERED:

1. The 2022 Order shall again be reviewed at a hearing to be fixed to take place on the first available date after 24 February 2026 with a provisional time estimate of 3 hours. For that purpose the Claimants' solicitors shall by 4pm on 1 December 2025 apply to the King's Bench Division Listings Office for the matter to be listed and shall provide for notice of the listing and the date as listed to be served by uploading a notice of the hearing to the "Dropbox" website mentioned in para 3.4 of the 2022 Order by 4pm no later than 10 days before the hearing date.

2. The Claimants shall procure that a copy of this order and a notice containing the information indicated in para 3 below is (a) added to each of the plastic containers mentioned in para 3.1 of the 2022 Order and (b) added to each of the signs mentioned in para 3.3 of the 2022 Order and (c) added to the "Dropbox" website mentioned in para 3.4 of the 2022 Order and (d) sent to the email addresses set out in the Appendix to the 2022 Order; and also that each of the plastic containers mentioned in paragraph 3.1 of the 2022 Order shall contain a copy of the bundle used at the hearing held on 24/02/2025.

3. That notice shall state that (1) the 2022 Order was reviewed at a hearing held on 24/2/2025; (2) the 2022 Order continues; (3) the 2022 Order is to be reviewed again at a hearing to be listed on the first available date after 24 February 2026; (4) the Claimants' solicitors can be contacted for details as to the time and date of that hearing; and (5) a copy of this order may be obtained from the "Dropbox" website mentioned in para 3.4 of the 2022 Order.

4. So far as "service" as distinct from notification remains appropriate in view of the decision of the Supreme Court in *Wolverhampton CC and others v. London Gypsies and Travellers and others* [2023] UKSC 47; [2024] AC 983: uploading a copy of this order to that "Dropbox" website combined with the taking of such steps as are set out in paras 1, 2 and 3 above, shall be good and sufficient service of this order upon the Defendants.

5. The Claimants have liberty to remove from all notice boards copies of the spent notices relating to the review hearings which took place in 2023 and 2024, including those which appear in the hearing bundle pages 585–586, 686 and 691–692.

6. Costs reserved.

Neutral Citation Number: [2025] EWHC 331 (KB)

Case No: QB-2021-003094

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 February 2025

Before:

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between:

(1) MBR ACRES LIMITED
(2) DEMETRIS MARKOU
(for and on behalf of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd pursuant to CPR 19.8)
(3) B & K UNIVERSAL LIMITED
(4) SUSAN PRESSICK
(for and on behalf of the officers and employees of B & K Universal Ltd, and the officers and employees of third party suppliers and service providers to B & K Universal Ltd pursuant to CPR 19.8)

Claimants

- and -

JOHN CURTIN **Defendant**

And in the matter of an application by the Claimants for a *contra mundum* injunction to restrain certain activities at the Wyton Site

- -
- -

Caroline Bolton and **Natalie Pratt** (instructed by **Mills & Reeve LLP)** for the **Claimants**
John Curtin appeared in person, save for the hearing on 23 June 2023 when he was represented by **Jake Taylor** (instructed by **Birds Solicitors**)
"Persons Unknown" did not attend and were not represented
Jude Bunting KC and **Yaaser Vanderman** filed written submissions on behalf of **Liberty**

The Honourable Mr Justice Nicklin :

1. This judgment is divided into the following sections:

A: Introduction

2. This is the final judgment in this civil claim brought by the Claimants against both known and unknown individuals. The common link between the Defendants is that, at one time or another, they have engaged in some form of protest against the activities of the First Defendant at its site at Wyton, Cambridgeshire.

3. Whilst the claim has been pending before the Courts, the law – as it applies to "Persons Unknown" – has been in a state of flux. The decision of the Supreme Court in ***Wolverhampton City Council & others -v- London Gypsies and Travellers & others*** **[2024] AC 983** (heard on 8-9 February 2023 with judgment handed down on 29 November 2023) clarified but also significantly changed the law as it concerns the grant of injunctions against "Persons Unknown" where that target class is protean and the injunction applies to what has been termed 'newcomers'.

4. Whilst the evidence relating to this claim was heard at a trial between 24 April 2023 to 23 May 2023, the trial was adjourned to await the Supreme Court decision in ***Wolverhampton***. Further hearings were fixed on 26 March 2024 and 7 May 2024 for the Court to consider whether, in light of the Supreme Court's decision, the Claimants should be given an opportunity to file any further evidence and to consider final submissions of law consequent upon the ***Wolverhampton*** decision.

5. At the hearing on 26 March 2024, I directed that the final hearing in the claim should be fixed for 7 May 2024. I directed that the Claimants must file their final submissions by 30 April 2024 and that, in addition to publicising the date of the final hearing on notices at the Wyton Site, and online, the written submissions must be served on Liberty and Friends of the Earth, who had intervened in the ***Wolverhampton*** case

("the Interested Parties"). I gave the Interested Parties an opportunity to file written submissions for the final hearing.

6. I received written submissions from Counsel instructed by Liberty, dated 3 May 2024.

7. I also received a letter, dated 30 April 2024 from Friends of the Earth ("FoE"). FoE expressed concern, due to their limited resources, of the risk that an adverse costs order might be made against them. In their letter, FoE stated that it had made an application for a Protective Costs Order in a civil claim brought in 2019 against "Persons Unknown" in a fracking protest case. The application was rejected, and FoE were ordered to pay £4,500 in costs. Because of these funding concerns, and also because FoE's campaigning objectives do not embrace the protest at the Wyton Site, FoE did not file written submissions. They did, however, send a copy of the written submissions, and a witness statement of David Timms, FoE's Head of Political Affairs, dated 25 November 2022, which had been filed with the Supreme Court in the ***Wolverhampton*** case. In their covering letter, FoE said:

> "In ***Wolverhampton***, the Supreme Court rejected our submissions as to the availability of persons unknown injunctions as a matter of principle, but our submissions may include relevant considerations for the Court in terms of criteria and the procedural safeguards for persons unknown injunctions in the protest context. In particular, the evidence of Mr Timms refers to our own experience of the serious chilling effect of these injunctions, in terms of their deterrence of lawful protest including lawful, peaceful, direct action protest. We would stress that the latter is a recognised and legitimate part of freedom of speech and assembly protected by the common law and Articles 10/11 ECHR."

8. I am very grateful to both Liberty and Friends of the Earth for their submissions, which I have considered in writing this judgment.

9. I consider the ***Wolverhampton*** decision in Section M of this judgment ([333]-[362] below). In brief summary, prior to ***Wolverhampton***, the previous method of attempting to restrain the activities of 'newcomers' depended upon the 'newcomer' becoming a party to existing litigation by doing some act that brought him/her within one or more categories of defendant who were party to the litigation and upon whom the Claim Form had been deemed to be served by some method of alternative service authorised by the Court. The Supreme Court swept this away and instead sanctioned the use of *contra mundum* injunctions in limited circumstances.

10. Following the ***Wolverhampton*** decision, at the hearing on 7 May 2024, the Claimants sought an injunction against various categories of "Persons Unknown" or, alternatively, a *contra mundum* injunction, to restrain certain acts. In some respects, the ***Wolverhampton*** decision allows the Court to adopt a more straightforward approach and an opportunity to make any injunction the Court grants much clearer and easier to comprehend (see [353]-[362] below).

11. Finally, this judgment also resolves a contempt application brought by the Claimants against the only remaining individual defendant, John Curtin, which was heard on 23 June 2023 (see Sections D(3), G and O(3); [52]-[53], [109]-[120], [247]-[253] and [400]-[407] below).

B: Background and parties

12. There have been several previous interim judgments in the claim:

    (1) [2021] EWHC 2996 (QB) (10 November 2021) ("the Interim Injunction Judgment");

    (2) [2022] EWHC 1677 (QB) (31 March 2022) ("the Conspiracy Amendment Judgment");

    (3) [2023] QB 186 (16 May 2022) ("the First Contempt Judgment");

    (4) [2022] EWHC 1715 (QB) (20 June 2022) ("the First Injunction Variation Judgment");

    (5) [2022] EWHC 2072 (QB) (2 August 2022) ("the Second Contempt Judgment"); and

    (6) [2022] EWHC 3338 (KB) (22 December 2022) ("the Second Injunction Variation Judgment").

    The background to this case – and the key procedural steps – are set out in these judgments, but as this is the final judgment in the claim, and for ease of reference, I will set out again some of the key facts.

(1) The Claimants

13. The First and Third Claimants are subsidiaries of the Marshall Farm Group Ltd, incorporated in the US and trading as Marshall Bioresources. The First and Third Claimants breed animals for medical and clinical research at sites in Cambridgeshire and Hull.

14. The First Claimant is licensed by the Secretary of State, under ss.2B-2C Animals (Scientific Procedures) Act 1986, to breed animals for supply to licensed entities authorised to conduct animal testing and research. It is presently a legal requirement, in the United Kingdom, that all potential new medicines intended for human use are tested on two species of mammal before they are tested on human volunteers in clinical trials.

15. The Second Claimant is an employee of the First Claimant acting in these proceedings to represent the officers and employees of the First Claimant, third-party suppliers, and service providers to the First Claimant pursuant to (what is now) CPR 19.8.

16. The Fourth Claimant is an employee of the Third Claimant and is its Site Manager & UK Administration & European Quality Manager. The Fourth Claimant represents the officers and employees of the Third Claimant, third-party suppliers, and service providers to the Third Claimant pursuant to CPR 19.8.

(2) The Wyton Site

17. The Wyton Site is in countryside, about 2 miles to the northeast of Huntingdon, very close to RAF Wyton. The only entrance to the Wyton Site is situated on a straight

section of the B1090. The road is a single carriageway with verges on either side. Vehicles arriving or leaving from the Wyton Site pass through outer and inner mechanical gates. This facilitates what has been termed an 'airlock' between the two gates enabling the First Claimant's security personnel to control access to the Wyton Site. The outer gate is set back about 1 metre from the boundary of the First Claimant's registered freehold title. This means that anyone standing immediately in front of the outer gate is on the First Claimant's land. The perimeter of the Wyton Site is protected by high outer and inner wire fences. As well as the First Claimant, another biotechnology company is situated within the Wyton Site.

18. A grass verge separates the gated entrance to the Wyton Site from the main carriageway of the Highway. A short tarmacked single lane road, of approximately 8.7 metres length, runs perpendicular to the B1090 over the grass verge and to the gated access at the Wyton Site to enable access to the Highway from the Wyton Site, and vice-versa. This road has been referred to as the "Access Road" in the proceedings. All movements into and out of the Wyton Site (whether vehicular or on foot) must pass along the Access Road. Some, but it transpired during the proceedings, not all, of the Access Road falls within the extent of the adopted Highway.

19. In or around March 2019, the First Claimant installed a new gate, because lorries kept on hitting a post that was part of the old gate was. The new gate was installed about a metre or so back into Wyton Site. Therefore, the area measuring approximately 1 metre in front of the Gate is within the boundary of the Wyton Site and the freehold ownership of the First Claimant. That area has been referred to as the "Driveway" in these proceedings.

20. The boundary of that area, and therefore the Wyton Site as defined, is marked on the ground by a metal strip that runs the full width of the Access Road. That metal strip was left behind when the old gate was removed, and the new Gate was installed.

21. The Claimants originally believed that the full extent of the Access Road had been adopted by the local Highways Authority. During the proceedings, it was discovered that the adopted highway did not extend to the full area.

22. On 4 August 2022, apparently without prior warning to, or consultation with, the First Claimant, a representative of the Local Highway Authority attended the Wyton Site and painted a yellow line halfway up the Access Road. The yellow line ran along the lip of the ditch closest to the Highway over which the Access Road ran. The distance between the yellow line and the metal strip that marks the edge of the Driveway is 2.85 metres. In a letter dated 16 November 2022, the Local Highway Authority confirmed to the First Claimant that the yellow line marked where it considered the extent of the adopted highway to end. The letter explained the basis on which the Local Highways Authority had reached this conclusion.

23. Having taken separate advice, the First Claimant's position is that it agrees with the decision of the Local Highways Authority as to the extent of the adopted highway. The effect of this, which has not been challenged in these proceedings, is that the land between the metal strip and the yellow line, that is not adopted highway, is land owned by the First Claimant. This has been referred to as the "Access Land".

(3) The Defendants

24. When originally issued, the Claimants brought claims against the first two Defendants as "*unincorporated associations*": "*Free the MBR Beagles*" and "*Camp Beagle*". The Third and Fifth Defendants were sued as representatives of these two "*unincorporated associations*". In the Interim Injunction Judgment ([52]-[67]), I refused to allow claims to be brought against the First and Second Defendants on a representative basis, and I stayed the claim against these two Defendants. The Claimants have made no application to lift that stay.

25. As the proceedings have progressed, the Claimants have sought, and generally been granted, permission to add further Defendants. A full list of the Defendants to the claim is set out in Annex 1 to this judgment. Apart from Mr Curtin, the claims against named individuals have all been settled. The one against the Twentieth Defendant, Lisa Jaffray, was settled early in the trial. In most instances, the relevant individual has given undertakings as to his/her future activities regarding the Claimants and the Wyton Site.

26. By the end of the trial, the claim was proceeding only against Mr Curtin, as a named Defendant, and various categories of Person(s) Unknown Defendants identified in Annex 1.

(4) The protest activities

27. It will be necessary to go into the detail of specific incidents later in the judgment, but the following summary will suffice by way of introduction.

28. This litigation concerns protest and its lawful limits. Since around June 2021, a fluctuating number of individuals have been protesting outside the Wyton Site. There is a small semi-permanent camp of protestors on the edge of the carriageway about 20-30 metres from the entrance to the Wyton Site. Mr Curtin, who has been protesting since the outset, is a semi-permanent resident of this camp. There have been isolated other incidents away from the Wyton Site, for example, in August 2021, there were some limited protests outside the B&K Site, but the main focus of the protest activity – and most of the Claimants' evidence – concerns protest activities at the Wyton Site.

29. The Claimants do not challenge that Mr Curtin, and the other protestors, have a sincerely and firmly held belief that animal testing is wrong. In terms of overall objective, the protestors probably share a common aim that animal testing should be prohibited. By extension, most protestors at the Wyton Site would like to see the First (and Third) Claimants put out of business. These objectives are not unlawful, and, subject to acting lawfully, Mr Curtin and others, may campaign and protest in their efforts to attempt to achieve a change in the law that would see their objective achieved.

30. The main complaints raised by the Claimants in this litigation are (1) incidents of trespass onto the Wyton Site, including the flying of a video-equipped drone around and above the Wyton Site, which is said to amount to trespass on the First Claimant's land; (2) repeated incidents of obstruction of the highway outside the Wyton Site, said to constitute a public nuisance, and specifically obstruction of people and vehicles entering and leaving the Wyton Site; and (3) specific incidents involving confrontation with individual employees when they arrive at or leave the Wyton Site, which are said to amount to harassment.

31. Although it is more complicated than this, the issue at the heart of the litigation is broadly whether the method of protest that the Defendants use (or threaten to use) is lawful. Ultimately this is an issue of striking the proper balance between the protestors' rights of freedom of expression and demonstration against the Claimants' rights to go about their lawful business. The law does not require a person exercising the right to demonstrate or to protest to demonstrate that s/he is "right" (whatever that would mean), and Mr Curtin is not required to persuade the Court that he is "right" to oppose animal testing.

C: The Interim Injunction

(1) The interim injunction granted on 10 November 2021

32. The Claimants were granted an urgent interim injunction on 20 August 2021 by Stacey J ("the Interim Injunction"). The return date was fixed for 4 October 2021. I handed down judgment on 10 November 2021. The Interim Injunction Judgment set out my reasons for modifying the terms of the injunction that had previously been granted. The protest activities that had led to the grant of the Interim Injunction are set out in [13]-[23]. In [18], I summarised the evidence as follows:

> "A clear picture emerges from the evidence, that the central complaint of the Claimants is the protestors' activities when people (particularly employees of the First Claimant) enter or leave the Wyton Site. At these times, protestors, including the named Defendants, have surrounded and/or obstructed the vehicles. Their ability to drive off is not only impaired by the physical obstruction of the protestors, but also because placards have been used, on occasions, to obstruct the view that the driver of the vehicle has of the road and whether it is safe to pull out. These incidents have frequently led to confrontation between the protestors and those inside the vehicles, allegedly leaving them feeling harassed and intimidated."

33. As a temporary solution, I prohibited trespass on the First Claimant's land and imposed an exclusion zone around the entrance to the Wyton Site ([116]-[119]) ("the Exclusion Zone"). I refused to grant an injunction to prohibit the flying of drones over the Wyton Site, which was alleged to be a trespass ([111]-[115]). The Interim Injunction did not restrain alleged harassment whether by named Defendants or "Persons Unknown" ([118]), and I refused to grant any orders to control the methods of protest adopted by the Defendants ([122]-[128]).

34. So far as concerns trespass and the Exclusion Zone, the material parts of the Interim Injunction, granted on 10 November 2021, were as follows. Paragraph 1 of the Injunction provided:

> "The Third to Ninth, Eleventh to Fourteenth, and Fifteenth to Seventeenth Defendants **MUST NOT**:
>
> (1) enter into or remain upon the following land:
>
> a. the First Claimant's premises known as MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 (the 'Wyton Site'); and

b. the Third Claimant's premises known as B&K Universal Limited, Field Station, Grimston, Aldborough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 (the 'Hull Site')

(2) enter into or remain upon the area marked with black hatching on the plans at Annex 1 … (the 'Exclusion Zone'), save where … accessing the highway whilst in a vehicle, for the purpose of passing along the highway only and without stopping in the Exclusion Zone, save for when stopped by traffic congestion, or any traffic management arranged by or on behalf of the Highways Authority, or to prevent a collision, or at the direction of a Police Officer.

(3) park any vehicle, or place or leave any other item (including, but not limited to, banners) anywhere in the Exclusion Zone;

(4) approach and/or obstruct the path of any vehicle directly entering or exiting the Exclusion Zone (save that for the avoidance of doubt it will not be a breach of this Injunction Order where any obstruction occurs as a result of an emergency)."

35. Definitions, set out in Schedule A to the Interim Injunction, provided:

> "The 'Exclusion Zone' is… for the purpose of the Wyton site, the area with black hatching at Annex 1 of this Order measuring 20 metres in length either side of the midpoint of the gate to the entrance of the Wyton site and extending out to the midpoint of the carriageway…"

36. Annex 1 to the Injunction was a plan of the Wyton Site marked with the Exclusion Zone around the entrance to the First Claimant's premises. Annex 1 included boxes containing annotations. One of those provided:

> "Exclusion Zone in black crosshatched area is 20 metres either side of the centre of the Gate to the Wyton Site marked by posts on the grass verge up to the centre of the carriageway."

(2) Modifications to the Interim Injunction

37. The terms of the Interim Injunction, and the persons it restrains, have been modified during the proceedings.

38. Orders of 18-19 January 2022 and 31 March 2022 added new Defendants to the claim, both named and further categories of "Persons Unknown". Those new Defendants became bound by the Interim Injunction, the material terms of which remained unchanged.

39. By Order of 2 August 2022, Paragraph (4) of the Interim Injunction (see [34] above) was replaced with the following restrictions:

> "(2) The Third to Ninth and Eleventh to the Twenty-Fourth Defendants **MUST NOT** within 1 mile in either direction of the First Claimant's Land, approach, slow down, or obstruct any vehicle which is believed to be travelling to or from the First Claimant's Land at the Wyton Site.

(3) The Seventeenth Defendant **MUST NOT** within 1 mile in either direction of the First Claimant's Land, approach, slow down, or obstruct any vehicle:

(a) for the purpose of protesting and/or campaigning against the activities of the First and/or Third Claimant; and

(b) where the vehicle is, or is believed to be, travelling to or from the First Claimant's Land at the Wyton Site.

(4) The Third, Twelfth, Fifteenth, Twentieth and Twenty-Second Defendants **MUST NOT** cut, push, shake, kick, lift, climb up or upon or over, damage or remove, or attempt to remove any part of the perimeter fence to the Wyton Site, as marked in red on the attached plan at Annex 1."

40. In the Second Injunction Variation Judgment, I explained why I had amended the Interim Injunction in these terms:

> [10] In respect of obstruction of vehicles (the subject of the new sub-paragraphs (2) and (3)), evidence of events following the grant of the injunction, particularly that which had been filed by the Claimants in relation to the contempt applications against the Twelfth and Thirteenth Defendants (see [2023] QB 186), showed that some protestors had adopted tactics of surrounding and/or obstructing vehicles that were travelling to or from the Wyton Site further along the carriageway of the B1090. It had also become apparent that the earlier formulation – prohibiting approaching/obstruction of any vehicle "directly" entering or exiting the exclusion zone – had the potential to catch behaviour that the injunction was not designed to prevent. A particular example was an occasion in which a police vehicle was about to exit the exclusion zone when it was obstructed by protestors who wanted to ascertain what was happening to a person who had been arrested. The exclusion zone has always been recognised to be an expedient, justified because it is the best way of avoiding the flashpoints that have occurred between the protestors and those coming and going to/from the Wyton Site. However, the Court will keep the terms of the any interim injunction under review – and in appropriate cases will make changes to the terms of the order – to ensure that they are not having an unintended effect. The revised restrictions now more directly focus on the obstruction of vehicles travelling to/from the Wyton Site where that obstruction is for the purpose of protesting.
>
> [11] Sub-paragraph (4) contained a new prohibition upon interfering with and/or damaging the perimeter fence of the Wyton Site. I was satisfied on the Claimants' evidence that the relevant Defendants had been damaging or interfering with the fence. Such actions are tortious, are not an exercise of a right to protest and the balance of convenience clearly favoured an interim prohibition. The Claimants had asked for a 1 metre exclusion zone to be imposed around the entire perimeter of the Wyton Site. I refused to make such an order. The correct way of targeting this particular wrongdoing is by making a direct order that prohibits that behaviour, not an indirect order that would also restrict lawful activities. The Claimants do not own the land over which they were seeking the imposition of this further exclusion zone, so I was not persuaded that there was an adequate legal basis upon which to impose the wider restriction that they had sought.

(The reference to obstruction of a police vehicle in [10] is to an incident on 12 May 2022, which featured as an allegation of breach of the Interim Injunction made in the Contempt Application against Mr Curtin – see [248]-[254] below.)

41. I refused to grant other amendments to the Interim Injunction sought by the Claimants: see Section E of the Second Injunction Variation Judgment ([58]-[80]). The Claimants had originally sought to revisit the question of whether the Interim Injunction should prohibit the flying of drones, but they abandoned that part of the application (see [16]).

D: Alleged breaches of the Interim Injunction

42. The Claimants have pursued several contempt applications, against both named Defendants and against a person alleged to fall within a category of "Persons Unknown", alleging breaches of the Interim Injunction.

(1) The First Contempt Applications

43. Contempt applications were issued against the Twelfth and Thirteenth Defendants ("The First Contempt Applications"). Both Defendants were alleged to have breached the Interim Injunction in the contempt application issued on 17 December 2021. A second contempt application, alleging further breaches of the Interim Injunction, was issued against the Thirteenth Defendant on 16 February 2022. They were heard on 6-7 April 2022. In the First Contempt Judgment, handed down on 16 May 2022, I dismissed the 17 December 2021 contempt application brought against the Thirteenth Defendant. Both Defendants were found guilty of contempt of court in respect of admitted breaches of the Interim Injunction.

44. On 17 June 2022, a further contempt application was made against the Twenty-Third Defendant.

45. On 2 August 2022, I imposed penalties for contempt of court on the Defendants. The Twelfth Defendant was given a sentence of imprisonment of 3 months and the Thirteenth Defendant was given a sentence of imprisonment of 28 days. Both periods of imprisonment were suspended for 18 months. The periods of suspension have now ended. I imposed no sanction on the Twenty-Third Defendant, who had admitted a breach of the Interim Injunction, although she was ordered to pay a sum in costs. None of these Defendants has been alleged to be guilty of a further breach of the Interim Injunction.

(2) The Second Contempt Application

46. On 4 July 2022, the Claimants issued a further contempt application against Gillian Frances McGivern, a solicitor ("the Second Contempt Application"). Ms McGivern was alleged to have breached the Interim Injunction, as a "Person Unknown", on 4 May 2022 by, variously, parking her car in the Exclusion Zone, entering the Exclusion Zone, trespassing on the First Claimant's land (by approaching the entry gate) and approaching and/or obstructing vehicles directly exiting and/or entering the Exclusion Zone.

47. The Second Contempt Application was heard on 21-22 July 2022. In the Second Contempt Judgment, handed down on 2 August 2022, I dismissed the contempt

application and declared it to be totally without merit. It is necessary, for the purposes of this judgment to recall some of the paragraphs of the Second Contempt Judgment.

> [94] I have found it very difficult to understand the motive(s) behind the Claimants' tenacious pursuit of Ms McGivern and the way that the contempt application has been pursued. First there is the delay in commencing the proceedings. Then there is the failure to send any form of letter before action to Ms McGivern giving her the opportunity to give her response. Next, the Claimants' response to the evidence of Ms McGivern, provided first in a position statement and then in a witness statement, both verified by a statement of truth. The contempt application was pursued in the face of this evidence. The Claimants did so on a somewhat speculative basis relying upon the evidence of PC Shailes (inaccurately trailed first in the email from Mills & Reeve to the Court on 15 July 2022 – see [39] above) and which was only obtained after serving a witness summons, on the eve of the Contempt Application. Finally, the Claimants persisted in a cross-examination of Ms McGivern in which allegations of the utmost seriousness were made suggesting, not only that had she, a solicitor, had deliberately breached a court injunction, but that she had brazenly and repeatedly lied for over a day in the witness box. The evidential support for this line of cross-examination was tissue thin.
>
> [95] In his skeleton argument, Mr Underwood QC submitted that the contempt application was an abuse of process. Certainly, allegations were made by some of the unrepresented Defendants that action had been taken against Ms McGivern because she was a lawyer helping some of the protestors. That would be the form of abuse of process by using proceedings for a collateral purpose. I can understand why they might suspect this, but Mr Underwood QC did not put any such suggestion to Ms Pressick when she gave evidence. I am unable to reach a conclusion as to the Claimants' motives for pursuing Ms McGivern. All I can say is I find them very difficult to understand.
>
> [96] In my judgment this contempt application has been wholly frivolous, and it borders on vexatious. The breaches alleged were trivial or wholly technical. Apart from a technical trespass, it is difficult to identify any civil wrong that was committed by Ms McGivern. At worst, obstructing the vehicles for a short period might be regarded as provocative, but there were no aggravating features. As the Claimants must have appreciated, this was not the sort of conduct that the Injunction was ever intended to catch. The Court does not grant injunctions to parties to litigation to be used as a weapon against those perceived to be opponents. At its commencement, this contempt application was based almost entirely upon deemed notice of the terms of the Injunction by operation of the alternative service order. Once Ms McGivern had provided evidence confirmed by a statement of truth that she had no knowledge of the Injunction, the Claimants should have taken stock as to the prospect of success of the contempt application and, particularly, whether there was a real prospect of the Court imposing any sanction for the alleged breaches. Instead of doing so, the Claimants embarked on what proved to be a hopeless attempt to impeach Ms McGivern's transparently honest evidence by witness summonsing a police officer. This was not a proportionate or even rational way to approach litigation of this seriousness.

> [97] Ms Bolton's final submission was that the Claimants were "*entitled*" to bring the contempt application against Ms McGivern; "*entitled*" to spend two days of Court time and resources pursuing an application that, on an objective assessment of the evidence, was only ever likely to end with the imposition of no penalty; and "*entitled*" to put a solicitor through the ordeal of a potentially career-ending contempt application and all the disruption that it has caused to Ms McGivern's work and the impact it has had on this litigation. There is no such "*entitlement*". The contempt application against Ms McGivern will be dismissed and will be certified as being totally without merit.

48. I was satisfied that, in the circumstances of this litigation, and particularly given the risk of abuse of "Persons Unknown" injunctions, it was necessary to impose a requirement that the Claimants must obtain the permission of the Court before instituting any contempt application against someone alleged to have breached the Interim Injunction as a "Person Unknown". I explained my reasons for doing so:

> [101] For the reasons I have explained in this judgment, depending upon its terms, a "Persons Unknown" injunction can have the potential to catch in its net people that were never intended by the Court to be caught. Ms McGivern is an example, but others were discussed at the hearing, including the passing motorist who stops temporarily in outside the gates of the Wyton Site and who inadvertently obstructs a vehicle that is leaving the premises. By dint of the operation of the definition of "Persons Unknown" and the deemed notice of the terms of the Injunction under the alternative service order, that motorist, like Ms McGivern, ends up potentially having to face a contempt application. In ordinary cases, the Court might usually expect that a litigant who had obtained such an injunction would consider carefully whether it was proportionate and/or a sensible use of the Court's and the parties' resources for contempt proceedings to be brought against someone who had inadvertently contravened the terms of the injunction. The Claimants have demonstrated that, even with the benefit of professional advice and representation, the Court cannot rely upon them to perform that task appropriately.
>
> [102] I am satisfied that the Court does have the power, ultimately as part of its case management powers to protect its processes from being abused and its resources being wasted, to impose a permission requirement. I reject the submission that the Court is powerless and must simply adjudicate upon such contempt applications that the Claimants seek to bring. "Persons Unknown" injunctions are recognised to be exceptional specifically because they have the potential to catch newcomers. I do not consider that it is an undue hardship that these Claimants should be required to satisfy the Court that a contempt application they wish to bring (a) is one that has a real prospect of success; (b) is not one that relies upon wholly technical or insubstantial breaches; and (c) is supported by evidence that the respondent had actual knowledge of the terms of the injunction before being alleged to have breached it.
>
> [103] Although the conditions for the making of a limited civil restraint order are not met, the imposition of a requirement that the Claimants must obtain the permission of the Court before bringing any further contempt applications

> against "Persons Unknown" is not a limited civil restraint order, it restricts only this specific form of application. The Claimants will remain free to issue and pursue applications in the underlying proceedings. I am satisfied that the imposition of a targeted restriction on the Claimants' ability to bring such contempt applications is a necessary and proportionate step to protect the Court (and the respondents to any future contempt applications) from proceedings that have no real prospect of success and/or serve no legitimate purpose.
>
> [104] I will therefore make an order requiring the Claimants to obtain the permission of the Court before they bring any further contempt application against anyone alleged to be in the category of "Persons Unknown" and to have breached the Injunction.

49. The order, on 2 August 2022, dismissing the Second Contempt Application therefore included the following provisions ("the Contempt Application Permission Requirement"):

> "3. Any further contempt application against any person, not being a named Defendant in the proceedings, may only be brought by the Claimants with the permission of the Court.
>
> 4. An application for permission under Paragraph 3 above, must be made by Application Notice attaching the proposed contempt application and evidence in support. The Court will normally expect the Claimants to have notified the proposed Respondent in writing of the allegation(s) that s/he has breached the injunction order. Any response by the Respondent should be provided to the Court with the application to bring a contempt application. Unless the Court otherwise directs, any such application will be dealt with by the Court on the papers."

50. I refused an application by the Claimants for permission to appeal against the imposition of the Contempt Application Permission Requirement. The Claimants did not renew their application for permission to appeal to the Court of Appeal.

51. I returned to the issue of potential abuse of "Persons Unknown" injunctions in the Second Injunction Variation Judgment, where I said this ([12]):

> "The operation of the interim injunction over the last 12 months has given cause for concern about whether the order is being used by the Claimants as a 'weapon' against the protestors or their supporters. The contempt application against Ms McGivern was dismissed. I found that the breaches alleged against Ms McGivern were trivial: see [the Second Contempt Judgment] [96]. The Claimants well know, and fully understand, the basis on which the exclusion zone has been imposed. It is not to be used by the Claimants as an opportunity to take action against protestors for trivial infringements that have none of the elements that led to the grant of the interim injunction and are not otherwise unlawful acts. Ultimately, if there were to be any repetition of contempt applications being brought for trivial infringements, then the Court might have to reconsider the terms of the interim injunction order that should remain in place pending trial".

(3) The Third Contempt Application

52. On 17 June 2022, the Claimants issued a contempt application against Mr Curtin ("the Third Contempt Application"). Some of the breaches of the Interim Injunction alleged against Mr Curtin were also relied upon as causes of action in the claim against him. As a result, the Claimants' evidence against Mr Curtin, both in relation to the claim against him and the Third Contempt Application was heard at a further hearing, on 23 June 2024, at which Mr Curtin was represented for the purposes of the Contempt Application.

53. I deal with the Third Contempt Application in Sections G and O(3) of this judgment (see [109]-[120], [247]-[253] and [400]-[407] below).

E: Alternative service orders in respect of "Persons Unknown"

54. Prior to the decision of the Supreme Court in ***Wolverhampton***, on 12 August 2021, the Court granted permission for alternative service of the Claim Form on the "Persons Unknown" Defendants. The order provided:

> "Pursuant to CPR Part 6.14, 6.15, 6.26 and 6.27 the Claimants have permission to serve the Tenth Defendant, Persons Unknown, by the following alternative forms of service:
>
> (1) Affixing copies (as opposed to originals) of the Claim Form, the Injunction Application Notice, draft Injunction Order and this Order permitting alternative service, in a transparent envelope on the gates of the First and Third Claimants' Land and in a prominent position on the grass verge at the front of the First and Third Claimant's Land.
>
> (2) The documents shall be accompanied by a cover letter in the form set out in Annexure 2 explaining to Persons Unknown that they can access copies of
>
> (a) the Response Pack;
>
> (b) evidence in support of the Alternative Service and Injunction Applications; and
>
> (c) the skeleton argument and note of the hearing of the Alternative Service Application
>
> at the dedicated share file website at: [Dropbox link provided]"
>
> (3) The deemed date of service for the documents referred to in (1) to (3) above shall be two working days after service is completed in accordance with paragraphs (1) to (3) above.

55. The Defendants (including those in the category of "Persons Unknown") were required to file an Acknowledgement of Service 14 days after the deemed date of service. No Acknowledgement of Service has been filed by any person in any of the categories of "Persons Unknown".

56. Similar orders have been made for service of the Claim Form by an alternative method on the additional categories of "Persons Unknown" Defendants as they have been added

to the claim. Following the imposition of the Exclusion Zone in the Interim Injunction granted 10 November 2021, the location at which the relevant documents were to be displayed was moved to a noticeboard opposite the entrance of the Wyton Site.

F: The claims advanced by the Claimants

57. As a result of some narrowing down of the Claimants' focus during the trial, the claims finally advanced by the Claimants against Mr Curtin and the "Persons Unknown" Defendants at the conclusion of the trial were: (1) trespass (including alleged trespass as a result of the flying of drones over the Wyton Site); (2) public nuisance on the highway; and (3) interference with the First Claimant's common law right of access to the highway from the Wyton Site. Although the Claimants had included a claim for harassment against both Mr Curtin and Persons Unknown, that claim was only pursued against Mr Curtin at the end of the trial. It was not pursued as a basis for the grant of relief against Persons Unknown. It is appropriate here to analyse the causes of action relied upon by the Claimants.

(1) Trespass

(a) Physical encroachment onto the Wyton Site

58. This claim is straightforward.

59. Trespass to land is the interference with possession or the right to possession of land. It includes instances in which a person intrudes upon the land of another without legal justification. The key features of trespass are:

    (1) it is a strict liability tort: a defendant need not know that s/he is committing a trespass to be liable;

    (2) the tort is actionable without proof of damage; and

    (3) the extent of the trespass is irrelevant to liability: ***Ellis -v- Loftus Iron Company* (1874-75) LR 10 CP 10, 12**: "… *if the defendant place a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it.*"

60. A person does not commit a trespass where s/he enters upon, or remains on the land, if s/he has permission (or licence). That permission (or licence) can be express or implied.

61. However, a person who enters land pursuant to a licence, but who proceeds to act in such a way that in exceeds the scope of that licence, or who remains on the land after the expiration of the licence, commits a trespass: ***Hillen -v- ICI (Alkali) Ltd* [1936] AC 65, 69**; ***Jockey Club Racecourse Limited -v- Persons Unknown* [2019] EWHC 1026 (Ch)** [15].

(b) Trespass to the airspace above the Wyton Site

62. This claim is not straightforward.

63. The First Claimant claims that the act of flying a drone directly over the Wyton Site is a trespass. In the early phase of this litigation, I refused to grant an interim injunction to restrain drone flying (see Interim Injunction Judgment [111]-[115]).

64. The only authority cited by the Claimants in support of the claim that flying a drone over land amounts to trespass is the first-instance decision of ***Bernstein -v- Skyviews & General Ltd*** **[1978] QB 479**. The case concerned an aircraft that the defendant flew over the claimant's land for the purpose of taking a photograph the claimant's country house which was then offered for sale to him. The claimant alleged that, by entering the airspace above his property to take aerial photographs, the defendant was guilty of trespass (alternatively that the defendant was guilty of an actionable invasion of his right to privacy by taking the photograph without his consent or authorisation). The claim failed. The Judge held that an owner's rights in the airspace above his/her land were restricted to such height as was necessary for the ordinary use and enjoyment of the land and structures upon it, and above that height s/he had no greater rights than any other member of the public. Accordingly, the defendant's aircraft did not infringe any rights in the claimant's airspace and thus did not commit any trespass by flying over land for the purpose of taking a photograph.

65. Griffiths J considered the authority of ***Kelsen -v- Imperial Tobacco Co.*** **[1957] 2 QB 334**, which concerned a sign that was overhanging the claimant's land by about 8 inches. He quoted part of the judgment of McNair J which held that the overhanging sign was a trespass to the claimant's airspace above his land, and held (at **486E-487A**):

> "I very much doubt if in that passage McNair J was intending to hold that the plaintiff's rights in the air space continued to an unlimited height or 'ad coelum' as [the plaintiff] submits. The point that the judge was considering was whether the sign was a trespass or a nuisance at the very low level at which it projected. This to my mind is clearly indicated by his reference to *Winfield on Tort*, 6th ed. (1954) in which the text reads, at p. 380: 'it is submitted that trespass will be committed by [aircraft] to the air space if they fly so low as to come within the area of ordinary user.' The author in that passage is careful to limit the trespass to the height at which it is contemplated an owner might be expected to make use of the air space as a natural incident of the user of his land. If, however, the judge was by his reference to the Civil Aviation Act 1949 and his disapproval of the views of Lord Ellenborough in ***Pickering -v- Rudd*** **(1815) 4 Camp 219**, indicating the opinion that the flight of an aircraft at whatever height constituted a trespass at common law, I must respectfully disagree.
>
> I do not wish to cast any doubts upon the correctness of the decision upon its own particular facts. It may be a sound and practical rule to regard any incursion into the air space at a height which may interfere with the ordinary user of the land as a trespass rather than a nuisance. Adjoining owners then know where they stand; they have no right to erect structures overhanging or passing over their neighbours' land and there is no room for argument whether they are thereby causing damage or annoyance to their neighbours about which there may be much room for argument and uncertainty. But wholly different considerations arise when considering the passage of aircraft at a height which in no way affects the user of the land."

66. Griffiths J then noted that, in both ***Pickering -v- Rudd*** and ***Saunders -v- Smith*** **(1838) 2 Jur 491**, the Court had rejected a submission that sailing a hot air balloon over

someone's land could amount to trespass. The Judge also quoted from Lord Wilberforce's speech in ***Commissioner for Railways -v- Valuer-General*** **[1974] AC 328, 351** in which he noted that: "*In none of these cases is there an authoritative pronouncement that 'land' means the whole of the space from the centre of the earth to the heavens: so sweeping, unscientific and unpractical doctrine is unlikely to appeal to the common law mind.*"

67. Griffiths J could find no support in the case law for the contention that a landowner's rights in the air space above his property extend to an unlimited height (**487G-H)**:

> "In ***Wandsworth Board of Works -v- United Telephone Co. Ltd.*** **(1884) 13 QBD 904** Bowen LJ described the maxim, *usque ad coelum*, as a fanciful phrase, to which I would add that if applied literally it is a fanciful notion leading to the absurdity of a trespass at common law being committed by a satellite every time it passes over a suburban garden. The academic writers speak with one voice in rejecting the uncritical and literal application of the maxim... I accept their collective approach as correct. The problem is to balance the rights of an owner to enjoy the use of his land against the rights of the general public to take advantage of all that science now offers in the use of air space. This balance is in my judgment best struck in our present society by restricting the rights of an owner in the air space above his land to such height as is necessary for the ordinary use and enjoyment of his land and the structures upon it, and declaring that above that height he has no greater rights in the air space than any other member of the public."

68. On the facts, there had been a "*fierce dispute*" between the parties as to the height at which the plane had flown to take the photograph, and the Judge found only that it had flown "*many hundreds of feet above the ground*" (**488C**). He added:

> "… it is not suggested that by its mere presence in the air space it caused any interference with any use to which the plaintiff put or might wish to put his land. The plaintiff's complaint is not that the aircraft interfered with the use of his land but that a photograph was taken from it. There is, however, no law against taking a photograph, and the mere taking of a photograph cannot turn an act which is not a trespass into the plaintiff's air space into one that is a trespass."

69. In a passage that perhaps echoes some of Ms Bolton's submissions in this case, Griffiths J noted, but rejected, the argument that photographs of the claimant's property obtained from the air could be used for nefarious purposes (**488E-F**):

> "… [Counsel for the plaintiff], however, conceded that he was unable to cite any principle of law or authority that would entitle Lord Bernstein to prevent someone taking a photograph of his property for an innocent purpose, provided they did not commit some other tort such as trespass or nuisance in doing so. It is therefore interesting to reflect what a sterile remedy Lord Bernstein would obtain if he was able to establish that mere infringement of the air space over his land was a trespass. He could prevent the defendants flying over his land to take another photograph, but he could not prevent the defendants taking the virtually identical photograph from the adjoining land provided they took care not to cross his boundary, and were taking it for an innocent as opposed to a criminal purpose."

70. For my part, I would respectfully disagree that proof that photographs of a property, captured from adjoining land, were taken for a "*criminal purpose*" would render photographer liable for trespass upon the land of the property-owner. If there is to be a remedy against taking such photographs, it is to some other area of the law that the aggrieved property-owner would have to turn.

71. Griffiths J therefore dismissed the claimant's claim for trespass, but he concluded his judgment with this observation (**489F-H**):

> "… I [would not] wish this judgment to be understood as deciding that in no circumstances could a successful action be brought against an aerial photographer to restrain his activities. The present action is not founded in nuisance for no court would regard the taking of a single photograph as an actionable nuisance. But if the circumstances were such that a plaintiff was subjected to the harassment of constant surveillance of his house from the air, accompanied by the photographing of his every activity, I am far from saying that the court would not regard such a monstrous invasion of his privacy as an actionable nuisance for which they would give relief. However, that question does not fall for decision in this case and will be decided if and when it arises."

72. The decision does not appear to deal expressly with the claim for breach of privacy. Perhaps that reflects the reality that, in 1977, there was no recognised right of privacy, so-called (a submission the defendant made – see p.481 in the report). Griffiths J's observations about whether repeated photographing of a person's property, amounting effectively to surveillance, might ground a cause of action were very much rooted in the notion that such behaviour might be found to be an actionable nuisance (cf. ***Fearn -v- Board of Trustees of the Tate Gallery*** **[2024] AC 1** [188]).

73. The law has developed significantly since 1977. A claimant who is subjected to the sort of surveillance that Griffiths J described might well now consider, in addition to a claim for nuisance, claims for misuse of private information, potential breaches of data protection legislation and harassment. For the purposes of this judgment, it is important to note that, as against "Persons Unknown", the Claimants have not advanced their claim for injunctive relief to restrain further drone usage on any of these bases; the claim is advanced solely as an alleged trespass. I can well see that pursuing claims for these additional torts might not be straightforward (and the omission to advance such claims may reflect an appreciation of those difficulties by the Claimants). For present purposes, it is sufficient to note that not only have the Claimants have not pursued such claims, but they have also not provided the evidence necessary to demonstrate that the historic drone usage (and apprehended future use) would amount to any of these further torts. For the purposes of the Claim against "Persons Unknown" I will therefore consider, only, whether the Claimants' evidence of drone usage amounts to trespass. For the claim against Mr Curtin, personally, I must additionally consider whether his use of a drone on 21 June 2022 was part of a course of conduct involving harassment of the First Claimant's employees (and others in the Second Claimant class) – see [255]-[274] below.

(2) Interference with the right of access to the highway

74. The common law right of access to the highway was described by Lord Atkin, in ***Marshall -v- Blackpool Corporation*** **[1935] AC 16, 22** as follows:

> "… The owner of land adjoining a highway has a right of access to the highway from any part of his premises. This is so whether he or his predecessors originally dedicated the highway or part of it and whether he is entitled to the whole or some interest in the ground subjacent to the highway or not. The rights of the public to pass along the highway are subject to this right of access: just as the right of access is subject to the rights of the public, and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway."

75. An interference with this right is actionable *per se*: ***Walsh -v- Ervin*** **[1952] VLR 361**. The right is separate from the land-owner's right, as a member of the public, to utilise the highway itself: ***Ineos Upstream Ltd -v- Persons Unknown*** **[2017] EWHC 2945 (Ch)** [42]. This private right ceases as soon as the highway is reached and any subsequent interference with access to the highway is actionable, if at all, only if it amounts to a public nuisance. In ***Chaplin -v- Westminster Corporation*** **[1901] 2 Ch 329, 333-334**, Buckley J explained:

> "The right which [the claimants] here seek to exercise is a right which they enjoy in common with all other members of the public to use this highway. They have an individual interest which enables them to sue without joining the Attorney-General, in that they are persons who by reason of the neighbourhood of their own premises use this portion of the highway more than others. They have a special and individual interest in the public right to this portion of the highway, and they are entitled to sue without joining the Attorney-General because they sue in respect of that individual interest; but the right which they seek to exercise is not a private right, but a public right. A person who owns premises abutting on a highway enjoys as a private right the right of stepping from his own premises on to the highway, and if any obstruction be placed in his doorway, or gateway, or, if it be a river, at the edge of his wharf, so as to prevent him from obtaining access from his own premises to the highway, that obstruction would be an interference with a private right. But immediately that he has stepped on to the highway, and is using the highway, what he is using is not a private right, but a public right."

76. The reference to the Attorney-General is to the important principle that an individual cannot, without the consent of the Attorney-General, seek to enforce the criminal law in civil proceedings: ***Gouriet -v- Union of Post Office Workers*** **[1978] AC 435, 477E-F**. Obstruction of the highway is a criminal offence. It does not create a civil cause of action unless the obstruction of the highway amounts to a public nuisance.

77. Ms Bolton submits that the First Claimant, as the owner of the Wyton Site, has an immediate right to access the highway from the Wyton Site to the B1090. Obstruction of this right of access gives rise to a private law claim.

78. I can readily accept that acts of the protestors which deliberately blockade the Wyton Site, preventing vehicles gaining access to or from the highway, would be an infringement of this private right.

79. However, Ms Bolton goes further. She argues that there is no protest right that can justify any interference with the access to the highway. She contends that there is no right to obstruct, slow down or hinder the passage of vehicles exiting the Wyton Site.

80. Put in those absolute terms, I reject this part of Ms Bolton's submission. As is clear from the passage I have quoted from ***Marshall*** (see [74] above), such private law right

of access to the highway that the First Claimant has is "*subject to the rights of the public*". At its most prosaic, the right of access to the highway cannot be absolute because people leaving the Wyton Site would have to give way to traffic on the B1090. In heavy traffic, or if there was significant congestion or a traffic jam, a person exiting the Wyton Site might have to wait for some time before s/he could access the highway. Another example, directly linked to the protest activities, would be if the protestors organised a march or procession along the B1090 (with due notification being given to the police under s.11 Public Order Act 1986). For the time it took for the procession to pass the entrance of the Wyton Site, it would interfere with the First Claimant's right of access to the highway. The First Claimant has no right to ask the Court to prohibit lawful use of the highway by the protestors on the grounds that it would interfere – for a short period – with the First Claimant's right of access to the highway. Under s.12 Public Order Act 1986, if certain requirements are met, the police can impose conditions on processions. In that way a proper balance can be struck between the protestors' right to demonstrate, and the First Claimant's right of access to the highway.

(3) Public nuisance

81. When these proceedings were commenced, it was an offence at common law to cause a public nuisance. From 28 June 2022, the offence of public nuisance has been put on a statutory footing in s.78 Police, Crime, Sentencing and Courts Act 2022, and the old common law offence has been abolished. The new s.78 provides:

> "(1) A person commits an offence if—
>
> (a) the person—
>
> (i) does an act, or
>
> (ii) omits to do an act that they are required to do by any enactment or rule of law,
>
> (b) the person's act or omission—
>
> (i) creates a risk of, or causes, serious harm to the public or a section of the public, or
>
> (ii) obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and
>
> (c) the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence.
>
> (2) In subsection (1)(b)(i) "serious harm" means—
>
> (a) death, personal injury or disease,
>
> (b) loss of, or damage to, property, or
>
> (c) serious distress, serious annoyance, serious inconvenience or serious loss of amenity.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for the act or omission mentioned in paragraph (a) of that subsection.

(4) A person guilty of an offence under subsection (1) is liable—

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

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both.

…

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

(7) Subsections (1) to (6) do not apply in relation to—

(a) any act or omission which occurred before the coming into force of those subsections, or

(b) any act or omission which began before the coming into force of those subsections and continues after their coming into force.

(8) This section does not affect—

(a) the liability of any person for an offence other than the common law offence of public nuisance,

(b) the civil liability of any person for the tort of public nuisance, or

(c) the ability to take any action under any enactment against a person for any act or omission within subsection (1).

(9) In this section "enactment" includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978."

82. The Act retains civil liability for the tort of public nuisance: s.78(8)(b). That reflects the position that used to apply under the common law and the authors of *Clerk & Lindsell on Tort* (§19-179, 24th edition, Sweet & Maxwell, 2023) consequently suggest: "*it is clear that the previous common law decisions on liability for public nuisance continue to provide guidance on the scope of civil liability in highway cases*".

83. Consideration of the law relating public nuisance arising from an obstruction of the highway must start with the following basic propositions:

(1) simple obstruction of the highway is a criminal offence under s.137 Highways Act 1980;

(2) a threatened or actual offence under s.137 *cannot* ground a civil claim (without the consent of the Attorney-General): ***Gouriet*** – see [76] above);

(3) if the conditions of s.78 Police, Crime, Sentencing and Courts Act 2022 (or, prior to enactment, the common law offence of public nuisance) are met, obstruction of the highway *may* amount to public nuisance; and

(4) a threatened or actual public nuisance *can* ground a civil claim upon proof of special damage.

(a) Obstruction of the highway: s.137 Highways Act 1980

84. So far as material, s.137 Highways Act 1980 provides:

> "(1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to imprisonment for a term not exceeding 51 weeks or a fine or both…"

85. Any occupation of part of a highway which interferes with people having the use of the whole of the highway is an obstruction; and unless the obstruction is so small that it is *de minimis*, any stopping on the highway is *prima facie* an obstruction. However, the prosecution must also prove that the person responsible for the obstruction was acting unreasonably. Resolving that issue depends on all the circumstances, including the length of time of the obstruction, the place where it occurs, the purpose for which it is done, and whether it does in fact cause an actual obstruction as opposed to a potential obstruction: ***Nagy -v- Weston*** **[1965] 1 WLR 280**; ***Hirst -v- Chief Constable of West Yorkshire*** **(1987) 85 Cr App R 143, 151** .

86. These principles were approved by the Divisional Court in ***DPP -v- Ziegler*** **[2020] QB 253** (and not subject to adverse comment in the Supreme Court **[2022] AC 408**).

87. The law resolves the tension between the criminal offence of obstruction of the highway, under s.137, and the right to protest (protected by Articles 10 and 11 of the ECHR) by recognising that some protest activities, that create an obstruction on a highway, can be defended on the basis that the right to protest provides a lawful excuse for the obstruction. That was the effect of ***Ziegler*** and Lord Reed gave the following summary in ***Reference by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland) Bill*** **[2023] AC 505** ("***Northern Ireland Abortion Services***"):

> [22] Section 137 and the equivalent predecessor provisions have a long and specific history, and have been the subject of a great deal of judicial consideration. The approach adopted to section 137 and its predecessors for over a century prior to ***Ziegler*** was rooted in authorities which treated the question to be decided under the statute as similar to the question to be decided in civil nuisance cases of an analogous kind. On that basis, it was held that it was necessary for the court to consider whether the activity being carried on in the highway by the defendant was reasonable or not: see, for example, ***Lowdens -v- Keaveney*** **[1903] 2 IR 82, 87** and **89**. That question was treated as one of fact, depending on all the circumstances of the case: ***Nagy -v- Weston*** **[1965] 1 WLR 280, 284**; ***Cooper -v- Metropolitan Police Commissioner*** **(1985) 82 Cr App R 238, 242** and **244**. That approach accorded with the general treatment in the criminal law of assessments of reasonableness as questions of fact. In cases where the activity in question

> took the form of a protest or demonstration, common law rights of freedom of speech and freedom of assembly were treated as an important factor in the assessment of reasonable user: see, for example, ***Hirst -v- Chief Constable of West Yorkshire*** **(1986) 85 Cr App R 143**. That approach was approved, *obiter*, by members of the House of Lords in ***Director of Public Prosecutions -v- Jones*** **[1999] 2 AC 240, 258-259** and **290**. Lord Irvine of Lairg LC summarised the position at p 255: 'the public have the right to use the public highway for such reasonable and usual activities as are consistent with the general public's primary right to use the highway for purposes of passage and repassage'. The same approach continued to be followed after the Human Rights Act entered into force: see, for example, ***Buchanan -v- Crown Prosecution Service*** **[2018] EWHC 1773 (Admin)**; **[2018] LLR 668**.

88. Lord Reed did criticise some aspects of the approach adopted by the Divisional Court in ***Ziegler*** ([23]-[25]), but recognised that the Supreme Court's decision in ***Ziegler*** governed the proper approach to the interpretation of s.137 in protest cases:

> [26] … it was agreed between the parties, and this court accepted [in ***Ziegler***], that section 137 has to be read and given effect, in accordance with section 3 of the Human Rights Act, on the basis that the availability of the defence of lawful excuse, in a case raising issues under articles 10 or 11, depends on a proportionality assessment carried out in accordance with the approach set out by the Divisional Court: see [10]-[12] and [16]. As that question is not in issue in the present case, we make no comment upon it.
>
> [27] One of the issues in dispute in the appeal was whether there can be a lawful excuse for the purposes of section 137 in respect of deliberate physically obstructive conduct by protesters, where the obstruction prevented, or was capable of preventing, other highway users from passing along the highway. Lord Hamblen and Lord Stephens concluded that there could be (***Jones*** was neither cited nor referred to). Lady Arden and Lord Sales expressed agreement in general terms with what they said on this issue.
>
> [28] In the course of their discussion of this issue, Lord Hamblen and Lord Stephens stated at [59]:
>
> > "Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case".
>
> One might expect that to be the usual position at the trial of offences charged under section 137 in circumstances where articles 9, 10 or 11 are engaged, if the section is interpreted as it was in ***Ziegler***; and that was the only situation with which Lord Hamblen and Lord Stephens were concerned…

89. Lord Reed's quarrel with ***Ziegler*** was with the suggestion – in [59] – that the Supreme Court had been stating a principle of universal application relevant to all contexts in which protest rights were engaged. It was this submission that Lord Reed rejected: [29]ff.

(b) Public nuisance by obstructing the highway

90. Assuming that a claimant can demonstrate commission of a public nuisance by the defendant(s), then s/he can bring a civil claim if s/he can prove (1) that s/he has sustained particular damage beyond the general inconvenience and injury suffered by the public as a result of the public nuisance; (2) that the particular damage which he has sustained is direct, not consequential; and (3) that the damage is substantial, "*not fleeting or evanescent*": ***Jan De Nul (UK) Ltd -v- N.V. Royale Belge*** **[2000] 2 Lloyd's Rep 700** ("***N.V. Royale Belge***") [42] relying upon ***Benjamin -v- Storr*** **(1874) LR 9 CP 400**.

91. Relying upon ***East Hertfordshire DC -v- Isobel Hospice Trading Ltd*** **[2001] JPL 597**, Ms Bolton submitted that "*it is well-established law that it is a public nuisance to obstruct or hinder the free passage of the public along the highway*". That is not an accurate statement of the law and the decision upon which she relied is not authority for that proposition. The case was a judicial review of the dismissal (by a Magistrates' Court, and then on appeal) of a local authority's complaint under s.149 Highways Act 1980 after several large wheelie bins had been placed on a highway. The Council had served a notice on the defendant to remove the wheelie bin that it had placed on the highway. The defendant did not comply with the notice and proceedings were then brought in the Magistrates' Court. The Magistrates dismissed the complaint, and the Council appealed. The Crown Court dismissed the appeal. The Crown Court was satisfied that the wheelie bin was situated on the highway, but that it could not be said to be a nuisance or, if it was, "*it was a nuisance of such a piffling nature that it did not warrant the intervention of any court*".

92. The High Court quashed the decision of the Crown Court. The Judge found that the wheelie bin was an obstruction of the highway that was not temporary. It was not relevant that people could navigate around it. The Judge concluded that the Crown Court had been wrong to hold that the positioning of the wheelie bin on the highway did not in law amount to a nuisance under s.149 ([32]), and remitted the case for redetermination: [38]. The case is not authority for what obstructions of the highway amount to a public nuisance; it is not a case about public nuisance at all.

93. The leading case concerning the common law offence of public nuisance is ***R -v- Rimmington*** **[2006] 1 AC 459**. In it, Lord Bingham identified ***Attorney General -v- PYA Quarries Ltd*** **[1957] 2 QB 169** as the modern authority on what amounts to a public nuisance [18]:

> "This was a civil action brought by the Attorney General on the relation of the Glamorgan County Council and the Pontardawe Rural District Council to restrain a nuisance by quarrying activities which were said to project stones and splinters into the neighbourhood, and cause dust and vibrations. It was argued for the company on appeal that there might have been a private nuisance affecting some of the residents, but not a public nuisance affecting all Her Majesty's liege subjects living in the area. In his judgment Romer LJ reviewed the authorities in detail and concluded, at p.184:
>
> > 'I do not propose to attempt a more precise definition of a public nuisance than those which emerge from the textbooks and authorities to which I have referred. It is, however, clear, in my opinion, that any nuisance is "public" which materially affects the reasonable comfort and convenience of life of

> a class of Her Majesty's subjects. The sphere of the nuisance may be described generally as "the neighbourhood"; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected for an injunction to issue.'

Denning LJ agreed. He differentiated between public and private nuisance at p.190 on conventional grounds: '*The classic statement of the difference is that a public nuisance affects Her Majesty's subjects generally, whereas a private nuisance only affects particular individuals.*' He went on to say, at p.191:

> 'that a public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large.'"

94. Ms Bolton's submissions on behalf of the Claimants have very much proceeded on the assumption that *every* threatened or actual obstruction of the highway is amounts to an actionable public nuisance. That is not correct. Whether a public nuisance is caused by an obstruction of the highway is a question of fact and degree: see e.g. ***N.V. Royale Belge*** [40].

95. The criminal offence of obstruction of the highway can embrace behaviour ranging from the obstruction of a single vehicle on a minor 'B' road at 3 o'clock in the morning, to a massive blockage of the M25 motorway during rush hour. The former, even if it amounts to a criminal offence under s.137 Highways Act 1980, would not remotely constitute a public nuisance, whereas the latter probably would.

96. In her submissions, Ms Bolton referred to and relied upon ***DPP -v- Jones*** **[1999] 2 AC 240**, ***Ziegler*** and ***Northern Ireland Abortion Services***. Whilst these authorities do contain important statements of principle, they have limited direct application to the issues that I must resolve. Each of those cases was concerned with the way in which the criminal law accommodates protest rights. None of the cases concerned the torts relied upon by the Claimants. ***DPP -v- Jones*** was a case about trespassory assembly, contrary to s.14A Public Order Act 1986; ***Ziegler*** concerned the offence of obstructing the highway, contrary to s.137 Highways Act 1980; and ***Northern Ireland Abortion Services*** concerned the legislative competence of the Northern Ireland Assembly to enact provisions that would prohibit certain activities within "*safe access zones*" adjacent to the premises where abortion services were provided.

97. Several of Ms Bolton's submissions, based upon ***Northern Ireland Abortion Services***, I consider to be wrong. For example, she argued that the case was authority for the proposition that ***Ziegler*** is not to be applied universally to cases concerning obstruction of the highway, "*and the approach is that set out by Lord Irvine in* ***Jones****, namely 'the public have the right to use the public highway for such reasonable and usual activities as are consistent with the general public's primary right to use the highway for purposes of passage and repassage*'". I reject that submission. ***Northern Ireland Abortion Services*** could not, and did not, overrule the authority of ***Ziegler*** on the proper interpretation of s.137. Lord Reed did not doubt the correctness of the Supreme Court's decision in ***Ziegler*** as it applied to the offence of obstructing the highway, indeed he

noted that it represented the position that was both well-established by earlier authorities and necessary given the parameters of the offence (see [87] above). He rejected the submission that the principle from ***Ziegler*** applied to all cases involving protest rights. He held that the answer to whether determination of the proportionality of an interference with Convention-protected protest rights required a fact-specific evaluation of the circumstances in the individual case depended upon the nature and context of the particular statutory provision. Even in relation to other offences that provide for a defence of lawful or reasonable excuse, it did not necessarily mean that the Court is required to carry out an individual proportionality assessment, "*the position is more nuanced than that*": [53] (and see [58]).

98. It is not necessary to consider the other arguments that Ms Bolton advanced based on ***Northern Ireland Abortion Services*** because the case has only tangential relevance to the Claimants' case against the Defendants in this claim. This case is not about, for example, whether it would be lawful for Cambridgeshire County Council to impose a Public Spaces Protection Order to prohibit certain protest activities in a designated zone around the Wyton Site (c.f. ***Dulgheriu -v- London Borough of Ealing*** **[2020] 1 WLR 609**). Nor is this case concerned with alleged offences of obstructing the highway. Even if the Claimants could establish that such an offence had been committed on one or more occasions, that could not be used as the basis for a civil claim against these Defendants. At the stage of liability, the case is about whether the Claimants can demonstrate: (1) that Mr Curtin (and others) have (a) trespassed on the Wyton Site; (b) obstructed access between the Wyton Site and the public highway; and/or (c) obstructed the carriageway in such a way as to cause a public nuisance; (d) (against Mr Curtin alone) that he has pursued a course of conduct involving the harassment; and/or (2) threaten to do one or more of these acts unless restrained by injunction.

(4) Harassment

99. The Protection from Harassment Act ("the PfHA"), s.1 provides, so far as material:

> "(1) A person must not pursue a course of conduct —
>
> (a) which amounts to harassment of another, and
>
> (b) which he knows or ought to know amounts to harassment of the other.
>
> (1A) A person must not pursue a course of conduct —
>
> (a) which involves harassment of two or more persons, and
>
> (b) which he knows or ought to know involves harassment of those persons, and
>
> (c) by which he intends to persuade any person (whether or not one of those mentioned above)—
>
> (i) not to do something that he is entitled or required to do, or
>
> (ii) to do something that he is not under any obligation to do.

> (2) For the purposes of this section …, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
>
> (3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows -
>
> (a) that it was pursued for the purpose of preventing or detecting crime,
>
> (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
>
> (c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

100. A breach of ss.1(1) and/or (1A) is a criminal offence: s.2. Sections 3 and 3A PfHA provide that any actual or apprehended breach of ss.1(1) and (1A) may be the subject of a civil claim by anyone who is or may be the victim of the course of conduct.

101. A corporate entity is not a "person" capable of being harassed under s.1(1): s.7(5) and ***Daiichi UK Ltd -v- Stop Huntingdon Animal Cruelty*** **[2004] 1 WLR 1503**. However, a company may sue in a representative capacity on behalf of employees of the company if that is the most convenient and expeditious way of enabling the court to protect their interests: ***Emerson Developments Ltd -v- Avery*** **[2004] EWHC 194 (QB)** [2]. Alternatively, claims for an injunction under s.3A may be brought by a company in its own right: ***Harlan Laboratories UK Ltd -v- Stop Huntingdon Animal Cruelty*** **[2012] EWHC 3408 (QB)** [5]-[9]; ***Astrellas Pharma -v- Stop Huntingdon Animal Cruelty*** **[2011] EWCA Civ 752** [7].

102. Section 7 provides, so far as material:

> "(2) References to harassing a person include alarming the person or causing the person distress.
>
> (3) A 'course of conduct' must involve—
>
> (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
>
> (b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.
>
> (3A) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—
>
> (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and
>
> (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation

to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(4) 'Conduct' includes speech.

(5) References to a person, in the context of the harassment of a person, are references to a person who is an individual."

103. A defendant has a defence if s/he shows: (i) that the course of conduct was pursued for the purpose of preventing or detecting crime; and/or (ii) that in the particular circumstances the pursuit of the course of conduct was reasonable (s.1(3)).

104. Assessing whether conduct amounts to or involves harassment, and whether any defendant has a defence under s.1(3), can be difficult and is always highly fact specific. In ***Hayden -v- Dickenson*** **[2020] EWHC 3291 (QB)** [44], I reviewed the relevant authorities and identified the following principles (with citations mostly omitted):

"(i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; '*a persistent and deliberate course of targeted oppression*'…

(ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2… A course of conduct must be grave before the offence or tort of harassment is proved…

(iii) The provision, in s.7(2) PfHA, that '*references to harassing a person include alarming the person or causing the person distress*' is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it… It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment; that would be illogical and produce perverse results…

(iv) s.1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective… '*The Court's assessment of the harmful tendency of the statements complained of must always be objective, and not swayed by the subjective feelings of the claimant*'…

(v) Those who are '*targeted*' by the alleged harassment can include others '*who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it*'…

(vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court's duties under ss.2, 3, 6 and 12 of the Human Rights Act 1998. The PfHA must be interpreted and applied compatibly with the right to freedom of expression. It would be a serious interference with this right if those wishing to express their own views could be silenced by, or threatened with, proceedings for harassment based on subjective claims by individuals that they felt offended or insulted…

(vii) In most cases of alleged harassment by speech there is a fundamental tension. s.7(2) PfHA provides that harassment includes '*alarming the person or causing the person distress*'. However, Article 10 expressly protects speech that offends, shocks and disturbs. '*Freedom only to speak inoffensively is not worth having*'…

(viii) Consequently, where Article 10 is engaged, the Court's assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant's Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality… The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the '*ultimate balancing test*' identified in ***In re S*** [17] …

(ix) The context and manner in which the information is published are all-important… The harassing element of oppression is likely to come more from the manner in which the words are published than their content…

(x) The fact that the information is in the public domain does not mean that a person loses the right not to be harassed by the use of that information. There is no principle of law that publishing publicly available information about somebody is incapable of amount to harassment…

(xi) Neither is it determinative that the published information is, or is alleged to be, true… '*No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do*'… That is not to say that truth or falsity of the information is irrelevant… The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under s.1(3)), particularly when considering any application interim injunction… On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger… The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment.

(xii) Finally, where the alleged harassment is by publication of journalistic material, nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment. Such cases will be rare and exceptional…"

105. That summary of the law was approved by the Divisional Court in ***Scottow -v- CPS*** **[2021] 1 WLR 1828** [24], to which Warby J added [25(1)]:

> "A person alleging harassment must prove a 'course of conduct' of a harassing nature. Section 7(3)(a) of the PfHA provides that, in the case of conduct relating to a single person, this 'must involve … conduct on at least two occasions in relation to that person'. But this is not of itself enough: a person alleging that conduct on two occasions amounts to a 'course of conduct' must show 'a link between the two to reflect the meaning of the word "course"': ***Hipgrave -v- Jones*** **[2004] EWHC 2901 (QB)** [62] (Tugendhat J). Accordingly, two isolated incidents separated in time by a period of months cannot amount to harassment: ***R -v- Hills (Gavin Spencer)*** **[2001] 1 FLR 580** [25]. In the harassment by publication case of ***Sube -v- News Group Newspapers Ltd*** **[2020] EMLR 25** I adopted and applied this interpretative approach, to distinguish between sets of newspaper articles which were 'quite separate and distinct'. One set of articles followed the other 'weeks later, prompted, on their face, by new events and new information, and they had different content': [76(1)], [99] (and see also [113(1)])."

106. Factors (vi) to (ix) from ***Hayden*** are likely to have equivalent resonance in protest cases, which similarly engage Article 10 (and Article 11). It is relevant to consider the speech that is alleged to amount to or involve harassment. Any attempt to interfere with political speech requires the most convincing justification, and the most anxious scrutiny from the Court: ***Hourani -v- Thomson*** **[2017] EWHC 432 (QB)** [212]; ***Hibbert -v- Hall*** **[2024] EWHC 2677 (KB)]** [154]. The objective nature of the assessment of whether the conduct amounts to or involves harassment (***Hayden*** factor (vi)) is critical to ensuring proper respect for Article 10.

107. The course of conduct, viewed as a whole, must be assessed objectively. It is not necessary for each individual act that comprises the course of conduct to be oppressive and unacceptable. Individual acts which, viewed in isolation, appear fairly innocuous, may take on a different complexion when viewed as part of a bigger picture: ***Hibbert -v- Hall*** [152].

108. Finally, the claim of harassment pursued against Mr Curtin, at trial, does not allege that Mr Curtin has breached s.1(1) of the PfHA. It is not alleged that he has targeted any individual. The claim alleges a breach of s.1(1A). As such, the Claimants must also demonstrate, not only that Mr Curtin pursued a course of conduct, which involved harassment of two or more persons, which he knew or ought to have known involved harassment of those persons, but also, under s.1(1A)(c) that he intended, by that harassment, to persuade any person (which could include either those who were harassed or the First Claimant) not to do something that s/he/it was entitled or required to do, or to do something that s/he/it was under no obligation to do.

G: The Third Contempt Application

109. As already noted (see [52] above), the Third Contempt Application, against Mr Curtin, was issued by the Claimants on 17 June 2022. It was supported by the Sixth Affidavit of Ms Pressick and the Second Affidavit of Mr Manning. The evidence was heard

during the trial, with a further hearing, after the trial, on 23 June 2023. Mr Curtin was represented at this hearing, and he gave evidence.

(1) Allegations of breach of the Interim Injunction

110. The contempt application alleged that Mr Curtin had breached the Interim Injunction, in the terms imposed on 31 March 2022, as follows ("the Grounds"):

(1) On 26 April 2022, at 03.08, Mr Curtin entered the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.

(2) On 26 April 2022, at 03.55 and in the period immediately thereafter, Mr Curtin twice approached and/or obstructed the path of a white van that was directly exiting the Exclusion Zone, in breach of Paragraph 1(4) of the 31 March 2022 order.

(3) On 12 May 2022, at 10.57, Mr Curtin entered the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.

(4) On 12 May 2022, at 11.56, Mr Curtin instructed and/or encouraged an unknown and unidentifiable person to enter the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.

(5) On 12 May 2022, at 15.13, Mr Curtin entered the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.

(6) On 12 May 2022, between 15.24 and 15.27, Mr Curtin approached and/or obstructed the path of a Police van, such that the van was unable to exit the Exclusion Zone, in breach of Paragraph 1(4) of the 31 March 2022 order.

(2) Evidence relied upon

111. Principally, the evidence upon which the Claimants relied to prove the alleged breaches is video footage. The affidavits of Ms Pressick and Mr Manning do little more than produce this video evidence and then comment upon what it shows.

112. Grounds 1 and 2 relate to an incident, on 26 April 2022, when a white van left the Wyton Site at just after 3am. Police were in attendance. The protestors clearly believed that dogs were being transported from the Wyton Site in the vehicle.

113. Grounds 3 to 6 concern various separate incidents on 12 May 2022.

(a) Ground 1

114. The video footage relied upon shows that a person, alleged to be Mr Curtin, stands and walks through an area which is alleged to be within the Exclusion Zone. The person is alleged to be in the Exclusion Zone for no more than 9 seconds.

(b) Ground 2

115. The video footage relied upon shows, from several different viewpoints, that a person, alleged to be Mr Curtin, approached and/or obstructed the path of a white van that was

directly exiting the Exclusion Zone. Specifically, it is alleged that Mr Curtin approached the white van when it was inside, attempting to exit, and immediately upon its exit from, the Exclusion Zone. Essentially, the white van left the Wyton Site by the main gate and attempted to turn right. As it did so, several protestors, including Mr Curtin, stood in front of and around the vehicle. Albeit temporarily, the vehicle was obstructed by Mr Curtin (and others) as it attempted to leave the Exclusion Zone.

(c) Ground 3

116. The video evidence shows that, at around 10.57 on 12 May 2022, a protestor throws a plastic box into the carriageway which is within the Exclusion Zone. Mr Curtin crosses the central line of the carriageway and kicks the plastic box away from the road. In doing so, Mr Curtin is within the Exclusion Zone for possibly 2 seconds.

(d) Ground 4

117. At 11.53 on 2 May 2022, an unidentified person, dressed as a dinosaur described by Mr Manning as a "*tyrannosaurus-rex costume*", enters the Exclusion Zone. The dinosaur ambles around the verge of the carriageway to the left of entrance to the Wyton Site. Another protestor appears to film the dinosaur without entering the Exclusion Zone. At 11.56, the dinosaur approaches Mr Curtin, who appears to have been filming him/her, and engages in conversation. Mr Curtin remains outside the Exclusion Zone. Mr Curtin then can be seen to take off and give his footwear to the dinosaur. Thereafter, Mr Manning says that the dinosaur "*seems to be doing little more than messing around on the driveway area… showing off for the CCTV cameras and the protestors who are cheering*". Mr Manning speculates that the dinosaur was looking for a lost drone. Mr Manning concludes: "*the CCTV of the t-rex incident clearly shows Mr Curtin assisting the t-rex's breach of the Exclusion Zone, as he lends his shoes to the person in the costume*". It is not alleged that, at any point, the itinerant dinosaur trespassed on the First Claimant's land or committed any other civil wrong.

(e) Ground 5

118. Later, on 12 May 2022, from around 15.08, the video evidence shows a convoy of vehicles leaves the Wyton Site, largely unobstructed. There is a significant police presence. On occasions, protestors can be seen to step over the mid-point of the carriageway into the exclusion zone. Police officers can be seen to gesture at the white lines, which I take to be a reminder of the Exclusion Zone. The protestors then step back.

119. At 15.13 a police van pulls up in front of the gates to the Wyton Site. It stops in the Exclusion Zone. A man, dressed in black, appears to have been arrested. Mr Curtin and another protestor approach the police vehicle, and in doing so enter the Exclusion Zone for a couple of seconds. Following a search, at 15.16, the detained man is placed into the van.

(f) Ground 6

120. This incident follows closely on from the Ground 5. A second police van can be seen to be stationary on the carriageway to the left of the Wyton Site. Police officers get into the van at around 15.18 and appear to be about to leave. However, their route is

obstructed by several protestors. At 15.24, Mr Curtin joins the protestors who are standing in front of the police van. A police officer gets out of the van and speaks to the protestors. The protestors disperse by 15.28 and the van drives off. Mr Manning states that the video evidence shows that Mr Curtin was in front of the van for a little over a minute. Arguably, the actions of the protestors were an obstruction of the highway, but the police did not take any action, perhaps in view of the very short-lived extent of the obstruction.

H: The parameters of the Claimants' claims

(1) The case against Mr Curtin

121. At an earlier stage of the proceedings, I made directions that the Claimant must plead, separately, the allegations that they made against each of the named Defendants in their Particulars of Claim. This was to ensure fairness. It was not fair to expect litigants in person to have to grapple with extensive Particulars of Claim – containing allegations directed at "Persons Unknown" – to attempt to identify what, if anything, was being alleged against them specifically. For the purposes of trial, Defendant-specific bundles were required to be provided by the Claimants. Each bundle contained only the allegations and evidence relevant to that Defendant.

122. By the time we reached the end of the trial, Mr Curtin was the only named Defendant who remained. The parameters of the case against him are set by what is pleaded in his Defendant-specific Particulars of Claim.

123. In their pleaded case, the Claimants allege that Mr Curtin, on various occasions, has been guilty of trespass, public nuisance on the highway, interference with the First Claimant's common law right of access to the highway from the Wyton Site and, finally a course of conduct involving harassment of the First Claimant's employees (and others in the Second Claimant class).

124. As I will come on to consider (see Section J(2) below), the Claimants advanced allegations against Mr Curtin, both in the witness evidence and at trial, that went beyond the case pleaded against him in the Particulars of Claim.

125. The Claimants' pleaded case against Mr Curtin relies upon the incidents I shall identify and address in the next section of the judgment when I deal with the evidence. I shall deal with each incident, chronologically, setting out the evidence and stating my conclusions, including, where necessary, resolving any disputed aspects of that evidence.

(2) The case against "Persons Unknown"

126. Although the pleaded case against the various categories of "Persons Unknown" included other claims, by the end of the evidence and in their closing submissions following the Supreme Court decision in ***Wolverhampton***, the Claimants had narrowed the claims advanced against "Persons Unknown" to a claim for an injunction against various categories of "Persons Unknown" or, alternatively, a *contra mundum* injunction, to restrain: (1) trespass (including prohibiting drone flying below 100 metres); (2) public nuisance caused by obstruction of the highway; and (3) interference with the First Claimant's right of access to the public highway. The Claimants did not

pursue a claim for harassment against "Persons Unknown" (or *contra mundum*) at the end of the trial.

I: The evidence at trial: generally

127. Before turning to the evidence relating to specific incidents, I should set out the evidence that was adduced at the trial and deal with some general issues. Some of the most important evidence at the trial were extracts of CCTV footage of various incidents. At the time the evidence for trial was prepared, the Wyton Site had 30 CCTV cameras in various locations. The security team are also equipped with body-worn cameras in certain situations.

128. The following witnesses were called by the Claimants at trial: (1) Susan Pressick; (2) Wendy Jarrett; (3) David Manning; (4) Demetrius Markou; (5) Employee A; (6) Employee AF; (6) Employee B; (7) Employee F; (8) Employee G; (9) Employee H; (10) Employee J; (11) Employee L; (12) Employee V; and (13) the Production Manager.

129. Anonymity orders were made for some of the witnesses. This was to protect the relevant witnesses from the risk of reprisal. The evidence has demonstrated that a small minority of individuals (not Mr Curtin) have sought to target those whom they identify as being employees of the First Claimant. At the trial, the anonymised witnesses gave their evidence via video link, in public, but with their identity protected. That was achieved by the Court, initially, sitting temporarily in private, during which the witness appeared on screen and was sworn. The screen was then deactivated, and the Court went back into open Court for the witness to be questioned on his/her evidence.

130. Some of the witnesses were not anonymised. For some, their names were well known to the protestors so anonymising them would have served no real purpose. Nevertheless, I have decided to adopt a cautious approach to naming them in this judgment. That is because, once handed down, this judgment, will become a public record.

131. The Claimants also relied upon witness statements of four witnesses, as hearsay, who were not called to give evidence: Employee C; Employee I; Employee P; and Jane Read.

132. Finally, Mr Curtin gave evidence at the trial. This largely consisted of his being cross-examined by Ms Bolton over three days.

133. The existence and availability of extensive CCTV recordings of the incidents means that there are no material disputes of fact that require me to decide between accounts given in the oral evidence. When I deal in the next Section of the judgment with the various incidents relied upon by the Claimants, I will refer to the evidence of the Claimants' witnesses. Before that, I should refer to the key witnesses for the Claimants who gave evidence relevant to the claim as a whole.

(1) Susan Pressick

134. Ms Pressick has provided many witness statements (and several Affidavits) during the litigation. She is employed by the Third Claimant as the Site Manager & UK Administration & European Quality Manager for the UK subsidiaries of Marshall Farm

Group Ltd. Ms Pressick has been closely involved in the litigation on behalf of the Claimants. Although she is based in Hull, Ms Pressick confirmed that she attends the Wyton Site most weeks. Her direct evidence of events is therefore limited, but she has played a significant role in the coordination of the evidence gathering process for the Claimants. Her witness evidence has been used as the primary vehicle for the introduction of the video evidence upon which the Claimants rely in relation to events at the Wyton Site.

135. Ms Pressick confirmed that, on occasions, she had been shouted at by protestors when she has visited the Wyton Site. In cross-examination she accepted that the protestors were not shouting at her, personally, but because she was perceived to be an employee of the First Claimant. One of the things that Ms Pressick recalled being shouted was "*puppy killer*". Questioned by Mr Curtin, Ms Pressick said that she did not understand why the protestors shouted that at people going to and from the Wyton Site. Mr Curtin put it to her that it was because dogs were euthanised at the site in a process that was termed "*terminal bleeding*". Ms Pressick accepted that on occasions that happened, but she maintained that being called a "*puppy killer*" was not a pleasant experience. Mr Curtin asked Ms Pressick about the impact of this upon her:

> Q: Do you take it personally, or do you take it 'They're calling me that because I work here?' …
>
> A: You take it personally, because we do everything we can do correctly…
>
> Q: Have you ever been specifically pointed out, 'That's the puppy killer'?
>
> A: No, as I described before, it's all of us, when we're moving around on and off site.
>
> Q: And in a form of legitimate protest, can you have any understanding… of why that would be a legitimate thing for a protestor to shout outside a very controversial beagle breeding establishment?
>
> A: I can understand the peaceful protest and the need for emotion to explain what the protestors are saying. It's still difficult to accept being shouted at.

136. In her witness evidence, Ms Pressick dealt with the, very limited, protest activity at the B&K Site in Hull.

137. Following the ***Wolverhampton*** decision, the Claimants were given the opportunity to file further evidence relevant to their claim for a *contra mundum* 'newcomer' injunction. Ms Pressick provided a further witness statement, dated 19 March 2024.

(2) Wendy Jarrett

138. The Claimants filed a witness statement for trial, dated 25 January 2023, from Wendy Jarrett, who attended to give evidence. Ms Jarrett is the Chief Executive of Understanding Animal Research ("UAR"). Ms Jarrett explained that UAR is a not-for-profit organisation that exists to explain to the public and policymakers why animals are used in medical and scientific research. UAR is funded by Marshall BioResources, the parent company of the First and Third Claimants; the Medical

Research Council and other bodies including the Wellcome Trust, the British Heart Foundation and Cancer Research.

139. Whilst Ms Jarrett's evidence was generally helpful in explaining the current UK legislation regarding animal research, I struggled to see the relevance that it had to the issues I must decide. Ms Bolton suggested that it was evidence that would explain the harm to medical research in this country were the First (and Third) Defendant to cease trading, thereby interrupting or curtailing the supply of beagles for clinical trials.

140. It was a feature at the trial that it was necessary, on several occasions, to remind Mr Curtin that he was not required (not was it relevant for him) to prove that the use of animals in medical research was "wrong". I appreciate why he feels the need to do so. That is a product of the adversarial process in which Mr Curtin feels the need to defend his actions. But the Claimants do not dispute that he, and the other protestors, have a sincerely held belief that animal testing – and the First and Third Claimant's role in supplying dogs for animal testing – is wrong (see [29] above). By the same token, it is equally irrelevant for the Claimants to attempt, in these proceedings, to show that animal testing is "*right*" or that Mr Curtin's beliefs are "*wrong*". Most of Ms Jarrett's evidence falls into this category, and is irrelevant to the issues that I must decide.

141. Even on the narrow issue identified by Ms Bolton – the consequences to medical research were the First (and Third) Defendants to be put out of business – I struggle to see its relevance. If the Defendants' protest activities are lawful – yet they lead to the First and Third Defendants going out of business – the harm that that might cause (which is highly speculative in any event) is not a basis on which the Court could curtail or limit otherwise lawful acts of protest. If the Defendants' protest activities are unlawful, then the Court will grant appropriate remedies to provide adequate redress whether or not harm might be caused to medical research in this country.

(3) David Manning

142. Mr Manning is employed by the First Claimant. He is a security guard at the Wyton Site. Although Mr Manning has only been employed by the First Claimant since June 2022, he has been a security guard at the site since 2014, having been previously employed by a contractor that used to provide security services at the Wyton Site. The contractor continues to provide other security guards at the site, but Mr Manning is now employed directly by the First Claimant to supervise the security team. As a result of that history, Mr Manning has had a direct involvement with the activities of the protestors from the start. If there is one employee of the First Claimant who has been in the 'front line', it is Mr Manning.

143. In his evidence, Mr Manning noted that because of the escalation of the protests, there is now a need for him to be supported by a security team of between four and ten guards. Mr Manning carries out a risk assessment on a day-to-day basis to determine how many of his team he will need. He also reviews CCTV footage and uses the cameras to monitor the protestors. In his witness statement, Mr Manning has identified the key incidents relied upon by the Claimants by reference to the CCTV footage that is available.

J: The evidence at trial against Mr Curtin

144. Before turning to the individual incidents alleged against Mr Curtin, it is necessary to set them in their context and the overall questioning of Mr Curtin.

145. The protest activities fall, broadly, into what can be called pre- and post-injunction periods. Before the Interim Injunction was granted, the hallmark of the main protest activities was the obstruction, and usually surrounding, of vehicles entering or leaving the Wyton Site. That was done largely to enable the protestors to confront those accessing the Wyton Site with the protest message they wanted to deliver. Mr Curtin described this as the 'ritual'. As part of the 'ritual', protestors would routinely delay entry or exit from the site. The extent of the delay varied. In the worst, pre-injunction incidents, the workers were prevented from accessing the Wyton Site for several hours, but typically the delay was only some minutes. In the Interim Injunction Judgment, I described this as the "*flashpoint*" in the protest activities.

146. After the Interim Injunction was granted, the phenomenon of protestors surrounding vehicles and delaying their access to/from the Wyton Site was largely brought to an end. This was achieved by the imposition of the Exclusion Zone as a temporary measure. After the Interim Injunction, although there are instances where it is alleged that Mr Curtin and others have obstructed vehicles entering or leaving the Wyton Site, it is nothing on the scale of what had been happening prior to the grant of the Interim Injunction.

(1) The pleaded allegations against Mr Curtin

13 July 2021

147. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles driven by the First Defendant's employees at the Wyton Site, whilst using a loudhailer to shout at those in the vehicles. Employee F was driving a white Mercedes A Class car, Employee Q was driving a black Volkswagen Polo, Jane Read was driving a green Vauxhall Mokka, and Employee AA was driving a white Seat Ibiza.

148. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway.

149. The obstruction of the vehicles and Mr Curtin's use of the loudhailer is alleged to be part of a course of conduct involving harassment of the employees involved, in particular it is alleged that Mr Curtin shouted at Ms Read: "*leave this place… are you seriously thinking that this time next year you want to be working at this hellhole… it's your choice*".

150. Although witness statements had been filed for Employees AA and Q, they did not give evidence at trial.

151. Employee F gave evidence at trial, and in doing so gave his name because he had been identified by some protestors. For the reasons I have explained, I have decided not to use Employee F's name in this judgment.

152. Employee F had worked at the Wyton Site since around 2015, including for the company that operated the site prior to the First Claimant. In his witness statement, Employee F gave some general evidence about the effect upon him/her of the demonstrations. One of the problems in this case is that the evidence – perhaps naturally – tends to focus upon the actions of "*the protestors*", as a general group, and without always being careful to identify the acts of specific individuals. An individual protestor does not lose the right to demonstrate because of unlawful acts committed by others in the course of the demonstration if the individual in question behaves lawfully: ***Canada Goose -v- Persons Unknown*** **[2020] 1 WLR 417** [99(8)].

153. In one particular paragraph, Employee F stated:

> "During the summer of 2021, the protests outside the Wyton Site became more intense, and it was not possible to enter or exit the Wyton Site safely. In particular, the staff cars trying to enter and exit the Wyton Site were frequently obstructed and surrounded by large groups of protestors. The abuse on particular days and threats and conduct of the Defendants towards me and others working at MBR is referred to in more detail below. It was, however, a terrifying experience entering and exiting the Wyton Site at this time, with protestors standing in front of and surrounding my vehicle on a daily basis, preventing me from freely accessing the Highway from the Wyton Site, or the Wyton Site from the Highway, whilst threatening me and abusing me in an angry and intense manner."

154. Although the wording used in this paragraph of Employee F's witness statement is very similar to that used by Mr Manning, and other witnesses who gave evidence – a point that Mr Curtin highlighted in cross-examination of some of the witnesses – I have no difficulty in accepting that it is an accurate description of what was happening at the Wyton Site in the summer of 2021, before the Interim Injunction was granted. During that period, there were occasions when the protestors were effectively dictating the terms on which people could access and leave the Wyton Site. I also accept that the experience of having their vehicles surrounded by protestors who were shouting at the occupants was frightening for Employee F and others. It is important, however, to isolate the allegedly harassing conduct for which Mr Curtin is responsible.

155. Employee F in his/her witness statement said this about the incident on 13 July 2021:

> "On 13 July 2021 at 15.56 onwards, [various protestors including John Curtin], stood on the Highway and obstructed my vehicle as I sought to travel along the Access Road to the main carriageway of the Highway, having exited the Wyton Site. [John Curtin and two other protestors] stood to the front and side of my car, which prevented me driving freely along the Access Road as there was no clear pathway for my car through the protestors… Two protestors stood on the Access Road directly in front of my car, so that I had to stop for around 45 seconds. While my car was on the Access Road… John Curtin continually shouted at me through a megaphone… [Another protestor] continually shouted at me, leaning into my passenger side window. [A further protestor] held a placard reading: 'STOP ANIMAL TESTING' and took a video recording of my vehicle and those travelling inside. [This protestor] then moved to the front passenger window and continued to take a video recording of those of us travelling inside my car. I have seen the video that [this protestor] was live streaming and, while speaking to those watching his Facebook live video, he can be heard to say 'Do you recognise these

> people? Look.' I understand this statement and recording to be an attempt to identify myself and those travelling with me in my car…"

156. Employee F then described an incident with another protestor in which the protestor represented that the law required Employee F to ask him/her to move out of the way. That was a misapprehension as to the law, but it was one that a police officer in attendance appeared to adopt. Employee F continued:

> "The protestors obstructing my vehicle, filming me and trying to film inside my vehicle and shouting at us made me feel intimidated and anxious and is a huge distraction from concentrating on the road while driving… I felt annoyed that the protestors were delaying me getting home, especially whilst making demands that I gesture to them to move and insisting to the police that they needed to ask me to do that. I also felt stressed prior to leaving the Wyton Site because I knew I would get delayed trying to get out of the Wyton Site, as I usually had to wait for the police to move the protestors out of the way. The protestors were scaring, threatening and intimidating me, and I believe their aim is to stop me coming back to the Wyton Site and to make me get a different job."

157. Employee F was cross examined by Mr Curtin. Employee F was a careful and impressive witness. S/he generally gave considered answers to the questions s/he was asked. I accept his/her evidence. Both in his/her witness statement, and confirmed in cross-examination, Employee F said that, in respect of the pre-injunction phase, s/he was frustrated by the lack of police action and thought that the police could have done more to help the employees entering and leaving the Wyton Site. Mr Curtin asked Employee F about his/her being terrified by the actions of the protestors. Employee F said: "*there's always the aspect of terror because, as far as I'm concerned, the behaviour of the protestors is uncertain*".

158. In cross-examination, Employee F confirmed that, at some point prior to the injunction being granted, anti-terrorism police came to the First Claimant and gave a presentation to the staff. The talk covered issues including car and letter bombs and was designed to support staff and raise awareness. Employee F confirmed that s/he found the information alarming and distressing.

159. In his/her witness statement, Employee F had identified thirteen protestors, including Mr Curtin, by name, whom he was able to identify as having been involved in the protests. S/he said that there were "*other protestors at the Wyton Site who [s/he] recognise by sight, but who are just making their views known, and not doing anything especially 'wrong' (for example, they have never surrounded or obstructed [his/her] car*". Mr Curtin asked Employee F what s/he thought that Mr Curtin had done wrong. Employee F said that there had been times when Mr Curtin had "*verbally abused [him/her] and other colleagues*" by "*name-calling*". Employee F gave as examples of "*monster*" and "*puppy killer*". Employee F believed that this was behaviour was "*wrong*". Mr Curtin asked Employee F whether s/he could appreciate that, in the context of a demonstration, such terms as "*puppy killer*" could be regarded as legitimate. Employee F agreed that "*everyone's entitled to their own opinion*". Nevertheless, Employee F maintained that s/he took the comment personally.

160. Mr Curtin established the following matters with Employee F. Employee F was aware that under the terminal bleeding procedures, some dogs did die at the Wyton Site.

Employee F accepted that Mr Curtin was not responsible for publishing Employee F's photograph online and that he was not responsible for sending abusive messages to Employee F.

161. In her witness statement, relied upon as hearsay evidence by the Claimants, Ms Read described the incident on 13 July 2021 as follows:

> "On 13 July 2021 at 15:56, protestors stood in the Access Road and obstructed the convoy of staff vehicles as we sought to leave the Wyton Site, as shown in Video 24. I was in my green Vauxhall, which was third in the convoy. [Two protestors] stood directly in front of my car as I sought to exit the Wyton Site, causing me to need to stop on the Driveway for around 50 seconds before I was able to slowly pass them; the incident prevented me having free passage along the Access Road and to the main carriageway of the Highway. [One of these protestors] was yelling 'shame on you'. I found [this protestor] very intimidating as he was so in my face and so close to my car. I was shaking by the time I got past him. I just did not know what to expect from him given his behaviour, and I feared for my safety. I also found [the other protestor] very intimidating, as he was so worked up, and seemed to be ranting, and kept making reference to whether I was 'proud' of my job. He did not appear to be acting rationally, so I was worried about what he would do. John Curtin was also standing to the side of my car, whilst using a loudhailer to shout at me. He can be heard yelling 'leave this place...are you seriously thinking that this time next year you want to be working at this hellhole...it's your choice'. I was just trying to ignore him and just drive safely.
>
> In another video of the same incident (Video 22), I can see [another female protestor] standing near the bell mouth of the Access Road and to the side of my car (once I have been able to reach that point) and holding posters to my windows and touching my car. I had to stop the car because of her presence. I was thinking of the traffic ahead, because I was trying to join the main carriageway of the Highway, and that this was a road traffic accident waiting to happen, and I was hoping that [she] would move. I then managed to get away. I remember not being able to see because of all the protestors crowding around my car, and the parked cars at the entrance to the Access Road.
>
> In Video 21, [another protestor] can be seen stepping back and forth in front of my car, looking like he was moving to the side and then stepping back in front of me; his movements made it very difficult to drive past him.
>
> There was also a woman in a baseball cap… standing to the front and side of my car, with a placard."

162. Although Mr Curtin was not able to cross-examine Ms Read, I readily accept the description she gives of the incident because it is corroborated by the video footage.

163. Mr Curtin was cross-examined about this incident by reference to the video footage. Police officers were present during the incident. Mr Curtin disputed that he was obstructing the vehicles leaving the Wyton Site, but I am quite satisfied that – together with the other protestors involved in the incident – he was. Indeed, an essential part of the 'ritual' was delaying and confronting those entering and exiting the Wyton Site with the protestors' message; that was the hallmark of the pre-injunction period. As Mr Curtin accepted in cross-examination, when the vehicles were slowed down or

stopped for a period when leaving or entering the Wyton Site the occupants became a "*captive audience*" to the protest message. He denied that he was intending to harass any of the employees of the First Claimant. He had not threatened any of them. Mr Curtin accepted that he was using a loudhailer. Ms Bolton put it to him that he was "*directing abuse directly at Employee F's car*". Mr Curtin disputed that it was abuse; he stated that he was communicating the protest slogans.

164. Mr Bolton put it to Mr Curtin that he was confronting the employees with his protest message, using a loudhailer, to try and get them to leave their jobs. Mr Curtin answered: "*If they were to leave their job, I'd be pleased for them, but there's no coercion, there's no intimidation, absolutely none*".

165. The video evidence shows that passage out of the Wyton Site was not free. As well as being delayed by those protestors who were standing in front of or near to the vehicles, in turn, each driver, would have had his/her view of the carriageway obstructed by people standing next to his/her vehicle. Mr Curtin accepted in cross-examination that, in this respect, he was inferring with each vehicle's access to the highway. He made clear that that had not been his intention at the time. This was Mr Curtin's reflection upon being asked this question in cross-examination. He said:

> "I'm there, and because I'm there, if I'm standing there as a protestor and I'm in some way impairing a perfect view it I wasn't there, then yes. But these thoughts were not in my mind, and they're more likely – they should have been in the mind of the police officer really… If it had been pointed out to me, I would have been more than happy – because my job that day was to protest and it wasn't to endanger anyone. I wouldn't have wanted that."

And a little later, in answer to Ms Bolton putting to him that he was standing in position which would have obstructed the driver's view to the right when entering the carriageway, Mr Curtin replied:

> "I accept – I don't want to be funny – I'm accepting I'm not transparent. The driver would have to – might have to move their neck out or their head… they should not move onto a highway if they can't see. And if that had been relayed to anyone at the time, it would have been part of the police liaison procedure… My aim here is to protest, and only protest, and do it safely and do it legally and do it well."

166. On closer analysis of the video footage of this incident, it appears that Ms Bolton's point on obstruction of Employee F's view along the carriageway is more theoretical than real. I asked her to identify the moment, on the CCTV, at which she alleged that Mr Curtin was blocking Employee F's view along the carriageway. At the point she identified, a police officer, who was attempting the guide Employee F's vehicle out of the Wyton Site was standing in front of the vehicle. The reality of this situation is that whilst Mr Curtin might have been obstructing, for a matter of moments, Employee F's view down the carriageway, the reality is that his/her attention would have been on the police officer in front of his vehicle. The point had not been explored in Employee F's evidence, so it is difficult to reach any firm conclusions beyond the fact that any obstruction of Employee F's view along the carriageway could only have been for a matter of moments.

167. Mr Curtin also made the point that it was never suggested by any of the police officers present that there was a problem with the way he was demonstrating. He also stated that he was not wilfully obstructing the drivers' view down the carriageway. He was demonstrating. He accepted that the performance of the 'ritual' meant that the cars were held up leaving the Wyton Site.

168. My findings in relation to the pleaded 13 July 2021 incident are:

(1) Mr Curtin trespassed, for a short period, on the Claimant's land.

(2) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being no longer than a few minutes. It will have caused only minor inconvenience. Insofar as it is relevant, I am not satisfied that Mr Curtin intended to obstruct vehicle access to the highway when he stood to the side of vehicles. He frankly accepted in cross-examination, that his standing in that position on the carriageway, close to the vehicles, may have meant that the driver of the vehicle's view of the carriageway was temporarily impaired, but I am unable to reach a firm conclusion about that. In any event, had this been the sole basis for the alleged interference with access to the highway, I would have rejected it. But this incident must be considered as a whole and, with others, Mr Curtin did directly obstruct the vehicles leaving the Wyton Site that day. It was the usual 'ritual'.

(3) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance, particularly having regard to the limited role played by Mr Curtin. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a few private individuals rather than the public generally. The only people affected by the obstruction were the employees of the First Claimant who were leaving the Wyton Site.

(4) The issue of whether Mr Curtin has engaged in a course of conduct involving harassment must be assessed by considering the full extent of the acts upon which the Claimants rely (and I do so below), but in this individual incident the protest message delivered by Mr Curtin was not, either in the words used or the manner in which it was delivered, inherently harassing. Ms Read simply tried to ignore him and did not say that she was caused distress or alarm either by what Mr Curtin shouted at her, or that his method of address was itself harassing. Employee F did not appreciate being called names – like "*monster*" and "*puppy killer*" – by Mr Curtin but he did not suggest that this name-calling had caused him/her distress or alarm. The alarming part of the protestors' behaviour, in Employee F's eyes, was the physical actions of surrounding the vehicles and their general unpredictability; in other words, more a fear of what they *might* do, rather than what that had actually done.

169. In cross-examination, Ms Bolton asked Mr Curtin questions about alleged obstruction of vehicles arriving at the Wyton Site in the morning of 13 July 2021. This was not included in the Claimants' pleaded allegations against Mr Curtin.

17 July 2021

170. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and again obstructed vehicles driven by the First Defendant's employees at the Wyton Site, whilst using a loudhailer to shout at those in the vehicles. A former employee was driving a yellow Ford Ka and Employee F was driving a white Mercedes A class.

171. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway. The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin.

172. Whilst there is CCTV footage of the events, Employee F is the only witness who gave evidence about the incidents on 17 July 2021. Mr Curtin did not challenge Employee F on the detail of his/her account. Employee F stated that Mr Curtin was one of several identified protestors who had obstructed Employee F's vehicle (the second of two vehicles) when he was attempting to leave the Wyton Site. The first vehicle was held up for around 2 minutes before it could pass along the Access Road and onto the highway. Once the leading vehicle had left, the protestors, including Mr Curtin, stood in the middle of the Access Road in front of Employee F's vehicle, causing him to have to stop. He was held there for about a minute after which he was able to edge his vehicle forward – surrounded by protestors – and out onto the highway. During the incident, another protestor identified by Employee F, shouted at him/her "*get another job, get another job… problem solved*". Employee F interpreted this as the protestor threatening him/her and suggesting that s/he should leave his/her job so that s/he would not have to deal with the protestors when coming in and out of work. Mr Curtin is not alleged to have said anything threatening or intimidating to Employee F (or the employee driving the other vehicle) during this incident.

173. Mr Curtin was cross-examined based on the CCTV evidence. This was another pre-injunction incident, and it has the same features of the 'ritual' in action. Mr Curtin accepted that he stood in the path of the vehicles, temporarily preventing them from leaving the Wyton Site. In doing so, he also accepted that he trespassed on the Claimant's land for a brief period. It was clear from Mr Curtin's answers in evidence that, at this stage, he did not believe that he was doing anything wrong in temporarily obstructing the exiting vehicles as part of the 'ritual'. It was clear from his evidence that Mr Curtin did believe, however, that although the 'ritual' did delay the departure of vehicles, it ultimately facilitated their leaving. The alternative, in the early days of the protest, would have been that other protestors would either have blockaded them into the Wyton Site, or totally prevented them from gaining access. To have taken that step, Mr Curtin clearly believed, would simply have invited action by the police, so, in his eyes, the 'ritual' represented a compromise between the protestors and those attempting to gain access to/from the Wyton Site.

174. My findings in relation to the pleaded 17 July 2021 incident are:

(1) Mr Curtin trespassed, for a short period, on the First Claimant's land.

(2) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First

Claimant's common law right of access to the highway by being part of a group of protestors who obstructed the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience.

(3) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance, particularly having regard to the limited role played by Mr Curtin. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a few private individuals rather than the public generally. The only people affected by the obstruction were the employees of the First Claimant who were leaving the Wyton Site.

(4) The issue of whether Mr Curtin has engaged in a course of conduct involving harassment must be assessed by considering the full extent of the acts upon which the Claimants rely (and I do so below – see [298]-[308]), but in this individual incident the Claimants rely only on the alleged obstruction as involving harassment, not any shouting at any of the employees by Mr Curtin.

20 July 2021

175. The Claimants allege that Mr Curtin trespassed on the Driveway and banged on the Gate and shouted, "*open the fucking gate to get the workers in*".

176. In cross-examination, Mr Curtin did not dispute that during this incident he did set foot on the First Claimant's land. As such, he has admitted an incident of trespass on the First Claimant's land.

25 July 2021

177. The Claimants allege that Mr Curtin caused a public nuisance on the highway by parking a Vauxhall Corsa on the Access Road, such that the Access Road was impassable for vehicles, including those driven by the First Claimant's staff. The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin and to have interfered with the First Claimant's common law right of access to the highway from the Wyton Site.

178. On this occasion, as is apparent from the CCTV footage, a large number of dog crates can be seen piled up in front of the gates to the Wyton Site causing an obstruction to those entering or leaving. It is right to note that police officers are in attendance, and they did not think that action needed to be taken in respect of the dog crates.

179. Mr Curtin was cross-examined about this incident by reference to the CCTV footage. Mr Curtin accepted that he was driving the Vauxhall Corsa, and that it was parked on the Access Road between 12.01pm and 4.45pm, and then again from 4.57pm to 5.52pm. Mr Curtin denied that his vehicle, and where it was parked, caused an obstruction of the highway. He made the point that, had he obstructed the highway, the police would have intervened. He said that if anyone had asked him to move the vehicle he would have done so.

180. My findings in relation to the pleaded 13 July 2021 incident are:

(1) By parking his car on the Access Road, Mr Curtin did obstruct the highway. However, this was wholly technical. There is no evidence that anyone was *actually* obstructed by the vehicle. The placing of the dog crates on the Access Road was arguably more of an obstruction in this incident, and I am surprised that the police allowed this to take place. Nevertheless, even the placing of the dog crates represented only a temporary obstruction. The Claimants do not hold Mr Curtin responsible for the alleged obstruction created by the placing of the dog crates on the Access Road.

(2) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), there is no evidence that anyone was actually obstructed still less that the obstruction affected the public generally.

(3) The incident did not involve any arguable harassment of the First Claimant's employees.

9 August 2021

181. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles leaving the Wyton Site. A white Nissan Duke, driven by a contractor, was obstructed.

182. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway. The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin.

183. Mr Curtin was not cross-examined about this incident. I make no findings about it.

12 August 2021

184. The Claimants allege that Mr Curtin (and others) stood on, and slow walked along, the Access Road and the main carriageway and obstructed vehicles driven by the First Claimant's staff; a white Vauxhall Astra, driven by Employee V; a black Volkswagen Polo, driven by Employee Q, a white Ford car, driven by Employee P; and a white Mercedes A Class, driven by Employee F.

185. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant's common law right of access to the highway from the Wyton Site.

186. Employee F gave evidence about this incident. On this occasion, Mr Curtin had what was described as a tambourine-style drum. By reference to the CCTV footage, Employee F gave the following description:

> "Each of [the] protestors stood in the Access Road so as to block the convoy of cars in which I was driving the fourth and last car. The protestors then slow walked, and occasionally stopped, along the Access Road and the highway so that the convoy could only pass along the highway at a very slow speed… Once we had

> travelled about 30 meters along the highway, we were able to drive past the protestors and travel home). Police officers formed a line either side of the convoy of cars to stop protestors from approaching staff cars from the side and rear, and walked the cars out onto the highway. It felt surreal having a police escort; it was like being in a film. The police escort was out of the ordinary, and not something that would usually happen during the protests, so it made me feel uncomfortable as this clearly was not an ordinary event, but on the other hand, their presence also enhanced the sense that this was not a safe situation to be in. The feeling of danger from the protestors makes me feel anxious and stressed. I just wanted to get out of the situation and go home so I did not have to deal with it anymore."

187. Mr Curtin put to Employee F that the protestors had mimicked a slow-paced funeral march when the employees left the Wyton Site. Employee F agreed with the description. Mr Curtin asked Employee F whether his/her emotion on this occasion was between terror and frustration. Employee F answered: "*Again, terror is still there in the back of your minds. We were unaware of how they could behave at any point… frustration played a big part it in because we just wanted to go home*". Employee F said that the number of police present on this occasion did not reduce the level of terror; s/he said it made it more surreal. Mr Curtin asked whether, at the point Employee F was giving evidence, some 20-22 months further on, the level of terror had diminished. Employee F replied: "*Since the injunction has been in place, I would say that my level of terror has dropped, yes, but there is still the thought something could happen…*"

188. Employee F, in his/her evidence, spoke more generally of the impact of the injunction, granted on 10 November 2021, which imposed an exclusion zone around the entrance to the Wyton Site:

> "The change in the protestors' behaviour since the grant of the November 2021 Injunction has been, at times, limited. Although the introduction of an exclusion zone did reduce the quantity of protestors on the Access Road and around the Gate, it also meant that the obstructing of cars just happens outside of the exclusion zone. Often protestors wait on the boundary of the exclusion zone, or slightly further along the main carriageway of the Highway and intercept cars there instead. It feels like protestors believe that, once staff vehicles are out of the exclusion zone, they can do whatever they like. The exclusion zone is a safety zone and once me and the other MBR staff are out of it, we are fending for ourselves…"

189. Ms Bolton cross-examined Mr Curtin about this incident. Ms Bolton suggested to Mr Curtin that his actions, with the other protestors, had delayed the employees leaving the Wyton Site getting out onto the carriageway. Although Mr Curtin stated that this was part of the 'ritual' he did not disagree with Ms Bolton. He said: "*I make no apologies for the funeral march… and I think it's a good thing we did the funeral march. The protest happened and the workers got home safely*". Again, it became apparent in his cross-examination that Mr Curtin believed that the limited obstruction of the employees leaving the Wyton Site was an accommodation that enabled them, ultimately, to leave the site albeit with some minor delay. In answer to a question from Ms Bolton that he and the other protestors had interfered with the First Claimant's employees' free passage along the highway, Mr Curtin answered:

> "There is a protest by its nature that interferes with the surrounding area by being there, but it's – the idea of the funeral march was exactly to have as free passage

> as possible, without unruly demonstrators kicking cars or doing something off their own bat. There's a joint enterprise here between the police [and] the protestors… even though it's slower, it's better than driving through a mob".

190. Ms Bolton put to Mr Curtin that the staff could not simply pass by the protest, he (and others) had held them up and they had to endure the protest. Mr Curtin answered: "*For a temporary and relatively tiny amount of time*".

191. My findings in relation to the pleaded 12 August 2021 incident are:

(1) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience.

(2) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a limited number of private individuals rather than the public generally. The only people affected by the obstruction were the employees of the First Claimant who were delayed leaving the Wyton Site for a few minutes.

15 August 2021

192. The events that took place on 15 August 2021, although significant in relation to the claim against "Persons Unknown", were not relied upon by the Claimants to advance any specific claim against Mr Curtin. Mr Curtin had relied upon this incident as demonstrating his role in attempting to calm the demonstrators and to ensure that they kept their protest within lawful bounds. By the 15 August 2021, Mr Curtin accepted, it was generally known amongst the protestors that the Claimants were intending to apply for an interim injunction.

193. As usual, there is video evidence available to demonstrate what happened on 15 August 2021. It was an event of a different order and scale from the 'rituals', as Mr Curtin called them. A large demonstration had been arranged for 15 August 2021, organised by Free the MBR Beagles (see Interim Injunction Judgment [22(10)]. It lasted most of the day, finishing at between 4-5pm. At its height, it was estimated to have been attended by around 250 demonstrators. There was a suggestion that up to 5 people had been arrested by the police (see Interim Injunction Judgment [17(17)]).

194. The number of people in attendance at this protest meant that, at times, the carriageway outside the Wyton Site was blocked and became impassable; indeed, for some period it may have been closed by the police. The morning arrival of the staff in the usual convoy of vehicles was being managed by the police, who had held back the vehicles some distance from the Wyton Site. Mr Curtin's evidence was that his intention was to facilitate the arrival of the staff at the Wyton Site. In one section of the recordings, Mr Curtin can be heard asking other protestors to show discipline. Ms Bolton put it to him that he was doing so because of the impending injunction application. Mr Curtin disagreed that was the sole reason, but accepted that it was a factor:

> "What I am dealing with there is we've got loads of volatile people around. It's going to be a big demo day, let's get the workers in… [The injunction] is a factor. We've got a lot of people coming today, a lot of people who have maybe never been there. I wanted to show … each other that we're able to not act as everyone for themselves, an unruly mob. There's many factors why I said that and the injunction is only one of those factors…"

195. The vehicles of the staff were guided into the Wyton Site by the police. Mr Curtin can be seen to be using a loud hailer trying to clear the way.

196. Ms Bolton then played the footage of the vehicles leaving at the end of the day. In contrast to the arrival of the vehicles, the protestors engaged in a substantial obstruction, and it took significant police intervention and a long time to enable the vehicles to leave. Vehicles were struck and apparently damaged by protestors. Mr Curtin said that, by this stage of the day, he had withdrawn and gone back to his tent. He had become disillusioned with some of the protest activities, and he had also been unable to communicate with the police. He said that he had attempted to speak to two of the usual police liaison officers, but that they had told him that it was out of their hands, and was being handled by a senior officer. Mr Curtin said he was not supportive of what some protestors had done that afternoon.

197. It was not apparent to me, given the absence of any allegation made against Mr Curtin in the Claimants' case against him, the purpose of the cross-examination of Mr Curtin. I asked Ms Bolton whether she challenged Mr Curtin's evidence that he was not present in the afternoon when the protestors effectively blockaded the Wyton Site for perhaps up to 2 hours and then used physical violence towards the vehicles when they did exit. Ms Bolton said that she was suggesting that Mr Curtin had failed to take a role in facilitating the staff leaving the Wyton Site in a similar way that he had done for their arrival earlier in the day. I do not find that criticism has any force. Mr Curtin is not responsible for the actions of other protestors. It is unreal to suggest that, on this day, Mr Curtin could have prevented what the police were unable to prevent. He did not join with or encourage the violent actions of a very small minority of the protestors. I accept Mr Curtin's evidence that he did not support them and that he thought they were counterproductive. As the Claimants do not allege any wrongdoing on the part of Mr Curtin, there is nothing more that I need to add.

198. The relevance of the events on 15 August 2021 is to the claim made in relation to "Persons Unknown" (see [325] below). This was a rare instance where the evidence does show that the scale and duration of the obstruction of the carriageway outside the Wyton Site may arguably have amounted to a public nuisance.

4 September 2021

199. The Claimants allege that Mr Curtin trespassed on the Driveway and approached the open Gate where he is alleged to have shouted abuse at the First Claimant's security staff.

200. In cross-examination, Mr Curtin accepted that he set foot again on the First Claimant's land. He disputed that he knew he was trespassing at the time, but as trespass does not require any particular state of mind, no purpose is served by resolving this further issue.

201. My finding in relation to the pleaded 4 September 2021 incident is that Mr Curtin trespassed, for a few moments, on the First Claimant's land.

6 September 2021

202. The Claimants allege the Mr Curtin (and others) repeatedly trespassed on the Access Land and obstructed a white van attempting to enter the Wyton Site.

203. Further, it is alleged that Mr Curtin (and others) caused a public nuisance by obstructing the white van's passage along the carriageway. The obstruction of the vehicle is also alleged to be part of a course of conduct involving harassment of the driver by Mr Curtin.

204. Although this incident was witnessed by Mr Manning, the principal evidence relied upon by the Claimants is the video footage, captured by CCTV.

205. Mr Manning called the police to ask for assistance at 13.38. Mr Manning told the driver of the van that the police had been called. There is no evidence from the driver of the vehicle. There is no suggestion that he was subject to any abuse.

206. The video evidence shows the arrival of the white van at the gates of the Wyton Site. Mr Curtin quickly arrives on the scene. At some point, prior to the grant of the Interim Injunction, the protestors had taken to placing banners (with protest messages) around the entrance to the Wyton Site. On some occasions, and visible in the forage for this incident, a banner was placed across the front of the gates, which would have needed to be removed before any vehicle could gain access to the Wyton Site.

207. Ms Bolton cross-examined Mr Curtin about the incident. Mr Curtin stated that the protestors were always concerned when white vans turned up, as the vehicles used to transport the dogs were often white vans. Mr Curtin said that he would usually want to inquire with the van driver who s/he was and what s/he was doing. He accepted that protestors were standing in front of the van. Mr Curtin said that he would often offer a leaflet to the drivers of vehicles who were not employees of the First Claimant to attempt to spread the message about the protest. Mr Curtin accepted that the length of time that a vehicle might be held up at the gate might depend on the attitude of the driver. He also accepted that, on this occasion, the vehicle had been obstructed from entering the Wyton Site. On the evidence, that was for about 6 minutes. Mr Curtin was, however, frank that he could not prevent vehicles accessing the site. He thought that, if he did that, he would get arrested. He wanted to avoid arrest because that would put him at risk of being subject to bail conditions that might include a prohibition on his attending the Wyton Site, which would have curtailed his ability to protest. The best he said he could achieve was to delay the arrival, to attempt to find out the purpose of the person's visit and to hope to convey information about the protest, either by conversation or by handing over a leaflet. To Mr Curtin's mind, there was no question that the vehicle would end up going into the Wyton Site, but he would attempt to engage the driver in conversation.

208. In answer to some questions from me, Mr Curtin confirmed that the banners were a regular fixture at this stage of the protest, although on occasions the police might ask them to remove some banners if they were obstructing the view down the highway. He said that the banner, "*Gates of Hell*", which was placed across the main gate was

taken down each time a vehicle needed to gain access to/from the Wyton Site. I asked Mr Curtin whether the First Claimant had ever asked the protestors to remove the banner that was placed across the main gate. He answered that it had not. Ms Bolton challenged this. It is not a point I need to resolve.

209. My findings in relation to the pleaded 6 September 2021 incident are:

(1) Mr Curtin trespassed, for a short period, on the First Claimant's land.

(2) Mr Curtin (with others) obstructed the white van seeking to enter the Wyton Site. The obstruction was short-lived; lasting about 6 minutes. At worst, it could have caused only minor inconvenience to the driver of the vehicle, but there is no evidence that he was inconvenienced at all.

(3) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only one individual rather than the public generally.

(4) The incident is not even arguably capable of amounting to harassment, applying the legal test I have set out above.

8 September 2021

210. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles seeking to enter the Wyton Site. Mr Curtin is alleged to have obstructed a white Volvo XC60, driven by the First Claimant's Production Manager ("the Production Manager"); a white Vauxhall Astra, driven by Employee V; a silver Kia Sorento, driven by Employee B; a white Skoda Fabia, driven by Employee AA; a grey Vauxhall Corsa, driven by Employee J; a white Ford motor car, driven by Employee P; a blue Ford Kuga; and a grey Honda Civic, driven by Employee I ("the First Incident").

211. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles in the First Incident, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway.

212. Later that same morning ("the Second Incident"), the Claimants allege that Mr Curtin (and others) caused a further public nuisance by obstructing a grey pickup truck towing a trailer, being driven by an employee of the First Claimant. The vehicle was delivering dog crates to the Wyton Site, and it is alleged that Mr Curtin obstructed the vehicle by approaching the front driver's side of the vehicle, causing it to stop. It is alleged that a further public nuisance was caused when Mr Curtin (and others) obstructed the same vehicle as it attempted to exit the Wyton Site a little time later. The obstruction of the vehicles, on both occasions, is also alleged to be part of a course of conduct involving harassment of the drivers of the relevant vehicles by Mr Curtin.

213. In the final incident that day, in the afternoon, the Claimants allege that Mr Curtin (and others) caused a further public nuisance by obstructing the highway for several vehicles driven by the Production Manager, Employee AA and Employee A which were

attempting to leave the Wyton Site ("the Third Incident"). The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin and an interference with the First Claimant's common law right of access to the highway.

214. The Production Manager and Employees B, J and V gave evidence at trial. The Claimants relied upon the evidence of Employees I and P in relation to this incident as hearsay.

215. In respect of the First Incident:

(1) the Production Manager's witness statement does not contain any evidence relating to an alleged obstruction of his/her vehicle entering the Wyton Site on 8 September 2021;

(2) Employee AA's witness statement does allege that Mr Curtin was part of the group of protestors involved in the First Incident. The evidence is limited to the allegation that Mr Curtin held a placard inches from his/her vehicle and shouted abuse, the content of which is not specified. Employee AA's evidence does not state, in terms, that Mr Curtin obstructed his/her vehicle; and

(3) Employees B, I, J, P and V's witness statements also allege that Mr Curtin was part of the group of protestors involved in the First Incident. Employee B was driving the third vehicle in the convoy. S/he states that Mr Curtin stood on the Access Road with a placard "*to the front and side of my car*". Employee I states that s/he was obstructed by Mr Curtin and another protestor both of whom stood "*to the front and side of my vehicle as I drove along the Access Road*" towards the gate. Employee I felt intimidated by the protestors' actions. Employee P was the fifth car in the convoy. S/he said that Mr Curtin had held a placard in front of his/her window as s/he drove by. Employee V was driving the second vehicle in the convoy and said that s/he felt frightened during the incident.

216. Mr Curtin was cross-examined about most of these incidents. In respect of the First Incident, Mr Curtin accepted that he had trespassed on the First Claimant's land, but stated that he was not aware that he was trespassing at the time. Ms Bolton did not ask Mr Curtin any questions in cross-examination about the alleged obstruction of vehicles entering the Wyton Site during the First Incident.

217. In relation to the Second Incident, the CCTV evidence shows that the van is forced to stop on the highway. Mr Curtin stood next to the vehicle and other protestors were standing either in the main carriageway or in the Access Road. Mr Curtin can be seen talking to the driver of the vehicle. The driver has not given evidence. Mr Curtin thought that he would simply have been engaging the driver in the usual conversation about the purpose of his/her visit and whether s/he was aware of the business of the First Claimant.

218. About 10 minutes later, the same van then attempts to leave the Wyton Site. Mr Curtin accepted that he and a few other protestors had obstructed the exit of the vehicle from the Wyton Site. Mr Curtin made the point that he had disconnected the banner to allow the vehicle to leave. He said that he had personally stood in the front of the vehicle only because he was concerned about a risk to the dog that was present. Mr Curtin accepted

that he had again tried to engage the driver in conversation as s/he left when another protestor stood in front of the vehicle.

219. In relation to the Third Incident, Mr Curtin accepted that he had been part of the protestor group who had obstructed vehicles leaving the Wyton Site as part of the daily 'ritual'. The evidence shows that the effect of the obstruction was short-lived and – after a few minutes of delay – the vehicles made their way off along the highway. There is no evidence that anything harassing was shouted at the employees on this occasion.

220. My findings in relation to the three pleaded incidents on 8 September 2021 incident are:

(1) During the First Incident, Mr Curtin trespassed on the First Claimant's land and (with others) obstructed the vehicles of several employees who were attempting to enter the Wyton Site. The obstruction was short-lived; being measured only in minutes. At worst, it could have caused only minor inconvenience to each driver.

(2) The two occasions of obstruction of the grey truck entering and later leaving the Wyton Site that make up the Second Incident were also short-lived, measured only in minutes. Again, if it caused any inconvenience to the driver (as to which there is no evidence) it could only have been trivial. The obstruction on these occasions could not remotely be described as harassing conduct (whether on its own or in combination with any other of the acts alleged against Mr Curtin).

(3) During the Third Incident, Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience. I do not accept that the actions of Mr Curtin in obstructing the vehicles were inherently harassing in nature (or had any elements that would mark them out as harassing)

(4) To the extent that there was any obstruction of the highway in any of these incidents, on no occasion did the obstruction amount to a public nuisance. The obstruction on each occasion was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only the specific individuals involved rather than the public generally.

13 September 2021

221. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles attempting to leave the Wyton Site. Employee C was driving a black Kia Sportage and Employee B was driving a silver Kia vehicle.

222. About an hour later, it is alleged that Mr Curtin (and others) trespassed on the same land and obstructed further vehicles, attempting to leave the Wyton Site: a white Volvo XC60 driven by the Production Manager, a white Skoda car driven by Employee AA and a blue Volkswagen driven by Employee A.

223. Both incidents are alleged to be an interference with the First Claimant's common law right of access to the highway and part of a course of conduct involving harassment of the relevant employees.

224. In addition to the CCTV footage, the Production Manager and Employees A and B gave evidence at the trial. The Claimants relied upon the evidence of Employee C as hearsay.

225. The Production Manager was the driver of one of the vehicles whose exit from the Wyton Site was obstructed by the protestors on this day. The Production Manager identified Mr Curtin as one of the protestors and said that s/he felt that Mr Curtin's pointing at him/her was threatening: "*I was scared that he might know who I was, and he was attacking me personally (even though I was wearing a balaclava and sunglasses…)*". The Production Manager said that Mr Curtin's actions made him/her feel anxious about his/her safety.

226. Employee A stated that Mr Curtin stood to the front and side of his/her vehicle, pointed at Employee A and shouted through a loudhailer "*Shame on you! Where do you tell people you work?*". Mr Curtin's actions of pointing at Employee A made him/her feel worried for his/her safety. The sound of the loudhailer so close to the car's window was alarming.

227. Employee B stated that, as s/he was attempting to leave the Wyton Site, protestors blocked the road. Employee B recognised Mr Curtin, who had a loudhailer. Mr Curtin and another protestor stood in front of the car in front of Employee B's vehicle, causing both vehicles to stop. Employee B said that s/he felt "*very scared and shaky*" as s/he was worried about what the protestors were going to do to the vehicles. S/he found it stressful and intimidating, particularly because there were no police or security personnel present. Employee B recalled hearing Mr Curtin shout, using the loudhailer: "*here comes the shit shovellers… hold them back*". He was also yelling: "*shame on you!*".

228. Employee C was attempting to leave the Wyton Site on the same occasion. S/he was unable to do so for a time because his/her exit was blocked by the protestors, one of whom was Mr Curtin. Employee C considered that Mr Curtin was organising the protestors because, as the vehicles were waiting to leave the Wyton Site, Mr Curtin used his loudhailer to address the other protestors and he said: "*For those who haven't been here before, the workers are coming out now. The shit shovellers. And … because of an injunction and the police, the idea is to stand here, hold them back, keep moving and they'll get to the road, and they'll go off.*" Mr Curtin then removed the banners that were placed over the main gate and a line of protestors then stood in the path of the vehicles. Mr Curtin used his loudhailer to address the protestors: "*Move back!*" and then addressing the employees in the vehicles: "*Puppy killers… Shame on you. You're scandalous! Have you noticed, have you noticed what everyone thinks about you now the secret's out… Where do you tell people you work, puppy killer!*"

229. Employee C said that s/he felt intimidated during the incident: "*I was hostage to the protestors in front of my car*".

230. After the incident, Employee C made a report to the police complaining that Mr Curtin had struck her car. Mr Curtin was apparently prosecuted, and Employee C attended to

give evidence. Little further information is given about the charge, but Employee C confirmed in his/her witness statement that Mr Curtin was acquitted.

231. Ms Bolton cross-examined Mr Curtin about this incident. She suggested to him that, in his address to the other protestors, he had made plain that the purpose was to obstruct the workers leaving the Wyton Site. Mr Curtin accepted that, as part of the 'ritual' they were going to be held up "*to some degree*" but there was not going to be a blockade: "*We're going to have a demonstration. They're going to look at our banners, and they're going to go home*". He wanted the other protestors to observe the 'ritual', rather than lashing out at the employees' vehicles. Mr Curtin accepted that the video evidence showed him standing in front of a vehicle. Mr Curtin accepted that he hoped that the protest activities against the First Claimant would lead to it being closed down. He denied that his protest was targeting workers to get them to leave their jobs. He denied that the protest methods adopted by him and others at Camp Beagle had sought to target individual employees.

232. In cross-examination, Ms Bolton did not pursue the allegation that Mr Curtin was guilty of trespass in this incident.

233. My findings in relation to the incident on 13 September 2021 are:

(1) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience.

(2) The obstruction of the highway in this incident did not amount to a public nuisance. The obstruction on each occasion was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only the specific individuals involved rather than the public generally.

(3) I state my conclusions below ([298]-[308]) on whether, taken with other incidents, the events on 13 September 2021 amount to a course of conduct by Mr Curtin that involves harassment of the employees of the First Defendant. However, looked at in isolation, I am not persuaded that Mr Curtin's behaviour in this incident crossed the line from unattractive, even unreasonable, to that which is oppressive and unacceptable.

22 September 2021

234. The Claimants allege that Mr Curtin (and others) caused a public nuisance by obstructing the highway for an Anglian Water vehicle that was attempting to leave the Wyton Site. Specifically, Mr Curtin is alleged to have stood in front of the vehicle and instructed other protestors to do similarly. The obstruction of this vehicle is also alleged to be part of a course of conduct involving harassment of the driver by Mr Curtin and an interference with the First Claimant's common law right of access to the highway.

235. Apart from the narrative in Ms Pressick's witness statement (which is simply a commentary on the CCTV footage) the evidence relating to this incident comes solely

from the CCTV footage. There is no evidence from the driver of the Anglian Water van.

236. Mr Curtin was cross-examined about this incident. Mr Curtin agreed that he had stood in front of the vehicle as it attempted to leave the Wyton Site. He explained that he had wanted to give the driver of the vehicle a leaflet about the protest. The video footage shows that once the vehicle had stopped, Mr Curtin approached the driver's window. As he did so, another protestor stood in front of the vehicle to prevent it from driving off. The driver refused to lower his window. Mr Curtin's recollection was that the driver was not interested in taking a leaflet. The incident then appears to escalate, with more protestors being drawn towards the vehicle. It appears from the footage that another protestor then places what may well be a leaflet under the windscreen wiper of the vehicle. Mr Curtin accepted that he could not force the driver to accept a leaflet, but he also recognised that the incident "*got out of hand*". It is apparent that the driver wants to leave, and the vehicle moves incrementally forward. Mr Curtin said that the driver was revving his engine, being obnoxious and "*winding people up*". This, Mr Curtin said, inflamed the situation. Mr Curtin can be heard saying "*take a leaflet, you buffoon*" at some point. Mr Curtin stood in front of the vehicle and used a phone to photograph or record the driver. He said, in evidence, "*I'm wound up by his behaviour. So, I'm allowed to be a human being too. I can get wound up with someone's obnoxious behaviour, what I consider obnoxious… I had no intention whatsoever of holding an Anglian Water man up for any longer than a second to take the leaflet.*"

237. The incident did not end there. Confronted by the protestors, who refused to move, the driver of the Anglian Water van then reversed back into the Wyton Site. Mr Curtin said that this was not his intention: "*My little plan to give the guy a leaflet ended up as a bit of a ten-minute debacle*". Mr Curtin said that the incident had escalated because another protestor had claimed that the driver had attempted to run her over, and word had spread amongst the protestors: "*Things like this can really quickly escalate*".

238. My findings in relation to the incident on 13 September 2021 are:

    (1) Mr Curtin (with others) obstructed the Anglian Water vehicle leaving the Wyton Site from gaining access to the highway. This was a more significant obstruction than had become typical in the 'ritual', and it forced the driver of the vehicle to retreat. It is perfectly apparent from the footage that the incident escalates. The protestors – including Mr Curtin – bear some responsibility for this escalation. Mr Curtin appeared to accept his responsibility this part when he gave evidence; he clearly regretted that things had got out of hand. Nevertheless, the driver of the Anglian Water vehicle also plays a part in the escalation, principally in the manner he edged his vehicle forward when there were protestors standing in front of the vehicle. That act significantly contributed to the escalation, with the protestors feeling aggrieved at what they perceived to be an aggressive act. Standing back, and judging the matter objectively, this incident is fairly trivial. In total, the driver of the Anglian Water vehicle was delayed for 10-15 minutes leaving the Wyton Site. There was some shouting. There is no evidence of any damage having been caused to the vehicle, and the Claimants have called no evidence from the driver as to whether he was caused distress or alarm in the incident. No-one apparently considered that the incident should be reported to the police.

(2) Such obstruction of the highway as there was in this incident did not amount to a public nuisance. Although the obstruction of the vehicle on this occasion was longer than had typically been the case in the 'rituals' it was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a single driver rather than the public generally.

(3) Although this incident has been pleaded against Mr Curtin as part of a course of conduct involving harassment, in my judgment it is incapable of supporting the harassment claim. There is no evidence from the driver of the vehicle that Mr Curtin's conduct caused him distress or alarm. I am not persuaded that Mr Curtin's behaviour in this incident crossed the line from unattractive, even unreasonable, to that which is oppressive and unacceptable. At worst, Mr Curtin's role in the episode can be described as regrettable, as I think he accepted when he gave evidence.

10 April 2022 and 7 May 2022

239. I shall take these two incidents together, because they amount, essentially, to a single complaint. The Claimants allege that, on 10 April 2022, Mr Curtin placed a CCTV camera (or similar device) on a mast erected outside the Wyton Site and, on 7 May 2022, Mr Curtin (and another unidentified male) placed a CCTV camera (or similar device) on a container within Camp Beagle. It is alleged that these cameras were positioned and used to monitor the activities of the First Claimant's staff. Mr Curtin's activities are alleged to be part of a course of conduct involving harassment of the First Claimant's staff.

240. The Claimants' evidence as to the positioning of the cameras in these incidents is CCTV footage, and Mr Curtin does not dispute that he was one of those who was involved in the siting of the relevant camera in each incident.

241. None of the Claimants' witnesses gave evidence regarding the siting of and use of the cameras in the two incidents complained of by the Claimant. There is therefore no evidence that any of them was caused distress or alarm at what Mr Curtin was alleged to have done. Instead, the Claimants relied upon the evidence of several witnesses as to their fears about being filmed/photographed. In her closing submissions, Ms Bolton identified the following:

(1) Mr Markou said:

> "Around this time (summer 2021) the protestors were very active on social media and would upload videos from their protests at the Wyton Site, as well as 'live stream' from outside the Wyton Site on Facebook. As I explain below, it was very invasive and caused me distress that images of my (albeit covered) face and vehicle were being uploaded to public social media sites where I could then potentially be identified and targeted. I knew (from reading articles online and speaking to other colleagues) that some of the protestors ([one] in particular [not Mr Curtin]) had criminal records in relation to activities that they had undertaken in the course of earlier protests, and this made me fear for my own safety even more as I didn't know what they were capable of. I have taken every single step I can to protect my identity, and I fear for my own safety if I am recognised by the protestors.

> Since the protests began, I have always been really worried about being identified by the protestors and then being targeted outside of work at my own home. Sadly, targeting at home has happened to a few of my colleagues who have been identified by the protestors, including Employee L (who had their house vandalised), Employee Q (who had their car vandalised outside of their parents' house), Employee K (who also had their car vandalised) and Dave Manning (who has been approached and abused in public, and had his house vandalised as well). I fear that the same will happen to me if I am identified by the protestors.
>
> As I set out below, I was also followed by protestors on 1 August 2021, a protestor took a photo of me through my car window whilst I was stationary at traffic lights. This image was then uploaded to the Camp Beagle Facebook group but thankfully the image quality was not very good, and the image could not reasonably be used to identify me. Nonetheless, this was a scary experience and has caused me a significant amount of anxiety about being recognised ever since."

(2) Ms Read said:

> "When driving to and from the Wyton Site, I would wear particular clothes and accessories to disguise my identity. I would wear dark glasses, a face mask, and have my hood up. I wore these clothes and accessories so that the protestors could not identify me. The Production Manager and I also advised staff to cover up as much as possible, to disguise their identity.
>
> I was anxious to disguise my identity because I did not want my face posted on social media. On 22 April 2021, the Production Manager and I identified that the protestors had published on social media footage of staff the Wyton Site whilst they working, which appeared to be taken from a camera hidden in the fence line at the Wyton Site. This behaviour continued, with the protestors then trying to film or photograph us as we entered and exited the Wyton Site every day, and posting images and videos on social media for anyone to identify us. The most prudent thing is to cover yourself from head to toe.
>
> Even though I have experienced many protests at the Wyton Site, I have never worn a disguise before, as I did not feel as at risk with previous protestors that protested at the Wyton Site. The historic protestors would usually notify police in advance of a big protest, so we could plan accordingly. Now the protests are 24/7 and can never be avoided. In the historic protests, the protestors were not interested in the staff as individuals, and they would not harass or target individual people like the current protestors do. Social media was not existent or not as prevalent as it currently is, so the protestors were not able to as easily share the identities of employees. Now the protestors seem to be protesting not only against MBR as a company, but also against the specific individuals that work for the company."

(3) Employee A said:

> "Initially, when arriving in convoy, we would drive in our own cars. However, on a date I cannot remember, we started to car share to reduce the

> number of cars entering and exiting the Wyton Site. Car sharing also meant that we could provide physical and emotional support to each other, and I felt more comfortable and slightly safer by having more people in the car with me, rather than being isolated on my own and in my car…
>
> Car sharing was helpful as when I was in my own car, and the protestors surrounded me (which happened often), it was incredibly scary, intimidating and harassing. I felt nervous and bullied. The intimidation and feeling of being personally targeted was heightened by the protestors holding the car captive by surrounding it, making a lot of noise, by playing drums and shouting threateningly, and filming me. I was scared that the protestors might smash the windows of the car, slash the tyres or damage the car in some way. It was helpful to have the emotional support of those with me in the car."

242. Whilst this evidence gives an insight into the fears of some of the employees, it provides little (if any) support for the particular claim advanced against Mr Curtin concerning his siting of the two cameras. First, the evidence of these three witnesses, particularly that of Ms Read, fails to distinguish between Mr Curtin's actions and the methods practised by different protestors. The evidence shows that *some* protestors have adopted a strategy of filming or photographing the employees. Others have not. Of those that have, some of them – a small minority – appear to have posted a small number of images on social media. Not all protestors adopt these methods. Only some protestors – again a small minority – have directed their protests at individual workers. Importantly, the Claimants do not suggest that Mr Curtin has adopted any of these tactics. Mr Curtin is not to be judged by the conduct of other protestors. If there is a complaint about such conduct, it is better dealt with on a direct basis by seeking to identify and take steps against the individuals concerned. I appreciate that many of the workers *feel* that they are being personally targeted by the protestors, but save for a few isolated incidents – which in all probability amount to criminal offences – the vast majority of protestors are not targeting any individual worker. Perhaps of most importance for the case against Mr Curtin, the Claimants do not allege that he has been targeting individual workers.

243. Mr Curtin was cross-examined about the allegations that his act of siting these two cameras was part of a campaign of harassment against the employees. In relation to the camera positioned outside the main gate of the Wyton Site, Mr Curtin said that it had been the idea of another protestor to place a camera. He had hoped that it might enable the footage to be "*beamed across the world*". The device was a "Ring" camera and this apparently meant that anyone with the relevant password could log in and view the livestream from the camera. Mr Curtin said that there were several cameras. One faced the gate and others pointed in the direction of the carriageway. The "Ring" camera provided a fixed view. Other cameras could be controlled to point in different directions. Ms Bolton suggested to Mr Curtin that "*if the target of the protest wasn't the staff, there would be no need to have a camera facing the gate, would there?*" Mr Curtin disagreed, and he rejected the suggestion that the camera was installed to intimidate the workers. Mr Curtin said that the cameras had been removed after there had been some falling out in the camp.

244. In relation to the later incident of siting a camera on a container within Camp Beagle, Mr Curtin again rejected Ms Bolton's suggestion that it had been placed there to "*capture … the staff arriving in the morning and leaving*". Mr Curtin said that camera

was not capable of doing that and that he had tried to use it as a way of alerting the camp to the movement of vehicles into and out of the Wyton Site, but it had not worked. The protestors, he said, had been concerned that there had been some night-time movement of vans which the "Ring" camera had not detected.

245. Ms Bolton suggested to Mr Curtin that the cameras were used to identify vehicle number plates and then put them on social media, as a means of targeting the employees. The Claimants had no evidential basis to make that assertion. Ms Bolton clarified that she was not suggesting that Mr Curtin had done this but that the footage could be used for this purpose. There followed this exchange:

> Q: It's reasonable, isn't it, that when [the employees] see cameras pointed at the gates, as they come and go, that that's going to cause them distress that yet again they are being recorded and that that could be for the purposes of identifying them, stopping them in the road, working out where they live. That's foreseeable, isn't it, that that's going to cause them distress?
>
> A: They live in Britain. They live in a place where they know damn well the controversial nature… they know how sensitive it is. They can now expect people to be watching their movements because they are so controversial. So a person of reasonable firmness – unless you want the protest to absolutely like I said, vaporise, once the secret is out – they were happy enough when nobody knew it was there and the local people didn't know it was there. Now it's out, a reasonable person kind of has to accept some sort of… well people watching them. They know it."
>
> …
>
> Q: It's right, isn't it, Mr Curtin, that whilst the employees have accepted there will be a degree of protest, it's quite a different thing, isn't it, for them to have to experience the distress of knowing that, if they don't put on a disguise to drive in and out of work everyday, that they could be picked up on cameras and that information may be shared and they may be identified? That's going to cause them distress, isn't it.
>
> A: Not all of the workers cover their faces… If there are fears – there have been some incidents – where people have been outed publicly. If these cameras went along with parallel, with say like the rogues' gallery, then yes there's like 'The cameras are going to mean we're going to be put on some site and they are going to generate hate for us'. That hasn't happened, that hasn't materialised, apart from some – there have been no incidents with individuals. The campaign has not gone down that road.

246. My conclusions in relation to these allegations are as follows:

(1) These two incidents cannot, and do not, support the Claimants' case that Mr Curtin is guilty of a course of conduct involving harassment.

(2) Mr Curtin accepts that he was involved in the siting of the two cameras. The Claimants have adduced no evidence as to the footage that was actually captured by either of these devices. They have not challenged Mr Curtin's evidence that, in relation to the camera sited in Camp Beagle (not opposite the

gate), that it did not work as intended (i.e. as an early warning device to alert the camp to vehicle movements).

(3) No witness has said that s/he was caused distress or alarm or otherwise felt harassed by the siting of the cameras. It may be that none of them noticed one or other of the cameras, or that they were more concerned by the hand-held recording of them by individual protestors, but this would be to speculate about evidence I do not have. The short – and simple – point is that the Claimants have adduced no evidence that the siting of these cameras caused any distress/alarm/upset to any employee. In the absence of that evidence, the cross-examination of Mr Curtin (see [245] above) was conducted on a hypothetical basis.

26 April 2022 and 12 May 2022: the Third Contempt Application

247. The Claimants allege that, on 26 April 2022, Mr Curtin (and others) caused a public nuisance by obstructing the highway for an Impex delivery vehicle after it had left the Wyton Site. Specifically, Mr Curtin is alleged to have stood in front of the vehicle.

248. The Claimants allege that, on 12 May 2022, Mr Curtin (and others) caused a public nuisance by obstructing the highway for a police van that sought to move off from a stationary position on the carriageway outside the Wyton Site. Specifically, Mr Curtin is alleged to have stood in front of the vehicle.

249. As these allegations were the subject of contempt proceedings against Mr Curtin (the Third Contempt Application), the evidence (and submissions) were dealt with at a separate hearing, following the trial, on 23 June 2023. Mr Curtin had been granted legal aid for the Third Contempt Application, and he was represented by Mr Taylor.

250. At an earlier directions hearing in November 2022, the Claimants indicated that they would not be pursuing Ground 3 (kicking the box) and Ground 4 (assisting someone in a dinosaur costume). At the commencement of the hearing on 23 June 2023, Ms Bolton indicated that the Claimants had agreed also not to proceed (as an allegation of contempt) with Grounds 1 and 5 (entry into the Exclusion Zone) and Ground 6 (obstruction of the police van leaving the Exclusion Zone). That left Ground 2 as the only allegation of breach of the Interim Injunction pursued by the Claimants. On behalf of Mr Curtin, Mr Taylor indicated that Mr Curtin accepted the breach of the Interim Injunction in Ground 2.

251. As noted already, Mr Curtin gave evidence at the hearing on 23 June 2023. He stated that he had been campaigning against vivisection for 40 years. He hoped that, by protesting, he would draw attention to the activities of the First Defendant and he wanted the law to be changed to prohibit testing on animals. Mr Curtin accepted that he was aware of the terms of the Interim Injunction. In light of that, Mr Curtin was asked by Mr Taylor about the events in the small hours of 26 April 2022, which gave rise to Ground 2 of the contempt application. Mr Curtin said this:

> "We had some information that night-time – shipments of dogs at night-time had already happened, a number. They'd sneak the vans in and out. We had an assurance from the police liaison officer that the police were not prepared to cover night-time actions. That was the understanding, and I couldn't believe this

> information we received. I was shocked. So we began to have a night-time shift and, hey presto, the van turned up without any police escort and now my intention –once I'm there, apart from the shock of, 'Oh my God, they're actually doing this', there hadn't been a daytime shipment… for 40 days. I tried to bring it up in court, why are there no more shipments anymore? It wasn't – I don't believe it was because of the protestors. They have the police to facilitate that. There was another reason. So I was in shock, it was at night-time, I feel the police had broken their word... They're sneaking in at night and that's all. There was no intention to ever stop a van. Other people were always having a go at me, 'We've got to stop the vans'; 'The police will stop you stopping the vans, the injunction will stop you stopping the vans'… When I spoke to Caroline Bolton after the last hearing, 'Are we going ahead with this contempt?', I said, 'Where's the obstruction?', and she said 'Approaching'. That word 'approaching', even I'd sat through the entire injunction, it hadn't and it still hasn't –– I don't think it's filtered into anyone's mind actually. What does 'approaching' mean? I didn't have on that night I'm not going to approach a van as in 'Shame on you' because that's breaking the injunction, isn't it, if we're going to use the English language? But not to block any van, not to – no."

252. Mr Curtin confirmed that, as can be seen in the video evidence, he was using his mobile phone to film the incident so that he could post it as evidence to a wider audience. He said saw the injunction as imposing a sort of "*force field*" and he would "*just work around it*". By that he meant that he was content to observe the terms of the injunction because it enabled Camp Beagle to maintain a presence at the site and he just needed to avoid the Exclusion Zone.

253. I am satisfied, based on the circumstances of the events that gave rise to Ground 2 and Mr Curtin's evidence, that Mr Curtin had not deliberately flouted the Interim Injunction. It is clear from the audio from the various recordings that emotions were running high early that morning because the nocturnal movement of the dog vans was an unexpected and unwelcome development, so far as the protestors were concerned. Mr Curtin got partly carried away by those emotions. As a result, he approached, and fleetingly obstructed, the van leaving the Wyton Site. That, as he accepts, was a breach of the injunction. I will deal with the penalty for this breach of the Interim Injunction below (see Section O(3): [400]-[407] below).

254. For the purposes of the civil claim against Mr Curtin, his obstruction of the van leaving the Wyton Site in the early hours of 26 April 2022 and his obstruction of the police van on 12 May 2022 were both temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only the specific individuals involved rather than the public generally. Insofar as there was any obstruction of the highway on these two occasions, neither amounted to a public nuisance. The police were present on both occasions, and they did not take any action against Mr Curtin, or others, involved in alleged obstruction of the highway. Almost certainly, that reflects the fact that any obstruction was very short-lived and required no police intervention.

21 June 2022

255. The Claimants allege that, on 21 June 2022, Mr Curtin flew a drone directly over the Wyton Site, at a height of less than 150m and/or 50m, without the permission of the

First Claimant. The footage obtained was posted to the Camp Beagle Facebook page the same day.

256. They flying of the drone is alleged by the Claimants to be (a) a trespass; and (b) part of a course of conduct involving harassment of the First Claimant's staff.

257. Although some of the Claimants' witnesses give general evidence of drone usage over the Wyton Site, the evidence relating to this specific incident – as it relates to Mr Curtin – is solely video, drawn largely from footage obtained from the drone that was posted on the Camp Beagle Facebook page. The drone is equipped with a camera, that clearly has the ability to zoom in and magnify the image of the terrain below it.

258. Ms Pressick, in her witness statement, gave a narrative commentary on drone usage based on the video evidence available to her. Ms Pressick purports to give evidence as to the height at which the drone was being flown on each occasion. However, much of the evidence she gives is (a) vague and imprecise (e.g. "*at a height I estimate was below 150 and/or 50 meters*" (which appears to embrace a range between 1 to 150m); and (b) expert evidence which she is not qualified to give. The only reliable evidence as to the height at which any drone was being flown, on any occasion, comes from instances where the height of the drone is shown as part of the footage (e.g. the footage posted to Camp Beagle's Facebook page on 16 June 2022 which records the height as being 50 metres). Finally, much of Ms Pressick's witness statement about generic drone usage is irrelevant to the claim in trespass. Her contention, for example, that, in one example, "*the drone is being used to monitor business activity*" is not relevant to the claim in trespass. Either the drone is trespassing on the relevant occasion, or it is not. Absent any suggestion of implied licence (of which there is none), the purpose of a drone's alleged trespass is not relevant.

259. Ms Pressick was questioned about Mr Curtin's use of a drone. She stated that, in around April/May 2022, staff had been forced to transport dogs around the site in a van rather than in crates because of the drone. Mr Curtin disputed that this was a regular practice. Ms Pressick accepted that the workers might still move the dogs in crates, even when the drone was around the site. Ms Pressick said that she had personally seen the drone whilst she had been on site. Asked at what height it was being flown, Ms Pressick said that it was "*above building height*". Ms Pressick stated that her main objection to the drone use was the fact that it was filming. It was that aspect, rather than any annoyance caused by the drone operations, that was the concern. Ms Pressick said that she understood why the protestors wanted to monitor the activities on site which was linked to their protest activities: "*It's what the feel they need to do*".

260. Potentially relevant evidence was provided by several witnesses who spoke of their direct experience of drones flying over the Wyton Site (emphasis added):

(1) Mr Manning stated:

> "In general, I do not have an issue with the use of drones if they are flown in the right manner and they are not being used to invade people's privacy. However, there are a number of occasions when I have experienced the protestors flying their drones in a dangerous manner. For example, sometimes they are very erratically flown downwards, and then from side to side quickly. Sometimes the drones are also flown really low, **to about the**

> **height of a one storey building**, which I would say happens about 20–40% of the time I see a drone flight over the Wyton Site. Very occasionally, they come down **very low, so it feels like I could reach up and grab the drone**. It is very concerning when the low and erratic flights happen, as they drop them suddenly from quite a height. I fear for my safety on these occasions as a drone dropped from such a height could potentially cause physical harm to me or one of my colleagues. I am often concerned for the safety of the staff when the protestors are flying the drones. Typically, the pilot will be sitting in the tent outside the Gate, and will not have a clear view of where the drone is flying. If they were to lose video signal on the drone, they would not be able to see what they were doing and someone could be injured.
>
> I have also noticed the protestors fly the drones directly overhead the Wyton Site, and over areas that cannot be observed from the fence line of the Site; I believe that the drones are flown there so they can see what the staff are doing every step of the way during the day. In this respect, there is no privacy.
>
> Due to the nature of my role, I spend a lot of time working outside on the Wyton Site, making sure the site is secure and checking the fence, so I have seen a lot of the drones being flown around the site. I do not like being outside when the drones are being flown, because I find them dangerous for the reasons outlined above. However, I have no choice to be outside, as part of my job is keeping an eye on what is going on around the Wyton Site. I am responsible for logging whenever there is a drone sighted on site. I log the date and time each time a drone goes up and is brought down by the protestors. I also try to locate who the pilot is by looking around outside the perimeter of the Wyton Site, and into their camp to see who goes to retrieve the drone when it lands. The security staff undertaking the nightshift follow the same process, and write it on a whiteboard for me to review when I return to work the next day. I then update a central spreadsheet, which I started keeping in September 2022… The CCTV sometimes captures the use of the drones, but they are very small and move around so quickly that they can be hard to spot on CCTV footage."

(2) Employee A stated:

> "Previously, when the protestors were flying a drone flying over area of the Wyton Site on which I was working, my colleagues used to stop carrying out tasks outside; we did not want to be identified by the protestors or have footage of us posted online (which the protestors do regularly). Stopping outdoor tasks whilst drones were flying meant that anything we needed to do was delayed. For example, part of my role is taking the electric meter reading in the generator room, which involves walking across the car park. On the occasions when I have heard from my colleagues that the protestors are flying the drone, I will delay undertaking the task until I have heard that the drone has come down.
>
> I often hear the drones flying, even from inside the office, however as I am not often outside I do not know how low they fly. If I ever do go outside, such as when moving between buildings or during my breaks, to prevent the drone camera capturing images of my face and being identified as a result, I put a mask on and make sure that my face is covered.

> I am aware that the drones are flown by the protestors a few times a week as I can either hear them, or a member of staff will notify all other staff members about it on the internal radios. If a drone is up, I will try not to go outside. I feel like we are constantly under surveillance, and it is quite a suffocating environment to be in. It feels like an invasion of privacy.
>
> On four or five occasions (but I cannot recall when) I have been outside at the Wyton Site when a drone was being flown, and have been scared of it and being identified by it that I turned and faced a wall until it was gone.
>
> I will never get used to the sound of a drone for the rest of my life. If I hear one in my personal life, I am worried it is the protestors' and that they have found me. This happened recently when a neighbour flew a drone over my garden. I panicked and went and hid indoors."

(3) Employee B stated:

> "The use of drones by the protestors over the Wyton Site has affected my day-to-day activities when at work. It feels like I am being watched 24/7. I wear a cap, balaclava, mask and sunglasses now when working outside at the Wyton Site, because I do not want the drones to video my face and for the protestors to then know my identity. Even though the protestors might know what my name is (for which, see below), they currently do not know what I look like. I do not want to be harassed by protestors who recognise my face. I go outside to empty the bins and I have to wear a disguise just to protect myself.
>
> When drones are being flown, we have to adopt a different procedure on how we move around the site, and how we move the animals around the site. We minimise staff working outside to avoid exposing them to the drones, and transport the animals in van instead of in an open air trolley. These different procedures add time to our tasks and means we cannot perform our tasks efficiently.
>
> When I hear the drones, it makes me feel uneasy.
>
> **The drones do fly very low on occasion. One has come within 10 feet of my head before.** It does not feel very safe when a remotely controlled drone is flying that close to me."

(4) Employee G stated:

> "In addition to the harassment as we arrive and leave the Wyton Site, the staff also have to deal with invasive filming by overhead drones. These are now a daily occurrence. I understand from my colleagues that most staff can hear the drones as they buzz overhead, but I have hearing difficulties and will only be aware they are there if I see them. I therefore look up before I leave the buildings to check for drones and make sure that I am covered up with my hat, snood and glasses. **The drones often fly really low, sometimes little higher than the single storey buildings on the Wyton Site**.
>
> When there is a drone overhead and I am outside, I don't look up. Whilst I am covered up, I really don't want to be recognised for the reasons I detail

above. In order to ensure that I am not recognised I have to carry my hat, snood and glasses with me everywhere I go in case I have to go outside. I also wear these, just to get to the car park in case I am filmed walking to my vehicle. I have seen footage of myself taken by the drones online. The footage shows me moving the animals around site. I believe I saw the footage posted on the Facebook page of Camp Beagle. I recognised myself from the hat I was wearing in the footage and for the activity that I was involved in."

(5) Employee I stated, by way of hearsay evidence:

"I remember drones first started appearing over the Wyton Site sometime in 2021, around the time the protests started increasing in intensity in June.

Sometimes the drones come as low as the height of our buildings (which are only one storey high), and one time I remember a drone looking through our tea room window. If we are doing something outside, like moving dogs, the drones seem to come lower.

The presence of the drones makes me feel like I am constantly being watched, so that the protestors can find more ammunition against us. I can usually hear the drones when I am working outside. They make me feel on edge, and I second guess everything I am doing. The lower the drone is, the more I second guess myself, and whether anything I am doing could be captured by the drone and the footage used by the protestors in a negative light. When the drone is higher, I do not feel as stressed, as it does not feel like the drone is focusing on me as much.

Because of the drones, when I am working outside I wear a facemask, a jumper, and I tie my hair up in a bun, to avoid being identified. Photos taken of me by the drones moving animals have been shared on social media but, because of my disguise, I cannot be identified from those photographs."

(6) Employee P stated, by way of hearsay evidence:

"The protestors fly drones over the Wyton Site and film staff working or moving on site. When I was first filmed by a drone, I was moving dogs around the Wyton Site. Given the use of the drones, we had started moving the dogs by van to prevent footage of the dogs being captured but, on this occasion, the Production Manager asked me to carry a small number of dogs between buildings. I was carrying a dog across the field when the drone came overhead. I could hear the buzz of the drone. I was wearing a facemask and sunglasses to protect my identity while carrying the dog. After the incident I saw the footage of me on the Camp Beagle Facebook page, being followed by the drone.

Being filmed by the drone was really invasive. It made me feel scared and anxious. The drones have become more common and they are spotted almost every day. I do not normally leave the buildings unless I have to because of the drones. If I do leave the buildings, I always wear a face mask."

(7) Employee V stated:

> "**The lowest I have seen a drone flying at the Wyton Site is approximately 3ft above the ground to capture information from dog travel boxes.**
>
> I am constantly concerned for my safety when drones are flown by the protestors, as a drone could cause a bad injury if it were to crash into something or someone. I hear the drone nearly every day, and on **average the drone flies at a 2-storey building height**. The protestors used to fly the drone much lower than this, but a couple of months ago this changed and it started to fly higher (but, as I say, it is still about the height of a 2-storey building).
>
> To stop the drones filming through windows, I have installed protective measures in all windows of the Wyton Site, for example frosting the glass, installing one way glass laminate or installing curtains.
>
> When there is a drone over the Wyton Site, I used to stop carrying out tasks outside, which meant that anything I needed to do was delayed. Now, as it was not possible to carry out the outside tasks required in the time the drone was not up, I have to wear my concealment clothing when working outside at the Wyton Site, as well as driving in and out. I do this to prevent the drones from capturing footage identifying me to the protestors, for the reasons that I have set out above. Having to cover up like this when working is particularly uncomfortable in summer time due to the heat.
>
> The drone sound has had a real effect on my mental health. I was once on holiday sitting on the beach and heard a stranger's drone. I thought that the protestors had found me and as a result I was concerned for my safety. I believe the use of drones is another form of psychological intimidation tactics used by the protestors. I used to immediately report the drones to security, now I just try to ignore it. The drones have a psychological and physical impact on my health."

261. I note the following things about this evidence:

(1) None of the evidence concerns (or supports) the single allegation of drone trespass made against Mr Curtin. None of the witnesses links his/her evidence to the use of a drone on any particular occasion. In relation to the harassment claim made against Mr Curtin, therefore, none of the witnesses says that the incident of the drone use on 21 June 2022 caused him/her distress or upset, or why it did on this particular occasion.

(2) Insofar as the witnesses complain of low-flying drones (see sections marked in bold), this cannot relate to the incident alleged against Mr Curtin as the drone was being flown by him at 50m.

(3) As the Claimants are not pursuing a harassment claim against "Persons Unknown" in relation to drone flying, the evidence from these witnesses about the impact on them is not relevant to trespass claim. Equally, whilst understandable, the concerns expressed about privacy infringement are equally irrelevant in the absence of a pleaded cause of action to which this evidence might have been relevant.

262. In short, the evidence of these witnesses, is not relevant to the claim brought against Mr Curtin personally.

263. When he was cross-examined, Mr Curtin agreed that, on 21 June 2022, he had operated a drone above the Wyton Site, and he had used it to observe what some of the workers were doing on site. The drone, he said, weighed 249 grammes and was flown by him at a height of 50m. His evidence was that it was better to fly the drone at a height at which it was not noticed by anyone at the Wyton Site. He said he can tell the height of the drone from its controls. The weight, Mr Curtin said, was important because there are regulations which govern the flying drones that weigh more than that. Those regulations were not explored at the trial. Mr Curtin said that his primary interest in using the drone was to monitor what was going on at the Wyton Site and specifically the movement of the dogs. Mr Curtin also accepted that, in the past, there had been occasions when the drone had crashed on the site.

264. In response to questions asked by me, Mr Curtin confirmed that he knew of 4 or 5 other people who had regularly flown drones over or in the vicinity of the Wyton Site and there were possibly between 30-50 people who had flown drones occasionally the identity of whom he did not know. He said that he did not start flying a drone until about a year into the protest activities (i.e. around June 2022).

265. Rather than concentrating on this single alleged incident on 21 June 2022, Ms Bolton's cross-examination ranged widely and included putting to Mr Curtin evidence from the Claimants' witnesses about use of drones generally. That was not helpful, not least because Mr Curtin is not the only person who has flown drones over the Wyton Site. It confused general evidence – which is only potentially relevant to the claim made for relief against "Persons Unknown" – and the specific evidence relating to Mr Curtin's drone use. Ms Bolton indicated that the Claimants do not have any evidence – beyond that relating to the incident on 21 June 2022 – of Mr Curtin operating a drone on any other occasion.

266. I accept that, as a matter of principle, it is legitimate for Ms Bolton to explore not only the past incident of drone usage on 21 June 2022 alleged against Mr Curtin but also whether, absent an injunction, Mr Curtin threatens to fly drones in the future that would amount to a civil wrong. But even that exercise needed to focus clearly upon the acts of Mr Curtin which give rise to the credible risk that, without an injunction, he will commit a civil wrong. What is impermissible is to attempt to advance a case against Mr Curtin based on historic drone usage when the Claimants cannot establish that the relevant incident was one in which he was operating the drone. The Claimants cannot, for example, establish that Mr Curtin was the person responsible for the incidents of drone flying – reported in the general evidence given by some of the witnesses (see [260] above) – where the drone was alleged to have been flown as low as head height.

267. On the contrary, Mr Curtin's evidence, which I accept, is that he typically flies the drone at 50 metres, not least because he hopes that, at that height, it goes unnoticed. In the Claimants' general evidence, advanced against "Persons Unknown", Ms Pressick produced evidence relating to a further drone incident where an image obtained from the camera on the drone was posted on the Camp Beagle Facebook page. That image showed some information which included "H 50m", which she interpreted (I believe correctly) that the drone was being flown at a height of 50 metres.

268. In answer to the Claimants' claim that flying the drone – generally – amounted to harassment of the workers at the Wyton Site, in cross-examination, Mr Curtin made the point that at no stage has footage from the drone been used to attempt to identify workers or images placed on the Camp Beagle website in a sort of 'rogues gallery'. And, indeed, the Claimants have adduced no evidence of the drone footage being used for that purpose. Again, on this point, the concerns of the employees are directed at what might happen rather than what has happened. At a prosaic level, if the workers are concerned about the risks of being potentially photographed whilst they are going about their duties outdoors at the Wyton Site, then that threat is ever-present because they could be photographed by someone standing at the perimeter fence or by a drone not flying directly over the Wyton Site. For the purposes of the case against Mr Curtin, the short point is that there is simply no evidence that Mr Curtin has been flying drones, or taking photographs, as part of an exercise to identify employees at the Wyton Site. I accept Mr Curtin's evidence that he has not sought to do so.

269. Mr Curtin accepted that footage from drones has been posted on the Facebook page of Camp Beagle. Mr Bolton suggested to Mr Curtin in cross-examination that his posting of drone footage of the Wyton Site might provide an opportunity for someone to learn more about the layout of the site and that this knowledge might assist someone who wanted to break into the site. Mr Curtin's immediate response to this suggestion was "*that's stretching it*", but he accepted that it might assist such a person. This section of cross-examination was hypothetical and not helpful – or relevant – to the issues I must decide.

270. As the Claimants have submitted – correctly – in relation to the main claim for trespass, the tort is simple and one of strict liability. The decision to be made is whether the flying of the drone is a trespass or not. What Mr Curtin hopes to achieve by flying the done, and the risks that might arise from publication of footage obtained from the use of the drone, are simply irrelevant. It is either a trespass or it is not. I identified the potential limits of the law of trespass – as it concerns drone use – in the Interim Injunction Judgment ([111]-[115]). Despite having ample opportunity to seek to amend their claim to do so, the Claimants have chosen not to seek to advance any alternative causes of action that might more effectively have addressed the concerns they have over drone use.

271. The final part of Ms Bolton's cross-examination was taken up with Mr Curtin being asked questions about other drone footage for which the Claimants had not alleged he was responsible. With the benefit of hindsight, and particularly considering the exchanges that followed (which consisted of little more than Mr Curtin being asked to comment on extracts from the drone footage and what it showed), I should have stopped the cross-examination. It quickly became speculative and, insofar as it was attempting to ascertain whether Mr Curtin was responsible for further drone flights beyond the specific example alleged against him, potentially unfair to him. I had wanted to ensure, in fairness to the Claimants, that they had an opportunity to develop as best they could their case (a) as to the threat of Mr Curtin carrying out further acts of alleged trespass/harassment with the drone; and (b) against Persons Unknown.

272. The Claimants have sought to adduce no expert evidence relating to drone usage, for example, based on the photographs and footage captured by the drones that have been put in evidence (a) at what height was the drone flying; and (b) whether the drone was immediately above the Wyton Site. Ms Bolton attempted to make up for this lack

of expert evidence by asking Mr Curtin to offer his view as to the height at which the relevant drone was being flown. That will not do. Mr Curtin may be a drone user, but he is not an expert qualified to comment on other drone use. He cannot offer an expert opinion, from a photograph or footage, as to how high the drone was flying when it was taken. I raised the issue of the need for expert evidence on the critical issue of the height at which drones were being flown during at least one interim hearing. The Claimants have chosen not to seek to advance any expert evidence in support of this aspect of their claim. Again, that is their choice.

273. The state of the evidence, at the conclusion of the trial, is that, in relation to the claim for trespass by drone usage against "Persons Unknown", I have no reliable evidence as to the height at which the drones were being flown in the incidents complained of in the evidence. In respect of the claim against Mr Curtin for trespass and/or harassment arising from his use of a drone on 21 June 2022, the only evidence that is available as to the height at which the drone was being flown is that given by Mr Curtin; i.e. at or around 50 metres.

274. Returning to the central issue, the question is whether Mr Curtin's flying of the drone on 21 June 2022 was a trespass on the land or alternatively part of the course of conduct involving harassment. My conclusions on this are as follows:

(1) Mr Curtin's use of the drone on 21 June 2022 was not a trespass.

(2) Based on the authority of ***Bernstein*** (see [64]-[71] above), the question is whether the incursion by Mr Curtin's drone into the air space above the Wyton Site was at a height that could interfere with the ordinary user of the land. Mr Curtin's drone was flying at or around 50 metres. To put that in context, a building that is 50 meters tall is likely to have between 15-16 storeys. Did flying a drone the size of Mr Curtin's drone, for a short period, at the height of a 15-16 storey building interfere with the First Claimant's ordinary user of the land. In my judgment plainly it did not. It is not possible – on the evidence – to conclude whether Mr Curtin's drone, flying at 50m on 21 June 2022, could even have been seen by the naked eye from the ground. Mr Manning's evidence was that it was very difficult to see smaller drones higher in the sky.

(3) On analysis, and in reality, the Claimants' real complaint is not about trespass of the drone at all. If the drone had not been fitted with a camera, the Claimants would not be pursuing a claim for trespass (or harassment). The Claimants have attempted to use the law of trespass to obtain a remedy for something that is unrelated to that which the law of trespass protects. The real object has been to seek to prevent filming or photographing the Wyton Site. The law of trespass was never likely to deliver that remedy (even had the claim succeeded on the facts), not least because it is likely that substantially similar photographs/footage of the Wyton Site could be obtained either by the drone avoiding direct flight over the site, flying at a greater height, or, even, the use of cameras on the ground around the perimeter. As I have noted (see [73] above), the civil law may provide remedies for someone who complains that s/he is effectively being placed under surveillance by drone use, but adequate remedies are unlikely to be found in the law of trespass.

(4) Turning to the harassment claim, the position is straightforward. There is no evidence that anyone was harassed by Mr Curtin's flight of the drone on 21 June 2022. It cannot therefore form any part of the alleged course of conduct involving harassment.

(5) Finally, considering whether the Claimants' evidence shows that, unless restrained, Mr Curtin is likely to use the drone to harass in the future, I am not persuaded on the evidence that the Claimants can demonstrate a credible threat that he will. I have accepted Mr Curtin's evidence that he flies the drone at 50 metres. Flown at that height, there is no credible basis to contend that future flights of the drone are likely to amount the harassment of any of the employees. There is no evidence that Mr Curtin is carrying out surveillance of individual employees, for example to be able to identify them. I appreciate that several witnesses expressed the fear that this was one of the objectives of the drone flights. But these are their subjective fears; they are not objectively substantiated on the evidence.

11 July 2022

275. The Claimants allege that Mr Curtin (and others) caused a public nuisance by obstructing the highway for a vehicle driven by Ms Read that had left the Wyton Site. Specifically, it is alleged that Mr Curtin stepped in front of and walked in front of the vehicle causing the vehicle to slow.

276. The incident is captured on CCTV. In her witness statement, Ms Read described the incident as follows:

> "On 11 July 2022 at 15.04, [Mr Curtin] walked in front of my car as I was driving along the main carriageway of the Highway… The incident happening as I was leaving the Wyton Site for the day; I left a few minutes later than everyone else on this day. I saw [Mr Curtin] walk across the Highway to the tent, and linger about, I had a feeling as I drove towards him that he was going to step out in front of me. [Mr Curtin], as I approached him in my car, he then walked in front of my car, causing me to slow down to avoid hitting him. He looked at me, and it felt like he was goading me – as if he was thinking 'I can do what I want away from the Access Road'. I found [Mr Curtin's] conduct very intimidating and I was fearful, as I did not know what he was planning to do."

277. Ms Read was not called to give evidence, and her evidence has been relied upon as hearsay by the Claimants. It is perhaps unfortunate that her evidence on this incident could not be explored and tested in cross-examination, particularly having regard to what can be seen of the incident from the CCTV recording. What that footage shows is little more than Mr Curtin crossing the B1090 road some 100 yards from the entrance to the Wyton Site.

278. Mr Curtin was cross-examined by Ms Bolton. She put to him that he had deliberately walked out in front of Ms Read's car because she had come from the Wyton Site. Mr Curtin disagreed, and maintained that he was simply crossing the road.

279. My conclusions in relation to this incident are as follows:

(1) In the CCTV footage, Mr Curtin can be seen to be crossing the road. There is nothing more to this incident than that. It caused Ms Read slightly to slow her vehicle. She did not stop, and she was caused no obstruction. There was no obstruction of the carriageway. There was no public nuisance

(2) I cannot accept Ms Read's evidence in relation to this incident. Having reviewed the footage – as apparently Ms Read also did when making her statement – I conclude that an element of paranoia must have contributed to Ms Read's perception of this incident. Like some other witnesses, Ms Read is clearly fearful of what Mr Curtin *might* do, rather than rationally assessing what he has *actually* done. There was nothing remotely intimidating in Mr Curtin's action of crossing the road. Objectively, there was nothing in the incident that should have caused her any fear.

(3) The inclusion of this incident in the Claimants' claim against Mr Curtin is remarkable. The evidence simply does not demonstrate, even arguably, any wrongdoing by Mr Curtin. Based on the evidence available to the Claimants, this allegation should not have been pleaded or pursued.

(2) Unpleaded allegations against Mr Curtin

280. There are three further incidents of alleged harassment that were raised in the Claimants' evidence and pursued in cross-examination with Mr Curtin that did not form part of the Claimants' pleaded case against him. I raised the lack of pleaded allegations with Ms Bolton during Mr Curtin's cross-examination. I expressed the provisional view that, if they were to be relied upon as part of the course of conduct alleged to amount to harassment against Mr Curtin, then they ought to be pleaded. Ms Bolton did not return to the issue until addressing the issue in her closing submissions. No application to amend was made by the Claimants.

281. In her closing submissions, Ms Bolton said that it was "*regrettable*" that the details of these three incidents had not been pleaded, they had only come to light when draft witness statements were received. The Claimants' position – as advanced in their closing submissions – is that "*whilst no 'claim' is brought in relation to these incidents, it is submitted that they are important incidents that should inform the Court's view of the strength of the pleaded harassment claim against Mr Curtin, and the likelihood of further acts of harassment occurring*".

282. I will return below to how I intend to deal with these unpleaded allegations after summarising them and the evidence that has been presented during the trial.

7 September 2021

283. This was an incident concerning Mr Manning. In his witness statement, Mr Manning said this:

> "… on 7 September 2021, [Mr Curtin] approached me at the Gate and said he had some personal details I would not want anyone else to see, which [Mr Curtin] had been given by a member of staff or security who passed it to [Mr Curtin] through the car window. He would not tell me what the details were or what he would do with them, but said that he could contact me at any time and that I would

> find out what he had at some point. I reported this incident to the police, and I felt really shaken up by it. Later that day, he approached me again, when I was by the perimeter fence. He said he would pass a piece of paper that was in his pocket with personal details of mine. I asked him to show the piece of paper. He looked through his pockets and said he thought it was in a folder. I walked away".

284. Mr Curtin did ask Mr Manning some questions about this incident when he was cross-examined. Mr Manning could recall few details. Mr Curtin suggested to Mr Manning that he had told him on this occasion that he had been given Mr Manning's telephone number by another security officer. Mr Manning replied that Mr Curtin had not told him what the information was.

285. As this is not a pleaded allegation against Mr Curtin said to form part of the alleged course of conduct involving harassment, I can deal with this shortly. Objectively judged, what Mr Curtin did (as described by Mr Manning) lacks the necessary qualities to amount to harassment. The incident has not been repeated, and therefore it sheds no light on whether, if the Claimants can prove a case of actual or threatened harassment against Mr Curtin, they can credibly suggest that this incident shows that there is need for an injunction to restrain future acts of harassment by Mr Curtin.

8 July 2022

286. The incident on 8 July 2022 concerned Mr Curtin and Employee V, a maintenance engineer at the Wyton Site. There was footage of the incident recorded by Mr Curtin. In his/her witness statement, Employee V stated that on 8 July 2022, s/he had been tasked with repairing a hole in the perimeter fence around the Wyton Site. As s/he was operating outside the perimeter, s/he was accompanied by a member of the First Claimant's security team. Mr Curtin followed Employee V, and the security officer, and Employee V alleged that Mr Curtin intimidated and harassed him/her whilst s/he undertook the repairs. Mr Curtin recorded the incident and livestreamed it to the Camp Beagle Instagram and Facebook pages. The video of the incident goes on for some 15-20 minutes, but the key parts, identified by Employee V in his/her witness statement, were the following:

(1) Mr Curtin said "*we are going to do our darndest to make sure some workers go to prison from here you deserve it you really do deserve it*". Employee F said that this upset him/her, because s/he had not done anything illegal.

(2) Mr Curtin said, "*how low can you go working here?*" Employee V regarded this as a "*psychological intimidation tactic*" as s/he was "*not working in a 'low job'*". Employee V felt that Mr Curtin was attempting to make him/her feel bad for what s/he did at the Wyton Site.

(3) Mr Curtin called Employee F a "*freak*". Employee V said that this upset him/her, as it portrayed him/her to be something that s/he was not.

(4) At one point during this incident, Employee V said that Mr Curtin was so close to him/her that he was nearly touching his/her face with his phone whilst livestreaming. Employee V said that s/he felt "*really threatened and uncomfortable*".

(5) Employee V said s/he felt "*constantly scared*" that Mr Curtin would pull down his/her mask and reveal his/her identity.

(6) Employee V felt that Mr Curtin's actions of being close to him/her, and abusing him/her for 15 to 20 minutes as s/he carried out his/her job was "*overwhelming*". S/he was "*very distressed*" after the incident and believed that it led to a deterioration in his/her mental health. "*I think this was a reaction to feeling so vulnerable (i.e. without a fence or car between me and [Mr Curtin]) and feeling degraded by not being able to retaliate or respond, as we have been advised by the police*".

287. In cross-examination, Employee V confirmed that s/he knew that Mr Curtin was livestreaming the encounter. In relation to the comment that s/he was a "*freak*", Employee V accepted that Mr Curtin had been reading out comments that had been received from people watching the livestream. Mr Curtin put to Employee V that the context of the encounter was him making a livestream during which he was offering a general commentary about the First Claimant. Employee V replied:

> "… you intensified your livestream to intimidate me. You got very close to me. I do agree you did not touch me, but at one point you became very close and you did everything possible to slow my work down."

288. In questioning, Employee V accepted that s/he had carried out research on Mr Curtin and this had coloured the impression s/he had of him. Employee V considered Mr Curtin to be one of the main leaders of the camp, who advised the other protestors on their tactics. S/he described the protestors as seeming to be very fanatical in their beliefs. Employee V said s/he had carried out internet research on the tactics used by protestors. This appears to have generated in Employee V a significant fear based not so much on what the protestors had actually done, but what Employee V believed they might be capable of doing.

289. This is not a pleaded allegation of harassment against Mr Curtin, so I intend to state my conclusions on this incident quite shortly.

290. It was clear from his/her evidence as a whole that Employee V had been significantly affected by the protests at the Wyton Site and not just this encounter with Mr Curtin. S/he was concerned that s/he might become a target away from the Wyton Site and expressed a fear, shared by several employees, at what the protestors might be capable of doing. I do not doubt that the particular encounter with Mr Curtin did upset him/her. I accept his/her evidence as to how s/he felt and how it affected him/her, but, in part, his/her sense of concern appears to have been elevated by his research on Mr Curtin rather than anything that Mr Curtin had actually done, whether during the incident or before.

291. Employee V appeared to me also to lack insight. S/he did not appreciate why protestors called the workers, generically, "*puppy killers*". S/he approached the issue simply on the basis that, as s/he personally had not been involved in the killing of any of the animals, it was wrong for the allegation to be made. That is to take literally the words used, and to fail to recognise that this was a protest message directed at the First Claimant's operation at the Wyton Site.

292. It is very important that Employee V was aware that Mr Curtin was livestreaming the encounter. To that extent it should have been immediately apparent to Employee V that this was not a normal conversation; there was an obvious element of performance by Mr Curtin that Employee V should have appreciated. I think it is likely that Employee V failed to appreciate this because of his/her elevated anxiety towards Mr Curtin and fears of what he might do. Whilst I recognise that, subjectively, Employee V did feel intimidated by the encounter, there was a significant element to which these fears were self-generated rather than being based on what Mr Curtin actually did or any threat that he realistically presented. Objectively judged, I am not persuaded that Mr Curtin's behaviour crossed the line between conduct that is unattractive, even unreasonable, and conduct which is oppressive and unacceptable.

293. Ms Bolton has relied upon this incident not as part of the alleged course of conduct involving harassment but as demonstrating Mr Curtin's propensity towards harassing behaviour, and therefore, supportive of the need for some form of injunctive relief. I will come on to consider the harassment claim advanced against Mr Curtin by the Claimants in due course, but I can reject now that this incident provides any evidence of "propensity". Far from demonstrating a tendency to act in a particular way – and compared to the repetitive incidents of obstructing the vehicles of employees leaving the Wyton Site in the 'ritual' – the incident with Employee V was a one off. It was the product of a particular set of circumstances, that had a unique dynamic. The only thing that really links it to the other activities about which the Claimants complain is that it could be said to be loosely part of the broader protest activities. But the issues raised in this incident are wholly different.

19 August 2022

294. This act of alleged harassment by Mr Curtin concerns an incident that took place on 19 August 2022 outside the Wyton Site, near to the notice board erected by the First Claimant. Mr Manning describes the event in his witness statement as follows:

> "… as I and another member of staff was [sic] putting the notice back up following it needing to be cleaned due to it being spray painted (and to put up new documents) on 19 August 2022 from 14.04 onwards [Mr Curtin] approached me and my colleague to film us, and came very close to me, almost touching me, multiple times. If someone came that close to me outside of work, I would tell them to get out of my personal space."

295. The incident is captured on CCTV. The footage does not support Mr Manning's description of Mr Curtin's physical proximity. Mr Manning must have misremembered how closely Mr Curtin came to him during this incident. From the video footage, there is nothing intimidating or harassing in Mr Curtin's physical closeness. I appreciate that, particularly given the long period over which Mr Manning has been dealing with Mr Curtin (and the other protestors), Mr Manning regards Mr Curtin as an irritant whose presence is not appreciated. But, judged objectively, Mr Curtin's behaviour on this occasion does not pass the threshold to amount to harassment under the law.

296. In cross-examination, Ms Bolton put to Mr Curtin that this incident was "*another example… of you targeting the staff as part of your actions to persuade the staff to leave MBR Acres*". Mr Curtin rejected that. I would simply note, by way of finding, that the incident does not remotely support the Claimants' characterisation of it.

297. As this is not a pleaded allegation against Mr Curtin said to form part of the alleged course of conduct involving harassment, I can deal with this shortly. Objectively judged, what Mr Curtin did (as described by Mr Manning and shown on the footage) lacks the necessary qualities to amount to harassment. The incident has not been repeated, and therefore it sheds no light on whether, if the Claimants can prove a case of actual or threatened harassment against Mr Curtin, they can credibly suggest that this incident shows that there is need for an injunction to restrain future acts of harassment by Mr Curtin.

(3) Conclusion on the claim of harassment against Mr Curtin

298. As noted above ([108]), the harassment claim brought against Mr Curtin is brought under s.1(1A) PfHA.

299. In the section above, I have stated my conclusions in respect of each of the acts alleged by the Claimants to constitute a course of conduct involving harassment of those in the Second Claimant class. I have not found that any of them, individually, were serious enough to amount to harassment applying the principles I have identified (see [99]-[108] above).

300. Nevertheless, I must step back and consider whether, taken together, these incidents do reach the required threshold of seriousness to amount to harassment. I am quite satisfied that they do not.

301. Although, in the pre-injunction phase, the repeated surrounding of vehicles of those entering and leaving the Wyton Site, has an element of repetition that might supply the necessary element of oppression, the same element of repetition meant that those in the vehicles should, objectively, quickly have become used to it. The 'ritual' did not change much. Although it was inconvenient, caused delay, and upset some employees, the 'ritual' was predictable and could not have failed to have been understood to be an expression of protest. Objectively, it was not targeted at any individual employee. Several witnesses were more concerned about what the protestors *might* do, rather than what they actually did.

302. As I am dealing with the claim made against Mr Curtin, it is necessary to concentrate on the evidence about what Mr Curtin did, not the actions of other protestors. At its height, the Claimants' evidence demonstrates that Mr Curtin participated in several 'rituals' and he expressed his protest message. It goes no further than that. Ms Bolton, in her final submissions, placed no reliance on the content of what Mr Curtin shouted at the employees.

303. I am not persuaded that this crosses the threshold between unattractive or unreasonable behaviour to that which is oppressive and unacceptable. In a democratic society, the Court must set this threshold with the requirements of Articles 10 and 11 clearly in mind. It would be a serious interference with these rights if those wishing to protest and express strongly held views could be silenced by actual or threatened proceedings for harassment based on subjective claims by individuals that they were caused distress or alarm. The context for alleged harassment will always be very important. In terms of whether the conduct supplies the necessary element of oppression to constitute harassment, there is a big difference between an employee of the First Claimant having to encounter, and withstand, a protest message with which s/he is confronted on his/her

journey to/from work and having the same protest message shouted through his/her letterbox at home at 3am.

304. My findings mean that the Claimants have failed to demonstrate the element of the tort required under s.1(1A)(a). In consequence, the claim in harassment brought against Mr Curtin will be dismissed.

305. In any event, I would also have found that the Claimants had failed to demonstrate the element of the tort required under s.1(1A)(c).

306. As part of the harassment claim against Mr Curtin, it is the Claimants' case that Mr Curtin's intention behind, or the underlying purpose of, the alleged acts of harassment of the First Claimant's employees (and others in the class of the Second Claimant) was to get them to sever their connection with the First Claimant (for employees to leave, for suppliers to cease business etc). Mr Curtin rejected this allegation on the several occasions when it was put to him during his long cross-examination.

307. I shall give one example of the answers he gave when this allegation was put to him, in the context of the unpleaded allegation of harassment of Mr Manning on 7 September 2021 (see [283]-[285] above):

> Q: … it was an attempt to intimidate [Mr Manning] because you want to persuade the officers, staff, workers of MBR not to work there, in pursuit of your goal to get MBR shut down?
>
> A: The case against me – you haven't spent millions of pounds to stop me trying to persuade people. I'm allowed to persuade people. It's a legal right for me to --- it's what protesting is, persuasion.
>
> Q: Your attempt to persuade Mr Curtin is done by intimidation?
>
> A: It's absolutely not my intention the way to close down MBR is to get Mr Manning to leave and then the maintenance man. That's not – that has never been the thrust of what's driven me behind my campaigning. It's going to be a lot more complicated than that to shut MBR down."

308. I accept Mr Curtin's evidence. I am not concerned with the evidence of what other protestors have done. Mr Curtin, in the protest methods he adopted, did not pursue the sort of crude intimidation of the First Claimant's staff that Ms Bolton ascribed to him. He was quite candid in accepting that he wished to see the First Claimant shut down, but he was equally clear about the ways in which that objective could be achieved.

K: The evidence at trial against "Persons Unknown"

(1) Trespass on the Wyton Site

309. It would be disproportionate to set out the evidence of all the incidents where "Persons Unknown" have trespassed on the First Claimant's land prior to the grant of the Interim Injunction. By dint of the fact that the First Claimant owns the Driveway at the Wyton Site and part of the Access Land, hundreds of people have potentially been guilty of trespass on this land. Basically, anyone who seeks to use the entry phone outside the

main gate could only do so by standing on the Driveway. Without a defence of implied licence, each and every person doing so would be a potential trespasser.

310. In addition, and during the currency of the proceedings, the understanding of where the public highway ended, and the First Claimant's land began significantly changed (see [22]-[23] above). This means that the number of unidentified individuals who arguably have trespassed on the First Claimant's land whilst protesting increases yet further. At the time of this alleged trespass, neither the individuals standing on the Access Land nor the Claimants would have been aware that this was an arguable trespass.

311. The incidents of more serious trespass – i.e. people accessing the Wyton Site by going beyond the entry gates or over the perimeter fence are very few. There were significant trespass incidents on 19-20 June 2022. On the first occasion, 25 people broke into the Wyton Site. On 20 June 2022, an unknown number of unidentified individuals broke into the Wyton Site and stole five dogs. There were several arrests.

312. Since the grant of the Interim Injunction, and specifically the imposition of the Exclusion Zone, the incidents of alleged trespass have significantly reduced (although not eliminated entirely). The Claimants' evidence shows that there have been isolated incidents of "Persons Unknown" entering the Exclusion Zone and/or trespassing on the First Claimant's land. For example, on 13 July 2022, 2 unidentified individuals chained themselves to the gate of the Wyton Site, delaying the departure of a van carrying dogs, and on 24 September 2022, 4 unidentified individuals glued themselves to the gate to the Wyton Site. They were removed by the police.

(2) Trespass by drone flying over the Wyton Site

313. I have dealt above with the specific allegations made against Mr Curtin relating to drone flying. The Claimants also maintain a claim, and seek a *contra mundum* injunction to prevent drone flying over the Wyton Site.

314. In the Claimants' pleaded case, the claim is advanced as follows

> "[Persons Unknown have]**,** without the licence or consent of the First Claimant, committed acts of trespass by flying drones:
>
> (1) directly over the Wyton Site; and/or
>
> (2) below 150 metres over the airspace of the Wyton Site; and/or
>
> (3) within 150 metres of the Wyton Site; and/or
>
> (4) below 50 metres over the airspace of the Wyton Site; and/or
>
> (5) within 50 metres of the Wyton Site; and/or
>
> (6) at a height that was not reasonable and interfered with the First Claimant's ordinary and quiet use of the Wyton Site.

315. Although this pleading is difficult to follow, the Claimants' position, at the end of the trial, was that they sought a *contra mundum* injunction to prohibit "*fly[ing] a drone or other unmanned aerial vehicle at a height of less than 100 meters over the Wyton Site*".

316. The claim in respect of alleged drone trespass can only be maintained in respect of direct *overflying.* The First Claimant has no arguable right, under the law of trespass, to prevent drones flying other than directly over the Wyton Site. For drones flown directly over the Wyton Site, the question is at what height does flying a drone represent a trespass on the land below (see [62]-[73] above).

317. The Claimants allege in the Particulars of Claim that "Persons Unknown" have flown a drone over the Wyton Site on 25 and 27 July 2021, 25 and 27 August 2021, 17 March 2022, 6 and 16 June 2022. Save for the incident on 27 July 2021, the allegation made in the Particulars of Claim is that the drone was flown "*at a height that was below 150m and/or 50m*". On 27 July 2021, the Claimants allege that the drone was flown "*at a height that was below 50m*". Again, for a sense of scale, the 'Walkie Talkie' building at 20 Fenchurch Street in London is 160m tall, with 38 floors. I have already summarised the Claimants' evidence about general drone usage (see [260] above).

318. In her witness statement of 19 March 2024, Ms Pressick provided some further evidence of drone use by "Persons Unknown":

> "Drones flown by the protestors are known to have crash landed on MBR's land on 5 occasions (10 May 2022, 12 May 2022, 3 July 2022, 3 February 2023, and 19 September 2023). This is indicative of drones being flown outside their operational parameters and/or by unsafe piloting. Where the drone has been recovered by the security team, it has been handed over to the police.
>
> I asked the security team to consider drone usage over a 5-month period, and this was closely monitored between 1 July and 30 November 2023. This is something that we had not done consistently previously. Staff tried to monitor use of the drone, noting days it was flown and the duration of the flight time over the Wyton Site. In that 5-month period, the security noted that at least 184 drone flights took place over the Wyton site, with an overall flight duration of at least 2,097 minutes (nearly 35 hours). I assume, but do not know, that the protestors filmed and recorded throughout each flight. During this period, there has been a notable increase in drone usage. There have been more drone flights, and the flight time appears to have increased over this period.
>
> In the period looked at in detail (1 July to 30 November 2023), the security team have tried to identify the protestors that fly the drone. Of the 89 flights noted by the security team, it has not been possible to identify a drone pilot in respect of 59 flights (this is equivalent to around 66% of the observed flights). Mr Curtin has been identified as the drone pilot on 18 occasions (or around 20% of the observed flights). The security team have identified a protestor known as [name redacted] as being the drone pilot on 12 occasions (or roughly 13.5% of the observed flights). It is generally understood from previous observations, and the footage uploaded to the Camp Beagle Facebook page, that Mr Curtin is the primary drone pilot…"

319. The evidence that Ms Pressick has included about Mr Curtin's drone flying I will not take into account in the claim against him. The opportunity to file further evidence was limited to the Claimants' claim for a *contra mundum* 'newcomer' injunction. It was not

an opportunity to supplement the evidence against Mr Curtin. The evidence against him was presented at the trial. Even had I taken this evidence into account, it would not have made any difference to my conclusions in relation to this aspect of the claim against Mr Curtin. He does not deny flying a drone. His evidence is that he flies it no lower than 50 metres. Ms Pressick's further evidence therefore takes the claim against him no further.

320. The evidence satisfies me that there is a risk that "Persons Unknown" may in the future fly drones over the Wyton Site. However, beyond the particular evidence of drone having crashed, the Claimants have failed to adduce reliable evidence as to the height at which any drone has been flown (or is likely in the future to be flown). Without that, it is impossible to conclude that there is a credible risk of trespass by drone flying.

(3) Threatened trespass at the B&K Site

321. In her witness statement, Ms Pressick included a section headed "*Protest activities at the B&K Hull Site*". She recognises, immediately, that the scale of protest activities has been much reduced at the B&K Site. Between June-July 2021, staff at the B&K Site received what Ms Pressick describes as "*threatening calls*" and there was a protest event held at the B&K Site on 15 August 2021 which was attended by some 40 people. The Claimants make no complaint about this demonstration. Much of Ms Pressick's evidence concerning the B&K Site was considered in the Interim Injunction Judgment (see [22]-[23]). At that stage, the evidence was being advanced in support of a claim for an interim injunction to restrain harassment. I refused to grant any injunction on that basis: [129(4)]. The Claimants have adduced no evidence that there has been any trespass at the B&K Site. Ms Pressick states in her evidence:

> "[The Third Claimant], its staff and myself apprehend that the protestors may focus, or refocus, on the B&K Site. Given that [the First and Third Claimants] are sister companies, there would be real benefit in the final injunction applying to both sites so that injunctive relief over the Wyton Site does not simply move the acts of unlawful protest over to the B&K Hull Site…
>
> [The Third Claimant] continues to receive nuisance calls. I understand from the staff on the switch board that sometimes the callers are silent and, on occasion, they express a negative view of the work that B&K does. It is therefore clear that the B&K Hull Site is still on the radar of animal rights protestors, and that it is reasonable for the Claimants to apprehend that acts of protest similar to those occurring at the Wyton Site may occur at the B&K Hull Site."

322. This evidence is very tenuous and involves a significant leap between the willingness of unidentified people to register displeasure with the activities of the Third Claimant in messages and calls and a real risk that, without an injunction, "Persons Unknown" will trespass upon the B&K Site. As I have noted, there is no evidence at anyone has trespassed at the B&K Site since the protests began in the summer of 2021. On the evidence, I am not satisfied that there is a credible threat of trespass at the B&K Site by "Persons Unknown".

(4) Interference with the right of access to the highway

323. Again, it would be disproportionate to identify all the occasions on which vehicles entering or leaving the Wyton Site had been obstructed prior to the grant of the Interim

Injunction. The 'ritual' was a regular and, at the height of the protests, almost daily occurrence. This inevitably meant that vehicles were obstructed getting from the Wyton Site to the highway.

324. On the evidence, I am satisfied that there is a real risk that "Persons Unknown" who are protesting about the activities of the First Claimant will engage in the obstruction of vehicles as they enter or leave the Wyton Site.

(5) Public nuisance by obstruction of the highway

325. Before the grant of the Interim Injunction, some large-scale demonstrations took place outside the Wyton Site. There were also some further isolated incidents of significant obstruction of the highway, primarily targeted at those going to or from the Wyton Site. The key events have been as follows:

(1) On 9 July 2021, a demonstration was attended by between 150-200 protestors. It lasted for nearly 2 hours.

(2) On 1 August 2021, there was another large-scale demonstration, numbering up to 260 protestors. The Claimants allege that the police struggled to contain the protestors and that reinforcements were required. Four protestors were arrested.

(3) On 13 August 2021, a convoy of staff cars was intercepted on the main carriageway around 70 metres from the entrance to the Wyton Site. It took 40 minutes for the vehicles to travel along the highway and to enter the Wyton Site.

(4) On 15 August 2021, approximately 250 people attended a large demonstration (see [192]-[198] above).

(5) On 1 July 2023, approximately 50 people attended the two-year anniversary of Camp Beagle. Ms Pressick described this as "*a relatively quiet event considering its significance*". Although she identified several alleged incidents of breach of the Interim Injunction (trespass and entry into the Exclusion Zone), there was no large scale obstruction of the highway.

326. There was also a significant protest event, on 20 November 2021, after the grant of the Interim Injunction. On that occasion, there was a significant obstruction of the highway. This incident was one of those included in the First Contempt Application, and it led subsequently to the variation of the Interim Injunction (see [39]-[40] above).

327. Whether any of these events amounted to a public nuisance is difficult to determine on the evidence. Perhaps because of their belief that any obstruction of the highway was a public nuisance, the Claimants have not provided evidence of the wider impact of the obstruction of the carriageway in each of the incidents I have identified above. On the evidence I have I can, I think, properly draw the inference that the incident on 15 August 2021, in terms of the length of the obstruction of the highway and its likely community impact, was a public nuisance. But the other incidents are not as clear cut, and, on the evidence, the Claimants have not proved that they were a public nuisance.

328. It is also important to note that in each of these incidents there was a significant police presence. In none of the incidents did the police seek to intervene or use their powers

to clear the obstruction of the highway. It appears to me that, in the incident on 15 August 2021, the police had closed the road. I am not criticising the decisions of the police in these incidents. It is an important part of policing demonstrations for police officers (both individual officers on the ground and senior officers in their strategic decision-making) to assess the extent to which the police need to use their undoubted powers to control what are essentially public order issues.

329. In summary, the evidence shows that this is some risk, perhaps diminished since the height of the demonstrations in 2021, that "Persons Unknown" will congregate in such numbers outside the Wyton Site that they cause a public nuisance. I will deal below whether the Court's response to that risk, in these proceedings, should be to grant any form of *contra mundum* order.

L: Evidence from the police

330. At an earlier stage of the proceedings, evidence was provided to the Court by a senior police officer, Superintendent Sissons, who was responsible for policing the protest activities at the Wyton Site. I set out this evidence in the Second Injunction Variation Judgment on 22 December 2022 [43]-[51] and Appendix.

331. Based in part on Superintendent Sissons evidence, I declined to vary the Interim Injunction:

> [76] … unless the Claimants can demonstrate a clear case for an injunction, in my judgment it is better to leave any alleged wrongdoing to be dealt with by the police. Officers on the ground are much better placed to make the difficult decisions as to the balancing of the competing rights (see Injunction Judgment [85] and [96]).
>
> [77] The evidence from Superintendent Sissons shows that this is precisely what the police are doing. There is no complaint from the Claimants that the police are failing in their duties or that the targeted measures taken by the police have been ineffective. Arrests are being made of some protestors, including it appears those engaged on protests at Impex, and several people have been charged. Appropriate use of bail conditions or, upon conviction, restraining orders will restrict further unlawful acts of individuals more effectively and on a targeted basis.
>
> [78] Arrests for offences under s.14 Public Order Act 1986 suggest that the police have already utilised their powers to impose conditions on public assemblies. I appreciate that the Claimants contend that, notwithstanding the efforts of the police, some people are continuing to break the law. The issue for the Claimants is that, before meaningful relief can be granted by way of civil injunction, it is necessary to identify the alleged wrongdoers so that they can be joined to the proceedings.

332. The Claimants' evidence at trial has not demonstrated that the police are failing to respond appropriately to any threats posed by the protestors. In my judgment, and as I have observed before, proportionate use, by police officers making decisions based on an assessment 'on-the-ground', of the powers available to them, adjudged to be necessary and targeted at particular individuals, is immeasurably more likely to strike the proper balance between the demonstrators' rights of freedom of

expression/assembly and the legitimate rights of others, than a Court attempting to frame a civil injunction prospectively against unknown "protestors".

M: *Wolverhampton* and its impact on this case

(1) Background

333. The context of the litigation that gave rise to the Supreme Court decision in ***Wolverhampton*** was a preponderance of cases in which Courts had granted injunctions against "Persons Unknown" (and in at least one case a *contra mundum* injunction) to restrain trespass on the land of local authorities by Gypsies and Travellers. The facts are set out in the first instance decision: ***LB Barking & Dagenham -v- Persons Unknown* [2021] EWHC 1201 (QB)**. Four issues of principle were resolved by me, the most significant being whether a "final injunction" against "Persons Unknown" could bind people who were not parties to the action at the date the injunction was granted (the so-called 'newcomers').

334. Based on established authorities, principally the decisions of the Supreme Court in ***Cameron -v- Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471** and the Court of Appeal in ***Canada Goose UK Retail Ltd -v- Persons Unknown* [2020] 1 WLR 2802**, I decided that it could not: [161]-[189]. I reached that conclusion based on the application of conventional principles of civil litigation and the established limits of those who were made subject to the Court's orders.

335. I also considered the question of whether *contra mundum* injunctions might provide an answer for restraining the actions of 'newcomers', but held that *contra mundum* orders were wholly exceptional and were reserved for cases (like those decided under the *Venables* jurisdiction) where the Court was effectively compelled to grant a *contra mundum* order to avoid a breach of s.6 Human Rights Act 1998: [224]-[238].

(2) The Court of Appeal decision

336. The Court of Appeal reversed my decision: [2023] QB 295. Disapproving the previous Court of Appeal decision in ***Canada Goose*** and applying ***South Cambridgeshire District Council -v- Gammell* [2006] 1 WLR 658**, the Court of Appeal held that that s.37 Senior Courts Act 1981 gave the court power to grant a final injunction that bound individuals who were not parties to the proceedings at the date when the injunction was granted. The Court held that there was no difference in jurisdictional terms between an interim and a final injunction, particularly in the context of those granted against "Persons Unknown". Where an injunction was granted, whether on an interim or a final basis, the court retained the right to supervise and enforce that injunction, including bringing before the court parties violating the injunction who thereby made themselves parties to the proceedings.

(3) The Supreme Court decision

337. Despite there being no defendants to appeal the Court of Appeal's decision, the Supreme Court nevertheless heard an appeal brought by the interveners.

338. The appeal from the Court of Appeal's decision was dismissed, but the Supreme Court disagreed with the Court of Appeal's reasoning. The Supreme Court held that the Court

had jurisdiction to grant a *contra mundum* injunction that restrained newcomers. The judgment concluded with this summary of the decision [238]:

> "(i) The court has jurisdiction (in the sense of power) to grant an injunction against 'newcomers', that is, persons who at the time of the grant of the injunction are neither defendants nor identifiable, and who are described in the order only as persons unknown. The injunction may be granted on an interim or final basis, necessarily on an application without notice.
>
> (ii) Such an injunction (a 'newcomer injunction') will be effective to bind anyone who has notice of it while it remains in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action. It is inherently an order with effect *contra mundum*, and is not to be justified on the basis that those who disobey it automatically become defendants.
>
> (iii) In deciding whether to grant a newcomer injunction and, if so, upon what terms, the court will be guided by principles of justice and equity and, in particular:
>
> (a) That equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue.
>
> (b) That equity looks to the substance rather than to the form.
>
> (c) That equity takes an essentially flexible approach to the formulation of a remedy.
>
> (d) That equity has not been constrained by hard rules or procedure in fashioning a remedy to suit new circumstances.
>
> (e) These principles may be discerned in action in the remarkable development of the injunction as a remedy during the last 50 years.
>
> (iv) In deciding whether to grant a newcomer injunction, the application of those principles in the context of trespass and breach of planning control by Travellers will be likely to require an applicant:
>
> (a) to demonstrate a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant.
>
> (b) to build into the application and into the order sought procedural protection for the rights (including Convention rights) of the newcomers affected by the order, sufficient to overcome the potential for injustice arising from the fact that, as against newcomers, the application will necessarily be made without notice to them. Those protections are likely to include advertisement of an intended application so as to alert potentially affected Travellers and bodies which may be able to represent their interests at the hearing of the application, full provision for liberty to persons affected to apply to vary or discharge the order without having to show a change of

circumstances, together with temporal and geographical limits on the scope of the order so as to ensure that it is proportional to the rights and interests sought to be protected.

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

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

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

(a) The *Gammell* principle disapproved as the basis for newcomer injunctions

339. As noted in paragraph (ii) of the Supreme Court's summary, the 'newcomer' injunction it recognised was a *contra mundum* order. In disagreement with the Court of Appeal, the Supreme Court disapproved of the previous basis upon which 'newcomer' injunctions had been granted using the principle from ***Gammell*** to treat 'newcomers', by their conduct, as having become defendants to the proceedings and bound to comply with the injunction: [127]-[132].

340. Ms Bolton submitted that the species of injunction newly sanctioned by the Supreme Court was "*analogous*" to a *contra mundum* injunction. Whilst the Supreme Court did use the word "*analogous*" in discussion of 'newcomer' injunctions ([132]), the new form of order that it ultimately approved is not analogous to a *contra mundum* order; it *is* a *contra mundum* order. That is plain from [238(ii)].

(b) The key features of, and justification for, a *contra mundum* 'newcomer' injunction

341. The Supreme Court identified the "*distinguishing features*" of a 'newcomer' injunction as follows [143]:

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

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

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

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

(v) Even in cases where there might in theory be such a dispute, or a real prospect that article 8 rights might prevail, the newcomers would in practice be unlikely to engage with the proceedings as active defendants, even if joined. This is not merely or even mainly because they are newcomers who may by complying with the injunction remain unidentified. Even if identified and joined as defendants, experience has shown that they generally decline to take any active part in the proceedings, whether because of lack of means, lack of pro bono representation, lack of a wish to undertake costs risk, lack of a perceived defence or simply because their wish to camp on any particular site is so short term that it makes more sense to move on than to go to court about continued camping at any particular site or locality.

(vi) By the same token the mischief against which the injunction is aimed, although cumulatively a serious threatened invasion of the claimant's rights (or the rights of the neighbouring public which the local authorities seek to protect), is usually short term and liable, if terminated, just to be repeated on a nearby site, or by different Travellers on the same site, so that the usual processes of eviction, or even injunction against named parties, are an inadequate means of protection.

(vii) For all those reasons the injunction (even when interim in form) is sought for its medium to long term effect even if time-limited, rather than as a means of holding the ring in an emergency, ahead of some later trial process, or even a renewed interim application on notice (and following service) in which any defendant is expected to be identified, let alone turn up and contest.

(viii) Nor is the injunction designed (like a freezing injunction, search order, *Norwich Pharmacal* or *Bankers Trust* order or even an anti-suit injunction) to protect from interference or abuse, or to enhance, some related process of the court. Its purpose, and no doubt the reason for its recent popularity, is simply to provide a more effective, possibly the only effective, means of vindication or protection of relevant rights than any other sanction currently available to the claimant local authorities."

342. Paragraph (iii) has particular importance in relation to some of the torts that are relied upon in relation to protest cases; e.g. public nuisance arising from an obstruction of the highway, interference with the right of access to the highway and harassment.

343. The Supreme Court was also very clear that this new form of *contra mundum* 'newcomer' injunction – "*a novel exercise of an equitable discretionary power*" – was only likely to be justified in the following circumstances [167]:

"(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other

> statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.
>
> (ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see [226]-[231] below); and the most generous provision for liberty (i.e. permission) to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.
>
> (iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.
>
> (iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.
>
> (v) It is, on the particular facts, just and convenient that such an injunction be granted. It might well not for example be just to grant an injunction restraining Travellers from using some sites as short-term transit camps if the applicant local authority has failed to exercise its power or, as the case may be, discharge its duty to provide authorised sites for that purpose within its boundaries."

344. The Supreme Court described the need to demonstrate a "*compelling justification*" for the order sought as an "*overarching principle that must guide the court at all stages of its consideration*" of such orders: [188].

(c) Protest cases

345. Necessarily, the factors identified by the Supreme Court were directed at the particular issue of unlawful encampments of Gypsies and Travellers on local authority land. So far as their potential application of *contra mundum* 'newcomer' injunctions in protest cases, the Supreme Court said only this:

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

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

346. Whilst the matters addressed by the Supreme Court were specific to the particular context of Gypsies and Travellers' encampments (see [190]-[217]), what emerges is that, before *contra mundum* 'newcomer' injunctions are granted, the Court must consider "*whether the [applicant] has exhausted all reasonable alternatives to the grant of an injunction*". Of course, in the context of the problems of unlawful encampments of land, a local authority has a range of other options available to it – ranging from byelaws, public space protection orders to directions made under s.77 Criminal Justice and Public Order Act 1994.

347. Private litigants, such as the Claimants in this case, do not have access to similar powers. The fact that an applicant for a *contra mundum* 'newcomer' injunction can demonstrate infringements of the civil law does not mean that they can have immediate recourse to a *contra mundum* 'newcomer' injunction. Consideration of both whether the applicant has demonstrated a compelling justification for the remedy and whether it is just and convenient to grant such an order will require the Court to consider what other (and potentially better) solutions may be available, particularly in the context of protests.

348. In the context of protest cases, the Court is entitled to and must have regard to (a) the extensive powers the police have to deal with protest activities, including, from 28 June 2022, the new statutory offence of public nuisance in s.78 Police, Crime, Sentencing and Courts Act 2022 (see [81] above); and (in relation to potential exclusion zones) (b) the powers of local authorities to impose public space protection orders under the Anti-social Behaviour, Crime and Policing Act 2014 (see ***Wolverhampton*** [204]).

349. In ***Canada Goose -v- Persons Unknown*** **[2020] WLR 417**, a protest case, I said this:

> [100] The evidence in the current case shows that there have been few arrests by the police of demonstrators prior to the grant of the injunction. I was told at the hearing that the Claimants know of no prosecutions of any protestors. Evidence before Teare J suggested that the cost of policing the demonstrations was around £108,000. Of course, individuals and companies are entitled to pursue such private law remedies as are available to them and to seek interim injunctions where appropriate, but this case (and ***Ineos*** and ***Astellas*** – see [119] below) perhaps demonstrate the

difficulties and limits of trying to fashion civil injunctions into quasi-public order restrictions.

[101] When considering whether it is *necessary* to impose civil injunctions (even if they can be precisely defined and properly limited to prohibit only unlawful conduct) the Court must be entitled to look at the overall picture and the extent to which the law provides other remedies that may be equally if not more effective.

[102] The police play an essential and important role in striking the appropriate balance between facilitating lawful demonstration and preventing activities that are unlawful. Consistent with the proper respect for the Article 10/11 rights (see [99(viii)] above), it is only those engaged upon or intent on violence (or other criminal activity) who are liable to arrest and removal, leaving others to demonstrate peacefully. The police have available an extensive array of resources and powers to keep protests within lawful bounds, including:

i) their presence; often itself a deterrent to unlawful activities;

ii) the power of arrest, in particular for breach of the peace, harassment, public order offences (under Public Order Act 1986), obstruction of the highway (see [107] below), criminal damage, aggravated trespass (contrary to s.68 Criminal Justice and Public Order Act 1994) and assault;

iii) the use of dispersal powers under Part 3 of the Anti-social Behaviour Crime and Policing Act 2014;

iv) the imposition of conditions on public assembly under s.14 Public Order Act 1986; and/or

v) an application for a prohibition of trespassory assembly under s.14A Public Order Act 1986.

[103] Selected and proportionate use of these powers, adjudged to be necessary and targeted at particular individuals, by police officers making decisions based on an assessment 'on-the-ground', is immeasurably more likely to strike the proper balance between the demonstrators' rights of freedom of expression/assembly and the legitimate rights of others, than a Court attempting to frame a civil injunction prospectively against unknown "protestors".

[104] Parliament has also provided local authorities powers to make public space protection orders which can restrict the right to demonstrate. Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014 empowers local authorities to make such orders if the conditions in s.59 are met: see ***Dulgheriu -v- London Borough of Ealing*** **[2020] 1 WLR 609**.

350. The Court of Appeal in ***Canada Goose*** **[2020] 1 WLR 2802** [93] agreed:

"… Canada Goose's problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a

> continually fluctuating body of protestors. It wishes to use remedies in private litigation in effect to prevent what is sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protestors. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, ***Dulgheriu -v- Ealing London Borough Council*** **[2020] 1 WLR 609**. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it."

351. Although the Supreme Court in ***Wolverhampton*** disagreed with the Court of Appeal's decision in ***Canada Goose*** (see [133]-[138]), that was on the ground that Court of Appeal was wrong to find that a final injunction could not bind 'newcomers'. The Supreme Court did not specifically address – or contradict – the Court of Appeal's identification of the problems of attempting to use civil injunctions to control public protest. The decision found that *contra mundum* 'newcomer' injunctions can, as a matter of principle, be granted in protest cases, but says nothing (beyond what is noted in [235]-[236]) about the particular issues that arise in such cases, other than to acknowledge the different issues that will call for decision and that, with all *contra mundum* 'newcomer' injunctions, a compelling justification for the order must be demonstrated.

(d) The need to identify the prohibited acts clearly in the terms of any injunction

352. The Supreme Court set out the requirements of any *contra mundum* 'newcomer' injunction:

> [222] It is always important that an injunction spells out clearly and in everyday terms the full extent of the acts it prohibits, and this is particularly so where it is sought against persons unknown, including newcomers. The terms of the injunction – and therefore the prohibited acts – must correspond as closely as possible to the actual or threatened unlawful conduct. Further, the order should extend no further than the minimum necessary to achieve the purpose for which it was granted; and the terms of the order must be sufficiently clear and precise to enable persons affected by it to know what they must not do.
>
> [223] Further, if and in so far as the authority seeks to enjoin any conduct which is lawful viewed on its own, this must also be made absolutely clear, and the authority must be prepared to satisfy the court that there is no other more proportionate way of protecting its rights or those of others.
>
> [224] It follows but we would nevertheless emphasise that the prohibited acts should not be described in terms of a legal cause of action, such as trespass or nuisance, unless this is unavoidable. They should be defined, so far as

> possible, in non-technical and readily comprehensible language which a person served with or given notice of the order is capable of understanding without recourse to professional legal advisers.

(4) Other consequences of *contra mundum* litigation

353. There are further implications of the move to *contra mundum* orders. In despatching the ***Gammell*** principle as the jurisdictional basis to bind newcomers, the Supreme Court did away with the notion that the people bound by a 'newcomer' injunction are parties to the litigation. They are not bound as a party; they are bound because the injunction is framed as a prohibition generally on the identified act(s) that, subject to notice of the injunction, binds everyone: "*anyone who knowingly breaches the injunction is liable to be held in contempt, whether or not they have been served with the proceedings*": [132].

354. The Supreme Court did not really address the issue of service of a Claim Form in a wholly *contra mundum* claim (i.e. one in which there are no named defendants). All that was said was [56]:

> "Conventional methods of service may be impractical where defendants cannot be identified. However, alternative methods of service can be permitted under CPR r 6.15. In exceptional circumstances (for example, where the defendant has deliberately avoided identification and substituted service is impractical), the court has the power to dispense with service, under CPR r 6.16."

355. In litigation brought solely *contra mundum* there can be no expectation or requirement to serve the Claim Form on the putative defendant. In *contra mundum* litigation, "*there is, in reality no defendant*": ***Wolverhampton*** [115]. There is therefore no one upon whom the Claim Form can be served. If, exceptionally, the Court is satisfied that it is appropriate to proceed to without a defendant, the Court can dispense with the service of the Claim Form under CPR 6.16. That was the course adopted in ***In the matter of the persons formerly known as Winch*** **[2021] EMLR 20** [31].

356. The absence of any defendant(s) also means that, whilst the Court must ensure that the terms of any *contra mundum* injunction are (a) clear as to what conduct is prohibited (see [352] above), and (b) compellingly shown to be necessary, there is now no need carefully to define the category of "Persons Unknown" who are to be defendants to the claim; there are no defendants in such a claim.

357. I note that the Supreme Court said the following about the description of those who are to be restrained by a *contra mundum* 'newcomer' injunction:

> [132] … Although the persons enjoined by a newcomer injunction should be described as precisely as may be possible in the circumstances, they potentially embrace the whole of humanity…
>
> [221] The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in ***Cameron*** **[2019] 1 WLR 1471**, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these

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

358. Of course, every case will have to be decided on its facts. In a case of unlawful encampment on land, it may very well be possible to identify, if not to name, (a) those currently on the land; (b) those immediately threatening to move onto the land; and (c) newcomers who might at some future point move onto the land. I read the Supreme Court's guidance as a reminder that the fact that the injunction sought includes a *contra mundum* 'newcomer' injunction against (c), does not relieve the local authority for taking such steps as are available to identify, and serve the Claim Form upon, those in categories (a) and (b) (if necessary, by an alternative service order).

359. But there can be no question of service of a Claim Form on those in category (c). These people cannot be identified. They cannot be served, not even under the terms of an alternative service order. As against them, the *contra mundum* 'newcomer' injunction is made, necessarily, without notice. For persons in category (c), the Supreme Court regarded their interests adequately safeguarded by their ability to apply to vary or discharge the order.

360. Ms Bolton had advanced, as an alternative to the *contra mundum* order, what might be regarded as the pre-***Wolverhampton*** form of "Persons Unknown" injunction. Reflecting the need to identify, clearly, the categories of "Persons Unknown" defendants (c.f. ***Canada Goose*** [82(4)]), the injunction sought restrain particular categories of defendants. Following ***Wolverhampton***, this is no longer necessary, nor appropriate for *contra mundum* 'newcomer' injunctions. Indeed, one benefit of the ***Wolverhampton*** decision is that the form of the injunction order, if granted, can be much simplified. The experience that I have gained in this case suggests that, if there is an opportunity to simplify injunction orders directed at those who are not parties to the proceedings, it should be grasped.

361. The form of the Interim Injunction Order that has been in force since 2 August 2022 lists a total of 33 Defendants, of which there are 10 separate categories of "Persons Unknown" (the various descriptions can be seen in Annex 1). It is not until page 4 of the 8-page document that a person reading it would get to the actual terms of the injunction. Even then, s/he would have to refer back to the defined categories of "Persons Unknown" to understand (a) whether s/he now fell (or, if s/he did an act prohibited by the injunction, would fall) within this category; and, if so (b) what s/he was therefore prohibited from doing. During these proceedings, I have become increasingly concerned that the Interim Injunction Order in this case has become an impenetrable legal thicket, likely to be beyond the comprehension of most ordinary people. That was an unavoidable product of the complicated legal basis on which "Persons Unknown" injunctions were granted. Courts should always strive to ensure that its orders are clear, but in a case concerning protest, it is especially important to avoid uncertainty as to what is and is not permitted. Such uncertainty is likely to chill lawful exercise of important rights under Articles 10 and 11.

362. Now that the Supreme Court has despatched the legal thicket, in favour of *contra mundum* 'newcomer' injunctions, all of these historic complications can (and in my view should) be swept away. I would also suggest, and it will be the practice I shall adopt in this case, that the *contra mundum* 'newcomer' injunction should be contained in a separate order from any injunction made against parties to the litigation. In that way, the terms of the *contra mundum* 'newcomer' injunction can state, clearly and simply, what acts the Court is prohibiting by *anyone*. It is particularly important that injunctions that place limits on a citizen's right to demonstrate must be spelled out in clear and readily comprehensible terms so that there is no inadvertent chilling effect.

(5) *Contra mundum* injunctions as a form of legislation?

363. In ***LB Barking & Dagenham*** (the first instance decision in ***Wolverhampton***), I had expressed the concern that, by granting *contra mundum* injunctions, the Court risked moving from its constitutionally legitimate role of resolving disputes raised by the parties before it, to an arguably constitutionally illegitimate role of using injunctive powers effectively to legislate to prohibit behaviour generally [260]:

> "If these established principles and the limits they impose on civil litigation are not observed, the Court risks moving from its proper role in adjudicating upon disputes between parties into, effectively, legislating to prohibit behaviour generally by use of a combination of injunctions and the Court's powers of enforcement. There may be good arguments - and Mr Anderson QC's submissions made points that could have been made by all of the Cohort Claimants - as to why such behaviour ought to be prohibited, but it is not the job of the Court, through civil injunctions granted *contra mundum*, to venture into that territory. Stepping back, the injunction that Wolverhampton was granted, with a power of arrest attached, effectively achieved the criminalisation of trespass on the 60 or so sites covered by the injunction. In a democracy, legislation is the exclusive province of elected representatives. A court operating in an adversarial system of civil litigation simply does not have procedures that are well-suited or designed to prohibit, by injunction, conduct generally…"

364. The view the Court of Appeal took as to the availability of "Persons Unknown" injunctions meant that the point did not arise.

365. The appellants in the Supreme Court did argue that *contra mundum* orders were objectionable on the ground that they were, effectively, a form of legislation (see [154]). The Supreme Court rejected the argument:

> [169] We have already mentioned the objection that an injunction of this type looks more like a species of local law than an in personam remedy between civil litigants. It is said that the courts have neither the skills, the capacity for consultation nor the democratic credentials for making what is in substance legislation binding everyone. In other words, the courts are acting outside their proper constitutional role and are making what are, in effect, local laws. The more appropriate response, it is argued, is for local authorities to use their powers to make byelaws or to exercise their other statutory powers to intervene.
>
> [170] We do not accept that the granting of injunctions of this kind is constitutionally improper. In so far as the local authorities are seeking to

> prevent the commission of civil wrongs such as trespass, they are entitled to apply to the civil courts for any relief allowed by law. In particular, they are entitled to invoke the equitable jurisdiction of the court so as to obtain an injunction against potential trespassers. For the reasons we have explained, courts have jurisdiction to make such orders against persons who are not parties to the action, i.e. newcomers. In so far as the local authorities are seeking to prevent breaches of public law, including planning law and the law relating to highways, they are empowered to seek injunctions by statutory provisions such as those mentioned in para 45 above. They can accordingly invoke the equitable jurisdiction of the court, which extends, as we have explained, to the granting of newcomer injunctions. The possibility of an alternative non-judicial remedy does not deprive the courts of jurisdiction.
>
> [171] Although we reject the constitutional objection, we accept that the availability of non-judicial remedies, such as the making of byelaws and the exercise of other statutory powers, may bear on questions (i) and (v) in para 167 above: that is to say, whether there is a compelling need for an injunction, and whether it is, on the facts, just and convenient to grant one…

366. I note that in ***Valero Ltd -v- Persons Unknown*** **[2024] EWHC 124 (KB)** [57]**,** Ritchie J described *contra mundum* injunctions as "*a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future*".

367. As a first instance Judge, my obligation is clear. I must faithfully follow and apply the law as declared by the Supreme Court. But I remain troubled by the Courts seeking to set the boundaries upon lawful protest by *contra mundum* injunctions. I remain concerned that, constitutionally, the prohibition of conduct by citizens generally, with the threat of punishment (including imprisonment) for contravention, ought to be a matter for Parliament.

368. Prior to ***Wolverhampton***, the grant of *contra mundum* injunctions was limited to exceptional cases where the court was "*driven in each case to make the order by a perception that the risk to the claimants' Convention rights placed it under a positive duty to act*": ***Wolverhampton*** [110]. As that duty was imposed by Parliament, by s.6 Human Rights Act 1998, there could be no suggestion that by granting the order, the Court was arrogating to itself a power of legislation that was exclusively the province of Parliament.

369. As recognised by Richie J in ***Valero***, the reality of the imposition of *contra mundum* injunction, with the threat of sanctions including fines and imprisonment for breach, is that it is akin to the creation of a criminal offence. It is a prohibition on conduct generally that has been imposed by a Court, not by the democratic process in Parliament.

370. Further, a *contra mundum* injunction is a prohibition, the alleged breach of which has none of the safeguards that are present in the criminal justice process. If a protestor is alleged to have broken the criminal law, unless exceptionally the prosecution is brought privately, it falls to the Crown Prosecution Service to decide whether to institute criminal proceedings against the protestor and to decide what charge(s) s/he should face. That involves the independent assessment of the evidence and an independent

decision whether it is in the public interest to prosecute. Those important safeguards – in addition to the safeguards in the substantive criminal law – ensure that in our society proper respect is afforded to protest rights under Article 10/11. Even if a private prosecution were brought in a protest case, the Director of Public Prosecutions has the power to take over and discontinue the prosecution.

371. In protest cases, there are additional reasons to be concerned at the risk of abuse. The Court may well grant the injunction (and its enforcement) to a private individual, often the very person against whom the protest is directed.

372. These concerns are not speculative. As the experience in this case has demonstrated, the risks of abuse are real. In the Second Contempt Application, the Claimants actively sought the imposition of a sanction on Ms McGivern, a solicitor, as a "Person Unknown", for behaviour that was either not a civil wrong at all, or a breach of the civil law that was utterly trivial. Yet, because of the terms of the Interim Injunction Order, and the imposition of the Exclusion Zone, the Claimants were able to pursue contempt application against her leading to a 2-day hearing. In the contempt application against Mr Curtin – the Third Contempt Application – the Claimants brought an application that sought to punish Mr Curtin for lending his footwear to a person in a dinosaur costume whom Mr Curtin was alleged to have encouraged to enter the Exclusion Zone. Such a claim would be laughable, if it did not have such serious implications. Apart from Ground 2, the other grounds advanced against Mr Curtin were trivial. None of actions alleged against Mr Curtin amounted to civil wrongs.

373. Had the Crown Prosecution Service been responsible for deciding whether to bring criminal proceedings against Ms McGivern or Mr Curtin for causing or authorising a person in a dinosaur costume to enter the Exclusion Zone, I am confident that a decision would have been made that it was not in the public interest to prosecute. The Claimants, however, are not subject to any analogous requirement to consider whether it is necessary or proportionate to bring a contempt application. On two separate occasions, therefore, they have shown themselves incapable of exercising any sense of proportionality in launching and pursuing the contempt applications in respect of alleged breaches of the Interim Injunction. As a result of the Second Contempt Application, the Court imposed the Contempt Application Permission Requirement (see [49] above) to protect against the abuse of using the Interim Injunction as a weapon.

374. All but one of the allegations brought in the Third Contempt Application against Mr Curtin were trivial. This immediately raises the question as to why the Claimants would pursue trivial breaches of the Interim Injunction. As the Claimants have not had an opportunity to address this specific issue, I shall leave its final resolution, if necessary, to the hearing at which this judgment will be handed down and the Court makes all consequential orders.

M: The relief sought by the Claimants

(1) Against Mr Curtin

375. The Claimants do not seek damages against Mr Curtin.

376. The terms of the final injunction order sought by the Claimants against Mr Curtin are set out in Annex 2 to the judgment.

(2) *Contra mundum*

377. The terms of the *contra mundum* 'newcomer' injunction sought by the Claimants are set out in Annex 3 to the judgment.

O: Decision

378. In this final section of the judgment, I will set out my decision. The final form of the orders that will be made consequent upon the judgment will be finalised at the hearing at which the judgment is handed down. As the only represented parties, I invite the Claimants' team to provide the first draft. The orders that the Court ultimately makes will be posted on the Judiciary website: www.judiciary.uk.

(1) The claim against Mr Curtin

379. Based on my factual findings, the First Claimant is entitled to judgment against Mr Curtin in respect of its claims against him for (1) trespass on the physical land at the Wyton Site; and (2) interference with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site.

380. The First Claimant's claims against Mr Curtin for public nuisance, harassment and trespass by drone flying are dismissed. The claims of the remaining Claimants against Mr Curtin will be dismissed.

381. Consequent upon the judgment that the First Claimant has been granted, I am satisfied that it is necessary that an injunction should be granted to restrain Mr Curtin from (a) any physical trespass on the land owned by the First Claimant at the Wyton Site; and (b) any direct and deliberate obstruction of vehicles entering or leaving the Wyton Site. The injunction will not include any restrictions in relation to the B&K Site.

382. I have considered carefully whether to continue the prohibition on Mr Curtin's entering the Exclusion Zone. I have concluded that I should not. The Exclusion Zone was a temporary expedient to resolve the flashpoint of vehicles being surrounded. The objectionable, and unlawful, conduct is obstructing vehicles entering or leaving the Wyton Site. The injunction should target that behaviour directly. Continuation of the Exclusion Zone would subject Mr Curtin to restrictions on activities that are not unlawful, for example if Mr Curtin wanted simply to stand on that part of the grass verge that is presently within the Exclusion Zone. The Claimants have not demonstrated that such a restriction is the only way of protecting their legitimate interests. Mr Curtin should not be exposed to the risk of proceedings for contempt by doing acts that are not themselves a civil wrong.

383. The restriction on obstructing vehicles will be drafted in a way that is clear and specific. It will not include the word "*approach*" or the concept of "*slowing*" a vehicle. Approaching a vehicle in a way that is not an obstruction of that vehicle is not an act that the First Claimant is entitled to restrain. The incident on 11 July 2022 (see [275]-[279] above) demonstrates the risks that an injunction framed in these terms risks capturing behaviour that the Court never intended to restrain. Mr Curtin, and the Claimants, now know what acts amount to obstructing a vehicle.

384. The words "*direct and deliberate*" will be included in the injunction to ensure that indirect or inadvertent obstruction is not caught. A disproportionate amount of time was spent at the time considering the extent to which Mr Curtin's simply standing at the side of the Access Road obstructed the view of the driver of a vehicle leaving the Wyton Site, and therefore amounted to an obstruction of the "*free passage*" of the vehicle. As I have held (see [80] above), the First Claimant's common law right of access to the highway is not unqualified. If Mr Curtin simply walks across the Access Road, to get from one side of the entrance of the Wyton Site to the other, he does not interfere with the First Claimant's right of access to the highway if a vehicle attempting to enter or leave the Wyton Site momentarily has to give way to Mr Curtin. Deliberately standing in front of a vehicle to prevent it entering or leaving the Wyton Site is different, and obviously so. The injunction will prohibit the latter, but not the former. An injunction framed in these terms will also enable Mr Curtin to invite drivers of vehicles to stop, to speak to them and to offer them leaflets about the protest.

385. As a result, the injunction granted against Mr Curtin will consist of Paragraph (1)(a) of the Claimants' draft (in Annex 2) together with a new paragraph (2) which will prohibit Mr Curtin from directly and deliberately obstructing vehicles entering or leaving the public highway outside the Wyton Site.

(2) *Contra mundum* claim

386. Based on my factual findings, I am satisfied that the First Claimant has proved that persons who cannot be identified threaten to (a) trespass upon the First Claimant's land at the Wyton Site; and/or (b) interfere with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site.

387. The First Claimant has failed to prove that persons who cannot be identified threaten to fly drones over the Wyton Site at a height that amounts to trespass upon the First Claimant's land. In any event, the First Claimant has not made out a compelling case for the grant of a *contra mundum* injunction or that such an order would be just and convenient. The Claimants have adduced no evidence as to the height at which flying a drone interferes with its user of the First Claimant's land. 100 meters (and indeed the other heights that have variously been proposed by the Claimants) are simply arbitrary. The Claimants have been forced to choose a height (albeit without supporting evidence) because they are seeking to rely upon trespass. In reality the Claimants want to prohibit all drone flying over the Wyton Site (at whatever height) because it is not the trespass that it represents but the filming opportunity that it provides. As I have explained, there is a palpable disconnect between the tort relied upon and the wrong that that the Claimants are seeking to address.

388. I am satisfied that there is a compelling need, convincingly demonstrated by the First Claimant's evidence of repeated infringements of its civil rights, for the Court to grant a *contra mundum* injunction to restrain future acts by protestors of (a) trespass at the Wyton Site; and (b) interference with the right of access from the Wyton Site to/from the public highway caused by the obstruction of vehicles entering or leaving the Wyton Site.

389. I considered carefully whether it was just and convenient to grant an injunction *contra mundum* to restrain future trespass. On the one hand, the First Claimant is particularly

vulnerable to deliberate acts of trespass by protestors targeted against it because of the nature of its business. Leaving the First Claimant to pursue ad hoc civil remedies against individual trespassers would be likely to provide inadequate protection for its civil rights. On the other hand, I have real concerns that this form of order is potentially open to abuse by the First Claimant. It threatens to expose people who do nothing more than step momentarily on the First Claimant's land at the Wyton Site to the threat of proceedings for contempt of court. However, I have decided that these risks are adequately mitigated by the following factors:

(1) First, a contempt application would only be successful if the First Claimant demonstrates that the alleged trespasser had notice of the terms of the *contra mundum* injunction. It is quite clear from the Supreme Court's decision in ***Wolverhampton*** that notice is an essential pre-requisite of liability for breach of the new *contra mundum* 'newcomer' injunction that it has sanctioned. (I say nothing about what, if any, notice is required for the sort of *contra mundum* injunction made under the *Venables* jurisdiction, which appear to me to raise very different questions, and upon which I have received no submissions).

(2) Second, the First Claimant is subject and will remain subject to the Contempt Application Permission Requirement that was imposed on 2 August 2022 (see [49] above). This will mean that the First Claimant will have to make an application to the Court for permission to bring a contempt application alleging breach of the *contra mundum* order. The evidence in support of the application for permission would need to demonstrate that the proposed contempt application (a) is one that has a real prospect of success; (b) is not one that relies upon wholly technical or insubstantial breaches; and (c) is supported by evidence that the respondent had actual knowledge of the terms of the injunction before being alleged to have breached it. Ms Bolton accepted that the continuation of the Contempt Application Permission Requirement was appropriate if the Court were prepared to grant a *contra mundum* injunction. The *contra mundum* order will record, again, the Contempt Application Permission Requirement, and what the First Claimant must demonstrate in order to be granted permission.

390. Based on my experience in this case, and my concerns about potential abuse of such injunctions (see [370]-[374] above), it is my very clear view that all *contra mundum* 'newcomer' injunctions, particularly those in protest cases, should include a requirement that the Court's permission be obtained before a contempt application can be instituted. This would reduce the risks of a *contra mundum* injunction being used as a weapon against perceived adversaries for trivial infringements.

391. The decision in relation to granting a *contra mundum* injunction to restrain interference with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site is more straightforward. If the injunction focuses, as it should, on direct and deliberate obstruction, then unlike trespass, this is unlikely to be an unintentional act or one committed by inadvertence. On the contrary, people who attend the Wyton Site to protest will quickly come to understand that the Court has prohibited direct and deliberate obstruction of vehicles entering or leaving the Wyton Site.

392. The inclusion of the words "*direct and deliberate*" is also required in the *contra mundum* injunction, for the same reasons as they are needed in the injunction against Mr Curtin (see [384] above). There is a further important reason why these words are required in the *contra mundum* order. They will ensure that if a group of protestors lawfully processed along the B1090, and past the entrance of the Wyton Site, for the time they were passing the entrance they would probably prevent a vehicle leaving or entering the Wyton Site. It would be a serious interference to the right of lawful protest, for the *contra mundum* injunction (by an unintended side wind) to prohibit such a procession. This is to be contrasted with a group of protestors assembling outside the Wyton Site (as has happened in the past) which deliberately and directly obstructs vehicles attempting to leave or enter the Wyton Site. This conduct the injunction intends to prevent.

393. Although the First Claimant has demonstrated that there is a continuing risk that large scale demonstrations may be of such a size and duration that they may amount to a public nuisance, it has not demonstrated a compelling case that a *contra mundum* injunction is needed to tackle this risk or that it is just and convenient to make an order in these terms.

394. First, a public nuisance on this scale is primarily a matter for the police, who have ample powers to deal with both obstruction of the highway and public nuisance. I am satisfied that the police are using their powers appropriately and, in doing so, are setting the right balance between the legitimate interests of the First Claimant and the rights of protestors.

395. Second, whether the obstruction of a highway amounts to a public nuisance is entirely dependent upon a factual assessment of what happened on a particular occasion. It clearly does not fit into the category identified by the Supreme Court in ***Wolverhampton*** [143(iv)]. It is virtually impossible to fashion an injunction to restrain public nuisance that complies with the requirements reiterated by the Supreme Court (see [352] above). There is an obvious risk that granting an injunction that was targeted at prohibiting public nuisance would in fact chill perfectly lawful protest activity.

396. The First Claimant has not demonstrated that there is a compelling need for an Exclusion Zone to be imposed *contra mundum*. Even if such an order was directed specifically at protestors, it would still be very problematic. As I have already noted in the context of Mr Curtin's claim, the Exclusion Zone was a temporary expedient granted as an interim measure. It has largely had the desired effect of removing the main flashpoint in the demonstrations. I understand, therefore, why the First Claimant wishes to see it maintained. However, the central objection to this being continued *contra mundum* is that it restrains acts that are not even arguably unlawful. When it is remembered that the Court is going to prohibit obstruction of vehicles entering or leaving the Wyton Site, it is also difficult to argue that this further restriction is necessary. For that part of the Exclusion Zone that is part of the highway, it is, in my judgment, for the police to deal with obstructions of the highway that are anything more than transitory. There may be scope for an Exclusion Zone to be imposed in protest cases (c.f. those imposed around abortion clinics), but that is best done by a Public Spaces Protection Order, not a civil injunction.

397. For vehicles that are leaving or entering the Wyton Site via the public highway, obstruction of those vehicles will be prohibited. That aspect of the "*flashpoint*" will

continue to be restrained. I accept that the Claimants have provided evidence of at least one occasion where there has been significant surrounding, obstruction and delay of vehicles further down the B1090 highway. However, none of the Claimants has demonstrated a legal entitlement to restrain that activity. Save in the most extreme cases, it is unlikely to amount to a public nuisance, and I have explained above why I am not prepared to grant a *contra mundum* injunction to restrain public nuisance. For understandable reasons, the Claimants did not pursue a harassment claim against "Persons Unknown". It suffers from the same problem as public nuisance; the tort is so fact sensitive as to whether the threshold has been crossed into unlawful behaviour as to make it almost impossible to fashion a *contra mundum* injunction in acceptable terms. In my judgment, these are simply the inevitable limits of what can be achieved in attempting to control public order issues by civil injunction.

398. For these reasons, I shall grant to the First Claimant a more limited form of *contra mundum* injunction than that sought by the Claimants. It will restrain future acts by protestors of (a) trespass at the Wyton Site; and (b) interference with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site. Given that *contra mundum* 'newcomer' injunctions remain relatively uncharted waters, I am going to provide that the injunction shall last initially for a period of 2 years, at which point the Court will consider whether it should be renewed, discharged, or potentially extended.

399. Turning to paragraphs 3-5 of the Claimants' proposed order.

(1) It is very important to ensure that those affected by the order are made aware of their right to apply to the Court to vary or discharge it. Anyone affected by the order, which would embrace anyone who is protesting at the Wyton Site, or is intending to do so, is entitled to apply to the Court or vary or discharge the order. For that purpose, they must have an immediately available and effective method of being provided with all of the evidence that was relied upon by the Claimants to obtain the *contra mundum* order.

(2) It is not appropriate to provide for any sort of alternative service of the injunction order. It is for the First Claimant to decide how best to give notice of the injunction to those who need to be aware of its terms. In terms of any subsequent enforcement action, the burden will fall on the First Claimant to demonstrate that the terms of the injunction have come sufficiently to the attention of the person against whom the First Claimant wants to bring contempt proceedings. The effect of paragraphs 3-5 of the Claimants' proposed order would be that, once the relevant steps were completed, the whole world would be deemed to have received notice of the injunction. That would be a palpable fiction. It could even embrace people who are not yet born. Subject to proof of breach of the injunction, it would deliver, practically, a strict liability regime. That is not what remotely what the Supreme Court envisaged, and it is not fair.

(3) Mr Curtin's penalty in the Third Contempt Application

400. When deciding the appropriate penalty for contempt of court, the Court assesses the contemnor's culpability and the harm caused by the breach. The concept of harm, in contempt cases, includes not only direct harm caused to those who the injunction was

designed to protect, but also the harm to the administration of justice by the contemnor's disobedience to an order of the Court.

401. As to Mr Curtin's culpability, I have already found that, in his admitted breach of the Interim Injunction that formed Ground 2, he did not deliberately flout the Court's order; he got partly carried away by his emotions. I accept that, when the breach was committed, he was engaged on protest activities reflecting his sincerely held beliefs. Overall, I assess his culpability as low.

402. As to harm, the breach was in respect of a protective order that was designed to prevent the sort of behaviour in which Mr Curtin engaged. However, against that, the van was only fleetingly obstructed as it attempted to leave the Wyton Site. The incident had none of the significantly aggravating factors that had led to the imposition of the Interim injunction. Overall, this was not a serious breach of the injunction, and it has no other aggravating features. I assess the harm to be low.

403. Mr Curtin accepted the breach represented by Ground 2 at the substantive hearing. By analogy with criminal proceedings, it is fair to reflect the equivalent of a guilty plea with a 10% reduction in the sentence.

404. I am quite satisfied that seriousness of Mr Curtin's breach of the Interim Injunction is not so serious that only a custodial sentence is appropriate. I indicated as much at the conclusion of the hearing on 23 June 2023. I am satisfied that, reflecting upon the culpability and harm, it is appropriate to deal with this breach by way of a fine. In terms of mitigation, this is the first breach of the Interim Injunction and there has been no repetition since the incident almost 3 years ago. I also accept Mr Curtin's evidence that he has always tried to abide by the terms of the Court's order.

405. I have considered the sentencing guidelines for the less serious public order offences as a useful cross reference. On the Sentencing Council Guidelines for disorderly behaviour, in breach of s.5 Public Order Act 1986, Mr Curtin's conduct would appear to fall into category 2B, which gives a starting point of a Band A fine, with a range from discharge to a Band B fine. A Band A fine, is between 25-75% of the defendant's weekly wage, with a Band B fine range of 75-125% of weekly wage. I have also reminded myself of Superintendent Sissons' evidence of penalties that have been imposed on protestors following conviction in the Magistrates' Court. Although not a precise analogue, in my judgment it would be wrong if the penalty I imposed were to be out of all proportion to the penalties that have been imposed by the Magistrates' Court for offences arising out of similar protest activities.

406. Of course, when sentencing for contempt, there is an important element – usually absent from most criminal sentencing – that the conduct is a breach of a court's order. A breach of a protective order is a further aggravating factor.

407. In my judgment, the appropriate penalty for Mr Curtin's breach of the Interim Injunction under Ground 2 would have been a fine of £100. I will reduce that to £90 to reflect his admission of liability at the substantive hearing. When the judgment is handed down, I will invite submissions as the time Mr Curtin might need to pay this sum.

Annex 1: **Full list of Defendants to the claim**

(1) FREE THE MBR BEAGLES (formerly Stop Animal Cruelty Huntingdon) (an unincorporated association by its representative Mel Broughton on behalf of the members of Free the MBR Beagles who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd)

(2) CAMP BEAGLE (an unincorporated association by its representative Bethany Mayflower on behalf of the members of Camp Beagle who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd)

(3) MEL BROUGHTON

(4) RONAN FALSEY

(5) BETHANY MAYFLOWER (also known as Bethany May and/or Alexandra Taylor)

(6) SCOTT PATERSON

(7) HELEN DURANT

(8) BERNADETTE GREEN

(9) SAM MORLEY

(10) PERSON(S) UNKNOWN (who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd)

(11) JOHN CURTIN

(12) MICHAEL MAHER (also known as John Thibeault)

(13) SAMMI LAIDLAW

(14) PAULINE HODSON

(15) PERSON(S) UNKNOWN (who are entering or remaining without the consent of the First Claimant on the land and in buildings outlined in red on the plan at Annex 1 of the Amended Claim Form, that land known as MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(16) PERSON(S) UNKNOWN (who are interfering with the rights of way enjoyed by the First Claimant over the access road on the land shown in purple at Annex 3 of the Amended Claim Form and enjoyed by the Second Claimant as an implied or express licensee of the First Claimant)

(17) PERSON(S) UNKNOWN (who are obstructing vehicles of the Second Claimant entering or exiting the access road shown in purple Annex 3 of the Amended Claim Form and/or entering the First Claimant's land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(18) LOU MARLEY (also known as Louise Yvonne Firth)

(19) LUCY WINDLER (also known as Lucy Lukins)

(20) LISA JAFFRAY

(21) JOANNE SHAW

(22) AMANDA JAMES

(23) VICTORIA ASPLIN

(24) AMANDEEP SINGH

(25) PERSON UNKNOWN 70

(26) PERSON UNKNOWN 74

(27) [Not used]

(28) PERSON(S) UNKNOWN (who are, without the consent of the First Claimant, entering or remaining on land and in buildings outlined in red on the plans at Annex 1 to the Amended Claim Form, those being land and buildings owned by the First Claimant, at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(29) PERSON(S) UNKNOWN (who are interfering, without lawful excuse, with the First Claimant's staff and Second Claimants' right to pass and repass with or without vehicles, materials and equipment along the Highway known as the B1090)

(30) PERSON(S) UNKNOWN (who are obstructing vehicles exiting the First Claimant's land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and accessing the Highway known as the B1090)

(31) PERSON(S) UNKNOWN (who are protesting outside the premises of the First Claimant and/or against the First Claimant's lawful business activities and pursuing a course of conduct causing alarm and/or distress to the Second Claimant and/or the staff of the First Claimant for the purpose of convincing the Second Claimant and/or the staff of the First Claimant not to: (a) work for the First Claimant; and/or (b) provide services to the First Claimant; and/or (c) supply goods to the First Claimant; and/or (d) to stop the First Claimants' lawful business activities at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(32) PERSON(S) UNKNOWN (who are photographing and/or videoing/recording the First Claimant's staff and members of the Second Claimant and/or their vehicles and vehicle registration numbers as they enter and exit and/or work on the First Claimant's land outlined in red at Annex 1 to the Amended Claim Form for the purpose of causing alarm and/or distress by threatening to use and/or in fact using the images and/or recordings to identify members of the Second Claimant, follow the Second Claimant or ascertain the home addresses of the Second Claimant for the purpose of convincing the Second Claimant not to: (a) work for the First Claimant; and/or (b) not to provide services to the First Claimant; and/or (c) not to supply goods to the First Claimant)

(33) PERSON(S) UNKNOWN (who are, without the consent of the First Claimant, trespassing on the First Claimant's land by flying drones over the First Claimant's land and buildings outlined in red on the plans at Annex 1 to the Amended Claim Form, that being land and buildings owned by MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(34) LAUREN GARDNER

(35) LOUISE BOYLE

(36) PERSON(S) UNKNOWN (who are, without the consent of the First Claimant, entering or remaining on the land shaded in orange on the plans at Annex 1 to the re-re-re-Amended Claim Form – which land measures 2.85 metres from the boundary outlined in red on the plans at Annex 1 to the re-re-re-Amended Claim Form, that boundary marking those land and buildings owned by the First Claimant, at MBR Acres Limited, Wyton, Huntingdon PE28 2DT, and only where that boundary runs adjacent to the Highway known as the B1090)

Annex 2: The relief sought by the Claimants against Mr Curtin

In the draft order provided to the Court as part of their closing submissions, the Claimants seek the following by way of injunction against Mr Curtin:

> "The Eleventh Defendant, Mr John Curtin **MUST NOT** whether by himself or by instructing or encouraging any other person, group, or organisation do the same:
>
> (1) Enter the following land:
>
> (a) The First Claimant's Land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 ('the Wyton Site');
>
> (b) The Third Claimant's premises known as B&K Universal Limited, Field Station, Grimston, Aldbrough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 ('the Hull Site');
>
> (2) Enter into or remain upon or park any vehicle or place any other item (including, but not limited to, banners) in the area marked with black hatch lines on the plan at Annexes 1 and 2 [which includes all the land up to the midpoint of the highway that is adjacent to the Claimants (sic) property at the Wyton Site]. Save that nothing in this prohibition shall prevent the Defendant from Accessing the highway whilst in a vehicle, for the purpose of passing along the highway only and without stopping in the area marked with black hatching, save for when they are stopped by traffic congestion or any traffic management arranged by or on behalf of the Highways Authority, or to prevent a collision or road accident.
>
> (3) Approach and/or obstruct the path of any vehicle directly entering or exiting the area marked in black hatching (save that for the avoidance of doubt it will not be a breach of this Injunction Order where a vehicle is obstructed as a result of an emergency)
>
> (4) Approach, slow down, or obstruct any vehicle which is travelling to or from the First Claimant's Land along the B1090 Abbots Ripton Road, or within 1 mile in either direction of the First Claimant's Land at the Wyton Site;
>
> (5) Fly a drone or other unmanned aerial vehicle over the Wyton Site as marked on the Plan at Annex 1 [at a height below 50 metres, 100 meters, 150 metres]
>
> (6) Record or use other surveillance equipment (including drones, camera phones and CCTV) to record individual staff members at the Wyton Site, or when staff are carrying out work on the permitter fence of the Wyton Site. Save that nothing shall prohibit the filming of activities at the gates of the Wyton Site other than the filming of staff cars."

Annex 3: The relief sought by the Claimants *contra mundum*

In the draft order provided to the Court as part of their closing submissions, the Claimants seek the following by way of *contra mundum* injunction:

> "UNTIL AND SUBJECT TO ANY FURTHER ORDER OF THE COURT OR UNTIL AND INCLUDING [date – 3 years from the date of grant] (WHICHEVER IS SOONER) IT IS ORDERED THAT:
>
> 1. Any person with notice of this Order **MUST NOT**
>
> (1) Enter the following land:
>
> (a) The First Claimant's land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 ('the Wyton Site');
>
> (b) The Third Claimant's land known as B&K Universal Limited, Field Station, Grimston, Aldbrough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 ('the Hull Site');
>
> (2) approach, slow down or otherwise obstruct any vehicle entering or exiting the Wyton Site
>
> (3) during the course of protesting against the First Claimant's business activities, enter into, remain upon or park any vehicle or place any other item (including, but not limited to, banners) in the area marked with black hatching on the plan at Annexe 1 ("the Exclusion Zone"). For the avoidance of doubt, the Exclusion Zone extends to 20 metres on both sides of the gate to the Wyton Site, measured from the centre of the gate, and extends from the boundary of the Wyton Site up to the midpoint of the B1090 Sawtry Way that runs adjacent to the Wyton Site. Nothing in this prohibition shall prevent any person from accessing the areas of the Exclusion Zone comprising adopted highway in a manner unconnected with protesting and for the purpose of passing and re-passing along the highway, or for any purpose incidental thereto and otherwise permitted by law;
>
> (4) during the course of protesting against the First Claimant's business activities, approach, slow down or otherwise obstruct any vehicle that is entering or exiting the Exclusion Zone;
>
> (5) during the course of protesting against the First Claimant's business activities, approach, slow down or otherwise obstruct any vehicle that is travelling to or from the Wyton Site and is within a one-mile radius of the Wyton Site;
>
> (6) fly a drone or other unmanned aerial vehicle at a height of less than 100 meters over the Wyton Site.

FURTHER APPILICATIONS ABOUT THIS ORDER

2. Any person affected by the injunction in paragraph 1 above may make an application to vary or discharge the injunction to a High Court Judge on not less than 48 hours' notice to the Claimants.

SERVICE OF THIS ORDER

3. A copy of this Order will be placed on the Judiciary Website.

4. Pursuant to CPR 6.15 and CPR 6.27, the Claimants are permitted to serve this Order endorsed with a penal notice as follows (with the following to be treated conjunctively)

   (1) by uploading a copy to the dedicated share file website at https://apps.fliplet.com/mbr-injunctionwebapp/

   (2) by affixing copies (as opposed to originals) to the notice board opposite the Wyton Site. A covering letter shall accompany the Order explaining that copies of all documents in the Claim, including the evidence in support of the Claim and the skeleton argument and note of the hearing at which this Order was made, can be accessed at the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/. The cover letter will also include an email address and telephone number at which the Claimants' solicitors can be contacted, and advise that hard copy documents can be provided upon request;

   (3) by affixing in a prominent position around the perimeter of the Wyton Site signs advising that an injunction that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/ and a QR code through which the designated share file website may also be accessed;

   (4) by affixing in a prominent position at the Hull Site signs advising that an injunction. that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/ and a QR code through which the designated share file website may also be accessed;

   (5) by positioning four signs adjacent to toe main carriageway of the public highway known as the B1090 Sawtry Way within a one-mile radius of the Wyton Site. Those signs shall advise that an injunction that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/ and a QR code through which the designated share file website may also be accessed.

5. The deemed date of service of this Order shall be one working day after service is completed in accordance with all of the steps set out in paragraph 4 above.

ANNUAL REVIEW

6. The Claimants shall, by 4.30pm on [date – 12 months from the grant of this Order] make an Application to the Court (accompanied by any evidence in support) and seek the listing of a review hearing at which the continuation of the injunction in paragraph 1 above will be considered. The Claimants must by the same date serve that Application and any evidence in support on Persons Unknown in accordance with paragraph 4 above…"

Neutral Citation Number: [2025] EWHC 454 (KB)

Case No: KB-2025-000497

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday 27th February 2025

Before:
FORDHAM J

- -

Between:

THE CHANCELLOR, MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE	**Claimant**
- and -	
PERSONS UNKNOWN	**Defendants**
- and -	
EUROPEAN LEGAL SUPPORT CENTRE	**Intervener**

- -
- -

Yaaser Vanderman (instructed by Mills & Reeve) for the **Claimant**
Grant Kynaston (instructed by ELSC) for the **Intervener**
The Defendants did not appear and were not represented

- -

Hearing date: 27.2.25

Judgment as delivered in open court at the hearing

- -

Approved Judgment

- -

FORDHAM J

Note: This judgment was produced and approved by the Judge,
after authorising the use by the Court of voice-recognition software during an ex tempore judgment.

FORDHAM J :

Introduction

1. I am going to give my reasons now, for a decision on the Claimant's ("the University") application for an injunction. In other circumstances the Court would have wanted, and preferred, to have the opportunity to reserve judgment and hand down the judgment at a future date. But I am satisfied that I must grasp the nettle now, to explain what I am going to do in this case and why, in particular in the light of points that have been made about the significance of the coming weekend. I am authorising the use by the Court of voice recognition software, in the hope that it will enable me to produce a prompt and approved written judgment. But I should make clear that I expect the University's lawyers to be taking a note of this judgment with a view to it being uploaded to their injunction webpage.

The Injunction Webpage

2. The injunction webpage can be located by Googling "Cambridge University notices injunction". The actual address is www.cam.ac.uk/notices. The webpage is, in my judgment, important. By locating it, any member of the public or press and any person with an interest in this case is able to access all of the court materials in their entirety. I will be expecting, and may need to direct, that the University continue to upload to that webpage all court materials. Anyone accessing those materials will have full information about the background to this case and the evidence and written submissions that were put forward to the Court. Because the materials are publicly accessible, I will give some bundle references.

Two Cases

3. Since the University's bundle of authorities for today's hearing is itself available on the injunction webpage, there is ready access for everyone to the voluminous caselaw that was put before the Court. I think it is sufficient, for now, if I identify two of the cases. The first is a working illustration case which lists and addresses "substantive requirements" (see §23) and "procedural requirements" (§40): see University of London v Harvie-Clark and Others [2024] EWHC 2895 (Ch). That is a judgment in which an interim injunction was granted by the High Court. It is right to record that the defendants were unrepresented in that case. I am told that there is a contested substantive hearing in those proceedings, waiting to be dealt with. My principal purpose in referencing that case at the outset is because it gathers together relevant "requirements". The second is Wolverhampton City Council v London Gypsies and Travellers [2023] UKSC 47 [2024] AC 983. Unlike the University of London case, and unlike the present case, Wolverhampton was not a protest case. But reliance has been placed on it in the submissions today. And, while bearing in mind the distinction with protest cases, it contains what is self-evidently important substantive and procedural guidance.

The University's Application

4. The Court has before it the University's claim for an injunction, brought by claim form supported by particulars of claim. Specifically for today, and filed to accompany the claim form, is the University's Form N244 application notice dated 12 February 2025.

By that application notice, the University is asking the Court to make an order, in the terms of a draft order, for an injunction. The basis – given in the Form N244 – is that:

> ***the Defendants have previously trespassed on part or all of the Land (as defined) and there is a substantial, real and imminent risk that those Defendants will trespass upon parts or all of the Land.***

Mr Vanderman for the University has clarified, through his written and oral submissions, that today's application is not, however, solely based on trespass. It is also based on private nuisance.

The ELSC's Application

5. The other application which is before the Court – and which I have already in part granted – is a Form N244 application by the European Legal Support Centre ("ELSC"). ELSC seeks two things. The first is an order pursuant to CPR 19.2 that it be added to these proceedings as an intervener party. Reliance has been placed by Mr Kynaston, in support of that part of the application, on passages in Wolverhampton (especially at §§176 and 226) recognising the appropriateness of hearing from persons who represent the interests of defendants. Reliance is also placed on the fact that there was such an intervener in the Wolverhampton case itself. That first part of the ELSC's application has not been opposed by the University and I granted it earlier during today's hearing. I was quite satisfied that it was appropriate and necessary in the interests of justice that ELSC be joined to these proceedings. I will need to return to the substance of the second part of ELSC's application, which asked the Court to adjourn the University's claim for an injunction, in its entirety.

University Rules, Codes and Guidance

6. I want next to draw attention to the fact that – as in the University of London case (see §§9, 15, 23) – so too in the present case there are terms of admission, rules of behaviour, codes of practice and guidance which expressly address the position of a University student so far as concerns matters relating to events on University property, and freedom of expression and protest. These are themselves in the public domain. But they are also within the bundle of materials, available on the injunction webpage. By way of an overview, a student at the University is required to comply with the rules of behaviour and in turn with relevant codes of practice. Under the rules, a student must not interfere with – or attempt to interfere with – the activities of the University or occupy any University property without appropriate permission. Permission is required for meetings and events on University property, whether indoors or outdoors. Students are not to occupy buildings; nor to disrupt University events. They are not to seek to disrupt events taking place on University premises or do anything designed to prevent an event successfully taking place. Within the interim injunction order that was made in the University of London case (see §15) was express recognition that UOL students were able to protest if they had the relevant authorisation pursuant to the conduct rules codes and guidance.

A Final Injunction

7. The University's primary position at today's hearing is that this Court should today grant a "final" injunction, subject only to there being liberty to apply to vary or discharge it.

Four Locations

8. The injunction sought by the University would relate to four locations. The Court has been shown the land ownership materials which support the University's position that it is the landowner. First, there is the Senate House. This is a formal building in the centre of Cambridge, at the heart of the University, where degree ceremonies and Senate meetings are held. Secondly, there is the Senate House Yard. This is a lawn in front of the Senate House. Thirdly, there is a building called the Old Schools. It is on the same enclosed site as the Senate House and Yard. But is described as "physically distinct". It contains University administrative departments. Finally, there is a building called Greenwich House. It is an administrative building two miles away from the others.

The Description of Persons Unknown

9. The injunction that is sought is directed against what are described as persons unknown, as follows:

> ***PERSONS UNKNOWN WHO, IN CONNECTION WITH CAMBRIDGE FOR PALESTINE OR OTHERWISE FOR A PURPOSE CONNECTED WITH THE PALESTINE-ISRAEL CONFLICT, WITHOUT THE CLAIMANT'S CONSENT (I) ENTER OCCUPY OR REMAIN UPON (II) BLOCK, PREVENT, SLOW DOWN, OBSTRUCT OR OTHERWISE INTERFERE WITH ACCESS TO (III) ERECT ANY STRUCTURE (INCLUDING TENTS) ON, THE FOLLOWING SITES (AS SHOWN FOR IDENTIFICATION EDGED RED ON THE ATTACHED PLANS 1 AND 2): (A) GREENWICH HOUSE, MADINGLEY RISE, CAMBRIDGE, CB3 0TX; (B) SENATE HOUSE AND SENATE HOUSE YARD, TRINITY STREET, CAMBRIDGE, CB2 1TA; (C) THE OLD SCHOOLS, TRINITY LANE, CAMBRIDGE, CB2 1TN.***

For the purposes of the Court dealing with the application today, the University through Mr Vanderman has accepted the appropriateness of narrowing down "block, prevent, slow down, obstruct or otherwise interfere with access", so that it would simply say "prevent access".

The Three Prohibitions

10. The substance of the order being sought against that identified group of Persons Unknown involves three things. They are reflected in the description of the group, quoted above. The first is a prohibition on entering, occupying or remaining upon the land without the University's "consent". The second is a prohibition on (what I just explained is for today) preventing access on the part of any other individual to the relevant land, again without the University's "consent". Pausing there, one of the significant points about that second prohibition is that it would bite on actions taken by an individual who was not on the specified University land itself, but was on the land outside it. The third is a prohibition on erecting or placing any structure on the land including tents or sleeping equipment, again without the University's "consent".

Protesting and Other Locations

11. The University's particulars of claim specifically include this as part of the University's pleaded case:

> ***The Defendants are able to protest at other locations without causing significant disruption to the University, its staff and students.***

That is a clear, pleaded reference to "protest". However, as Mr Kynaston for ELSC points out "protest" does not appear within the drafting of the University's draft injunction order.

Five Years

12. Completing my description of the order that I am being asked by the University to make today, the injunction sought – in relation to these four locations and with these three categories of prohibition – would be for a period of 5 years (to 12 February 2030), but subject to an annual review and a liberty to apply provision.

Three Incidents of Occupation

13. So far as the factual basis for the University's application is concerned, it really comes to this. The University has put forward evidence of three incidents each described in the materials as an "occupation". The University explains that its understanding is that these have been occupations, predominantly by its own students. Two of them (at Senate House Yard) relate to the location for a planned graduation ceremony (Senate House) and, on the evidence, the occupation led to those graduation ceremonies being relocated. I emphasise I am not making any finding of fact for the purposes of today's application. But I do need to consider and assess the evidential picture as it stands before the Court.

14. On 15 May 2024 – it is said – 40 to 50 people entered Senate House Yard by climbing over the fence. They made an "encampment" of 13 tents on the lawn. I understand 15 May 2024 to have been a Thursday. Graduation ceremonies were due to take place at Senate House during the course of the weekend (17 and 18 May 2024). There are social media postings which refer to the encampment, with photos. There is a reference to this as action "disrupting graduation" (University's bundle p.600). The occupiers left at 10:20pm on the Friday evening (16 May 2024), by which time the location of the graduations had been moved from Senate House, to take place instead within individual colleges. There were 1,158 students graduating and 2,773 guests.

15. The other occupation relating to a graduation started on 27 November 2024 when – it is said – a group entered Senate House Yard again by climbing over the fence and 6 tents were put on the lawn. Again there are social media communications which are before the Court with the description of a returning occupation ("Cambridge encampment is back"; "we are back") (pp.133, 401). I understand 27 November 2024 to have been a Wednesday. A graduation was due to take place at the Senate House that weekend, on Saturday 30 November 2024. That graduation was moved from Senate House across the road to Great St Mary's Church. There were some 500 students affected and their guests. Communications – linked to those in occupation – refer to having "forced" the move of the graduation ceremony (p.153). The occupants again left, this time on the evening of Saturday 30 November 2024. At 11am on that same day (30 November) there was a rally outside Great St Mary's Church (p.566). Great St Mary's Church – as I have already indicated – is across the road from Senate House and Senate House Yard. Mr Vanderman emphasises that, on the day that the occupants left (30 November 2024), there was a contemporaneous posted message that says: "We will be back" (p.153).

16. The third occupation is an incident of a very different nature, on the face of it. At Greenwich House (the administrative office building) on 22 November 2024 – it is said – a group entered the building; the fire alarms were activated and all the staff exited the

building; at which point the group then blocked re-entry. The University's evidence is that members of that group then accessed private offices and opened locked cabinets. That occupation continued until 6 December 2024. There were legal proceedings relating to that incident, specifically relating to what was said by the University to be confidential materials which the University was concerned had been accessed. Court orders were made relating to that.

17. That completes my summary of the background and context in which I have to decide what, if any, order it is appropriate for the Court to make today. I need next to record that I was particularly concerned during the hearing about two features of this case

A Concern About Timing

18. The first concern is that the University publicised these proceedings through its injunction webpage only on Wednesday 19 February 2025. Emails were sent on that morning to three identified email addresses. Notices were fixed by process servers at the four locations. The court documents were all published on the injunction webpage. That timing, is in my judgment, a matter of significant concern in the following context and for the following reasons:

    i) I have already identified the dates of the incidents which really underpin the application for an injunction. As I have already described, the latest of them (Greenwich House) had ended on 6 December 2024. It was well known and understood that the graduation ceremonies were scheduled to take place at Senate House on 1 March 2025, 29 March 2025 and 5 April 2025.

    ii) A published statement by the University on 3 February 2025 (p.261) referred to graduation ceremonies. It said the University was:

        > ***currently exploring legal options that would protect certain limited areas of the University, including Senate House and Senate House Yard, from future occupations so that we can hold the [graduation ceremonies] that our students and their families expect.***

        Two days later (5 February 2025) there was a meeting with representatives of Cambridge for Palestine. A final decision was then taken on the 7 February 2025 to issue these proceedings. But that was not announced publicly.

    iii) These proceedings were commenced on 12 February 2025 and an oral hearing was sought (in Form N244) at that stage, for the "week commencing 24 February 2025". The principal witness statement relied on (Rampton 1) is dated Friday 14 February 2025. It refers (§161) to proposed notification, by the means that were subsequently adopted. It was on that Friday 14 February 2025 (at 1736) that the Court confirmed to the University the listing of this hearing for today (27 February 2025).

19. In my judgment, it is regrettable that publication of the fact of these proceedings and the Court documents, including uploading to the webpage and sending of the three emails, did not take place until the morning of Wednesday 19 February 2025. That left just 5 working days before the hearing. It is no answer, in my judgment, that CPR 23.7(1)(b) refers to serving an application "at least 3 days" before the court is going to deal with it. That is because CPR 23.7(1)(a) has a freestanding requirement "as soon as practicable" after an application has been filed. The University was not waiting for an order from the

Court to direct or authorise any particular notification step. It had already waited a considerable period of time since the latest of the events most directly relied on.

20. All of this really matters, for reasons identified by the Supreme Court in the Wolverhampton case. At §226 the Supreme Court emphasised the importance of notification in sufficient time before an application is heard to allow affected persons – or those representing their interests – to make focused submissions as to whether it is appropriate for an injunction to be granted and if so as to terms and conditions (ie. including drafting). The Supreme Court also identified (at §226) why that was important, namely that it was "in the interests of procedural fairness". I am unable to accept that the University's delay is justifiable on the basis that (until it had a hearing date) it was "avoiding confusion"; or that it needed to "ready itself for press attention"; or that it needed to await the actions of a process server. In my judgment there ought to have been earlier and more prompt action, and therefore greater notice.

Reaction

21. In the event, ELSC became aware of the University's application only on Friday 21 February 2025. Others have also, belatedly, become aware of these proceedings. The Court has – and I will require to be uploaded to the injunction webpage – a communication written to the University by the United Nations Special Rapporteur on Freedom of Association and Peaceful Assembly (Gina Romero), dated today 27 February 2025. There is also a letter to the Court from the non-governmental organisation Liberty, dated 26 February 2025. In addition, among the materials filed by ELSC and by the University there are other responses to the University's application for the injunction. A series of concerns are raised in these materials.

The Other Graduation Events

22. The second point which caused me specific concern in dealing with the hearing today relates to the facts, so far as graduation ceremonies are concerned. The Court was told in the materials about the 17/18 May 2024 graduation weekend; and then about the 30 November 2024 graduation weekend. The Court was also told about the upcoming graduation events, beginning this Saturday 1 March 2025, then 29 March 2025 and then 5 April 2025. What the Court was not told in the materials was about these further ten graduation ceremonies which had taken place, unimpeded, at the Senate House and Senate House Yard. They were on 19 June 2024, 26 to 29 June 2024, 18 to 20 July 2024, and 25 and 26 October 2024. In my judgment, it was important that the Court was given a full factual picture, and not simply told about those graduation events that had been displaced. It was fortunate that, by specifically enquiring, I was able – through Mr Vanderman – to discover the fuller facts (also evidently unknown to him). This does mean that the picture before the Court is that it is three out of the last thirteen graduation events which have involved a need to relocate in the light of occupation action.

What I am Not Going to Do

23. I am not prepared today to make any "final" order for an injunction. I am not going to make any order with a duration of "five years". Nor am I prepared today to make an order relating to all four of the locations that have been identified in the Claimant application. So far as the Old Schools are concerned, this building does not feature in any of the evidenced prior incidents. It is true that they are at the same enclosed site as

the Senate House and Senate House Yard. But I am very clearly told that they are "physically distinct". So far as Greenwich House is concerned that, as I have said, is two miles away from graduation events. It has been the subject of one enduring incident which ended on 6 December last year. I am not satisfied that it could be appropriate, procedurally or substantively – still less necessary and justified – for this Court to be making any order today in relation to any of these features or locations.

24. Nor am I prepared today to make any order that would apply to the conduct of any individual who is outside of University land. In my judgment, that is a distinct feature. It relates to the second of the three prohibitions. It introduces distinct and important considerations. When I enquired about that, I was taken to footnoted references (authorities bundle p.543 fn.9) to a line of authorities that are not before the Court today. And I have not been satisfied, either from a procedural or a substantive point of view, that any injunction – even an interim injunction – should be made extending to what any individual does or does not do outside University land.

Saturday's Graduation Ceremony

25. In my judgment, the clear focus for the purposes of today – in the light of everything that I have so far said – has to be on this Saturday's graduation ceremony, scheduled as it is to take place at Senate House and Senate House Yard. Mr Kynaston for ELSC very fairly accepted that all of his points about timing and procedural unfairness were subject to the caveat that the Court would need to consider – as I do - the question of urgency. It is because the graduation ceremony is due to take place on Saturday – the day after tomorrow – that I am giving this judgment immediately at the end of the hearing. The supporting witness statement (Rampton 1 §74) describes as the "main issue" caused by the previous occupations, the disruption of degree graduation ceremonies at Senate House. The University's solicitors letter of response (26 February 2025) to ELSC's request for an adjournment today emphasises "urgency" by reference to Saturday's ceremony. I agree with Mr Kynaston that it is striking, in all the circumstances, that the University did not narrow down and tailor today's application and an injunction to Saturday's degree ceremony. I am quite satisfied that it is the appropriate focus for my consideration. It is, moreover, an event which – on the face of it – squarely engages the University rules, codes and guidance to which I have referred, especially about students not interfering with University events, as well as about not having protest events without having applied for authorisation.

What I Am Going to Do

26. I am going to make a very limited court order in this case. I do not accept Mr Kynaston's submission that there are "insurmountable drafting problems" in the University's draft order, which it is simply too late to resolve or which the Court ought not to be concerned to address. I will be seeking with Mr Vanderman's assistance and (if he is able to give it) Mr Kynaston's assistance, to achieve maximum focus and clarity. Far from being a "final" order, for "five years", my order will be a strictly time-limited order, covering the coming weekend only, and by way of "interim" injunction. It will relate only to conduct on the University land at Senate House Yard and within the Senate House building. It will relate only to persons being at those locations without the University's consent (the first prohibition) and the erecting or leaving at those locations of equipment (the third prohibition). It follows – there being no second prohibition – that the rally which is scheduled to take place on Saturday opposite Senate House and Senate House Yard will

not be and cannot be affected by this Court's order today. I am satisfied that my order is a very limited, but a necessary, intrusion into any legitimate interests. One of the key points raised on behalf of ELSC – in Ms Ost's witness statement (at §28) – is that there is no evidence that anyone threatens or intends to take any action to interfere with Saturday's ceremony. I will return to that point. But I say now that, if that were correct, the order which I am making is benign. I will require from the University the usual cross-undertaking in damages that has been put forward.

Description of Persons Unknown

27. I am minded, in line with the approach of Nicklin J in MBR Acres Ltd v Curtin [2025] EWHC 331 (KB) especially at §§356 and 390, to adopt a simplified description of the Defendant. I have well in mind the clear guidance in Wolverhampton at §221 about defining actual or intended respondents to injunction applications "as precisely as possible", "when it is possible to do so". That guidance describes the appropriateness of exploring that identification, if necessary by reference to intention, and adopting it "if possible". I am conscious that the order that I am making today is only, in any event, very limited and targeted, including for a very short period of what would be a couple of days. I will return with the parties' assistance to the drafting and finalisation of the order in this respect. One of the points that concerns me is as to the messaging that a court order may give, in the way in which it is expressed and targeted. In fact, in this case, even on the University's own drafting the order would not be limited to individuals or groups with any particular position or point of view in relation to "the Palestine-Israel conflict". That is because the University's suggested drafting includes any "purpose connected with" the conflict. That is notwithstanding, as Mr Vanderman rightly points out, the University has needed to justify its application by reference to evidence; and the evidence in question has related to the occupation incidents which I have summarised.

Observations from UOL

28. I record here the following observations made in the University of London case by Thompsell J at §50:

> ***whilst the rights and wrongs of the matters over which the protestors are protesting is a much bigger topic than the one before the court, and it would not be right for the court to express any opinion on them, I think I can observe that the motivations of the protestors spring from a deeply-held sense of injustice and it is a good thing that young people do take notice and seek to call out what they see as injustice. As noted in City of London Corp v Samede [2012] PTSR 1624 at §41 the court can take into account the general character of the view that Convention is being invoked to protect.***

Human Rights

29. The "Convention" referred to by Thompsell J is the European Convention on Human Rights. I would not have been prepared in this case to proceed for today on the basis that those human rights were irrelevant to an application of this kind. There is authority in the possession case of University of Birmingham v Persons Unknown [2024] EWHC 1770 (KB) at §§62 to 64, where this Court (Johnson J) was not prepared to proceed by treating them as irrelevant, going on to explain that in that case possession on behalf of the University was plainly not a violation of Convention rights (see §§72-75). Wisely, Mr Vanderman – for the purposes of today – was prepared to accept that the Court should assume that the Convention rights could apply. I am not reaching a finding as to the law.

I am simply avoiding making an adverse assumption (whether about the Convention rights directly, or about substantively equivalent standards). Apart from anything else, as it presently seems to me, the Convention rights would be engaged in relation to any injunction which took effect under the second prohibition, on conduct outside the University's premises; even if they arose only from the perspective of this Court itself acting as a public authority.

Contempt and Permission

30. I will want to include in my order, in the particular circumstances of the present case, the special provision that the court's permission is required before any contempt application can be instituted: see MBR §390. I am told by Mr Vanderman that that is an unusual provision to include, but I am undeterred by that observation. Given, in particular, the procedural concerns that I identified earlier – but in any event in the particular circumstances – I am satisfied that additional protection is appropriate in this case.

Justification

31. It is obvious from what I have said already that I have been satisfied, by reference to the evidential burden which is on the University, that there is the requisite justification for a court order but only the very narrow and limited order which I have identified. A helpful encapsulation of the key substantive test was identified for me by Mr Vanderman – and embraced by him for the purposes of my consideration today – from the local authority gypsy and traveller context in Wolverhampton at §218:

> ***any [claimant] applying for an injunction against persons unknown, including newcomers … must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought… There must be a strong probability that a tort … is to be committed and that this will cause real harm. Further, the threat must be real and imminent.***

Doubtless there is much that can be said about the word "imminent". I have, for the purposes of today, noted the observations of Julian Knowles J in London City Airport Ltd v Persons Unknown [2024] EWHC 2557 (KB) at §29, about "imminence" being the absence of prematurity. I interpose that no concept of "imminence" justifies the University's delay to which I earlier referred when expressing my first of two concerns.

32. On the evidence before the Court, there have on two occasions been incidents in which individuals have deliberately entered Senate House Yard in the days before a known scheduled graduation ceremony. They have erected tents on the lawn. They have remained until the University has been "forced" to transfer the graduation ceremony from Senate House to another location. At which point they have then left the site. There is no evidence of damage caused by them. They are expressly described as having occupied and left peaceably; and having left the site on each of the two occasions in "a tidy state". Nevertheless, on the contemporaneous social media communications, the identifiable purpose of the actions was "disrupting" graduation, so its move of location was "forced". I have anxiously considered the newly-disclosed fact that there are no fewer than 10 graduation events after May 2024 and before November 2024 when no such occupation took place. Nevertheless, the latest graduation event in time was the November 2024 graduation weekend, where the University was "forced" to move the event from its historic graduation venue to an alternative venue. Moreover, as I have mentioned, there is evidence of a communication from an individual involved in the November occupation – the most recent event – which said: "we will be back". All of this is the evidential

picture which, in my judgment, does satisfy the relevant legal tests of justification, for the purposes of today's interim injunction relating to the coming weekend, so far as occupation of the lawn at Senate House Yard is concerned.

33. Alongside that evidential picture, Mr Vanderman is in my judgment right to draw attention to the fact that there has been an opportunity – not taken by them – for those who were involved in communicating about the previous occupations to have disavowed any intention, so far as this Saturday is concerned. On that point, my attention was invited to the observations of Linden J in Esso Petroleum Co Ltd v Persons Unknown [2023] EWHC 1837 (KB) at §67. A principal point made in the helpful witness statement of Ms Ost of ELSC involved bringing to the Court's attention that Cambridge for Palestine has announced its intention to have a rally this Saturday at Great St Mary's, opposite Senate House. What she has taken from that information – which I respect and understand – is that this rally would be action "instead of" any protest or occupation at Senate House or Senate House Yard. On the evidence, however, there was a rally at 1pm on 30 November 2024 outside Great St Mary's, on the same day that the occupation at Senate House Yard was still taking place. I am not able, for the purposes of today, to take reassurance from the fact of the rally having been announced. Nor is there any reassurance in my judgment to be gained by the absence of prior communications of an intention to occupy ahead of this weekend. There is similarly no evidence that the previous occupations were preceded by visible communications which would have alerted anyone. Therefore the fact that there are no visible communications as at today is not something on which I am able to rely. As I have already mentioned – although it is really only a footnote – if and insofar as there is in fact no intention to occupy on this occasion, well then my Order is benign.

34. Alongside these points about the evidence of the risk there is the powerful evidence filed by the University, describing the impact for those for whom this is their graduation ceremony, and for their guests. That is the impact of a relocation to an alternative venue which, on the face of the evidence, would mean an event and location of a very different character. There is, in my judgment, powerful evidence – within the supporting witness evidence which can be viewed in the public domain on the injunction webpage – about these impacts and the impacts on the University itself and its staff. Against those impacts, I cannot see that there is any countervailing justification – still less compelling justification – which would extend to disrupting that graduation event by forcing it to again to be moved.

35. I have found a useful reference-point within the Statement from the UN Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association, in her statement (2 October 2024) with recommendations for universities worldwide:

> ***In universities located on private property, gatherings and peaceful protests are still protected under the right to freedom of peaceful assembly. While certain restrictions may be applied to safeguard the rights and interests of others property stakeholders, these must be assessed on a case-by-case basis. This evaluation should consider "whether the space is routinely publicly accessible, the nature and extent of the potential interference caused, whether those holding rights in the property approve of such use, whether the ownership of the space is contested through the gathering and whether participants have other reasonable means to achieve the purpose of the assembly, in accordance with the sight and sound principle". This underscores the importance of refraining from imposing blanket restrictions. The use of "trespassing" offences for peaceful assemblies carried out on the private property of academic institutions should be assessed strictly against the necessity and proportionality principles…***

I am quite satisfied, that viewed through the lens of those considerations, there is no countervailing feature within them which militates against the grant of this order. On the contrary, that case-specific evaluation in the light of those considerations in my judgment supports the court making the narrow order which I am now going to make.

36. I have not in these reasons gone through the "substantive requirements" and "procedural requirements" described in the two authorities which I mentioned at the start of this judgment. I record that I am satisfied that there is a cause of action in trespass, which matches the particulars of claim; that – subject to the second concern which I raised which was cured at this hearing – there has been full and frank disclosure; that the evidence is sufficient to prove the claim for the purposes of an interim injunction; and that the balance of convenience and justice weighs in my judgment strongly in favour of the grant, as opposed to the refusal, of my narrow order for interim relief in all the circumstances. Damages would not be an adequate remedy for the harm on the part of the University and those affected . Nor is there an adequate alternative remedy for the University which would, with sufficient urgency, be able to address an occupation and ensure that this weekend's event did not again need to be relocated. I am satisfied that clarity can be achieved as to the "who", the "what", the "where" and the "when" of my order. I am satisfied that there has been sufficient notification, for the purposes of justly determining this application today, to the limited extent that I have. I am satisfied that my Order involves no procedural unfairness. I will make directions so that this case can return to this Court, at which point there can be full representation on the part of the Intervener and the court will be able to revisit the question of an injunction, including any question of another temporally-limited injunction relating to the next graduation ceremony scheduled for 29 March 2025. But I am not prepared, in the circumstances that I have described, to make any wider or further injunction order: I do not consider there to be a compelling justification or imminent risk justifying any further or other order; nor am I satisfied that it would be procedurally fair for this Court today to be making any wider or further order.

37. There is a final point which I should address explicitly. I was at one point minded to restrict today's Order so that it applied only to Senate House Yard. The reason being that that is the location where there has previously been occupation. I have seen no evidence of any previous entry into Senate House itself. However I was satisfied on reflection that it was appropriate to include Senate House within the Order. It is the location of the ceremony. It would be an odd thing for the Court to restrict the injunction to the Yard. It might also be misunderstood, if the Court were to communicate that it is only the Yard. Moreover, I have been influenced by the other events at Greenwich House. I can see the prospect that those intent on securing a relocation of Saturday's event, if feeling unable to locate themselves on the lawn at the Senate House Yard, could then see as open to them from the Court the alternative of securing entry – perhaps while preparations are underway for the ceremony – into the venue itself; and then being able to disrupt through occupation from within Senate House itself. And so it is, in my judgment, necessary, justified and appropriate in all the circumstances that Senate House should itself be included within the court order.

The Order

38. The Order itself will be promptly uploaded to the injunction webpage, where it can be viewed. There are directions in the Order for uploading of materials. The Defendants in the Order are simply "Persons Unknown". The two prohibitions are that until 23:00 on

Saturday 1 March 2025, the Defendants must not, without the consent of the Claimant: (1) enter, occupy or remain upon the Land; or (2) erect or place any structure (including, for example, tents or other sleeping equipment) on the Land. The Land is Senate House and Senate House Yard. The return date for further consideration of the case will be the first available date after 17 March 2025. The parties will now need to liaise and provide a prompt time estimate. As I mentioned at the hearing, consideration should be given to a possible hybrid hearing which may serve to allow remote observation by those interested or affected unable readily to attend in person in London.

Neutral Citation Number: **[2025] EWHC 724 (KB)**

Case No: KB-2025-000497

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2025

Before :

MR JUSTICE SOOLE

- -

Between :

THE CHANCELLOR, MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE	**Claimant**
- and -	
PERSONS UNKNOWN WHO FOR THE PURPOSE OF PROTEST (i) ENTER OCCUPY OR REMAIN UPON (ii) BLOCK ACCESS TO; OR (iii) ERECT ANY STRUCTURE (INCLUDING TENTS), ON THE FOLLOWING SITES (AS SHOWN FOR IDENTIFICATION EDGED RED ON THE ATTACHED PLANS 1 AND 2): **(A) GREENWICH HOUSE, MADINGLEY RISE, CAMBRIDGE, CB3 0TX** **(B) SENATE HOUSE AND SENATE HOUSE YARD, TRINITY STREET, CAMBRIDGE, CB2 1TA** **(C) THE OLD SCHOOLS, TRINITY LANE, CAMBRIDGE, CB2 1TN, WITHOUT THE CONSENT OF THE CLAIMANT**	**Defendant**

-and-

EUROPEAN LEGAL SUPPORT CENTRE
First Intervener

-and-

NATIONAL COUNCIL FOR CIVIL LIBERTIES
Second Intervener

Myriam Stacey KC and **Yaaser Vanderman** (instructed by **Mills & Reeve LLP**) for the **Claimant**
Owen Greenhall, Mira Hammad and **Grant Kynaston** (instructed by and for the **First Intervener**)
Hollie Higgins and **Rosalind Comyn** (instructed by and for the **Second Intervener**)

Hearing dates: 19-21 March 2025

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JUDGMENT

Approved Judgment

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Mr Justice Soole :

1. By application dated 12 February 2025 the Claimant University seeks an injunction against Persons Unknown to restrain them from alleged threats of trespass and private nuisance in respect of its land in Cambridge at two sites namely (i) that comprising the Senate House, Senate House Yard and the Old Schools and (ii) Greenwich House in Madingley Road. The context is various forms of direct action demonstration and protest by those supportive of the Palestinian cause in the continuing conflict in Gaza and elsewhere and who contend that the University is complicit in the events taking place. The leading group in this action is Cambridge for Palestine (C4P) which on its website states that "We are a coalition standing against Cambridge University's complicity in the genocide of and apartheid against Palestinians".

2. This application first came before Fordham J in an urgent hearing on 27 February 2025. The particular urgency arose from the pending graduation ceremony in Senate House on Saturday 1 March 2025. The University feared that this would be disrupted in the same way as graduation ceremonies planned for the Senate House on 17 and 18 May 2024 and 30 November 2024 and which had to be relocated in consequence of encampment and occupation of Senate House Yard.

3. By his Order of 27 February 2025 Fordham J granted injunctions until 23.00 on 1 March 2025 restraining Persons Unknown from, without the consent of the University, (i) entering occupying or remaining upon the land comprising Senate House and Senate House Yard or (ii) erecting or placing any structure (including tents or other sleeping equipment) on that land.

4. The Judge declined to grant injunctive relief in respect of those properties for the longer five-year period sought by the University or in respect of the Old Schools part of the central site, Greenwich House or the claim in private nuisance. Those matters were adjourned to be heard on the first available date after 17 March 2025 and came before me on 19 March 2025 with a time estimate of one day. In the event it was necessary to continue the hearing into the morning of 20 March 2025. The most pressing pending event is the next University graduation ceremony on Saturday 29 March. For this reason, and my own judicial commitments next week, this judgment must be given today.

5. In the meantime the University had reconsidered its position and now seeks interim injunctive relief for a period of approximately four months expiring at 23.00 on 26 July 2025, rather than the original five year period. 26 July is the date of the final graduation ceremony in this academic year.

6. By its Claim Form dated 12 February 2025 the University identified the Defendant Persons Unknown by the description "…who, in connection with Cambridge for Palestine or otherwise for a purpose connected with the Palestine-Israel conflict, without the claimant's consent (i) enter occupy or remain upon (ii) block, prevent, slow down, obstruct or otherwise interfere with access to (iii) erect any structure (including tents) on the following sites…".

7. In the light of observations of Nicklin J in MBR Acres Ltd v. Curtin [2025] EWHC 331 (KB) at [358]-[359], Fordham J granted an Order in terms which simply identified the Defendants as Persons Unknown, i.e. without any further description. By subsequent

application it applied to amend the Claim Form accordingly. However, following discussion with the Court at the outset of this hearing, that application is not pursued. The application for an injunction proceeds on the basis that the Defendants should be described. The University has for that purpose supplied two alternative revised draft orders.

8. By the Order of Fordham J, the European Legal Support Centre (ELSC) was permitted to intervene in these proceedings and to make written and oral submissions. The National Council for Civil Liberties (Liberty) subsequently applied to intervene with written and oral submissions, a request which I granted at the outset of the hearing. ELSC opposes the grant of any relief. Liberty is neutral on the matter but focuses its submissions on the drafting of any Order and in opposing the initial proposal that Persons Unknown should have no further description. I am grateful for the detailed and helpful submissions which I have received from Counsel for the University, ELSC and Liberty.

9. In addition to the witness statements and exhibits served on behalf of the University, in particular by its Registrary Ms Emma Rampton, I have received and considered eight witness statements served on behalf of ELSC. These are from Prof James Scott-Warren, an elected member of the University Council; Dr James Clark; Mr Michael Abberton on behalf of the executive committee of the University and College Union (UCU); Ms Jenny Hardacre, current chair of the Cambridge Palestine Solidarity Campaign; Mr Augustin Denis, an academic and participant in pro-Palestine rallies in Cambridge since October 2023; Dr Amelia Hassoun, a Research Fellow at Darwin College and British-Palestinian; Mr Basil Alaeddin of Trinity College and of Palestinian heritage; and Ms Elleni Eshete, an elected representative of university students under the remit of Welfare and Community.

10. The evidence sufficiently shows that the University is the owner of the relevant Land. Ms Rampton's first witness statement describes the Senate House and Senate House Yard and the Old Schools as the ceremonial and administrative heart of the University. In Senate House, the University holds its formal ceremonies, including graduation. It is also the official meeting place of the Regent House and Senate. The Old Schools houses key University administrative departments including the offices of the Senior Leadership Team which includes the Vice-Chancellor. Its working capacity is 261, with an average daily occupancy of 100.

11. The public do not have a right of access to the Senate House or Senate House Yard or the Old Schools. Students may enter the Old Schools for specific purposes including attending a University committee meeting, but do not have general access.

12. Greenwich House is an administrative office building, accommodating about 500 employees, but with lower daily occupation given hybrid working arrangements. University students do not have general access to the building. It stores physical records that only authorised University personnel have permission to inspect.

13. C4P is understood to be a student-led group. It is not a registered society with the University's Student Union. It maintains social media profiles on platforms such as X, Instagram, Facebook and Tik Tok. These show that it engages in various activities in support of Palestine and in the particular context of the conflict in Gaza. As already noted, it states on its website: "We are a coalition standing against Cambridge

University's complicity in the genocide of and apartheid against Palestinians". A particular focus is the University's alleged complicity in the actions of the Israel Defense Forces in the conflict in Gaza and its financial, academic, research and other relationships with third party companies and other entities that have connections with Israel in that context. Its website includes the following demands: "DISCLOSE the University of Cambridge's financial ties with institutions and companies complicit in Israel's violations of international law. DIVEST from institutions and companies complicit in the ongoing ethnic cleansing of Palestine. REINVEST by supporting Palestinian students, academics, and scholars in the University of Cambridge and the reconstruction of higher education institutions in Gaza. PROTECT the academic freedoms and safety of all University of Cambridge students, faculty, and staff and become a University of Sanctuary."

Previous incidents of direct action

14. The University supports its application for precautionary interim injunctive relief by reference to a number of previous incidents of direct action.

15. The first is an encampment on the lawn in front of King's College Cambridge on or about 6 May 2024 which was undertaken by C4P in support of its demands on the University. The encampment ended on about 14 August 2024.

16. The second was an encampment on Senate House Yard which began on 15 May 2024. The original number of occupiers was between 40 and 50. The gates into the Yard had been locked at the time and entrance was obtained by a ladder. There were around 12 to 13 tents throughout the occupation; people staying overnight; and a fluctuating number of people present, peaking to about 100 when they had daytime marches. The encampment ended with the occupiers' voluntary departure on the evening of 16 May. However, because of the occupation, the University was forced to reorganise its degree graduation ceremonies which were due to be held at Senate House on Saturday 18 May and to hold them at various colleges. All the occupiers had their faces covered or partially covered during the encampment. The area was left in a tidy state.

17. The third was a further encampment which was set up by C4P in Senate House Yard on about Wednesday 27 November 2024. There were about six tents. The average number staying overnight was about 5 to 8. A meeting area was erected under the colonnades of the Old Schools building. They attempted to block the view of the area by attaching large sheeting/bedding from each of the colonnades. The occupiers left voluntarily on Saturday 30 November; and left the area in a tidy state. The occupiers again had their faces covered or partially covered.

18. In consequence the University again had to reorganise the degree graduation ceremonies that had been scheduled to take place at Senate House on Saturday 30 November. They were held instead at Great St Mary's Church. Social media posts by C4P recorded that "Our presence at the Liberated Zone on Senate House Lawn has forced the University to move graduations – typically held at Senate House – to Great St Mary's Church across the street".

19. The relocation of the graduation ceremonies at Senate House on these two occasions affected 1658 students and approximately 3000 guests.

20. The fourth direct action event was the occupation of Greenwich House in November 2024. On the evening of Friday 22 November, a group believed to be connected to C4P entered Greenwich House. They activated the fire alarm which led to staff evacuating the building. They then blockaded the entrances and exits to prevent University staff from re-entering the building. During the occupation, security staff observed the occupiers gaining access to restricted areas of the building, opening locked cabinets and searching through cabinets. This precipitated a Court application by the University dated 6 December 2024 against Persons Unknown for an interim non-disclosure order to prohibit the dissemination of confidential information obtained from within the building. An interim injunction order was made to that effect. The occupation ended on 6 December 2024.

21. The occupation caused significant disruption to the work carried out in Greenwich House. Staff were unable to work there from late afternoon on 22 November and only returned on 8 January 2025. Some were able to work from home; others needed to be accommodated in alternative University buildings. In addition there were concerns about the health and safety of the occupiers. The costs of additional security, cleaning and legal costs totalled at least £230,000.

22. The University is also concerned at the reputational damage that could arise from republication or misuse of documents stored at Greenwich House and The Old Schools. It has an annual turnover from research grants in excess of £500 million. Its funding partners rely on the University to safeguard their interests and their confidential information.

23. At the hearing on 27 February Fordham J expressed his concern that it was only at the hearing that the Court had been told about the unimpeded graduation ceremonies which had taken place at the Senate House and Yard on 10 occasions in June, July and October 2024.

24. Following the Judge's Order, the graduation ceremony on 1 March 2025 went ahead unimpeded; and C4P organised a rally of about 100 people outside Great St Mary's Church, opposite Senate House.

25. On 2 March 2025 C4P uploaded a social media post which stated 'Cambridge University tried to silence us. We will NEVER be silent while they profit from Genocide. Our call remains the same Disclose, Divest, We Will NOT Stop, We Will NOT REST'.

26. On 4 March 2025, red paint was sprayed on the wooden door and archway masonry which forms the west entrance to the Old Schools. The sprayed graffiti read 'DIVEST' and 'ALWAYS RESIST…FREE PALESTINE'. A group called Palestine Action claimed responsibility. C4P republished that post and stated 'Full support to Palestine Action'.

27. On the night of 17/18 March, protesters placed placards on the outside of the Senate House windows including the word DIVEST.

28. On Wednesday 19 March, starting at 4.30, a rally took place in King's Parade. The participants gathered round the Gatehouse of the Old Schools and chanted. Part of the incident was captured on video. Mr Paul Oliver, the University of Cambridge Security

Officer, produced a transcript of part of the demonstration in his witness statement which states: 'We will not be silenced. We will not stop, we will not rest, disclose, divest'. At about 16.57 a representative from "Youth Demand" made a speech which included "We can't just shout any more. We have to materially disrupt the genocidal machine, that is what we have to do, it's no good just saying we are not comply with it, we have to actively resist and that is what Palestine Action did a couple of weeks ago, and that is what Youth Demand is planning to do. Youth Demand in April is going to swarming numbers for an entire month, we're going to be getting a thousand people into the streets of London and blockading roads for 15 minutes and then [disturbing] before police start making arrests. This is what it's going to take, it's going to take months and months of direct action, it's going to take months of disruption, it's going to take all of you to think about what you can do more, and do it because it is not enough we need to escalate we need to do more."

The law

29. As I understood to be common ground by the end of the hearing, there are a number of principal sources of instruction and guidance in this evolving area of law. First, the general principles which apply to applications for interim precautionary injunctions. Secondly, the adaptations to those principles which are necessary if and when ECHR Convention Rights and/or s.12 HRA 1998 are engaged. Thirdly, the principles and guidance identified by the Supreme Court in Wolverhampton City Council v. London Gypsies and Travellers [2024] AC 983.

30. As to the HRA 1998, s.6(1) provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. Section 12 provides as material: '*(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression…(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.'*

31. It is unnecessary to rehearse the provisions of Articles 10 and 11 on freedom of expression and of assembly. ELSC also rely on Article 14 which provides that '*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*'

32. I find a particularly helpful starting point for the relevant principles, albeit prior to Wolverhampton, to be the summary by Julian Knowles J in HS2 v Persons Unknown [2022] EWHC 2360 (KB). They are not accepted in every respect by Counsel for ELSC. Excluding the references to the authorities cited in support, the summary includes the following.

Trespass

33. A landowner whose title is not disputed is prima facie entitled to an injunction to restrain threatened or apprehended trespass on the land: [74].

34. A protester's rights under Articles 10 and 11 of the ECHR, even if engaged, will not justify continued trespass onto private land or public land to which the public generally does not have a right of access: [81].

35. This statement must now be subject to the following observations of the Court of Appeal in R v Hallam [2025] EWCA Crim 199 at [34]: '*Articles 10 and 11 did not confer on the appellants a right of entry to private property: see* Appleby v United Kingdom (2003) Application No. 44306/98… *However, we were not referred to any case in which the European Court of Human Rights…has decided that a protester who commits an act of trespass thereby automatically loses their rights under Article 10 or 11 altogether…*'

Private nuisance

36. Private nuisance is any continuous activity or state of affairs causing a substantial and unreasonable interference with a claimant's land or his use or enjoyment of that land: [85].

37. The unlawful interference with the claimant's right of access to its land via the public highway, where a claimant's land adjoins a public highway, can be a private nuisance: [86].

Interim injunctions

38. The general function of an interim injunction is to 'hold the ring' pending final determination of a claim. The basic underlying principle of that function is that the court should take whatever course seems likely to cause the least irremediable prejudice to one party or another: [93].

39. The general test for the grant of an interim injunction requires that there be at least a serious question to be tried and then refers to the adequacy of damages for either party and the balance of justice (or convenience): [94].

40. The threshold for obtaining an injunction by the defendant is normally lower where wrongs have already been committed by the defendant: [95].

41. Where s.12(3) HRA 1998 applies, the Court must be satisfied that the claimant would be likely to obtain an injunction preventing future trespass at trial; not just that there is a serious question to be tried. 'Likely' in this context usually means more likely than not: [97]. I interpose that this must apply also to an application for an injunction to restrain a private nuisance.

42. Where the relief sought is a precautionary injunction, the question is whether there is an imminent and real risk of harm: [99]. 'Imminent' means that the circumstances must be such that the remedy sought is not premature: [100].

43. 'Publication' in s.12(3) HRA 1998 has been interpreted by the courts as extending beyond the literal meaning of the word to encompass 'any application for prior restraint of any form of communication that falls within Article 10 of the Convention': [122].

44. Whether a claimant is a core public authority or at least a hybrid public authority, it can pray in aid A1P1 Convention rights and the common law values they reflect: [123; 125].

ELSC dispute that a core or hybrid public authority has A1P1 rights but of course acknowledge that the University has common law rights in trespass and private nuisance.

45. Where Articles 10 and 11 are engaged, the court must consider the questions identified in DPP v Ziegler [2022] AC 408, namely: (a) Is what the defendant did in exercise of one of the rights in Articles 10 or 11?; (b) If so, is there an interference by a public authority with that right?; (c) If there is an interference, is it 'prescribed by law'; (d) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Articles 10 and 11, for example the protection of the rights of others?; (e) If so, is the interference 'necessary in a democratic society' to achieve that legitimate aim?: [136].

46. That final question can be subdivided into four further questions: (a) Is the aim sufficiently important to justify interference with a fundamental right?; (b) Is there a rational connection between the means chosen and the aim in view; (c) Are there less restrictive alternative means available to achieve that aim?; (d) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?: [137].

47. I turn to the principles and guidance in respect of newcomer cases provided by the Supreme Court in Wolverhampton at [188] et seq. By reference to Gypsy and Traveller cases, these are: (1) the applicant must satisfy the court by detailed evidence that there is a compelling justification for the order sought; (2) 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; (3) the actual or intended respondents to the application must be defined as precisely as possible; (4) the injunction must spell 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. Further the authority must be prepared to satisfy the court that there is no other more proportional way of protecting its rights or those of others. The prohibited act should be defined so far as possible in non-technical and readily comprehensible language; (5) the need for strict temporal and territorial limits is another important consideration; (6) the authority must take reasonable steps to draw the application to the attention of persons likely to be affected by the injunction sought; (7) there must be effective notice of the order and its consequences; (8) the order ought always to include generous liberty to any person affected by its terms to apply to vary or discharge the whole or part of any order; (9) costs protection should be considered; (10) there may be occasions where a cross undertaking in damages is appropriate.

48. The Supreme Court then turned to protest cases and stated: *'...nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those 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 injunction against persons unknown, including newcomers'*: [235]. However in the following paragraph it stated: '*Again, insofar as the applicant seeks an*

injunction against newcomers, the judge must be satisfied there is a compelling need for the order': [236].

49. In support of the application the University also relies on the provisions of its Rules of Behaviour and Code of Practice of Freedom of Speech to whose provisions all students sign up when enrolling at the University. The Rules of behaviour unsurprisingly include that a student must not 'damage, misappropriate or occupy without appropriate permission any University or College property or premises, or any property or premises accessed as a result of a College or University activity'. The Code of Practice includes that 'Permission is required for meetings and events to be held on University premises, whether indoors or outdoors'.

50. Ms Rampton's evidence also refers to the steps taken by the relevant University officials to engage with demonstrators including members of C4P. This led to an agreement that the University would review its approach to investments in and research funded by the defence industry. Further that a working group would be established to make recommendations to the relevant University committees overseeing investments and research and that the working group would include two student representatives. However on 28 November 2024 a decision was made by the University Council to suspend the two student members from the working group because of the Senate House Yard occupation of that month. On 27 January 2025 the University Council agreed that the two members should be invited to rejoin the working group subject to two conditions identified in an email of 28 January. There was no reply to that email but Ms Rampton understood that they attended the meeting which took place on 5 February 2025.

51. Ms Myriam Stacey KC submits first that the claim is properly founded on the causes of action in trespass and private nuisance. As to the latter, direct and deliberate blocking would be an undue and substantial interference with the University's enjoyment of the land.

52. The evidence established a real and imminent risk of further direct action on the relevant sites. As to the Senate House and Yard, she points in particular to the occupations of the Yard in May and November 2024 and its effect on the graduation ceremonies; to the placards placed on 17/18 March; to the absence of any disavowal of further direct action; and to the expressions of support for the conduct of Palestine Action. As to Old Schools, she now points to the graffiti on 4 March 2024 carried out by Palestine Action and endorsed by C4P; and to the rally on 19 March, its location and the terms of the speech of the representative of Youth Demand. As to Greenwich House, she points to the occupation of November 2024 and its effects; and to the evidence of the broader determination to continue direct action against the University. The harm from such incursions was real and substantial in all the ways indicated in the evidence.

53. Ms Stacey submits that the evidence of 1 March 2025 showed the good effect of the injunction and how the interests of the University and the protesters had each been met. The graduation ceremonies had proceeded and the protesters had carried out their rally opposite the Senate House and outside Great St Mary's Church.

54. As to Articles 10 and 11, whilst not accepting that these were engaged in respect of the cause of action in trespass, Ms Stacey was content to proceed on the assumption that the enhanced threshold of liability applied. On the evidence, it was likely that at a

notional trial the University would succeed in obtaining relief in the terms which were sought.

55. As to proportionality, the University was pursuing the legitimate aim of protecting its property rights as well as the rights and interests of third parties lawfully seeking to use the land. Those aims were sufficiently important to justify any interference with Convention rights. There was a rational connection between the means chosen and the aims. The proposed order struck a fair balance between the various rights; and confined itself to the two sites and for the short duration of four months until the end of the academic year.

56. In the meantime the protesters were able to protest effectively at other locations and through other methods without causing significant disruption to the University, its staff and students. One example was the rally on 1 March 2025.

57. As to the cause of action in private nuisance and the proposed restraint against blocking access to the relevant buildings, this would not unduly interfere with the rights of others on the public highway. Such orders had been granted in other similar cases and were neither new nor controversial.

58. There were no less restrictive alternative means available to achieve the University's legitimate aim, whether by use of the criminal law or the internal disciplinary processes of the University.

59. Damages would not be an adequate remedy. There was, in all, a compelling justification for the grant of the limited injunctive relief which was sought.

60. On behalf of the ELSC, Mr Owen Greenhall, Mr Grant Kynaston and Ms Mira Hammad made the following particular submissions.

61. As to the University's approach that it was willing to proceed on a range of assumptions in favour of the Defendants, i.e. as to whether it was exercising a public function and/or whether the application had to satisfy the enhanced threshold under s.12(3) HRA and/or whether it could rely on A1P1, this was unsatisfactory. The Court should determine these questions and in each case find in favour of the Defendants for the detailed reasons which they set out in their careful legal analysis and submissions.

62. As to proportionality, the proposed injunction was a disproportionate infringement of the Defendants' rights. First, whilst the University was advancing its claim on a broad basis that it was pursuing the legitimate aim of vindicating its own property rights, the evidence and the order now proposed suggested that its aims were in fact limited to protecting particular events, namely restricting encampments in relation to graduation ceremonies. This was the only potential harm identified by the Registrary as posing a risk to the Senate House, Yard and Old Schools. This was further confirmed by the time-limited relief now sought. There was no rational connection between the proposed prohibition which covered any non-consensual access to the land and the aim of preventing disruption to graduation ceremonies through encampments.

63. Secondly, the injunction was not necessary. There was a broad and robust framework under the criminal law which addresses such protests. In particular s.68 Criminal Justice and Public Order Act 1994 and its offence of aggravated trespass provided wide

protection in relation to disruptive protests on private property. The offence was in respect of trespass which creates disruption, obstruction or intimidation to lawful activity taking place on the land. It extends to activity taking place on adjoining land where that activity can properly be said to be disrupted by the trespasser. There is no requirement that any disruption must be severe or significant. That offence was apposite to a protest occurring on the University's land. Further it had a maximum sentence of three months; in contrast to the maximum 2-year penalty for contempt of court by breach of a Court order.

64. Further, s.137 Highways Act 1980 provided a criminal offence for unreasonable obstruction of the highway, punishable with up to 6 months imprisonment. Police officers have powers of arrest for those suspected of such offences and bail conditions could be imposed on those arrested pending any further investigation. The power of the police to deal with such matters provided a much quicker and more appropriate remedy than contempt proceedings for breach of an injunction. In MBR Acres at [348] Nicklin J had noted the importance in such cases of taking account of the extensive powers of the police in these and other respects. Further or in the alternative, the University could effectively and sufficiently deal with these matters through its own internal disciplinary processes for students.

65. Thirdly, the University had not identified any serious risk sufficient to justify the extreme infringement now sought. The protests affecting graduations formed part of continual and ongoing political dialogue between the University and its students. For example, the occupation of the Senate House Yard in May 2024 was concluded on the evening of 16 May, after the University had reached an agreement with students.

66. Further, during the encampments at the Senate House Yard, the protesters did not exclusively occupy the land, which remained accessible by others. No encampments or other disruption took place at the Senate house between May and November 2024. In that period 10 graduations went ahead without disruption. There was currently no encampment at any of the identified sites. The University had identified no C4P conduct at Old Schools which could justify injunctive relief. The graffiti on 4 March 2025 did not involve access to the site, would not be covered by the proposed injunction and was not carried out by C4P. The rally on 19 March and the speech by a representative of Youth Demand was expressly focused on plans for demonstrations and direct action in London.

67. The risk of further direct action at Greenwich House was entirely speculative. The University's true complaint about the incident there was the severity of the incursion. That was not a safe basis for assessing the future risk of such an incursion.

68. Fourthly, the proposed injunction affected the ability of the Defendants to exercise their Article 10 and 11 rights at the very heart of the University, namely at the Senate House and Senate House Yard with its potent symbolic importance. They pointed to the evidence of Dr Hassoun that such protests are intended to be "seen by the people in charge and who may make decisions on investment".

69. Fifthly, the proposed prohibition was not calibrated by the requirements of Articles 10 and 11. It affected all entry onto the land without the consent of the University. By the proposed paragraph 2, it then extended the restraint to conduct on the public highway. The unreasonable and disproportionate effect of that restraint would prevent, for

example, a one-off peaceful five-minute prayer vigil in the entrance to the Senate House Yard which deliberately stopped people from entering the land as part of a symbolic protest asking persons to reflect for a few minutes on the University's connections to the children killed in Gaza. Such vigils were common at Cambridge for Palestine, Ukraine and other causes.

70. Sixthly, the condition in the proposed injunction that the conduct must be without the consent of the University produced uncertainty for students and staff as to the nature of that consent. On the evidence of Dr Clark, the process of securing consent was not fit for purpose, including because of "spontaneous individual or group responses to specific fast-emerging issues". For ordinary students there was in practical terms no appreciation of the need to request permission from the University prior to protesting against it. The results would be a chilling effect on political expression at Cambridge, supported by e.g. the evidence of Dr Hassoun that she would be afraid to be caught by the injunction if walking through any of the University buildings with cultural symbols of her people.

71. Seventhly, there were less restrictive means of achieving the intended aim. As to disciplinary processes, the evidence showed a recent history of student occupations of University buildings which did not result in applications for injunctions. The University had given no explanation as to why it was now thought appropriate to seek an injunction. Further the four-month period was not proportionate to the events, i.e. in particular graduation ceremonies, which they sought to protect. The University's evidence identified 23 days over the coming 12 months – 21 graduation ceremonies and 2 further election days.

72. Eighthly, the application for the injunction and its consequences had not been subjected to appropriate scrutiny by the University's decision-making bodies. The evidence of Professor Scott-Warren was that the University decided to pursue the application for an injunction without consultation or approval from the Council. The University had filed witness evidence to the effect that the Registrary had authority to commence the proceedings. There was no evidence of any proportionality assessment or other University consultation undertaken prior to seeking the injunction.

73. Ms Hammad presented ELSC's arguments on the alleged discriminatory effect of the proposed injunctions, having regard to the provisions of ECHR Article 14. The effect of their terms was discriminatory in respect both of race and of political and philosophical beliefs.

74. The question for consideration was whether a particular group would be particularly disadvantaged by the proposed injunctions, by comparison with other groups. That question had to be considered in the context of the 4-month period proposed.

75. The situation would be different if the evidence were of many different groups protesting about other causes as well. Here the evidence was of a particular cause; so that the impact would be disproportionate to those who had a reason and urgency to protest about that cause.

76. This factor needed to be taken into account as part of the consideration of whether there was a less restrictive means of achieving what was sought by the injunction. The evidence showed that previous protests had not been dealt with by means of

applications for an injunction. This case involved a new approach which the Court was being asked to sanction. She contrasted the circumstances of an occupation of Greenwich House in 2018 by protesters of the Climate Zone movement. That occupation was no less disruptive than the occupation in this case. The University had taken proceedings for possession but had not sought injunctive relief. Likewise an occupation of the Old Schools building by the Education Movement in March 2020 had been met with possession proceedings rather than applications for injunction. Possession proceedings did not have the chilling effect of precautionary injunctions. This was a particularly restrictive means of responding to the protest.

77. By way of example, Ms Hammad pointed to the evidence of Dr Hassoun that: '*Unlike other specific national/ethnic groups experiencing state-sanctioned violence abroad, like our Ukrainian colleagues, whose speech and expression has received support from the University (and certainly has not been targeted by the University), this injunction singles out Palestinians based on their national and ethnic identity and limits our expression (and expressions of solidarity on our behalf) as it is protests on behalf of Palestine that have led to the injunction being sought".*

78. In contrast to a protester who was not of Palestinian origin, it was a person's identity as a Palestinian person which made her wish to protest so important. The same applied in respect of political and philosophical beliefs.

79. Ms Hammad accepted that the potential availability of other places in Cambridge at which to protest was a factor that went into the overall balancing exercise.

Conclusions

80. I am satisfied that there is a compelling need for the grant of an injunction in the terms and for the period now proposed. This is subject to final discussion with Counsel on one or two points of detail.

81. First, I am satisfied that there is an imminent and real risk of the occurrence of the conduct which it is sought to restrain and consequent substantial harm. Indeed I consider that there is a strong probability that this will otherwise occur.

82. This is demonstrated in particular by the evidence of the occupations of Senate House Yard in May and November 2024; the occupation of Greenwich House in November 2024; by the overall continuing campaign of direct action against the University and the terms in which this is expressed; and by the symbolic importance which is attached by the campaigners and indeed the University alike to all these buildings and spaces at the heart of the University's central administrative and public functions. In the absence of restraint, there is an imminent and real risk that one or more of these would be occupied in order to cause disruption to the University and thereby to advance the campaign. This includes a real and imminent risk of acts to prevent people entering those buildings. Given the overall nature of the campaign and the symbolic importance attached to these buildings, I do not accept that the risk is any less in respect of Old Schools or Greenwich House.

83. In such events, there would be very substantial harm to the University. Depending on the choice of location this includes its central administration; the staff working in the buildings; the effect on the relationship of the University with third parties (here I have

in mind in particular the sort of incursion that happened at Greenwich House); and all those who look to the University for the ceremonial events, in particular the graduation ceremonies which fittingly mark and celebrate the achievements of the graduands. The incursions in Senate House Yard in 2024 and consequent transfer of those ceremonies to other places in the University will surely have been a particular disappointment to most if not all of the graduands and their families, and in turn a blow to the reputation of the University. In my judgment, the more that the evidence and submissions on behalf of ELSC and the campaign emphasised the symbolism of all these buildings and spaces, the more it confirmed the extent and imminence of the risk which the University fears.

84. Secondly, I am satisfied that it is likely (indeed very likely) that, at a notional final trial or hearing of this application for relief, the application would succeed. Without deciding the point on publication, I think it right to proceed on the assumed basis most favourable to the Defendants that s.12(3) HRA 1998 is engaged. In any event, where there is unlikely to be such a final hearing within that period, I consider it appropriate to apply that enhanced threshold.

85. I turn to the factors which satisfy me that the test of likelihood is passed. For this purpose, and in particular for the assessment of proportionality, I proceed on the assumed basis that the Defendants' Convention rights under Articles 10, 11 and 14 are engaged in respect of the University's causes of action in both trespass and private nuisance.

86. On the authorities, I consider that the University is entitled to pray in aid its A1P1 Convention rights. However, I consider the point to be immaterial on the facts and circumstances of the present case, because the University can sufficiently rely on its common law rights in trespass and private nuisance as part of the overall balancing exercise.

87. Turning to the Ziegler questions in respect of Articles 10 and 11, I am quite satisfied that any interference is in pursuit of the legitimate aim of the University to secure its buildings and spaces and the activities carried out thereon; and that any such interference is necessary to achieve that end.

88. As to necessity, the legitimate aim is sufficiently important to justify any interference and there is a rational connection between the means and the end. I do not accept that there is any irrationality in respect of an injunction whose terms are not confined to restraint against incursion for the purpose of disrupting graduation and other ceremonies. The campaign of direct action and the consequent real and imminent risk of unauthorised incursions is not confined to those ceremonies and it is necessary and proportionate for the University to have the broader protection which is sought. Indeed, I consider that a restriction which is confined to the context of ceremonies would be likely to exacerbate the risk of incursions on other occasions.

89. I have given due consideration to the suggested alternative means of reliance on police powers and the provisions of criminal offences such as for aggravated trespass and unreasonable obstruction of the highway; and/or through deployment of the University's internal disciplinary processes. In my judgment, these suggested alternative means do not meet the problem which the University faces. This is in particular because they are essentially focused on dealing with disruptive events as and

after they happen, whereas the fully justified concern of the University is to prevent their occurrence. I do not accept that prior letters to students from the University or warnings from the police would be a sufficient alternative to the remedy which the civil law provides if (as here) the Court otherwise thinks it just to grant such relief.

90. I am also satisfied that the proposed injunction does provide a fair balance between the rights of all parties. The protesters and the campaign are left with ample opportunities and ability to protest their cause in Cambridge; and the University is enabled to carry on its administrative and ceremonial work in these core buildings and spaces. The fairness of the resulting balance was in my judgment well demonstrated by the events on the graduation day of 1 March, following the Order of Fordham J.

91. In reaching these conclusions, I have also taken due account of the particular arguments advanced in respect of private nuisance and of Article 14.

92. As to private nuisance, I consider it necessary and proportionate to include an order which prevents people from deliberately blocking the access of individuals to these sites. I am not persuaded that this limited restraint of use of the public highway is unjustified. On the contrary, given the nature of the campaign and the imminence of the risk, I consider it to be a necessary adjunct to the injunction against trespass. As to vigils and the like, there are ample other places for these to be carried out. I do not accept that in this or any respect the proposed injunction has the chilling effect which is alleged. Nor do I consider that the simple wearing of supportive and/or emblematic badges or clothing would put anyone at risk of breach of the proposed injunction.

93. As to Article 14, in circumstances where the campaigners and protesters are evidently not confined to those of Palestinian heritage, I am very doubtful if the proposed order has any discriminatory effect in that respect. I am also doubtful in respect of the arguments based on discrimination on the grounds of opinions and beliefs. But, in any event, even if there is a discriminatory effect on either or both bases, I am again quite satisfied that the proposed restraint leaves ample opportunity for the protesters to campaign and express their opinions and beliefs elsewhere in Cambridge and its city centre and that Article 14 provides no basis for refusal of the proposed relief.

94. Both in this context and generally, I do not see any fair basis for the criticism that the University has not sought this type of injunctive relief in respect of previous occupations of its buildings; but has rather resorted to instituting possession proceedings after the event. The oral submissions properly made clear that it was not being suggested that the decision to take this new course of action was motivated by the nature of or the parties to this particular cause. Further, applications for injunctions against Persons Unknown in such cases are both a relatively new and developing area of law. True it is that such remedies were available e.g. in 2018, but it is entirely reasonable and appropriate for the University to keep under review its potential remedies in these situations; and on this occasion to take the course of applying for precautionary injunctive relief. Having done so, it has then further reviewed the terms of the application as first presented to the court and then sought an order for a significantly reduced period.

95. I also do not accept that the application has not been subject to appropriate scrutiny by the University and its decision-making bodies. The evidence, including the minutes of the meeting of the senior University officers on 7 February 2025 demonstrates a careful,

fair and measured analysis and approach and a full and proper regard to its various duties under statute and the ECHR. Amongst other statements in the minutes, I note paragraph 5.1.8 which states: '*The Application is based entirely on the impact of the direct action threatened on the University, its staff and students and has nothing whatsoever to do with the particular race, religion or beliefs of the intended Defendants*'.

96. Further, I do not accept the submission that there is a lack of clarity in the proposed reference in the terms of the injunction to the prohibited acts being carried out "without Consent". In the latest draft, "Consent" is sufficiently defined as permission given by the University under the terms of the Code of Practice 'or other express permission'.

97. It is clear that damages would not be an adequate remedy; nor, realistically, was any such argument advanced.

98. All in all, I am satisfied that the evidence points compellingly to the grant of the injunction sought; and that the proposed terms are the minimum necessary in the circumstances.

99. For the same essential reasons, I am satisfied that, even on the assumption that the Wolverhampton principles apply in full measure to this protester case, each of the requirements is fully met.

100. In addition to the compelling justification, strong probability of the commission of the torts and the real and imminent threat, I am satisfied that: (i) subject to final drafting, the Persons Unknown are defined as precisely as possible and the prohibited acts identified with sufficient clarity; (ii) the territorial and temporal limits are appropriate; (iii) the provisions for effective service are appropriate; (iv) there is the necessary liberty to apply to discharge or vary; and (vi) the proposed cross-undertaking in damages is appropriate.

101. There will also be the further and valuable safeguard of the proposed inclusion in the Order of a permission requirement in respect of any contempt application based on alleged breach.

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

Case No: QB-2017-005202

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28th May 2025

Before :

MR JUSTICE GARNHAM

- -

Between :

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

- -
- -

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

Hearing dates: 16th May 2025

- -

Approved Judgment

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

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MR JUSTICE GARNHAM :

Introduction

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

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

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

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

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

Procedural Background

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

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

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

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

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

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

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

The Evidence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Relevant Legal Principles

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Applications against persons unknown

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

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

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

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

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

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

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

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

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

41. At [225] the court said

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

(iii) The test to be applied to renewed applications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Discussion

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

    i) The existence of any material change of circumstances;

    ii) The efficacy of the order to date;

iii) The justification for its continuance;

iv) Whether any grounds for discharge have emerged;

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

vi) The other Wolverhampton requirements.

(i) Any material change in circumstances?

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

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

56. Two potential changes of circumstances are mooted.

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

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

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

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

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

(ii) The efficacy of the Order

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

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

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

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

(iii) Justification for the continuation of the Order

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

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

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

(iv) Grounds for Discharge

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

(v) Basis for a further order

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

(vi) The Wolverhampton requirements

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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