Claim No: KB-2022-BHM-000188
KB-2022-BHM-000221

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

B E T W E E N

(1) WOLVERHAMPTON CITY COUNCIL
(2) DUDLEY METROPOLITAN BOROUGH COUNCIL
(3) SANDWELL METROPOLITAN BOROUGH COUNCIL
(4) WALSALL METROPOLITAN BOROUGH COUNCIL

Claimants

and

(1) PERSONS UNKNOWN WHO PARTICIPATE BETWEEN THE HOURS OF 3:00PM AND 7:00AM IN A GATHERING OF 2 OR MORE PERSONS WITHIN THE BLACK COUNTRY AREA SHOWN ON PLAN A (ATTACHED) AT WHICH SOME OF THOSE PRESENT ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING
AND 7 OTHERS

Defendants

B E T W E E N

BIRMINGHAM CITY COUNCIL

Claimant

and

AHZI NAGMADIN AND 16 OTHERS

Defendants

JOINT AUTHORITIES BUNDLE

Local Government Act 1972 c. 70
s. 111 Subsidiary powers of local authorities.

Law In Force

Version 1 of 1

1 April 1973 - Present

Subjects
Local government

Keywords
Incidental powers; Local authorities

111.— Subsidiary powers of local authorities.

(1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

(2) For the purposes of this section, transacting the business of a parish or community meeting or any other parish or community business shall be treated as a function of the parish or community council.

(3) A local authority shall not by virtue of this section raise money, whether by means of rates, precepts or borrowing, or lend money except in accordance with the enactments relating to those matters respectively.

(4) In this section "local authority" includes the Common Council.

1 2 3

Notes

1 Act modified by Representation of the People Act 1983 (c.2), s. 40(2), S.I. 1979/1123, arts. 4(2), 5, extended by Charlwood and Horley Act 1974 (c.11), s.2 Words of enactment omitted under authority of Statute Law Revision Act 1948 (c 62), s.3Power to modify Act conferred by Representation of the People Act 1983 (c.2), s. 39(6)(7)

2 S. 111 extended by Housing Act 1974 (c. 44), s. 126(1), extended by Water Act 1989 (c.15), s. 164(2), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58

3 S. 111 extended by Housing Act 1974 (c. 44), s. 126(1), extended by Water Act 1989 (c.15), s. 164(2), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58 S. 111 amended by Local Government Act 1985 (c.51), ss. 1, 57(7), Sch. 13 para. 12(a)

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s. 222 Power of local authorities to prosecute or defend legal proceedings.

Law In Force With Amendments Pending

Version 5 of 5

25 March 2022 - Present

Subjects
Administrative law; Civil procedure; Criminal procedure; Local government

Keywords
Civil proceedings; Local authorities' powers and duties; Prosecutions; Public inquiries

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

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

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

(2) In this section "local authority" includes the Common Council [, a corporate joint committee] [1] [and a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004] [2] [and the London Fire Commissioner] [3] .

[

(3) In the application of subsection (1) to a corporate joint committee, the reference to the corporate joint committee's area is to be read as a reference to the area specified as the corporate joint committee's area in regulations under Part 5 of the Local Government and Elections (Wales) Act 2021 establishing the corporate joint committee.

] [4]

Notes

1 Words inserted by Corporate Joint Committees (General) (Wales) Regulations 2022/372 Pt 6 reg.20(a) (March 25, 2022)
2 Words inserted by Policing and Crime Act 2017 c. 3 Sch.1(2) para.26 (April 3, 2017)
3 Words substituted by Policing and Crime Act 2017 c. 3 Sch.2(2) para.46 (April 1, 2018)
4 Added by Corporate Joint Committees (General) (Wales) Regulations 2022/372 Pt 6 reg.20(b) (March 25, 2022)

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Highways Act 1980 c. 66
s. 130 Protection of public rights.

Law In Force

Version 1 of 1

1 January 1981 - Present

Subjects
Road traffic

Keywords
Highway authorities' powers and duties; Highways; Public rights of way

130.— Protection of public rights.

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

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

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

(a) the highways for which they are the highway authority, and

(b) any highway for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area.

(4) Without prejudice to the foregoing provisions of this section, it is the duty of a local highway authority to prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are the highway authority.

(5) Without prejudice to their powers under section 222 of the Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.

(6) If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local highway authority—

(a) that a highway as to which the local highway authority have the duty imposed by subsection (3) above has been unlawfully stopped up or obstructed, or

(b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority,

it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name.

(7) Proceedings or steps taken by a council in relation to an alleged right of way are not to be treated as unauthorised by reason only that the alleged right is found not to exist.

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Notes

1 Act amended by Town and Country Planning Act 1990 (c.8), s. 54(1) Power to apply Act conferred by Town and Country Planning Act 1990 (c.8), s. 247(3) Power to exclude Act conferred by Town and Country Planning Act 1990 (c.8), s. 61(3)(b) Act modified by Town and Country Planning Act 1990 (c.8), ss. 28, 54, Sch. 2 Pt. I para. 1(2), Pt. III para. 2, Dartford-Thurrock Crossing Act 1988 (c.20), ss. 3, 19, Sch. 3 para. 9, Channel Tunnel Act 1987 (c.53), s. 35, Sch. 4 paras. 7(1), 10(1) Act amended (in part) by Town and Country Planning Act 1990 (c.8), ss. 27, 28 (1)(2) Act extended by Water Act 1989 (c.15), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 1(2)(xxv)(8), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58, Electricity Act 1989 (c.29), ss. 112(1)(3), Sch. 16 para. 2(4)(d)(6)(9), Sch. 17 paras. 33, 35(1), Gas Act 1986 (c.44), s. 67(1)(3), Sch. 7 para. 2(1)(xl), Sch. 8 para. 33 Functions of Minister of Transport, except those exercisable jointly with Secretary of State under ss. 258, 300(2), Sch. 1 paras. 7, 8, 14, 15, 18, 19, 21, now exercisable by Secretary of State: S.I. 1981/238, arts. 2(2), 3(2)(3)

Part IX LAWFUL AND UNLAWFUL INTERFERENCE WITH HIGHWAYS AND STREETS > Protection of public rights > s. 130 Protection of public rights.

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Senior Courts Act 1981 c. 54
s. 37 Powers of High Court with respect to injunctions and receivers.

Law In Force

Version 2 of 2

22 April 2014 - Present

Subjects
Administration of justice; Civil procedure

Keywords
Appointments; High Court; Injunctions; Jurisdiction; Receivers

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

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

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

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

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

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

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

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

(a) in proceedings for enforcing the charge; or

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

[

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

]1

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Notes

1 Added by Crime and Courts Act 2013 c. 22 Sch.10(2) para.58 (April 22, 2014: insertion has effect as SI 2014/954 subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8 and transitional provision specified in SI 2014/954 arts 2(d) and 3)

Part II JURISDICTION > Chapter 002 THE HIGH COURT > Powers > s. 37 Powers of High Court with respect to injunctions and receivers.

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Human Rights Act 1998 c. 42
Schedule 1 THE ARTICLES
para. 1

Law In Force

Version 1 of 1

2 October 2000 - Present

Subjects
Constitutional law; Human rights

Keywords
Constitutional rights; Human rights
RIGHTS AND FREEDOMS

Right to life

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Prohibition of torture

Article 3

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

Prohibition of slavery and forced labour

Article 4

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term *"forced or compulsory labour"* shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

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(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

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

Right to liberty and security

Article 5

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

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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

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

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

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

Right to a fair trial

Article 6

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

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

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

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

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

No punishment without law

Article 7

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Right to respect for private and family life

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Freedom of thought, conscience and religion

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of expression

Article 10

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

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic

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society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Freedom of assembly and association

Article 11

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

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Right to marry

Article 12

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

Prohibition of discrimination

Article 14

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

Restrictions on political activity of aliens

Article 16

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

Prohibition of abuse of rights

Article 17

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Limitation on use of restrictions on rights

Article 18

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

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Crime and Disorder Act 1998 c. 37
s. 6 Formulation and implementation of strategies

Law In Force With Amendments Pending

View proposed draft amended version

Version 9 of 9

31 January 2023 - Present

Subjects
Penology and criminology

Keywords
Implementation; Local authorities' powers and duties; Ministers' powers and duties
[

6 Formulation and implementation of strategies

(1) The responsible authorities for a local government area shall, in accordance with section 5[, with subsection (1A),][2] and with regulations made under subsection (2), formulate and implement–

(a) a strategy for the reduction of crime and disorder in the area (including anti-social and other behaviour adversely affecting the local environment); and

(b) a strategy for combatting the misuse of drugs, alcohol and other substances in the area [; and][3]

[

(c) a strategy for the reduction of re-offending in the area [; and][4]

][3] [

(d) a strategy for—

(i) preventing people from becoming involved in serious violence in the area, and

(ii) reducing instances of serious violence in the area.

][4]

[

(1A) In exercising functions under subsection (1), apart from devolved Welsh functions (as defined by section 5(8)), each of the responsible authorities for a local government area must have regard to the police and crime objectives set out in the police and crime plan for the police area which comprises or includes that local government area.

][5]

(2) The appropriate national authority may by regulations make further provision as to the formulation and implementation of a strategy under this section.

(3) Regulations under subsection (2) may in particular make provision for or in connection with–

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(a) the time by which a strategy must be prepared and the period to which it is to relate;

(b) the procedure to be followed by the responsible authorities in preparing and implementing a strategy (including requirements as to the holding of public meetings and other consultation);

(c) the conferring of functions on any one or more of the responsible authorities in relation to the formulation and implementation of a strategy;

[

(ca) the conferring of functions on a police and crime commissioner for a police area in England in relation to the formulation and implementation of a strategy for any local government area that lies in that police area;

]6

(d) matters to which regard must be had in formulating and implementing a strategy;

(e) objectives to be addressed in a strategy and performance targets in respect of those objectives;

(f) the sharing of information between responsible authorities;

(g) the publication and dissemination of a strategy;

(h) the preparation of reports on the implementation of a strategy.

(4) The provision which may be made under subsection (2) includes provision for or in connection with the conferring of functions on a committee of, or a particular member or officer of, any of the responsible authorities.

[

(4A) Provision under subsection (3)(ca) may include provision—

(a) for a police and crime commissioner to arrange for meetings to be held for the purpose of assisting in the formulation and implementation of any strategy (or strategies) that the commissioner may specify that relate to any part of the police area of the commissioner,

(b) for the commissioner to chair the meetings, and

(c) for such descriptions and numbers of persons to attend the meetings as the commissioner may specify (including, in particular, representatives of the responsible authorities in relation to the strategies to be discussed at the meetings).

]7

(5) The matters referred to in subsection (3)(d) may in particular include guidance given by the appropriate national authority in connection with the formulation or implementation of a strategy.

(6) Provision under subsection (3)(e) may require a strategy to be formulated so as to address (in particular)–

(a) the reduction of crime or disorder of a particular description; [...]8

(b) the combatting of a particular description of misuse of drugs, alcohol or other substances [;]9

[

(c) the prevention of people becoming involved in serious violence of a particular description; or

(d) the reduction of instances of serious violence of a particular description.

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]9

(7) Regulations under this section may make–

(a) different provision for different local government areas;

(b) supplementary or incidental provision.

(8) For the purposes of this section any reference to the implementation of a strategy includes–

(a) keeping it under review for the purposes of monitoring its effectiveness; and

(b) making any changes to it that appear necessary or expedient.

(9) In this section the "appropriate national authority" is–

(a) the Secretary of State, in relation to strategies for areas in England [and strategies for preventing people from becoming involved in and reducing instances of serious violence in areas in Wales] 10 ;

(b) the National Assembly for Wales, in relation to strategies for combatting the misuse of drugs, alcohol or other substances in areas in Wales;

(c) the Secretary of State and the Assembly acting jointly, in relation to strategies for combatting crime and disorder [or re-offending] 11 in areas in Wales.

[

(10) The Secretary of State must consult the Welsh Ministers before making regulations under this section if and to extent that the regulations—

(a) relate to a strategy within subsection (1)(d), and

(b) make provision that applies in relation to a devolved Welsh authority within the meaning of the Government of Wales Act 2006 (see section 157A of that Act).

(11) References in this section to serious violence and to becoming involved in serious violence are to be construed in accordance with section 18.

]12]1

Notes

1 S.6 substituted for s.6 and 6A by Police and Justice Act 2006 c. 48 Sch.9 para.3 (November 19, 2007 as SI 2007/3073)
2 Words inserted by Police Reform and Social Responsibility Act 2011 c. 13 Sch.11 para.4(2) (November 22, 2012)
3 Added by Policing and Crime Act 2009 c. 26 Pt 8 c.2 s.108(4) (March 2, 2010 for the purpose of making regulations under 1998 c.37 s.6; April 1, 2010 otherwise)
4 Added by Police, Crime, Sentencing and Courts Act 2022 c. 32 Pt 2 c.1 s.20(4) (January 31, 2023: 2022 c.32 s.20(4) came into force April 28, 2022 as specified in 2022 c.32 s.208(4)(f) for the limited purpose of making regulations; January 31, 2023 as specified in SI 2022/1227 reg.4(l) otherwise)
5 Added by Police Reform and Social Responsibility Act 2011 c. 13 Sch.11 para.4(3) (November 22, 2012)
6 Added by Police Reform and Social Responsibility Act 2011 c. 13 Sch.11 para.4(4) (November 22, 2012)
7 Added by Police Reform and Social Responsibility Act 2011 c. 13 Sch.11 para.4(5) (November 22, 2012)

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Notes

8 Word repealed by Police, Crime, Sentencing and Courts Act 2022 c. 32 Pt 2 c.1 s.20(5)(a) (January 31, 2023: 2022 c.32 s.20(5)(a) came into force April 28, 2022 as specified in 2022 c.32 s.208(4)(f) for the limited purpose of making regulations; January 31, 2023 as specified in SI 2022/1227 reg.4(l) otherwise)

9 Added by Police, Crime, Sentencing and Courts Act 2022 c. 32 Pt 2 c.1 s.20(5)(b) (January 31, 2023: 2022 c.32 s.20(5)(b) came into force April 28, 2022 as specified in 2022 c.32 s.208(4)(f) for the limited purpose of making regulations; January 31, 2023 as specified in SI 2022/1227 reg.4(l) otherwise)

10 Words inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 Pt 2 c.1 s.20(6) (January 31, 2023: 2022 c.32 s.20(6) came into force April 28, 2022 as specified in 2022 c.32 s.208(4)(f) for the limited purpose of making regulations; January 31, 2023 as specified in SI 2022/1227 reg.4(l) otherwise)

11 Words inserted by Policing and Crime Act 2009 c. 26 Pt 8 c.2 s.108(5) (March 2, 2010 for the purpose of making regulations under 1998 c.37 s.6; April 1, 2010 otherwise)

12 Added by Police, Crime, Sentencing and Courts Act 2022 c. 32 Pt 2 c.1 s.20(7) (January 31, 2023: 2022 c.32 s.20(7) came into force April 28, 2022 as specified in 2022 c.32 s.208(4)(f) for the limited purpose of making regulations; January 31, 2023 as specified in SI 2022/1227 reg.4(l) otherwise)

Part I Prevention of crime and disorder > Chapter I England and Wales > Crime and disorder strategies > s. 6 Formulation and implementation of strategies

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s. 17 Duty to consider crime and disorder implications.

Law In Force

Version 18 of 18

26 December 2023 - Present

Subjects
Education

Keywords
Crime prevention; Local authorities' powers and duties

17.— Duty to consider crime and disorder implications.

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent [—] [1] [

(a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and

(b) the misuse of drugs, alcohol and other substances in its area [; and] [2]

] [1] [

(c) re-offending in its area [; and] [3]

] [2] [

(d) serious violence in its area.

] [3]

[

(1A) The duty imposed on an authority by subsection (1) to do all it reasonably can to prevent serious violence in its area is a duty on the authority to do all it reasonably can to—

(a) prevent people from becoming involved in serious violence in its area, and

(b) reduce instances of serious violence in its area.

] [4] [

(2) This section applies to each of the following–

a local authority;

a joint authority;

[a corporate joint committee established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021 (asc 1);] [5]

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[a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;] [6]

[a combined county authority established under section 9(1) of the Levelling-up and Regeneration Act 2023;] [7]

[the London Fire Commissioner;] [8]

a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;

[a fire and rescue authority created by an order under section 4A of that Act;] [9]

a metropolitan county fire authority;

[a local policing body] [10] ;

a National Park authority;

the Broads Authority [;] [11]

[the Greater London Authority; [12]

[...] [13]

Transport for London. [14]] [11]

] [1]

(3) In this section—

"local authority" means a local authority within the meaning given by section 270(1) of the Local Government Act 1972 or the Common Council of the City of London;

"joint authority" has the same meaning as in the Local Government Act 1985;

"National Park authority" means an authority established under section 63 of the Environment Act 1995.

[

(4) The appropriate national authority may by order amend this section by–

(a) adding an entry for any person or body to the list of authorities in subsection (2),

(b) altering or repealing any entry for the time being included in the list, or

(c) adding, altering or repealing provisions for the interpretation of entries in the list.

(5) In subsection (4) *"the appropriate national authority"* has the same meaning as in section 5.

] [1] [

(6) References in this section to serious violence and to becoming involved in serious violence are to be construed in accordance with section 18.

] [15]

Notes

1 Amended by Police and Justice Act 2006 c. 48 Sch.9 para.4 (November 19, 2007 as SI 2007/3073)
2 Added by Policing and Crime Act 2009 c. 26 Pt 8 c.2 s.108(6) (April 1, 2010)
3 Added by Police, Crime, Sentencing and Courts Act 2022 c. 32 Pt 2 c.1 s.20(9) (January 31, 2023: 2022 c.32 s.20(9) came into force April 28, 2022 as specified in 2022 c.32 s.208(4)(f) for the limited purpose of making regulations; January 31, 2023 as specified in SI 2022/1227 reg.4(l) otherwise)
4 Added by Police, Crime, Sentencing and Courts Act 2022 c. 32 Pt 2 c.1 s.20(10) (January 31, 2023: 2022 c.32 s.20(10) came into force April 28, 2022 as specified in 2022 c.32 s.208(4)(f) for the limited purpose of making regulations; January 31, 2023 as specified in SI 2022/1227 reg.4(l) otherwise)
5 Words inserted by Crime and Disorder Act 1998 (Additional Authority) (Wales) Order 2022/367 art.2 (March 25, 2022)
6 Entry inserted by Local Democracy, Economic Development and Construction Act 2009 c. 20 Sch.6 para.90 (December 17, 2009)
7 Words inserted by Levelling-up and Regeneration Act 2023 c. 55 Sch.4 para.120 (December 26, 2023)
8 Entry substituted by Policing and Crime Act 2017 c. 3 Sch.2(2) para.105 (April 1, 2018)
9 Entry inserted by Policing and Crime Act 2017 c. 3 Sch.1(2) para.79 (April 3, 2017)
10 Words substituted by Police Reform and Social Responsibility Act 2011 c. 13 Sch.16(3) para.233 (January 16, 2012)
11 Words inserted by Crime and Disorder Act 1998 (Additional Authorities) Order 2008/78 art.2 (February 15, 2008)
12 The Greater London Authority is established under Part 1 of the Greater London Authority Act 1999 (c.29).
13 Entry repealed by Localism Act 2011 c. 20 Sch.25(32) para.1 (March 31, 2012)
14 Transport for London is established under Part IV of the Greater London Authority Act 1999.
15 Added by Police, Crime, Sentencing and Courts Act 2022 c. 32 Pt 2 c.1 s.20(11) (January 31, 2023: 2022 c.32 s.20(11) came into force April 28, 2022 as specified in 2022 c.32 s.208(4)(f) for the limited purpose of making regulations; January 31, 2023 as specified in SI 2022/1227 reg.4(l) otherwise)

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Police and Justice Act 2006 c. 48
s. 27 Injunctions in local authority proceedings: power of arrest and remand

Partially In Force

Version 3 of 3

22 April 2014 - Present

Subjects
Local government; Police

Keywords
Injunctions; Local authorities' powers and duties; Powers of arrest; Remand

27 Injunctions in local authority proceedings: power of arrest and remand

(1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (c. 70) (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants of their area).

(2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.

(3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either–

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection.

(4) Where a power of arrest is attached to any provision of an injunction under subsection (2), a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of that provision.

(5) After making an arrest under subsection (4) the constable must as soon as is reasonably practicable inform the local authority.

(6) Where a person is arrested under subsection (4)–

(a) he shall be brought before the court within the period of 24 hours beginning at the time of his arrest, and

(b) if the matter is not then disposed of forthwith, the court may remand him.

(7) For the purposes of subsection (6), when calculating the period of 24 hours referred to in paragraph (a) of that subsection, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(8) Schedule 10 applies in relation to the power to remand under subsection (6).

(9) If the court has reason to consider that a medical report will be required, the power to remand a person under subsection (6) may be exercised for the purpose of enabling a medical examination and report to be made.

(10) If such a power is so exercised the adjournment shall not be in force–

(a) for more than three weeks at a time in a case where the court remands the accused person in custody, or

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(b) for more than four weeks at a time in any other case.

(11) If there is reason to suspect that a person who has been arrested under subsection (4) is suffering from [mental disorder within the meaning of the Mental Health Act 1983] [1] the court shall have the same power to make an order under [section 35 of that Act] [2] (remand for report on accused's mental condition) as the Crown Court has under that section in the case of an accused person within the meaning of that section.

(12) For the purposes of this section–

(a) *"harm"* includes serious ill-treatment or abuse (whether physical or not);

(b) *"local authority"* has the same meaning as in section 222 of the Local Government Act 1972 (c. 70);

(c) *"the court"* means the High Court or [the county] [3] court and includes–

(i) in relation to the High Court, a judge of that court, and

(ii) in relation to [the county] [3] court, a judge [...] [4] of that court.

Notes

1 Words substituted subject to savings/transitional provisions specified in 2007 c.12 Sch.10 para.2 by Mental Health Act 2007 c. 12 Sch.1(2) para.26(a) (November 3, 2008: substitution has effect subject to savings/transitional provisions specified in 2007 c.12 Sch.10 para.2)

2 Words substituted subject to savings/transitional provisions specified in 2007 c.12 Sch.10 para.2 by Mental Health Act 2007 c. 12 Sch.1(2) para.26(b) (November 3, 2008: substitution has effect subject to savings/transitional provisions specified in 2007 c.12 Sch.10 para.2)

3 Words substituted by Crime and Courts Act 2013 c. 22 Sch.9(2) para.44(a) (April 22, 2014: substitution has effect as SI 2014/954 subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8 and transitional provision specified in SI 2014/954 arts 2(c) and 3)

4 Words repealed by Crime and Courts Act 2013 c. 22 Sch.9(2) para.44(b) (April 22, 2014: repeal has effect as SI 2014/954 subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8 and transitional provision specified in SI 2014/954 arts 2(c) and 3)

Part 3 CRIME AND ANTI-SOCIAL BEHAVIOUR > Injunctions > s. 27
Injunctions in local authority proceedings: power of arrest and remand

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Localism Act 2011 c. 20
s. 1 Local authority's general power of competence

Law In Force

Version 1 of 1

18 February 2012 - Present

Subjects
Local government

Keywords
General power of competence

1 Local authority's general power of competence

(1) A local authority has power to do anything that individuals generally may do.

(2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise —

(a) unlike anything the authority may do apart from subsection (1), or

(b) unlike anything that other public bodies may do.

(3) In this section *"individual"* means an individual with full capacity.

(4) Where subsection (1) confers power on the authority to do something, it confers power (subject to sections 2 to 4) to do it in any way whatever, including—

(a) power to do it anywhere in the United Kingdom or elsewhere,

(b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and

(c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

(5) The generality of the power conferred by subsection (1) ("the general power") is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.

(6) Any such other power is not limited by the existence of the general power (but see section 5(2)).

(7) Schedule 1 (consequential amendments) has effect.

Part 1 LOCAL GOVERNMENT > Chapter 1 GENERAL POWERS OF AUTHORITIES > s. 1 Local authority's general power of competence

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A

CASES

determined by the

CHANCERY DIVISION

B

and the

COURT OF PROTECTION

and on appeal therefrom in the

C

COURT OF APPEAL

D

[COURT OF APPEAL]

STOKE-ON-TRENT CITY COUNCIL *v.* B & Q (RETAIL) LTD. WOLVERHAMPTON BOROUGH COUNCIL *v.* B & Q (RETAIL) LTD. BARKING AND DAGENHAM LONDON BOROUGH COUNCIL *v.* HOME CHARM RETAIL LTD.

E

[1982 S. No. 2111]
[1982 W. No. 16293]
[1982 B. No. 16360]

1983 March 24, 28, 29, 30; April 26

Lawton, Ackner and Oliver L.JJ.

F

Local Government—Powers—Action by local authority—Sunday trading in deliberate and flagrant breach of statute—Local authority claiming injunction to restrain further breaches—Whether entitled to injunctive relief—Whether proceedings properly instituted—Whether proceedings improperly instituted capable of ratification—Shops Act 1950 (14 *Geo.* 6, *c.* 28), *ss.* 47, 71 (1)—*Local Government Act* 1972 (*c.* 70), *s.* 222 (1) (*a*)

G

The defendants in three separate actions owned retail shops which they continued to open for trading on Sundays contrary to section 47 of the Shops Act 1950,[1] despite complaints and warnings from the local authorities concerned. In each case the local authority instituted civil proceedings for an injunction to restrain the defendants from trading in breach of section 47 and applied for an interim injunction, relying on section 222 (1) of the Local Government Act 1972[2] and, in the third case, also on section 71 (1) of the Shops Act 1950. Interim injunc-

H

[1] Shops Act 1950, s. 47: see post, pp. 24H—25A.
S. 71 (1): see post, p. 20A–B.

tions were made in the first and third actions and refused in the second action. A

On appeal by the defendants in the first and third actions and by the local authority in the second action:—

Held, (1) that local authorities, in carrying out the duty to enforce the provisions of the Shops Act 1950 imposed on them by section 71 of the Act, were entitled to use their power under section 222 (1) of the Local Government Act 1972 to institute proceedings for injunctive relief where they were satisfied that such relief was the only way to stop deliberate and flagrant B flouting of section 47 of the Act of 1950; and that, on the evidence, it was reasonable in all three actions to conclude that the defendants would continue deliberately and flagrantly to flout section 47 (post, pp. 23C–E, 24D, 27C–E, 30G–H, 31C, 34H—35B, F–H).

Gouriet v. *Union of Post Office Workers* [1978] A.C. 435, H.L.(E.) and *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324, C.A. considered. C

(2) Allowing the second and third appeals, that, although the proper exercise by a local authority of their discretion under section 222 (1) of the Act of 1972 involved a consideration of whether the action proposed was expedient for the promotion or protection of the inhabitants of their area, there was a rebuttable presumption that the discretion had been so exercised; and that, as no evidence had been adduced by the defendants in the second action, those proceedings were presumed to have been, and were in fact, properly brought; but that evidence in the third action showed that the local authority gave no consideration to section 222 and that no proper authority had been given for the institution of proceedings for injunctive relief against the defendants (post, pp. 23E–G, 24D–E, 28F–G, 29B, 31D, 36A). D

(3) Dismissing the first appeal, that although, on the evidence, the proceedings in the first action had been instituted E without a proper exercise of the discretion under section 222 of the Act of 1972 by the local authority they were effectively ratified by a subsequent consideration of the limitations imposed by section 222 (post, pp. 23H—24B, 31B, 36A).

Warwick Rural District Council v. *Miller-Mead* [1962] Ch. 441, C.A. applied.

Per curiam. (i) Section 71 of the Shops Act 1950 does not authorise local authorities to institute civil proceedings for F injunctive relief against the commission of offences against section 47 of the Act (post, pp. 20C–D, 31D–E, 36B).

(ii) Local authorities do not have a general discretion to decide whether or not to enforce the Shops Act 1950 and could be made to enforce it by means of a judicial review (post, pp. 20G, 28C–D, 34E–F).

Reg. v. *Braintree District Council, Ex parte Willingham* (1982) 81 L.G.R. 70, D.C. approved. G

Per Ackner L.J. The general observation that, for the purposes of section 222 of the Local Government Act 1972, the inhabitants of any area have a general interest to see that the provisions of Acts in force in the area are duly observed cannot be accepted (post, p. 26G–H).

Decision of Whitford J. affirmed and decisions of Nourse J. and Falconer J. reversed.

H

[2] Local Government Act 1972, s. 222: "(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—(*a*) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name . . ."

The following cases are referred to in the judgments:

Asssociated Provincial Picture Houses Ltd. v. *Wednesbury Corporation* [1948] 1 K.B. 223; [1947] 2 All E.R. 680, C.A.

Attorney-General v. *Bastow* [1957] 1 Q.B. 514; [1957] 2 W.L.R. 340; [1957] 1 All E.R. 497.

Attorney-General v. *Chaudry* [1971] 1 W.L.R. 1614; [1971] 3 All E.R. 938, C.A.

Attorney-General v. *Harris* [1961] 1 Q.B. 74; [1960] 3 W.L.R. 532; [1960] 3 All E.R. 207, C.A.

Attorney-General v. *Shonleigh Nominees Ltd.* [1971] 1 W.L.R. 1723; [1971] 3 All E.R. 473; [1974] 1 W.L.R. 305; [1974] 1 All E.R. 734, H.L.(E.).

Gouriet v. *Union of Post Office Workers* [1978] A.C. 435; [1977] 3 W.L.R. 300; [1977] 3 All E.R. 70, H.L.(E.).

Hampshire County Council v. *Shonleigh Nominees Ltd.* [1970] 1 W.L.R. 865; [1970] 2 All E.R. 144.

Kitchener v. *Evening Standard Co. Ltd.* [1936] 1 K.B. 576; [1936] 1 All E.R. 48.

Prestatyn Urban District Council v. *Prestatyn Raceway Ltd.* [1970] 1 W.L.R. 33; [1969] 3 All E.R. 1573.

Reg. v. *Braintree District Council, Ex parte Willingham* (1982) 81 L.G.R. 70, D.C.

Solihull Metropolitan Borough Council v. *Maxfern Ltd.* [1977] 1 W.L.R. 127; [1977] 2 All E.R. 177.

Stafford Borough Council v. *Elkenford Ltd.* (unreported), July 30, 1976, Oliver J.; [1977] 1 W.L.R. 324; [1977] 2 All E.R. 519, C.A.

Stoke-on-Trent City Council v. *Saxon Scaffolding Ltd.* (unreported), October 26, 1979, Goulding J.

Tottenham Urban District Council v. *Williamson & Sons Ltd.* [1896] 2 Q.B. 353, C.A.

Warwick Rural District Council v. *Miller-Mead* [1962] Ch. 441; [1962] 2 W.L.R. 284; [1962] 1 All E.R. 212, C.A.

The following additional cases were cited in argument:

Caldwell v. *Pagham Harbour Reclamation Co.* (1876) 2 Ch.D. 221.

Hammersmith London Borough Council v. *Magnum Automated Forecourts Ltd.* [1978] 1 W.L.R. 50; [1978] 1 All E.R. 401, C.A.

Kent County Council v. *Batchelor (No. 2)* [1979] 1 W.L.R. 213; [1978] 3 All E.R. 980.

Wyre Forest District Council v. *Taylor* (unreported), October 22, 1981, Dillon J.

STOKE-ON-TRENT CITY COUNCIL *v.* B & Q LTD. (RETAIL) LTD.

APPEAL from Whitford J.

By writ dated May 5, 1982, the plaintiffs, Stoke-on-Trent City Council, claimed an injunction restraining the defendants, B & Q (Retail) Ltd., from using or causing or permitting to be used premises at Waterloo Road, Burslem, Stoke-on-Trent, and at Leek Road, Hanley, Stoke-on-Trent, as a retail do-it-yourself and garden centre on Sundays other than for the

purposes of carrying out transactions exempted from the operation of the Shops Act 1950 by section 47 and Schedule 5 to that Act. On June 25, 1982, Whitford J., on motion by the plaintiffs, granted an injunction in the terms claimed by the writ until judgment or further order.

By notice of appeal dated July 9, 1982, the defendants appealed on the grounds that the judge erred in law in that (1) he gave no or no sufficient weight to the fact that there was no evidence that the plaintiffs or any duly authorised committee or sub-committee of the plaintiffs had considered whether the commencement of the action was expedient for the purposes of promoting or protecting the inhabitants of the plaintiffs' locality (as required by section 222 of the Local Government Act 1972); (2) he gave no or no sufficient weight to the fact that there was no evidence that the plaintiffs or their duly authorised organs had concluded that it was expedient for such purposes that the action be commenced; (3) he gave no or no sufficient weight to the fact that there was no evidence that there was any interest of the inhabitants which would be promoted or protected by the commencement of the action; (4) he gave no or no sufficient weight to the fact that there was no evidence of any complaint by any inhabitant of the plaintiffs' area nor that the defendants' activities of which complaint was made in the action were contrary to the interests of the inhabitants of the plaintiffs' locality; (5) he gave no or no sufficient weight to the fact that there was no evidence as to the terms of any policy which the plaintiffs might have had as to the enforcement by means of civil proceedings of the provisions of the Shops Act 1950; (6) he held that it could be assumed to be in the interests of the inhabitants of the plaintiffs' locality that the provisions of the Shops Act 1950 should be enforced by means of an injunction; (7) notwithstanding (a) that the plaintiffs' standing orders contained no power authorising the delegation of the decision whether to institute legal proceedings in respect of breaches of the Shops Act 1950 to the town clerk, (b) that the plaintiffs' environmental health sub-committee on April 15, 1982, authorised the town clerk to "take out injunctions" where considered appropriate, and (c) that the plaintiffs' officers expressly disclaimed having exercised any discretion, he held that the commencement of the action was duly authorised; and (8) he held that if the action was not duly authorised by the date of the issue of the writ any want of authority was cured by resolution of the plaintiffs' policy committee on May 17, 1982, and/or by resolution of the plaintiffs themselves on May 27, 1982, notwithstanding that those resolutions were passed after the date of issue of the writ.

The facts are stated in the judgment of Lawton L.J.

WOLVERHAMPTON BOROUGH COUNCIL *v.* B & Q (RETAIL) LTD.

APPEAL from Nourse J.

By writ dated December 13, 1982, the plaintiffs, Wolverhampton Borough Council, claimed an injunction restraining the defendants, B & Q (Retail) Ltd., from using or causing or permitting to be used their premises at Howard Street, Wolverhampton, and at Loxdale Street, Bilston, Wolverhampton, and at Bushbury Lane, Wolverhampton, as retail do-it-yourself trade or business or as garden centres on Sundays except for the purposes

A of carrying out transactions exempted from the operation of the Shops Act 1950 by section 47 and Schedule 5 to that Act. By notice of motion dated December 13, 1982, the plaintiffs sought an injunction in the same terms as that sought in the writ until trial or further order. On January 18, 1983, Nourse J. refused to grant an injunction on the motion.

By notice of appeal dated February 11, 1983, the plaintiffs appealed on the grounds that (1) the judge erred in law in holding that it was for B the plaintiffs (in the absence of any evidence lodged by the defendants) to show a case within section 222 of the Local Government Act 1972 so as to justify the commencement of the proceedings without the fiat of the Attorney-General; (2) the judge erred in law in holding that there were no facts or circumstances known to the plaintiffs on which they could reasonably have considered it to be expedient for the promotion or protection of the interests of the inhabitants of their area that the application C for an injunction should be made; (3) the plaintiffs could reasonably have considered it to be for the promotion or protection of the interests of the inhabitants of their area that the persistent and continued flouting of the provisions of section 47 of the Shops Act 1950 by the defendants in their area be prevented by an application to the High Court for an injunction; (4) the judge erred in law in rejecting the submission in ground (3): (a) by D holding that the provisions of section 222 of the Local Government Act 1972 required there to be some " special " interest in the inhabitants of the plaintiffs' area in bringing the proceedings in that the conduct of the defendants which the plaintiffs sought to restrain must be such as to cause particular prejudice to the inhabitants of the plaintiffs' area that in any event such prejudice did not exist, and (b) in giving no or no sufficient E weight to the fact that by virtue of section 71 (1) of the Shops Act 1950 the plaintiffs were under a statutory duty to enforce the provisions of the Act within their area and for that purpose to institute and carry on such proceedings as might be necessary to secure the due observance of those provisions or alternatively in holding that the provisions of section 71 (1) did not of themselves create a sufficient interest in the inhabitants of the plaintiffs' area in securing the due observance of the provisions of the F Shops Act 1950; and (5) alternatively the plaintiffs were by virtue of section 71 (1) of the Shops Act 1950 duly authorised to commence the proceedings without the fiat of the Attorney-General and without the necessity for a resolution duly passed in accordance with the provisions of the Local Government Act 1972 and that the judge erred in law in holding to the contrary.

G The facts are stated in the judgment of Lawton L.J.

BARKING AND DAGENHAM LONDON BOROUGH COUNCIL
v. HOME CHARM RETAIL LTD.

APPEAL from Falconer J.

By writ dated December 15, 1982, the plaintiffs, Barking and Dagenham H London Borough Council, claimed an injunction restraining the defendants, Home Charm Retail Ltd., from opening a shop or causing or permitting others to open a shop for the service of customers on a Sunday at Merrielands Crescent, Dagenham, or elsewhere in the district of the London

Borough of Barking and Dagenham in breach of the Shops Act 1950. By notice of motion dated December 15, 1982, the plaintiffs sought an injunction in the same terms as that sought in the writ until the hearing of the action or further order. On January 11, 1983, Falconer J. granted the injunction sought on the motion.

The defendants appealed by notice of appeal dated February 8, 1983, and amended March 3, 1983, on the grounds that (1) the judge misdirected himself in holding that the plaintiffs had authority to commence the proceedings and pursue the application for an injunction by reason of section 71 (1) of the Shops Act 1950; (1A) there was no power in a local authority to bring in its own name proceedings for an injunction restraining the defendants from committing a criminal offence; alternatively (2) the judge ought to have directed himself that the only basis on which the plaintiffs could commence proceedings was pursuant to section 222 of the Local Government Act 1972, if at all; (2A) the judge erred in treating *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324 as authority for the proposition that injunctive proceedings could be initiated by a local authority otherwise than under section 222 of the Local Government Act 1972 or by way of relator action; (2B) the judge erred in thinking it relevant to the issues before him that he was of the view that the enforcement of the law and the carrying out of the statutory duty placed on the local authority was a matter which was expedient for the promotion or protection of the interests of the inhabitants of their area, and the relevant question was whether the authority, having properly directed itself, considered it expedient for the promotion or protection of the interests of the inhabitants of their area to institute civil proceedings in their own name; (2C) there was no evidence before the judge to that effect, and the plaintiffs having contended that they were empowered to bring such civil proceedings otherwise than under section 222 of the Local Government Act 1972, the judge erred in presuming (if he did so) that the plaintiffs had taken into account the matters specified in that section; (3) the judge misdirected himself in holding that he was entitled to presume that the commencement of proceedings in the present form by the plaintiffs was expedient for the promotion or protection of the interests of the inhabitants of their area; (4) on the evidence the judge could and should have concluded that the only reason why the plaintiffs commenced the proceedings was in order to attempt to enforce the law; (5) there was no evidence before the judge that the failure or refusal of the defendants to abide by the law had given rise to any particular problem or difficulty which required action on the part of the plaintiffs in order to protect the interests of the inhabitants of their area; (6) the judge was wrong in the absence of any supporting evidence to presume that the commencement of proceedings was expedient for the promotion or protection of the inhabitants of the plaintiffs' area; and (7) the judge erred in exercising his discretion to grant an injunction on the evidence before him: (a) he erred in equating the position of a shopkeeper who opened his shop on Sundays with the position which appertained in *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324, namely that of a person organising a system which encouraged the mass breaking of the law by others, and (b) there was no evidence that criminal proceedings were inadequate to prevent continuing breaches and

A at most the evidence went to show that the level of fines imposed by the magistrates (which was less than the maximum prescribed by statute) was inadequate to prevent continuing breaches.

The facts are stated in the judgment of Lawton L.J.

John Samuels Q.C. and *Nicholas Davidson* for the defendants in the first appeal. The defendants' case is based on the propositions that (1) only B the Attorney-General can obtain injunctive relief to restrain the commission of crime simpliciter, and (2) section 222 of the Local Government Act 1972 only entitles a local authority to maintain proceedings for injunctive relief where the acts complained of amount to conduct prejudicial to the interests of the inhabitants of their area.

The starting point is *Gouriet* v. *Union of Post Office Workers* [1978] C A.C. 435. Injunctive relief to restrain a breach of the criminal law should only be sought in exceptional circumstances: see pp. 481, 489, 491, 495, 498–499. Examples of those exceptional circumstances are where a defendant has, by his past behaviour, evinced an intention to flout the requirements of the law and where the maximum penalty for the offence is an inadequate sanction, or where the case is of an emergency nature: see pp. 481, 491.

D There are two distinct hurdles for any local authority seeking injunctive relief. First, the case must fall within the categories of cases in which the Attorney-General would have acted in any event. Secondly, the local authority must show that the proceedings were brought for the protection or promotion of the interests of the inhabitants of their area; that is to say, that they have applied their minds to the section 222 criteria. Irrespective of the identity of a prosecuting authority, its duty to enforce the law is E discharged by initiating a prosecution for the relevant offence in the appropriate criminal court: see *Gouriet's* case [1978] A.C. 435, 490, 497–498.

An injunction to restrain breaches of the criminal law is essentially a matter for the discretion of the Attorney-General and should not be left to the discretion of local authorities. If there is a widespread pattern of breaches of a particular statutory provision it would result in unsatisfactory F disarray if left to the discretion of the enforcing authorities. It should be for the Attorney-General to invoke the aid of the civil courts, so that the provision will be enforced uniformly.

Obedience to Acts of Parliament is in the interests of the public at large and not necessarily the inhabitants of a particular area: see *Gouriet's* case at p. 519.

G Where criminal conduct, whether threatened or committed, does not additionally involve the invasion of private rights of person or property only the Attorney-General can seek and obtain injunctive relief, and he should take extreme care before doing so: see *Gouriet's* case, at pp. 510, 511.

The conclusion to be drawn from the foregoing submissions is that it was not competent in any event on the information available to Stoke-on- H Trent City Council to decide to institute enforcement proceedings against the defendants.

Turning to the power conferred by section 222 of the Act of 1972, in every reported case in which a local authority has successfully obtained

injunctive relief under the section to restrain conduct which amounts to the commission of criminal offences, the same conduct clearly amounted to a prejudicial interference with the rights of the inhabitants of the area. [Reference was made to *Stafford Borough Council* v. *Elkenford Ltd.* (unreported), July 30, 1976; [1977] 1 W.L.R. 324, 329; *Hammersmith London Borough Council* v. *Magnum Automated Forecourts Ltd.* [1978] 1 W.L.R. 50 and *Kent County Council* v. *Batchelor (No. 2)* [1979] 1 W.L.R. 213.] In the first reported case in which the construction of section 222 was considered Oliver J. emphasised the circumscribed nature of the jurisdiction: see *Solihull Metropolitan Borough Council* v. *Maxfern Ltd.* [1977] 1 W.L.R. 127.

Since breaches of section 47 of the Shops Act 1950 do not in themselves (unless coupled with behaviour which objectively causes a public nuisance) prejudice the interests of the inhabitants of a particular area, future breaches cannot properly be restrained save at the suit of the Attorney-General at the relation of the local authority.

If, contrary to the previous submission, the council were entitled under section 222 of the Act of 1972 to initiate proceedings for an injunction to restrain further breaches of section 47 of the Act of 1950, it was a condition precedent to the exercise of that power that they had first duly considered whether such proceedings were expedient for the promotion or protection of the interests of the inhabitants of their area and had duly concluded that they were. In doing so the council must not have made any assumptions: there must have been material on which they could act. [Reference was made to *Warwick Rural District Council* v. *Miller-Mead* [1962] Ch. 441.] There is no evidence that the council had any opinion at all on the section 222 criteria. It is no use simply deeming a committee to have a power if it was not purporting to exercise it. The *Warwick* case was somewhat exceptional and can quite clearly be distinguished from the present case.

On the facts, the council, notwithstanding the resolution of May 17, 1982, did not consider the question of expediency in the context of section 222 at all until after the commencement of the action; their purported resolution of May 17 could not validate what was an improperly constituted action, which was a nullity or invalid ab initio. On the evidence, the council could not in any event properly have concluded that proceedings for an injunction were expedient given (i) the absence of complaints, (ii) the failure to take, let alone exhaust, the remedies prescribed by statute and (iii) no evidence at the time of decision that the defendants intended to open on Sundays subsequent to the first opening.

Simon D. Brown as amicus curiae. The submissions of the amicus are confined to the defendants' contention that section 222 of the Act of 1972 does not enable local authorities to seek injunctive relief to restrain conduct which does not create or cause a public nuisance.

It is not sought to support the view that, independently of section 222 of the Act of 1972, local authorities have the power, by virtue of the Shops Act 1950, to take civil proceedings to restrain Sunday opening. But section 71 of the Act of 1950 is of relevance in considering the scope of the power under section 222. Local authorities are amenable to judicial review proceedings in regard to the performance of their public law duty

A to enforce the provisions of the Act of 1950. The Act places an unqualified duty on local authorities, and the court would support persons having a sufficient interest with an order of mandamus.

Section 222 of the Act of 1972 was clearly designed to confer a substantial measure of autonomy on local authorities in respect of law enforcement within their areas. The Attorney-General welcomes that autonomy in regard to the control of those activities generally associated with local B authority jurisdiction.

Before *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435 the position was that where public rights were being infringed the only permissible plaintiffs in civil proceedings to enjoin against the continuation of the infringing conduct were (1) the Attorney-General, acting either ex officio or ex relatione, (2) an individual who had suffered some particular damage as a result of the infringing conduct and who could establish an indepen- C dent cause of action in private law, and (3), as from 1972, local authorities acting pursuant to section 222 of the Act of 1972. [Reference was made to *Wade, Administrative Law*, 5th ed. (1982), p. 533; R.S.C., Ord. 15, r. 11; *de Smith's Judicial Review of Administrative Action*, 4th ed. (1980), p. 451; *Clerk & Lindsell on Torts*, 15th ed. (1982), p. 1140 and *Archbold, Criminal Pleading, Evidence & Practice*, 41st ed. (1982), p. 1965.]

D The ambit of section 222 of the Act of 1972 extends beyond that of controlling public nuisances and is apt to cover the prevention of a continuing infringement of the Sunday trading laws in some circumstances at least.

[LAWTON L.J. Why has the Attorney-General done nothing though the law is being continually broken?]

Where, as in the present cases, the legislature has placed the law enforce- E ment duty on local authorities it indicates that the activity relates to the local jurisdiction and there is no primary obligation on the Attorney-General to take action.

Because it envisages the control of criminal conduct by civil injunction with its attendant problems, section 222 ought not to be too widely construed. In the same way as the Attorney-General, as the representative of F the Crown, acts as parens patriae to protect the public rights of Her Majesty's subjects nationally, so by section 222 Parliament enables local authorities to act similarly in respect of the inhabitants of their areas. The particular expertise possessed by a local authority justifying the discretion being vested in them by section 222 might be thought to be confined essentially to local government functions in their particular area, orientated particularly to the physical use of land.

G Anything that smacks of public nuisance would be controllable by a local authority under section 222; equally, crime simpliciter would not be so controllable. Where, as in the present cases, there is a statutory obligation on the local authority, that creates the presumption that the conduct in question properly concerns the local authority in carrying out their local authority functions for the very reason that it relates to physical activities H in their area which directly affect the interests of their inhabitants. [Reference was made to the Consolidation of Enactments (Procedure) Act 1949 and *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324.]

Robert Reid Q.C. and *Nicholas Patten* for the plaintiff councils in the

first and second appeals. Dealing first with the appeal in *Stoke-on-Trent City Council* v. *B & Q Retail Ltd.*, the environmental health sub-committee of the council had power to " deal with " offences under the Shops Act 1950 which necessarily includes the power to institute proceedings to avert the threat of future offences under the Act. If that is wrong, then the policy committee of the council had the power to authorise such proceedings, and following such authorisation, even though it was after the issue of the writ, the proceedings were duly ratified and were perfectly valid. [Reference was made to *Halsbury's Statutes of England*, 3rd ed., vol. 42 (1973), p. 1042 and *Warwick Rural District Council* v. *Miller-Mead* [1962] Ch. 441.]

Section 222 of the Local Government Act 1972 is wide enough to empower a local authority if necessary to institute proceedings in their own name for an injunction in cases where before the Act it would have been necessary for the Attorney-General to issue the proceedings by way of a relator action. Accordingly, the Act in effect empowers a local authority to act as a local Attorney-General where it is considered " expedient for the promotion or protection of the interests of the inhabitants of their area." It does not matter that when they so act the relief obtained would also promote or protect the interests of persons outside their area.

If a local authority purport to act pursuant to section 222 they are presumed to have done so lawfully. It is for those who assert that they have not done so to prove their case by showing either that (1) the local authority made their decision on the basis of matters they should not have taken into account, or (2) they failed to take into account matters they ought to have taken into account, or (3) no reasonable local authority could have reached the decision reached. See *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223, 228, 230; *Stafford Borough Council* v. *Elkenford Ltd.* (unreported), July 30, 1976, and *Stoke-on-Trent City Council* v. *Saxon Scaffolding Ltd.* (unreported), October 26, 1979.

Even if proceedings under section 222 are improperly launched because the local authority is shown not to have considered the criteria of section 222, they can be subsequently ratified and validated by analogy with the power to convert an ordinary action into a relator action: see *Caldwell* v. *Pagham Harbour Reclamation Co.* (1876) 2 Ch.D. 221; *Hampshire County Council* v. *Shonleigh Nominees Ltd.* [1970] 1 W.L.R. 865, 876; *Attorney-General* v. *Shonleigh Nominees Ltd.* [1974] 1 W.L.R. 305, 309 and *Wyre Forest District Council* v. *Taylor* (unreported), October 22, 1981.

The position of a local authority starting proceedings without the necessary authority is no different from that of, say, a solicitor who issues a writ without authority. If the statutory power to take an action exists, there is no reason why, if the local authority get their house in order, they should have to issue another writ.

A local authority has a duty under section 71 (1) of the Shops Act 1950 to enforce the Act, and such enforcement may be by any lawful means, i.e. by prosecution or by injunction under section 222 of the Act of 1972 or by injunction pursuant to a relator action. [Reference was made to *Reg.* v. *Braintree District Council, Ex parte Willingham* (1982) 81 L.G.R. 70.] The means of carrying out their duty is essentially a matter for the local

A authority, bearing in mind its resources, the nature of the breach and any other relevant factors. It may well be sensible to seek injunctive relief against a large store, but to prosecute or merely warn a small shopkeeper. A local authority are entitled to take the view that a persistent and deliberate intention to flout the law is in itself a grave and serious injury to the inhabitants of their area and to seek to enforce the law by injunction.

They can also bear in mind, inter alia, the comparative cost to ratepayers; the effect on the council's resources of both cash and manpower and the resultant effect on other duties that have to be undertaken; the comparative effect of the type of proceedings on the type of trader; and the effect on the trader who abides by the law.

The enforcement of the Shops Act 1950 is essentially a local matter: it is entrusted to the local authority by Parliament and it affects primarily local traders and residents. It is essentially a matter on which the local view of the local authority who comprise the elected representatives of the locality is to be allowed to prevail.

The right to apply for an injunction in the case where the prescribed penalty is clearly insufficient to deter the particular offender is well established. A fine under the Shops Act 1950 is not in the nature of a licence fee enabling the well-off trader to break the law with impunity but deterring the small trader who has fewer resources. [Reference was made to *Attorney-General* v. *Bastow* [1957] 1 Q.B. 514, 519, and *Stafford Borough Council* v. *Elkenford Ltd.* (unreported), July 30, 1976.]

Turning to the appeal in *Wolverhampton Borough Council* v. *B & Q (Retail) Ltd.*, that is a clear section 222 case in which the proceedings were duly authorised from the beginning, and all the propositions put forward in relation to the first appeal, apart from those relating to ratification, apply equally to it. The judge went wrong in reversing the *Wednesbury* [1948] 1 K.B. 223 burden of proof.

John Samuels Q.C. and *L. J. West-Knights* for the defendants in the second appeal. The first question is the proper construction and ambit of section 222 of the Local Government Act 1972. It is tempting for the court to assume that the promotion or protection of the interests of the inhabitants of a local authority's area includes the promotion or protection of the interests of any section of inhabitants, but it should be construed as referring to the overall interests of the inhabitants whom the local authority represent. If there is merit in the submission that section 222 has conferred on local authorities the role of local Attorney-General, and, as one has to regard the role of the Attorney-General generally as exercising the powers of the sovereign as parens patriae, then by analogy the " local Attorney-General " must be exercising a similar role in relation to the inhabitants generally. Unless a local authority act with appropriate caution and circumspection and are properly advised injustice may follow.

There may be a positive duty on local authorities to prosecute under the Shops Act 1950 in all cases brought to their attention, but the jurisdiction under section 222 of the Act of 1972 involves the exercise of a discretion when other factors besides the breach of statute may have to be taken into account in considering the overall situation. It is a strange feature of these cases that local authorities are under exactly the same duty as was placed on them by statute in 1911 and it is only by the side wind of section 222

that they are able, if the council's submissions are right, to add to their armoury in enforcing the Act of 1950 the power to procure an injunction.

Samuels Q.C. in reply on the first appeal. The power of the policy committee to authorise the proceedings was not exercised until the proceedings were well on their way and the point as to want of authority had been taken.

It is accepted that if a local authority do have the capacity to sue they have the power retroactively to validate proceedings. But consideration of and compliance with section 222 of the Act of 1972 should be regarded as a condition precedent to the commencement of proceedings which rely on the section; so that, unless a local authority have duly and properly invoked section 222, any action which they commence to restrain behaviour of the present type cannot constitute a good cause of action. [Reference was made to *Tottenham Urban District Council* v. *Williamson & Sons Ltd.* [1896] 2 Q.B. 353, 354.]

Some restriction on the power of a local authority to prosecute in their own name must clearly be introduced, and that was accepted by the council, but whether it should be as submitted by the amicus is a matter for the court. To regard them as a local Attorney-General is an approach which requires some caution, since they do not have the experience or expertise of the Attorney-General.

It is accepted that if the taking of proceedings to promote or protect the inhabitants of a local authority's area has the incidental effect of also promoting the interests of persons outside their area that does not vitiate the validity of the proceedings.

If compliance with the provisions of section 222 is a true condition precedent to a local authority's maintaining an action which before 1972 would have been a relator action, an action commenced without such compliance would in law be a nullity and incapable of being validated by the local authority.

In submitting that enforcement of the Shops Act 1950 could be carried out in three ways, including a relator action, the council appear to be accepting that in some cases only a relator action would be justified.

It was suggested that a local authority might properly seek injunctive relief against a large store while prosecution might be sufficiently effective against a small trader. But Parliament must be deemed to have been aware of the situation when fines were last adjusted in 1972; nor can it be a sufficient compliance with the criteria of section 222 to bring proceedings against defendants merely because the local authority consider that it would be a good idea to make an example of them.

Konrad Schiemann Q.C. and *Keith Knight* for the defendants in the third appeal. Section 71 of the Shops Act 1950 on its own does not entitle a local authority to institute proceedings of the present sort. When Parliament has wished to give a specific remedy by way of injunction to local authorities it has said so in terms both before and after the Act of 1972.

On the facts, the council did not purport to exercise any discretion under section 222 of the Local Government Act 1972 so as to authorise injunctive proceedings.

The judge exercised his discretion to grant an injunction on mistaken principles in taking into account a variety of matters which he ought not

A to have taken into account. [Reference was made to *Stafford Borough Council* v. *Elkenford Ltd.* (unreported), July 30, 1976.] The position of the defendants cannot be equated with that of a person organising a system which encouraged the mass breaking of the law by others.

Relevant factors on discretion are the presence or absence of a conspiratorial element; the view taken by the local authority when giving consideration to section 222; the fact that the Attorney-General has not B seen fit to encourage enforcement of the Shops Act 1950 uniformly; the fact that the Act of 1950 contains dispensations; the fact that the maximum penalties under the Act of 1950 were not imposed; the double jeopardy of prosecution and injunction; the degree to which the defendants advertised their intention to open on Sundays; and the danger of irrevocable harm if an injunction is not granted.

C Turning to the construction of section 222 of the Act of 1972, there is no authority binding on the court for the proposition that the section entitles a local authority to bring proceedings for injunctive relief to restrain a crime simpliciter.

Julian Sandys Q.C. for the plaintiff council in the third appeal. It is no longer the submission of the council, as it was before the judge, that section 71 of the Shops Act 1950 is sufficient by itself to justify a local authority D seeking an injunction in a case such as the present. But the interaction between that provision and section 222 of the Local Government Act 1972 does empower a local authority to bring such proceedings.

It is for the local authority to choose what legal proceedings to pursue in order to secure observance of the Act of 1950. If they choose civil proceedings they must go by way of either a relator action or the E procedure under section 222.

Even if " proceedings " in section 71 (1) of the Act of 1950 is limited to criminal proceedings, the court has a reserve power to assist in the enforcement of the criminal law by granting injunctions, though it is accepted that the use of such power is exceptional. [Reference was made to *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324.] Where one has persistent breaches of the law coupled with an intention to F continue and other remedies are likely to be ineffective, the case is potentially within the category of cases in which the use of the reserve power to aid the criminal law is appropriate. [Reference was made to *Attorney-General* v. *Harris* [1961] 1 Q.B. 74, 92.]

Where a local authority purport to exercise their statutory powers they are presumed to have acted within those powers, and the burden of proving G the contrary, in relation to which the standard of proof is a high one, is on the party who asserts they have not so acted: see *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223.

Schiemann Q.C. replied.

Cur. adv. vult.

H April 26. The following judgments were handed down.

LAWTON L.J. These three appeals raise a common issue. Can local authorities obtain injunctions to restrain shopkeepers from anticipated

unlawful Sunday trading contrary to section 47 of the Shops Act 1950? In the Wolverhampton appeal this is the sole issue. In the other two appeals queries arise on the evidence as to whether the proceedings were ever properly authorised and instituted.

The common issue touches upon a matter of general interest and some public controversy. It is common knowledge that the provisions of the Shops Act 1950 about Sunday trading are widely disregarded and that many people want the statutory prohibition against the Sunday opening of shops for many kinds of retail trading repealed. But not all want this. Some local authorities do what they can within their resources to curb unlawful Sunday trading. Others do little, if anything. We were told by Mr. Schiemann, who has an extensive knowledge of local government law and administration, that for a few years now some local authorities have sought and obtained injunctive relief against anticipated unlawful Sunday trading; but not all applications have been successful. In the cases before us, the Stoke-on-Trent and Barking councils got such relief: Wolverhampton did not.

The two companies involved in these appeals are typical defendants. They both have chains of retail shops which sell building materials and tools which are used mostly by individuals for home repairs and improvements—colloquially known as do-it-yourself goods. The sale of these kinds of goods on Sundays is clearly convenient to customers who want to use them during their weekends away from their normal work.

There was some evidence in the Stoke-on-Trent case, which may be typical of what is happening in many areas, that it was the policy of that local authority to proceed by injunction against the bigger retailers and by warnings against the smaller. This alleged policy was criticised as oppressive at first instance but it is, in my opinion, justifiable if it is effective, as it may be, either by warning off the smaller retailers or by making examples of the bigger ones so as to deter the others.

At the outset of this judgment I wish to make clear what I regard as irrelevant considerations: first, that section 47 of the Shops Act 1950 is widely disregarded; secondly, that many people want it repealed; thirdly, that many people find it convenient to shop for non-exempt goods on Sundays; and fourthly, that with the resources of manpower and money which are available to local authorities many of them could not hope to stop unlawful Sunday trading save on a selective and spasmodic basis which would probably be regarded as unfair and oppressive. My judicial duty is to apply the law as laid down by Parliament, not to change it. Change is the function of Parliament, not of judges. But cases may reveal to Parliament weaknesses and anomalies in the law which call for change. Whether these appeals will have such an effect is for Parliament to decide.

The Wolverhampton appeal

This appeal brings out clearly the main issue in all three appeals. It is uncomplicated by side issues. The defendants, B & Q (Retail) Ltd., have three retail shops in Wolverhampton. In the late spring and summer of 1982 they advertised locally that their shops would be open on Sundays; and they were. On November 3, 1982, they were convicted by the Wolverhampton magistrates of 24 offences under section 47 of the Shops

Act 1950 and fined £50 in respect of each, and ordered to pay £120 costs. The offences had been committed on dates between May and July 1982.

On October 13, 1982, the environmental health and control committee of the Wolverhampton Borough Council met. It was the appropriate one to consider breaches of section 47 of the Shops Act 1950. It had before it a report from its chief executive and town clerk which stated what B & Q (Retail) Ltd. had been doing in Wolverhampton and that they had been convicted in a number of other towns of unlawful Sunday trading. The report also dealt with the unlawful trading of other retailers. It contained the following paragraph:

> " Since fines are no deterrent, the only effective form of action which can be taken against companies trading in defiance of the Shops Act 1950 is that taken by Stoke City Council, viz.: the obtaining of an injunction. A local authority has power under section 222 of the Local Government Act 1972 to take such proceedings where they consider it expedient for the promotion or protection of the interests of the inhabitants of their area. This would entail more serious sanctions being applied against the company and its directors and management should they continue to open and I understand that since the obtaining of the injunction at Stoke-on-Trent the store of B & Q (Retail) Ltd. has remained closed."

The chief executive advised that before starting proceedings the defendants should be sent a warning letter. This advice was accepted. On October 19, 1982, a letter was sent to them under the heading " Shops Act 1950—Sunday Trading ":

> " In response to complaints received by the council, inspections by officers of the environmental health department have revealed that premises operated by you in Wolverhampton are open on Sundays and are then selling goods outside those contained in Schedule 5 to the above Act. This of course is in clear breach of the law and a report was accordingly submitted to the environmental health and control committee of the council last week. The committee resolved that if the operations in breach of the law did not cease application would be made to the court for an injunction to compel you to observe the law. I therefore inform you that should your premises in Wolverhampton be open in breach of the Shops Act 1950 next Sunday, October 24, and subsequently, application will be made to the court for an injunction without further notice."

The defendants took no notice. They opened their shops on October 24, 1982, and again committed offences against section 47 of the Shops Act 1950.

On November 9, 1982, the policy and resources committee resolved that the decisions on Sunday trading taken by the environmental health and control committee should be supported. The chief legal officer was authorised to start proceedings for an injunction. He did so. A writ was issued on December 13, 1982, and on the same day the Wolverhampton Borough Council served a notice of motion asking for an injunction to restrain the defendants until trial from using or causing or permitting

the use of their premises otherwise than for lawful Sunday trading. The affidavit in support, sworn by an assistant solicitor in the council's employment, ended as follows:

> " 6. I believe that the defendants have been warned verbally as well as by letter that they are breaking the provisions of the Shops Act 1950 and that the defendants continue to trade in breach of section 47 of the Shops Act 1950.
>
> " 7. The plaintiffs are under a duty to enforce the provisions of the Shops Act 1950 and I verily believe that contravention of the legislation will take place if an injunction is not granted."

In my judgment the council had good grounds for thinking that the defendants would go on committing offences under section 47 unless restrained by injunction. I infer that they would not have been deterred by having had even the maximum fine of £200 imposed upon them for each offence. They would have regarded this as the price they had to pay for Sunday opening and that that price was worth paying having regard to the profits which were likely to be made.

Nourse J. heard the motion on January 18, 1983, and dismissed it. The council have appealed. The judge gave two reasons for his decision. The council had failed to show, first, that the proceedings for an injunction were " expedient for the protection of the interests of the inhabitants of their area " as required by section 222 of the Local Government Act 1972 and, secondly, that a desire on the part of the council to stop the commission of criminal offences under section 47 of the Shops Act 1950 within their area did not justify their using their powers under section 222. The council have submitted that the judge misdirected himself on both points.

The Stoke-on-Trent appeal

In April 1982 it became clear to the Stoke-on-Trent City Council's officers that a number of retail shops selling do-it-yourself goods in their area intended to trade on Sundays. Observation was kept on them on Sunday, April 11, 1982. A number were found to be unlawfully trading, including two shops belonging to the defendants, B & Q (Retail) Ltd. A written report was put before the council's environmental health subcommittee at its meeting on April 15, 1982. It ended with two recommendations as follows:

> " 1. That in view of the proliferation of contraventions of the Shops Act 1950 legal proceedings be instituted and injunctions be taken out against all the offending companies. 2. That the council make a representation to the Association of District Councils in an endeavour to secure an increase in the level of fines which might more adequately serve as a deterrent to potential offenders."

The report inaccurately stated that the defendants had been convicted in 1981 of an offence under section 1 of the Shops Act 1950. The subcommittee passed the following resolution:

> " That, in view of the proliferation of contraventions of the Shops Act 1950, the town clerk be authorised to institute legal proceedings

A and, where considered appropriate, take out injunctions against the companies concerned."

By letter dated April 19, 1982, the council warned the defendants that legal proceedings might be instituted. They opened their shops again on Sunday April 25, 1982. By letter dated April 27, 1982, the council warned them that unless they gave an undertaking within 24 hours that they would not open their shops on Sunday, May 2, 1982, an application B would be made for an injunction. No undertaking was given. The council issued a writ on May 5, 1982, asking for an injunction to restrain these defendants from unlawful Sunday trading in their Stoke-on-Trent shops. They served a notice of motion next day, which came before the court on May 12 and was adjourned. The defendants agreed not to open their shops pending a full hearing. They informed the council's lawyers C that they intended to question their power to start proceedings for an injunction. On May 17, 1982, the council's policy committee met and passed the following resolution:

"That this committee, acting on behalf of the local authority and exercising executive powers granted by the city council, and having read and considered the report of the director of environmental D services submitted to the environmental health sub-committee on April 15, 1982, and considering that it is expedient for the promotion or protection of the interests of the inhabitants of the City of Stoke-on-Trent that the provisions of section 47 of the Shops Act 1950 should be enforced and in particular that the further breach of those provisions by the retailers named in the report of the director of environmental services should be prevented, the council hereby re-E solves that pursuant to section 222 of the Local Government Act 1972, the proceedings for an injunction in the High Court against B & Q (Retail) Ltd., under title No. 1982 S. 2111 Chancery Division Group A should be prosecuted and continued and hereby ratifies the same."

In an affidavit sworn on May 26, 1982, in answer to the motion one of F the defendants' regional managers made it clear that in addition to opposition on legal grounds the defendants would contend that the proceedings had been commenced without any proper authority given by or on behalf of the council.

The motion was heard by Whitford J. on June 25, 1982. He granted the injunction asked for by the council. He adjudged that the proceed-G ings had been properly authorised and that the council had acted properly pursuant to section 222 of the Local Government Act 1972 because:

"it must be in the general interest of the inhabitants of any area that if there is an open, plain breach of any law all appropriate action may and should be used to ensure compliance."

The defendants have submitted that he was wrong on both points.

H

The Barking and Dagenham appeal

The appellant defendants, Home Charm Retail Ltd., own a shop within the area of the London Borough of Barking and Dagenham. On

March 11, 1982, the manager of this shop was warned by one of the council's officers not to open for unlawful Sunday trading. He took no notice. The shop was opened on three successive Sundays thereafter, March 14, 21 and 28, 1982. Informations were laid against the defendants. On July 13, 1982, they were convicted of offences against section 47 of the Shops Act 1950 and fined £50 for each offence and ordered to pay £25 costs.

On September 15, 1982, the council's general purposes committee considered a number of cases of alleged unlawful Sunday trading, including 14 involving the defendants. They had opened their shop on all Sundays during the spring and summer. Minute 757 reads:

> " Trading Standards
> " (i) Authorisation of proceedings—We have authorised the institution of legal proceedings subject to the town clerk being satisfied with the evidence in the following cases: "—There then followed particulars of offences committed by a number of traders including the defendants—" The chief trading standards officer reported that the chairman and vice-chairman had, in accordance with standing order No. 34, and as a matter of urgency, authorised the institution of legal proceedings subject to the town clerk being satisfied with the evidence in the following cases: "—There then followed further references to offences against the Shops Act 1950 committed by traders including the defendants—" The chief trading standards officer reported that, in addition, the chairman and vice-chairman had agreed to the seeking of injunctions in the High Court restraining the directors of companies referred to above . . . from further contraventions of the Shops Act 1950."

On December 15, 1982, the council issued a writ to restrain the defendants from unlawful Sunday trading. They served a notice of motion which was heard by Falconer J. on January 11, 1983. The defendants took the same legal objection as was taken by the defendants in the other two cases and in addition submitted that the proceedings for an injunction had never been authorised. This point turned not on the delegated powers of the council's general purposes committee or of its chairman and vice-chairman but on the lack of any reference in the minutes to the exercise of powers under section 222 of the Local Government Act 1972 and indications in the evidence that the council thought that they were empowered to start proceedings for injunctive relief by section 71 (1) of the Shops Act 1950. The judge granted the council an injunction. He adjudged that section 71 (1) gave them an enabling power to claim injunctive relief in their own name and that on the evidence the council had brought themselves within section 222 of the Act of 1972. The defendants have appealed against these specific findings as well as on the issue common to all three cases.

The law relating to Sunday trading

According to the legal research undertaken by Mr. Reid on behalf of Stoke-on-Trent City Council and Wolverhampton Borough Council English law started to prohibit Sunday trading in the reign of King

Athelstan. For about two centuries after the Norman Conquest Sunday trading was legal but, according to *Pease and Chitty's Law of Markets and Fairs*, 2nd ed. (1958), p. 41, in the 13th century the view began to prevail that Sunday marketing was wrong. The Sunday Fairs Act 1448, which was not repealed until 1969, made Sunday trading unlawful. There was, however, an exemption in favour of " necessary victual " which was the origin of the list of goods which may be sold on Sundays set out in Schedule 5 to the Shops Act 1950. The Sunday Observance Act 1677, which remained on the Statute Book until 1969, by section 1 provided:

> " no person . . . shall publicly cry, shew forth or expose to sale, any wares, merchandises, fruit, herbs, goods or chattels whatsoever, upon the Lord's day, or any part thereof . . ."

Section 3 provided that the Act did not extend

> " to selling of meat in inns, cookshops or victualling houses, for such as otherwise cannot be provided nor to the crying or selling of milk before nine of the clock in the morning or after four of the clock in the afternoon."

This Act was widely disregarded in parts of London, mostly in the street markets of the East End. Parliament made special provisions in both the Shops (Sunday Trading Restrictions) Act 1936 and the Shops Act 1950 (section 54) to legalise such trading. At the end of the 19th century Parliament started to pass Acts regulating the conditions under which shop assistants worked. These Acts provided for closing hours and conditions of employment. The Shops Act 1950 was intended to consolidate the Shops Acts 1912 to 1938 and other enactments relating to shops. It is pertinent to remember that when Parliament passed the Act of 1950 both the Sunday Fairs Act 1448 and the Sunday Observance Act 1676 were still in force. As recently as 1936 in *Kitchener* v. *Evening Standard Co. Ltd.* [1936] 1 K.B. 576 Atkinson J. had given judgment in favour of a common informer suing for penalties pursuant to the Sunday Observance Act 1780. As the Act of 1950 allowed the sale of some goods on Sundays (see sections 48 to 56 and Schedules 5, 6 and 7), provision had to be made to ensure that such sales were not unlawful under the old Acts. This was done by section 59 (2). In 1950 Parliament presumably had regard for what was thought to be the public's attitude towards trading activities on Sundays. Section 47 left no doubt that shops should be closed on Sundays save for serving customers with the goods specified in Schedule 5. Local authorities were given limited dispensing powers to deal with special situations: see sections 48, 49, 51, 52, 53 and 54. Section 59 made any contravention of the provisions of the Act relating to Sunday trading a criminal offence punishable in the case of a first offence to a fine of £5 and in the case of a second or subsequent offence of £20. These penalties were later increased to £50 and £200; but were not revised again when Parliament increased the maxima for fines for many offences by the Criminal Law Act 1977 and the Criminal Justice Act 1982.

The duty of enforcement

Parliament thought it prudent to make a special provision for the enforcement of the Act of 1950. Section 71 (1) provided:

> " It shall be the duty of every local authority to enforce within their district the provisions of this Act and of the orders made under those provisions, and for that purpose to institute and carry on such proceedings in respect of contraventions of the said provisions and such orders as aforesaid as may be necessary to secure observance thereof."

By section 71 (2) it was the duty of local authorities " for the purpose of their duties under the foregoing subsection " to appoint inspectors and to authorise them to institute and carry on any proceedings under the Act on their behalf. In the Barking case it was submitted by the council and accepted by Falconer J. that the word " proceedings " which is to be found in section 71 (1), (2) and (4) includes civil proceedings. Before us it was accepted by all counsel, including Mr. Sandys who appeared for Barking and Dagenham London Borough Council, that this word had to be construed in its context as being limited to criminal proceedings and that section 71 did not authorise local authorities to institute and carry on civil proceedings for injunctive relief against anticipated commissions of offences against section 47. What section 71 does make clear, however, is that Parliament intended the prohibition against unlawful Sunday trading to be observed and charged local authorities with the duty of ensuring it was. It seems likely, too, that in 1950 Parliament thought that taking traders before magistrates' courts and fining them would be an adequate deterrent. The facts of these cases and the social and economic changes which have occurred since 1950 show that convictions and the present scale of fines are no deterrent.

Local authorities have to grapple with administrative problems when seeking to perform their duties under section 71. Getting evidence of contraventions of section 47 necessitates their inspectors or other employees keeping observation on shops suspected of unlawful Sunday opening. If contraventions are widespread, as in many parts of England and Wales they are, this means an extensive use of expensive manpower; and if that use is ineffective in securing observance of the Act of 1950 time and ratepayers' money are wasted. Further, failure to secure observance of the Act tends to generate complaints of unlawful and unfair competition by traders who do comply with it. If local authorities disregard these complaints, disgruntled traders may try to make them enforce the Act by means of a judicial review. This is what happened in *Reg.* v. *Braintree District Council, Ex parte Willingham* (1982) 81 L.G.R. 70. The Divisional Court adjudged that the council did not have a general discretion to decide whether or not to enforce the Act of 1950, nor to decide whether it would be expensive or desirable to institute proceedings. In my judgment this case was rightly decided. What then is a local authority to do? Clearly some action has to be taken to stop widespread deliberate flouting of the law. The three local authorities involved in these appeals, and others not before the court, have tried to rely upon the powers given them by section 222 (1) of the Local Government Act 1972, which provides:

A "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 . . ."

Enforcement by injunction

B Both companies involved in these appeals have submitted that these statutory powers do not enable the local authorities to do what they did. If any action needs to be taken, they submitted by their counsel, it should be by the Attorney-General and then only in exceptional circumstances. He has, they said, a wide discretion as to when and how the criminal law should and can be enforced. He alone can weigh the considerations whether attempted enforcement would be likely to make the administration C of justice unpopular with a large section of the public, thereby undermining respect for the law. They submitted that these were the principles enunciated by the House of Lords in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435: see Lord Wilberforce at pp. 481–482; Viscount Dilhorne at pp. 489, 491 and 495; Lord Diplock at pp. 498–499; and Lord Edmund-Davies at p. 513. Counsel pointed out that before the passing of the Local Government Act 1972 local authorities had no power anyway to institute D in their own names proceedings for injunctive relief to restrain anticipated breaches of the criminal law in their areas. They had to persuade the Attorney-General either to act ex officio or to allow them to proceed ex relatione: for examples, see *Attorney-General* v. *Bastow* [1957] 1 Q.B. 514 and *Attorney-General* v. *Harris* [1961] 1 Q.B. 74. Section 222 of the Act of 1972 did give them a power to sue for such relief in their own E names but it was a limited power circumscribed by the words "expedient for the promotion or protection of the interests of the inhabitants of their area." In consequence of these limiting words local authorities were not given in their areas the wide discretion which the Attorney-General had. Mr. Samuels, on behalf of B & Q (Retail) Ltd., submitted further that as a consequence of these limiting words a local authority could only use its powers under section 222 to restrain anticipated offences if the commission F of them was likely to cause a public nuisance. This, he said, was how the Sunday market trading cases, such as *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324 could be justified. Sunday markets do tend to cause public nuisances by attracting large crowds with consequential traffic problems. In the *Stafford* case neither Oliver J. at first instance (unreported), July 30, 1976, nor the Court of Appeal [1977] 1 W.L.R. 324 G were asked to consider the limitations on local authorities' powers under section 222. Further, Lord Denning M.R.'s comment, at p. 329:

"When there is a plain breach of the statute I do not think that the authorities concerned, the county councils, need wait at all for finality anywhere. They can take proceedings in the High Court before any other proceedings are even started."

H must be qualified by what was said in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435. Before local authorities could institute proceedings for injunctive relief they had to consider the interests of the inhabitants of their areas, which meant the inhabitants generally, not some of them

such as traders who did close their shops on Sundays and complained of unfair or unlawful competition. He invited our attention by way of contrast to section 137 (1) of the Act of 1972 which limited a local authority's powers to use for the benefit of "all or some of its inhabitants."

Mr. Reid's answer on behalf of the Stoke-on-Trent and Wolverhampton councils was that the words of section 222 did not limit the exercise of power to the restraining of anticipated public nuisances. Both the House of Lords in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435 and Bridge L.J. in *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324 had envisaged that the institution of proceedings for injunctive relief to restrain anticipated offences could be used in exceptional cases: see *Gouriet's* case [1978] A.C. 435 *per* Lord Wilberforce, at p. 481; *per* Viscount Dilhorne, at p. 491; and *per* Lord Fraser of Tullybelton, at p. 519. Exceptional cases included those in which an injunction was necessary to restrain an anticipated criminal act "where the penalties imposed for the offence have proved wholly inadequate to deter its commission": see p. 491. Mr. Reid pointed out that Bridge L.J. in the *Stafford* case, seemingly in anticipation of what the House of Lords was to decide in *Gouriet's* case [1978] A.C. 435 and of the problems which have to be dealt with in these appeals, stated the appropriate approach in these words [1977] 1 W.L.R. 324, 330:

> "We have been urged to say that the court will only exercise its discretion to restrain by injunction the commission of offences in breach of statutory prohibitions if the plaintiff authority has first shown that it has exhausted the possibility of restraining those breaches by the exercise of the statutory remedies. Ordinarily no doubt that is a very salutary approach to the question, but it is not in my judgment an inflexible rule. The reason why it is ordinarily proper to ask whether the authority seeking the injunction has first exhausted the statutory remedies is because in the ordinary case it is only because those remedies have been invoked and have proved inadequate that one can draw the inference, which is the essential foundation for the exercise of the court's discretion to grant an injunction, that the offender is, in the language of Oliver J., 'deliberately and flagrantly flouting the law.'"

I agree with what Bridge L.J. said in this passage; but he did not have to consider, because the point was never taken in the *Stafford* case, what we have to decide in these appeals, namely, whether the instituting of proceedings for injunctive relief to restrain anticipated offences against section 47 of the Shops Act 1950 is expedient for the promotion or protection of the interests of the inhabitants of a local authority's area. I accept Mr. Samuels' proposition that before instituting such proceedings a local authority must consider the interests of the inhabitants generally, not of a particular section of them. I also accept that it is for the Attorney-General to take such steps as he deems necessary in his absolute discretion to ensure that the criminal law is enforced in all parts of England and Wales. But Parliament in 1972 entrusted local authorities with limited powers to institute legal proceedings of *all* kinds. These powers are ancillary, as Mr. Simon Brown as amicus pointed out, to the discharge of their statutory duty of administering their

areas. They must concern themselves with the environment and the enforcement of a number of statutes creating criminal offences of a regulatory kind. They must safeguard their resources and avoid the waste of their ratepayers' money. It is in everyone's interest, and particularly so in urban areas, that a local authority should do what it can within its powers to establish and maintain an ambience of a law-abiding community; and what should be done for this purpose is for the local authority to decide. Members of the public should be confident that the local authority will do all it can to ensure that they will not be sold unwholesome food or given false measure, that goods will not be sold with false trade descriptions, that property will not be used in breach of the planning legislation and that shops will be open on days and at hours regulated by the Shops Act 1950. In my judgment a local authority is entitled to use its powers for all these purposes. Its power under section 222 to institute proceedings for injunctive relief is not limited to restraining public nuisances. Further, as I have already commented, the employment of shop inspectors and other employees Sunday after Sunday to keep observation on shops which advertise that they will open on Sundays is a waste of manpower and money; and the cost of prosecuting offenders is not always covered by any orders for costs made by magistrates. It follows, in my judgment, that all local authorities who give thought to these factors and satisfy themselves on reasonable grounds and on adequate evidence that an injunction is the only way of stopping anticipated offences amounting deliberately and flagrantly to flouting the law may use their powers under section 222 of the Act of 1972 to apply for injunctive relief. The Wolverhampton and Barking councils had reasonable grounds for concluding that the defendant companies would continue deliberately and flagrantly to flout section 47 of the Shops Act 1950. The evidence in the Stoke-on-Trent case is less clear. I will examine it separately when dealing with that case.

The exercise of discretion

In all three cases the question arises whether before instituting proceedings for injunctive relief the councils did give thought to the limitation of their powers under section 222 of the Act of 1972. In the Wolverhampton case Nourse J. adjudged that it was for the council to show that what they did was within section 222. In so deciding, as all counsel accepted in this court, he overlooked the application to the exercise of local authorities' powers of the rebuttable presumption of omnia praesamuntur rite esse acta. It was for the defendant companies to show, if they could, that the three councils had not given thought to any limitation upon the exercise of their powers. In the Wolverhampton case the defendants called no evidence so the presumption that the council's appropriate committee did exercise their discretion before authorising proceedings applies. There was in fact evidence that their attention was invited to section 222. This was provided by the written report made to them by the council's chief executive to which I have already referred.

The evidence in the Stoke-on-Trent case leads me to infer that that council's environmental health sub-committee did not give thought to the limitations imposed upon their council's powers by section 222 but that the

policy committee at its meeting on May 17, 1982, did. Their resolution of that date provided that the proceedings against the defendants " should be prosecuted and continued " and they purported to ratify them. They had, however, been instituted in the council's own name without thought being given to the statutory limitations on the council's powers. In my judgment the words " prosecute " and " appear " in section 222 (1) (*a*) are apt to describe what the policy committee did, namely, to authorise and ratify what had been started without the proper exercise of discretion. Since May 17, 1982, the council have " prosecuted " the proceedings, having decided that their continuance was expedient for the statutory purposes. The resolution of May 17, 1982, was an effective ratification.

There remains the question whether on the evidence the conduct of the defendants was such as to require restraint by injunction. When the sub-committee resolved to authorise the town clerk to institute legal proceedings the defendants had only committed one offence against section 47 of the Act of 1950 in the Stoke-on-Trent area and had not yet been prosecuted for it. But before the writ was issued on May 5, 1982, the council had more evidence of what their intentions were for the future. After having been warned by letter dated April 19, 1982, that proceedings had been authorised in respect of the unlawful openings on April 11, 1982, the defendants unlawfully opened their shops on April 25, 1982, and made no reply to the council's request that they should give an undertaking not to do so on May 2, 1982; and they did open on that date. In my judgment the council were justified in concluding that the defendants intended deliberately and flagrantly to flout the law.

The evidence in the Barking case raises two issues. Did the council exercise their discretion at all? If they did, were the proceedings for injunctive relief properly authorised? Minute 757 of the meeting of the general purposes committee makes no reference to the matters which had to be considered if proceedings were to be instituted under section 222. I infer that they were not considered. Even had they been there is no evidence that any authority was given for the instituting of legal proceedings for injunctive relief against the defendants Home Charm Retail Ltd. The references to " legal proceedings " against the defendants in their context clearly refer to criminal proceedings to be taken under section 71 (1) of the Shops Act 1950. The authorisation of civil proceedings was limited to the directors of the companies referred to, not to the companies themselves. No such proceedings were ever instituted.

I would allow the appeals of the Wolverhampton Borough Council and Home Charm Retail Ltd. and dismiss the appeal of B & Q (Retail) Ltd.

ACKNER L.J. The common question of law which these appeals raise is the extent to which it is open to a local authority to seek in its own name injunctive relief in relation to those who infringe the Shops Act 1950 in relation to Sunday trading.

Shops Act 1950

Section 47 of the Act provides:

" Every shop shall, save as otherwise provided by this Part of this Act, be closed for the serving of customers on Sunday: Provided that a

A shop may be open for the serving of customers on Sunday for the purposes of any transaction mentioned in Schedule 5 to this Act."

Schedule 5 specifies a variety of transactions for the purposes of which a shop may be open in England and Wales for the serving of customers on Sunday. They do not cover the activities of the shops concerned in these appeals, all of which were open for the sale of equipment B for use in what is conveniently referred to as " do-it-yourself " activities particularly related to house decoration and maintenance.

No one suggests that the Act is obsolete. On the contrary, it has been recently under much attack and an attempt to achieve its repeal failed in the House of Commons this year. It is common ground that the penalties provided by section 59 are in themselves quite inadequate to restrain the large organisations, particularly those who operate a chain of shops which C find it highly profitable to trade on Sundays. Recent growth, in particular, in leisure activities has made Sunday the next most popular day after Saturday for shopping for many commodities, including in particular do-it-yourself articles. The penalties provided by section 59 were originally £5 in the case of a first offence and £20 in the case of a second or subsequent offence. In 1972 the penalties were increased to £50 and £200 respectively.

D In section 71 of the Act, Parliament has imposed a clear obligation upon the local authority with regard to the enforcement of the Act. The section provides:

> " (1) It shall be the duty of every local authority to enforce within their district the provisions of this Act and of the orders made under those provisions, and for that purpose to institute and carry on such E proceedings in respect of contraventions of the said provisions and such orders as aforesaid as may be necessary to secure observance thereof."

This section unequivocably obliges the local authority to use the best means they can, having regard to their resources, " to secure observance " of, inter alia, section 47 of the Act. Prior to 1972, if a trader refused to F heed the local authority's warnings in regard to breaches of section 47 of the Act, then the only direct action which the local authority could take would be to institute criminal proceedings in the hope that the fines that would be imposed for the first or subsequent offences would be enough to dissuade the offender. Where, however, the trader, despite the imposition of fines, persisted in defying the Act, then all that was left to the local G authority was to apply to the Attorney-General for his permission to bring relator proceedings in order to obtain an injunction. They had no power, if they thought summary proceedings afforded an inadequate remedy, to bring proceedings in their own name in the civil courts for injunctive relief: see *Tottenham Urban District Council* v. *Williamson & Sons Ltd.* [1896] 2 Q.B. 353. This was so despite the provisions of section 276 of the Local H Government Act 1933 which provided:

> " Where a local authority deem it expedient for the promotion or protection of the interests of the inhabitants of their area, they may prosecute or defend any legal proceedings."

(See *Prestatyn Urban District Council* v. *Prestatyn Raceway Ltd.* [1970] 1 W.L.R. 33 and *Hampshire County Council* v. *Shonleigh Nominees Ltd.* [1970] 1 W.L.R. 865).

Section 222 of the Local Government Act 1972

This section replaced section 276 of the Local Government Act 1933. It provides, so far as is material to these appeals:

> " (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 . . ."

Thus, there was added to the local authority's armoury in relation to securing the observance of the provisions of section 47 of the Shops Act 1950 the right to bring proceedings in the civil court for injunctive relief.

Scope of section 222 of the Local Government Act 1972

It is common ground that the local authority is not entitled to use the civil courts generally to control criminal conduct; for instance, they would not be entitled to use section 222 to apply for injunctive relief to prevent obscenity occurring in a theatre in their area or the sale of pornography from a local newsagent's shop. The House of Lords in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435 made it clear that relator actions, which are the exclusive right of the Attorney-General to represent the public interest and in which the assistance of the civil courts is invoked in aid of the criminal law, is a jurisdiction which, although useful on occasions, is one of great delicacy and to be used with caution: see in particular the speech of Lord Wilberforce, at p. 481. In that case the right of a local authority to invoke the assistance of the civil courts was not in point, but Viscount Dilhorne, at p. 494, referred to section 222 as giving local authorities a " limited power " to sue on behalf of the public. Lord Edmund-Davies observed, at p. 513, that whenever public rights are in issue, the general rule is that relief may be sought only by, and granted solely at the request of, the Attorney-General subject to the statutory exception created by section 222 " which enables a local authority to institute civil proceedings for the promotion or protection of the interests of the inhabitants of their area."

The proper limitation upon the entitlement of the local authority to apply in their own name for injunctive relief is to be found in the opening words of the section, " Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area." A local authority must consider it expedient and there must be material to support the opinion that the civil proceedings may promote or protect the interests of the inhabitants of their area. With respect, I cannot accept the general observation made by Goulding J. in *Stoke-on-Trent City Council* v. *Saxon Scaffolding Ltd.* (unreported), October 26, 1979, when he said:

> " I conceive that, for the purposes of the section, the inhabitants of any area have a general interest to see that the provisions of Acts of Parliament in force in the area are duly observed."

A However, in relation to Sunday trading, there are some matters that are self-evident. The essential motivation for a trader to keep his shop open on a Sunday is because it is profitable to do so. The trader who refuses to abide by the law with regard to Sunday trading and remains undissuaded from trading on that day by repeated prosecutions is, through his criminal conduct, obtaining a wholly unfair advantage in relation to his competitors. He is not only obtaining the profit which is normally associated with his own B activities, but he is obtaining an increased profit, likely to be substantial, by reason of his competitors abiding by the law and keeping their shops closed. He is thus, by his criminal conduct, obtaining part of the profit which would normally have gone to them. It is clearly in the interests of the inhabitants of the area involved that there should be fair competition amongst the local traders. If unfair trading is permitted to exist not only will the commercial interests of the trading community be prejudiced, but C so ultimately will those of the inhabitants generally in the area.

Moreover, there is a further point which to my mind is equally self-evident. No one doubts that once an injunction has been obtained, unlawful Sunday trading will cease. The penalties for contempt of court are likely to dissuade any commercial activity in breach of the law from continuing. In an appropriate case, an injunction is a relatively speedy and inexpensive D remedy to obtain. Assuming that the maximum fines that can be obtained will have no deterrent effect upon the trader intent on trading on Sunday, ratepayers' money will be wasted by the preparation for, and the institution of, criminal proceedings. It is clearly in the interests of ratepayers generally that public money is not wasted on useless litigation.

I accordingly, with respect, reject as quite unrealistic Mr. Samuels's E submission that breaches of section 47 of the Shops Act 1950 do not in themselves, unless coupled with behaviour which causes a public nuisance, prejudice the interests of the inhabitants of a particular area. I find support for the view which I have expressed in the observations of Sellers L.J. in *Attorney-General* v. *Harris* [1961] 1 Q.B. 74, 86, when he said:

> " It cannot, in my opinion, be anything other than a public detriment for the law to be defied, week by week, and the offender find it profit- F able to pay the fine and continue to flout the law. The matter becomes no more favourable when it is shown that by so defying the law the offender is reaping an advantage over his competitors who are complying with it."

The discretion of the local authority

G 1. I have already referred to the duty imposed on local authorities by section 71 (1) of the Shops Act 1950 to enforce the Act, including the Sunday trading provisions. The means of carrying out its duty is essentially a matter for the local authority, bearing in mind its resources, the nature of the breach and any other relevant factors. No local authority could be criticised for first issuing a warning, when it is established that a breach of H the Act has occurred or is being threatened. If that warning is disregarded, then much must depend upon the particular circumstances of the case. If satisfied that a successful prosecution may well have the effect of dissuading any repetition of the offence, then, of course, summary proceedings in the

local magistrates' court would seem the next appropriate step. However, if the terms in which the warning was rejected, the policy adopted by the offender in regard to Sunday trading in other districts and the likelihood of a conviction and fine for the maximum having no deterrent effect are such, the local authority may well properly decide that criminal proceedings are a waste of time and money. Further, the status in the commercial world of the offender may be such that the speed with which the local authority obtain an effective remedy may make their task of enforcing in their area the provisions of this controversial Act a great deal easier. Each case must be considered on its own merits, but there is no rigid rule which requires a local authority to institute criminal proceedings which are bound, or highly likely, to be ineffectual before moving for injunctive relief: see *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324, in particular the judgment of Bridge L.J., at p. 330.

2. Having regard to the clear terms of section 71 (1) imposing the duty to take such proceedings as may be necessary to secure observance of the Shops Act 1950, the local authority are not entitled to refuse to take effective action because the Shops Act 1950 may be unpopular within their area. They are not entitled to say, we have carried out our obligations under section 71 (1) by instituting criminal proceedings on a number of occasions, although we fully recognise that such proceedings are quite useless to achieve the observance of the Act. If such were the attitude of a local authority then they would have laid themselves open to an order of mandamus requiring them to exercise their powers under section 222 of the Act of 1972 and institute civil proceedings: see *Reg.* v. *Braintree District Council, Ex parte Willingham*, 81 L.G.R. 70, a decision of the Divisional Court with which I respectfully agree. I view this as an important constitutional point. If an Act has become so unpopular that it should no longer be enforced, then it is for Parliament to achieve its repeal. So long as it remains on the statute book, containing as it does a positive obligation on the local authority to enforce its provisions, it has to be treated as the still effective manifestation of the will of Parliament. Its demise is not to be achieved by attrition. If it is no longer justifiable to make it a criminal offence for shops generally to open on a Sunday, and accordingly section 47 should be repealed, this will not be achieved by the non-enforcement of its provisions. Quite the contrary. The strength of the public support for a change in the law will only be debilitated if the section is disregarded.

The institution of proceedings

As previously stated, the local authority have under section 222 of the Act of 1972 a discretion as to whether to prosecute or institute civil proceedings in their own name. It is axiomatic that in order validly to exercise this discretion the local authority must apply their minds to whether or not they consider it expedient for the promotion or protection of the interests of the inhabitants of their area to exercise these statutory powers. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion they must have regard to those matters: see *Associated Provincial Picture*

Houses Ltd. v. *Wednesbury Corporation* [1948] 1 K.B. 223, 228, *per* Lord Greene M.R. It is, of course, for those who assert that the local authority have not had regard to the matters which they ought to have considered to establish that proposition: see *Wednesbury* case, also at p. 228. This may often be difficult. However, where a local authority can be shown to have relied on some other but invalid statutory justification for bringing the proceedings and can thus be shown never to have purported to have exercised the discretion given to it by section 222, the local authority would be shown to have contravened the law.

Where the local authority purport to act for the promotion or protection of the interests of the inhabitants of their area, then they will be presumed to have done so lawfully pursuant to section 222—the maxim omnia praesumuntur rite esse acta applies. Again applying the *Wednesbury* decision, it is for those who assert the unlawfulness to prove this by showing that the local authority made their decision on the basis of facts they should not have taken into account, or failed to take into account matters that they ought to have taken into account, or that no reasonable local authority could have reached the decision they reached.

Ratification

The question which next arises is, given that the proceedings under section 222 are improperly initiated because the local authority are shown not to have considered the criteria of the section, can those proceedings be subsequently ratified and validated? On the authority of *Warwick Rural District Council* v. *Miller-Mead* [1962] Ch. 441, the answer is in the affirmative. In that case, the statutory power relied upon by the local authority was section 100 of the Public Health Act 1936 which placed the local authority in the privileged position of being entitled to sue in respect of a statutory nuisance without the necessity of proving special damage. The section is in the following terms:

> " If in the case of any statutory nuisance the local authority are of opinion that summary proceedings would afford an inadequate remedy, they may in their own name take proceedings in the High Court for the purpose of securing the abatement or prohibition of that nuisance, and such proceedings shall be maintainable notwithstanding that the authority have suffered no damage from the nuisance."

The solicitors for the local authority issued a writ against the owner of a caravan site and served notice of motion to restrain him from keeping or maintaining the site in such a state as to be a statutory nuisance contrary to section 92 of the Act of 1936. However, it was only three days later that the local authority in council meeting resolved, " being of opinion that the summary proceedings would afford an inadequate remedy " to take proceedings in the High Court to secure the abatement of the alleged statutory notice. When subsequently Widgery J. heard the council's motion for an injunction, the defendant raised the objection that the proceedings were a nullity since at the date of the issue of the writ the local authority had not recorded " its opinion " by resolution, as required by section 100 of the Act of 1936, and therefore had no capacity

to sue and could not by subsequent resolution ratify the act of its servant in issuing the writ. This objection failed and in the Court of Appeal it was held (Lord Evershed M.R. and Danckwerts L.J., Willmer L.J. dissenting) that by the time the defendant challenged the validity of the council's cause of action promulgated in the endorsement of the writ, the council had by then satisfied the terms of section 100 of the Act of 1936. Moreover, I think that Mr. Reid is correct in his submission that an analogy can properly be drawn with the power which has been accepted to exist to convert an ordinary action into a relator action: see *Hampshire County Council* v. *Shonleigh Nominees Ltd.* [1970] 1 W.L.R. 865, 876 where the action would have been struck out unless the Attorney-General was prepared to give his fiat, which fiat was subsequently granted: see [1971] 1 W.L.R. 1723 and [1974] 1 W.L.R. 305 in the House of Lords.

The discretion of the court to grant or refuse the injunction sought by the local authority

It is important to have firmly in mind that although the local authority may have acted entirely lawfully in seeking in the exercise of its statutory powers under section 222 of the Local Government Act 1972 injunctive relief against a trader, the court's discretion still exists as to whether or not to grant the injunction sought. Generally speaking a court will not grant an injunction unless the defendant is deliberately and flagrantly flouting the law. Generally speaking the local authority would have to show that its complaints were unheeded and that subsequent prosecutions, resulting in convictions and fines, had failed to deter the defendant. However, as Bridge L.J. recognised in *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324, 330, exceptional cases may exist where the scale of the operation which the defendant is carrying on, or plans to carry on, the extent of the profits likely to be enjoyed, are such that it can be legitimately inferred that the defendant will continue in his operations or plans unless the court orders him to desist. But the court must at all times be alert to ensure that its civil jurisdiction does not oust its criminal jurisdiction as the appropriate means of controlling criminal conduct.

The three appeals

I will now seek to apply the principles which I have endeavoured to set out to the three appeals before us. In so doing I gratefully accept the facts so succinctly set out by Lawton L.J. in his judgment and I shall not therefore repeat them.

The Wolverhampton appeal

(1) The local authority purported to act from the outset under section 222 of the Local Government Act 1972. (2) There was ample material to justify the local authority's concluding that the defendant company would continue deliberately and flagrantly to flout section 47 of the Shops Act 1950. (3) I cannot agree with Nourse J. that the material before the council did not point to any particular prejudice to the interests of the inhabitants of their area as distinct from the public in general. For the

A reasons given, it is in my judgment self-evident that effectively to prevent unlawful trading which results in unfair competition protects the interests of the inhabitants in the area where the law is being disregarded.

I too, therefore, would allow the appeal of Wolverhampton Borough Council.

The Stoke-on-Trent appeal

B (1) I agree that although the council's environmental health sub-committee did not give thought to the limitations imposed upon their council's powers by section 222 of the Local Government Act 1972, the policy committee did do so at its meeting on May 7, 1972, and thereby ratified what had been started without the proper exercise of discretion. (2) There was material which justified the local authority in concluding C that the defendants intended deliberately and flagrantly to flout the law. (3) I accordingly agree with the conclusion of Whitford J. that this was a proper case for the grant of an injunction and I too would dismiss this appeal.

The Barking and Dagenham appeal

D (1) I agree that the proper inference is that the general purposes committee never gave any thought to section 222 of the Local Government Act 1972 and therefore never embarked upon the consideration of the requirements of the section which are necessary to the valid exercise of the discretion which the section confers. If they gave any thought to the basis of their authority to institute proceedings, they wrongly concluded that it was to be found in section 71 of the Shops Act 1950. (2) I E further agree that there is no evidence that any authority was given for the institution of legal proceedings for injunctive relief. (3) I too would therefore allow the appeal of Home Charm Retail Ltd.

OLIVER L.J. Each of the three appeals with which we are concerned has individual features which require consideration, but there are two F questions which are common to all three and which are fundamental to the arguments which have been addressed to the court. Although they are, in my judgment, quite distinct questions, they tended to become confused in the course of the argument and it is, I think, important that they be considered separately. The first, which really lies at the threshold of any useful discussion of the subject matter of these appeals, is that of the extent to which it is ever proper to invoke the civil remedy of injunc- G tion as an aid to the enforcement of the criminal law in cases where the breach gives rise to no civil right of action in any individual. The second, which assumes the propriety of the invocation of a civil remedy, relates to the circumstances in which proceedings to obtain that remedy can properly be put in motion at the suit, not of the Attorney-General, but of a local authority acting under the statutory power conferred upon H them by section 222 of the Local Government Act 1972.

As has been pointed out by both Mr. Samuels and Mr. Schiemann, the decision of this court in *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324 and my own decision at first instance in *Solihull*

Metropolitan Borough Council v. *Maxfern Ltd.* [1977] 1 W.L.R. 127 both preceded the decision of the House of Lords in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435 which now represents an authoritative statement of the circumstances in which it will be proper for the court to grant the civil remedy of injunction to restrain threatened breaches of the criminal law which do not also constitute any private wrong. The majority of their Lordships in that case concurred in expressing the view that this form of proceeding is anomalous and to be resorted to only in exceptional circumstances, Lord Wilberforce observing, at p. 481, that in practice it is restricted to cases where an offence is frequently repeated in disregard of a, usually, inadequate penalty as in *Attorney-General* v. *Harris* [1961] 1 Q.B. 74 or cases of emergency such as *Attorney-General* v. *Chaudry* [1971] 1 W.L.R. 1614.

Where such proceedings are appropriate—that is, where the circumstances are of such an exceptional nature—the proper plaintiff, and the only proper plaintiff, is the Attorney-General unless the case can be brought within one of the statutory or common law exceptions. One such exception is that provided by section 222 of the Local Government Act 1972 but, so the argument runs, that provision does not enlarge the ambit within which such proceedings may properly be brought: it merely enables a local authority, in a proper case and—and this is important—subject to satisfying the provisions of the section, to institute proceedings in their own name instead of in the name of the Attorney-General, as was necessary prior to 1972.

Thus, it is argued, a local authority suing to enforce by injunction a criminal prohibition involving no private wrong have to surmount two hurdles. They have first to show that the case is one where, prior to 1972, it would have been proper for the Attorney-General to proceed in accordance with the principles laid down in *Gouriet* [1978] A.C. 435. Secondly, they have to satisfy also the internal requirements of the section.

Mr. Samuels, indeed, goes further than this, if I understand his argument correctly. He suggests—I think by analogy with section 100 of the Public Health Act 1936—that the power of the local authority to institute proceedings is restricted to cases where some element of public nuisance is involved and that where there is no such element and no invasion of any private right, a relator action by the Attorney-General is still the only appropriate proceeding. Speaking for myself, I am unable to accept this submission and I can see nothing in the history of the legislation or in the structure of the section itself which leads to the conclusion that the power conferred by it is so restricted.

Nevertheless, I accept entirely the general proposition that the section was not intended to extend and ought not to be treated as extending the range of cases in which application can properly be made to a civil court to aid in the enforcement of the criminal law by providing a remedy which Parliament itself has not seen fit to provide. It was, as Mr. Brown has submitted, clearly designed by Parliament to confer a substantial autonomy upon local authorities within their areas to institute proceedings in cases where they would previously have needed to invoke the assistance of the Attorney-General, but the considerations by which the court should be guided in determining whether or not to grant injunctive

A relief remain, in my view, the same. Thus the critical question, regardless of the identity of the plaintiffs, is whether the case is an appropriate one for injunctive relief having regard to the limitations suggested by the *Gouriet* case [1978] A.C. 435.

It then has to be considered whether, on the assumption that the case is one in which the Attorney-General could properly have invoked the relief sought, the local authority can properly assume the role of plaintiff, B for section 222 does not give a general and unlimited power. It is a discretionary power to institute civil proceedings in their own name " where the local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area," and this raises two questions which have occupied the bulk of the argument on these appeals, namely (1) in what circumstances can the enforcement of the criminal law in general, and section 47 of the Shops Act 1950 in particular, by means other than those C envisaged by Parliament at the time of creating the offences, be considered to be " for the promotion of the interests of the inhabitants of their area " and (2) to what extent is it incumbent upon the local authority in each case (i) actually to consider and (ii) to prove that they have considered the promotion of those interests.

On the first of these questions several arguments have been advanced. D It is not, it is submitted, sufficient to say, as has been said in some cases, simply that it is for the benefit of the inhabitants that the law of the land should be enforced. Section 222 is directed to specifically local interests and it is not, it is suggested, appropriate to use the power conferred by that section for the purpose of general law enforcement, which is for the benefit of the population of the British Isles generally. Thus, the argument runs, one has to look for some more localised interest and where, it is asked E forensically, is that to be found? No doubt the closing of all shops on Sunday promotes the interests of those shopkeepers who do not wish to open on Sunday. It promotes the interests of those who have environmental or religious objections to trading on Sundays. But these groups are only sections of the local inhabitants and the section is not referring to the promotion of the interests of " persons who are inhabitants of their area " F but of " *the* inhabitants of their area." I agree with Mr. Samuels's submission that this more appropriately refers to the inhabitants generally, so that what one has to look for is some general interest common to the inhabitants taken as a whole, although it may not be the interest of particular individual inhabitants or groups of inhabitants.

There may well, it is argued, be such a general interest where what is G sought to be restrained is some generally organised breach of the law which involves public nuisance, traffic congestion, breaches of planning law and the inducement of others to undertake an illegal activity—features which were present in the *Stafford Borough Council* v. *Elkenford Ltd.* [1977] 1 W.L.R. 324 and *Solihull Metropolitan Borough Council* v. *Maxfern Ltd.* [1977] 1 W.L.R. 127. But here, it is submitted, there are no such features. The cases in which the three appeals before the court have arisen are cases H of individual traders opening their ordinary shopping premises with no element of conspiracy or public disturbance and no evidence of complaint from any member of the public. True it is that in all three cases the defendants had indicated beyond doubt their intention of flouting the law,

but nevertheless, it is argued, the penalties prescribed by the Shops Act 1950 are those which Parliament has seen fit to provide and which, so it seems, have been deliberately left unaltered despite there having been subsequent opportunities to increase them. There being, therefore, here no element of public nuisance nor evidence of public complaint, the plaintiffs should, it is argued, be content with the exaction of such penalties as Parliament has prescribed, despite its being perfectly clear that those penalties have absolutely no deterrent effect and are totally ineffective to secure compliance with the statute. Now of course I appreciate the argument for restricting enforcement of the statute to the method which Parliament has prescribed and which, therefore, Parliament must presumably have considered to be adequate. But the fact is that, certainly in the Stoke and Wolverhampton cases, the statutory penalties have proved entirely inadequate. Parliament no doubt considered the penalties adequate and was confident that they would be effective. But at the same time Parliament intended the Act to be enforced and there cannot, I think, be attributed to it the intention, by restricting the statutory penalties to figures which are derisory when compared with the profitability of the prohibited activity, of turning a nation of shopkeepers into a nation of commercial recidivists. Thus the argument based on the non-alteration of the statutory penalties is one which I find less than compelling. There remains, however, the limitation in section 222 of the Act of 1972 to the promotion of the interests of the inhabitants of the area and the difficulty of establishing the criteria for determining where those interests lie. I agree that this is a difficult question but it is one which cannot, in my judgment, be segregated from the essential feature which statutorily underlies the approach of the local authority to enforcement of the Shops Act 1950 by whatever means. I do not, for my part, see how the interests of the inhabitants of the area can be treated apart from the statutory duties of the local authority in relation to the area for which they are responsible, and in this context the provisions of section 71 of the Shops Act 1950 are, in my judgment, crucial. That section has already been referred to in the judgments of Lawton and Ackner L.JJ. and, as has been pointed out, its effect has been the subject matter of a decision of the Divisional Court in *Reg.* v. *Braintree District Council, Ex parte Willingham*, 81 L.G.R. 70 with which I respectfully agree. No useful consideration of the interests of the inhabitants of the area can be divorced from the background that they are inhabitants of an area the local authority for which are under a specific duty to enforce and to maintain (at the ratepayers' expense) the machinery to enforce the provisions of the Act.

Parliament, for good or ill, has decreed that shops shall not be open on Sunday except for certain specified transactions and it has placed on local authorities a specific duty to enforce that prohibition in their areas. Argument about whether some or all of the inhabitants think that the existence of that duty serves their interests is irrelevant. The duty exists and has to be carried out and it follows that the local authority best serves the interests of the inhabitants by doing that which it is statutorily obliged to do in the way which it considers most effective and most economical. To put it in a negative way it cannot be in the interests of the inhabitants that an offender should be regularly and repeatedly brought before the court for the exaction of a statutory penalty which obviously has no deterrent effect whatever, for

there ultimately comes a point where so barren a process not only brings the law into disrepute but exposes the prosecuting authority itself to public ridicule. Nevertheless, it still has to carry out its duty and it has to continue to expend public funds on maintaining the machinery of enforcement and on repetitive but ineffective proceedings. If this situation arises—or in the exceptional case if it is clear that such a situation is inevitably going to arise—then enforcement of the prohibition by proceedings for an injunction not only could properly be considered to promote the interests of the inhabitants but would also do so as a matter of fact, for the local inhabitants have to recognise that one of the facts of life with which they have to live is that their local authority are under this inescapable statutory duty.

Turning to the evidential problem, I entirely accept Mr. Samuels's and Mr. Schiemann's submissions that the power under section 222 of the Act of 1972 is exercisable only in the circumstances envisaged in the section and that this involves a consideration of whether the action proposed is one which is expedient for the promotion of the interests of the inhabitants. What is less clear to me is how far this involves the consideration of anything beyond the proposition that the action envisaged is the most effective way of carrying out the local authority's statutory duty under section 71 of the Act of 1950. If that is the opinion of the authority—and that it is is self-evident from the very resolution to institute the proceedings—then that, as it seems to me, subsumes the expediency for the promotion of the interests of the inhabitants, for the reasons given above, and it does not seem to me that it becomes necessary to look for some further and different interest of the inhabitants beyond that of having their local authority carry out its statutory duties as expeditiously, effectively and economically as it considers possible. In any event, I agree respectfully with what has fallen from Lawton L.J. as regards the application of the maxim, omnia praesumuntur rite esse acta.

Turning to the facts of the individual cases, the questions which arise in each case are (a) were the proceedings properly authorised and (b), if they were, are they, in any event, proceedings of that exceptional nature envisaged in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435 which justifies the exercise of the court's discretion in granting injunctive relief to restrain the commission of further offences? As regards the former, the facts have been fully set out in the judgment of Lawton L.J. and I respectfully concur with his conclusions. As regards the latter, the Wolverhampton case is beyond argument a case in which, in the absence of an injunction, the defendants openly state that they intend to go on breaking the law, and Mr. Samuels has frankly accepted—indeed averred—this on their behalf. That seems to me to be a case plainly within the *Gouriet* principles. As regards Stoke, it is true that when the proceedings commenced there had not been a course of conduct which could be said to amount to persistent breach of the law. Nevertheless, again, it is entirely clear that, unless the injunction granted by Whitford J. is continued, the defendants propose to embark on the same course in Stoke as that upon which they have already embarked in Wolverhampton. I can see no useful purpose which would be served by refusing an injunction now merely to

enable offences to be committed in the future until they reach the point at which the conduct can be said to be persistent.

Accordingly, I agree that the appeal of the Wolverhampton Borough Council should be allowed and that of the defendants in the Stoke case dismissed. I also agree that the appeal in the Barking and Dagenham case should be allowed for the reason given by Lawton L.J. There simply was, in that case, no proper authority given by the plaintiff council for the institution of the proceedings and it is, I think, entirely clear that section 71 of the Act of 1950 itself does not confer on the local authority any power to institute proceedings of this nature in its own name.

First appeal dismissed with costs.
Leave to appeal refused.
Second appeal allowed with costs
Leave to appeal refused.
Third appeal allowed with costs.

Solicitors: *Hepherd, Winstanley & Pugh, Southampton; Treasury Solicitor; Sharpe, Pritchard & Co. for Town Clerk & Chief Executive, Stoke-on-Trent City Council, and Solicitor, Wolverhampton Borough Council; Hepherd, Winstanley & Pugh, Southampton; Laytons; Town Clerk, Barking and Dagenham London Borough Council.*

C. N.

July 28. The Appeal Committee of the House of Lords (Lord Fraser of Tullybelton, Lord Brandon of Oakbrook and Lord Brightman) allowed a petition by the defendants in the first appeal.

A Court of Appeal

*Birmingham City Council *v* Shafi and another

[2008] EWCA Civ 1186

2008 June 24, 25; Oct 30

B Sir Anthony Clarke MR, Rix, Moore-Bick LJJ

Local government — Powers — Action by local authority — Local authority claiming civil injunction to control activities of alleged gang members — Injunction sought to prevent commission of criminal offence and public nuisance — Terms of injunction sought similar to anti-social behaviour order — Whether jurisdiction to grant injunction — Whether injunctive relief appropriate — Appropriate standard of proof — Local Government Act 1972 (c 70), s 222 — Crime and Disorder Act 1998 (c 37), s 1(1) (as amended by Police Reform Act 2002 (c 30), s 61(2))

C

In an attempt to mitigate the impact of the growing gang culture and accompanying serious crime in its area, the claimant city council, relying on section 222 of the Local Government Act 1972[1], sought injunctions in the county court to restrain the defendants, who were alleged gang members, from entering the

D city centre, associating with named individuals and wearing green clothing, which was the gang's colour. The injunctions sought were in identical or almost identical terms to anti-social behaviour orders ("ASBOs") which the council had sought or obtained in the magistrates' court against juvenile gang members under section 1 of the Crime and Disorder Act 1998, as amended[2]. The council claimed that the defendants had repeatedly behaved in a criminal and tortious manner as members of the gang, that their conduct would continue unless restrained by injunction, that

E the criminal law was not an effective remedy in the circumstances, and that the injunctions were required to prevent the future commission of criminal offences or to avoid future public nuisances. The council obtained interim injunctions against the defendants pending the trial of the action. At the trial the judge held that he had no jurisdiction to grant the injunctions, but that even if he had he could not be sure on the evidence that either defendant had participated in acts which were either criminal or amounted to a public nuisance, and that it was not necessary or appropriate in the

F circumstances to make the orders. He therefore discharged the interim injunctions and dismissed the claims.

On appeal by the council—

Held, dismissing the appeal, that section 222 of the Local Government 1972 vested in local authorities the procedural power, previously only available to the Attorney General at common law, to bring and defend proceedings in support of public rights; that the principles governing the common law jurisdiction to grant an

G injunction to restrain a breach of the criminal law or to suppress a public nuisance were subject to any legislation specifically designed to deal with the very situation for which an injunction was sought; that in the Crime and Disorder Act 1998 Parliament had enacted a detailed statutory scheme to restrain anti-social behaviour in a particular way and subject to particular safeguards, some of which did not apply to injunctions granted at common law; that, accordingly, although the court had jurisdiction to grant an injunction sought by a local authority under section 222 of

H the 1972 Act in circumstances in which an ASBO would be available, it would be wrong in principle for it to exercise its discretion to do so save in an exceptional case, and it should leave the authority to seek an ASBO in the magistrates' court; that,

[1] Local Government Act 1972, s 222(1): see post, para 21.
[2] Crime and Disorder Act 1998, s 1(1), as amended: see post, para 46.

since the injunctions sought by the council against the defendants were typical of and in almost identical terms to an ASBO, and since the case was not an exceptional one, the appropriate course had been to decline to grant an injunction and leave the council to its remedy in the magistrates' court; and that, in any event, the judge had been entitled, whatever standard of proof was applied, to conclude, in the exercise of his discretion, that it was neither necessary nor appropriate to grant the injunctions (post, paras 23–24, 36, 44, 45, 52, 54, 59–60, 67, 69, 77).

Dicta of Hoffmann J in *Chief Constable of Leicestershire v M* [1989] 1 WLR 20, 23 applied.

City of London Corpn v Bovis Construction Ltd [1992] 3 All ER 697, CA considered.

Per Sir Anthony Clarke MR and Rix LJ. If exceptionally the High Court or the county court find it necessary to consider whether to grant an injunction in circumstances in which the relief is identical or almost identical to an ASBO, it should apply the criminal standard of proof. However where the relief sought is not identical or almost identical to an ASBO and where the facts are much more complicated than in the instant case there is no reason why the ordinary civil standard of proof should not apply, subject to argument in a particular case (post, paras 51, 53, 65, 69).

R (McCann) v Crown Court at Manchester [2003] 1 AC 787, HL(E) considered.

In re D (Secretary of State for Northern Ireland intervening) [2008] 1 WLR 1499, HL(NI) and *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2009] 1 AC 11, HL(E) distinguished.

The following cases are referred to in the judgments:

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

Attorney General v PYA Quarries Ltd [1957] 2 QB 169; [1957] 2 WLR 770; [1957] 1 All ER 894, CA

B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening), In re [2008] UKHL 35; [2009] 1 AC 11; [2008] 3 WLR 1; [2008] 4 All ER 1, HL(E)

Barking and Dagenham London Borough Council v Jones (unreported) 30 July 1999; [1999] CA Transcript No 1369, CA

Chief Constable of Leicestershire v M [1989] 1 WLR 20; [1988] 3 All ER 1015

City of London Corpn v Bovis Construction Ltd [1992] 3 All ER 697, CA

D (Secretary of State for Northern Ireland intervening), In re [2008] UKHL 33; [2008] 1 WLR 1499, HL(NI)

Gouriet v Union of Post Office Workers [1978] AC 435; [1977] 3 WLR 300; [1977] 3 All ER 70, HL(E)

Guildford Borough Council v Hein [2005] EWCA Civ 979; [2005] LGR 797, CA

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

Kent County Council v Batchelor (No 2) [1979] 1 WLR 213; [1978] 3 All ER 980

Nottingham City Council v Zain (A Minor) [2001] EWCA Civ 1248; [2002] 1 WLR 607, CA

Portsmouth City Council v Richards (1988) 87 LGR 757, CA

R (McCann) v Crown Court at Manchester [2002] UKHL 39; [2003] 1 AC 787; [2002] 3 WLR 1313; [2002] 4 All ER 593, HL(E)

Runnymede Borough Council v Ball [1986] 1 WLR 353; [1986] 1 All ER 629, CA

Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] AC 754; [1984] 2 WLR 929; [1984] 2 All ER 332, HL(E)

Worcestershire County Council v Tongue [2004] EWCA Civ 140; [2004] 2 Ch 236; [2004] 2 WLR 1193, CA

Wychavon District Council v Midland Enterprises (Special Events) Ltd (1987) 86 LGR 83

A The following additional cases were cited in argument:

Broadmoor Special Hospital Authority v Robinson [2000] QB 775; [2000] 1 WLR 1590; [2000] 2 All ER 727

Chief Constable of Lancashire v Potter [2003] EWHC 2272 (Admin); The Times, 10 November 2003

Department of Social Security v Butler [1995] 1 WLR 1528; [1995] 4 All ER 193, CA

B *R v Rimmington* [2005] UKHL 63; [2006] 1 AC 459; [2005] 3 WLR 982; [2006] 2 All ER 257, HL(E)

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

Botta v Italy (1998) 26 EHRR 241

C *Brown v Stott* [2003] 1 AC 681; [2001] 2 WLR 817; [2001] 2 All ER 97, PC

Gough v Chief Constable of the Derbyshire Constabulary [2002] EWCA Civ 351; [2002] QB 1213; [2002] 3 WLR 289; [2002] 2 All ER 985, CA

Guzzardi v Italy (1980) 3 EHRR 333

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

Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11; [2000] Imm AR 271, CA

D *Kirklees Metropolitan Borough Council v Wickes Building Supplies Ltd* [1993] AC 227; [1992] 3 WLR 170; [1992] 3 All ER 717, HL(E)

Mole Valley District Council v Smith (1992) 90 LGR 557, CA

R v Boness [2005] EWCA Crim 840; [2006] 1 Cr App R (S) 690, CA

R v Governor of Brockhill Prison, Ex p Evans (No 2) [2001] 2 AC 19; [2000] 3 WLR 843; [2000] 4 All ER 15, HL(E)

R v Secretary of State for the Home Department, Ex p Leech [1994] QB 198; [1993] E 3 WLR 1125; [1993] 4 All ER 539, CA

R v Secretary of State for the Home Department, Ex p Pierson [1998] AC 539; [1997] 3 WLR 492; [1997] 3 All ER 577, HL(E)

R v Secretary of State for the Home Department, Ex p Simms [2000] 2 AC 115; [1999] 3 WLR 328; [1999] 3 All ER 400, HL(E)

R v W [2006] EWCA Crim 686; [2007] 1 WLR 339; [2006] 3 All ER 562, CA

R (BAPIO Action Ltd) v Secretary of State for the Home Department [2007] F EWHC 199 (Admin); [2007] EWCA Civ 1139; [2008] ACD 20, CA

R (C (A Minor)) v Secretary of State for Justice [2008] EWHC 171 (Admin)

R (Countryside Alliance) v Attorney General [2007] UKHL 52; [2008] AC 719; [2007] 3 WLR 922; [2008] 2 All ER 95, HL(E)

R (Daly) v Secretary of State for the Home Department [2001] UKHL 26; [2001] 2 AC 532; [2001] 2 WLR 1622; [2001] 3 All ER 433, HL(E)

R (Elias) v Secretary of State for Defence [2006] EWCA Civ 1293; [2006] 1 WLR G 3213, 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 (Morgan Grenfell & Co Ltd) v Special Comr of Income Tax [2002] UKHL 21; [2003] 1 AC 563; [2002] WLR 1299; [2002] 3 All ER 1, HL(E)

R (Parminder Singh) v Chief Constable of the West Midlands Police [2006] EWCA Civ 1118; [2006] 1 WLR 3374; [2007] All ER 297, CA

H *Samaroo v Secretary of State for the Home Department* [2001] EWCA Civ 1139; [2001] UKHRR 1150, CA

Secretary of State for the Home Department v JJ [2007] UKHL 45; [2008] AC 385; [2007] 3 WLR 642; [2008] 1 All ER 613, HL(E)

South Bucks District Council v Porter [2003] UKHL 26; [2003] 2 AC 558; [2003] 2 WLR 1547; [2003] 3 All ER 1, HL(E)

Westminster Bank Ltd v Beverley Borough Council [1971] AC 508; [1970] 2 WLR 645; [1970] 1 All ER 734, HL(E)
Wheeler v Leicester City Council [1985] AC 1054; [1985] 3 WLR 335; [1985] 2 All ER 1106, HL(E)
Z, In re [2004] EWHC 2817 (Fam); [2005] 3 All ER 280

APPEAL from Judge MacDuff QC sitting in the Birmingham County Court

On 16 August 2007 the claimant, Birmingham City Council, exercising its powers under section 222 of the Local Government Act 1972, applied without notice for interim and final injunctions against the first to third defendants, Junior Cadogan, Marnie Shafi and Tyrone Ellis, respectively, (i) excluding them from Birmingham city centre and other defined areas of the Birmingham metropolitan area; (ii) prohibiting them from being in the company of 11 named persons, including in the case of the second defendant his brother; (iii) prohibiting them from being in the company of more than one person in a public place; and (iv) prohibiting them from wearing green clothing in a public place. On 17 August 2007 Judge McKenra granted interim injunctions against the defendants, which were subsequently continued until the trial of the action on 3 and 4 December 2007. The claim against the first defendant was subsequently adjourned, and he played no further part in the proceedings. By order dated 10 January 2008 Judge MacDuff QC, sitting in the Birmingham County Court, discharged the interim injunctions and dismissed the claims against the second and third defendants, but gave the council permission to appeal.

By an appellant's notice filed on 5 February 2008 the council appealed on, inter alia, the following grounds. (1) The judge had been wrong to hold that he had no jurisdiction to grant an injunction under section 222 of the 1972 Act in support of the criminal law; in particular (a) he had been wrong to hold that the council was entitled to sue in its own name for an injunction to prevent a breach of the criminal law only (i) there was "something more" than a mere threatened breach of the criminal law, and (ii) the case was exceptional and it was clear that nothing short of an injunction would prevent the unlawful acts complained of, and (iii) the council had a responsibility for the enforcement of that branch of the law; (b) he had been wrong to hold that an injunction "may only be granted where . . . there is a known likelihood of a specific crime"; and (c) he should have held that the principles enunciated by Bingham LJ in *City of London Corpn v Bovis Construction Ltd* [1992] 3 All ER 697 were met and that he had jurisdiction to grant an injunction. (2) The judge had erred in holding that he had no jurisdiction to grant an injunction under section 222 of the 1972 Act to prevent a public nuisance on the basis that there was a comprehensive code for dealing with such matters contained in the Crime and Disorder Act 1998, as amended, and the Housing Act 1996, as amended. (3) The judge had erred in law in holding that the council would have to prove any facts to the criminal standard of proof. (4) In the circumstances the judge should have found that the defendants' behaviour justified the grant of injunctive relief.

The facts are stated in the combined judgment of Sir Anthony Clarke MR and Rix LJ.

A *Jonathan Manning* and *Justin Bates* (instructed by *Chief Legal Officer, Legal Services, Birmingham City Council, Birmingham*) for the council.

Maya Sikand (instructed by *McGrath & Co, Birmingham*) for the second defendant.

Ramby de Mello and *Tony Muman* (instructed by *McGrath & Co, Birmingham*) for the third defendant.

B The court took time for consideration.

30 October 2008. The following judgments were handed down.

SIR ANTHONY CLARKE MR and **RIX LJ**

Introduction

C **1** This appeal relates to the circumstances in which it is appropriate for local authorities to use the civil law in order to control the activities of those who create disturbances and indulge in criminal activities on streets within their areas. There were originally three defendants in this action, Junior Cadogan, Marnie Shafi and Tyrone Ellis. On 17 August 2007 the appellant claimant, Birmingham City Council ("the council"), sought and obtained D without notice injunctions against all three defendants in wide terms. They were subsequently continued, subject to slight amendments, until trial. The claim against Junior Cadogan was adjourned, with the result that he played no part in the trial and has played no part in this appeal. The trial of the action as between the council as claimant and Marnie Shafi and Tyrone Ellis as defendants came before Judge MacDuff QC (now MacDuff J), whom we E will call "the judge", on 3 and 4 December 2007. In addition to written material the judge heard both oral evidence and oral submissions. By an order dated 10 January 2008 the judge dismissed the claims and discharged the injunctions. This appeal is brought against that order with the permission of the judge.

2 The judge held that the court had no jurisdiction to grant the injunctions sought and that, even if it did, he would have refused to grant F them against Marnie Shafi ("MS") and Tyrone Ellis ("TE") on the facts of this case. The council submits that the judge was wrong on both counts. It is convenient to consider the issues that arise in this appeal under these headings: the orders, the council's case, the facts found, the legal principles, and jurisdiction and discretion.

G *The orders*

3 The orders are in very similar terms. It is therefore convenient to focus on just one. We take that against TE. So far as relevant to this appeal, it was in these terms:

> "The court ordered that the defendant shall not (whether by himself or by instructing, encouraging or allowing any other person) (1) be in any H public place in the City of Birmingham with any of the following people: Courtney Jones, Courtney Moore, Junior Hollingshead, John Shafi, Nelson Junior Nelson, Kristopher Boyd-Clarke, Tristan Miles, Sheldon Wint, Junior Cadogan, Hassan Ali; (2) enter that part of the City of Birmingham shown on the attached plan and delineated in red;

(3) assault, harass, intimidate or attempt to do any of the same to any person lawfully present in the City of Birmingham."

The plan attached showed a considerable part of the city. Because TE lives within what would otherwise have been part of the excluded area it was necessary to remove from the exclusion a small area which would enable him to go to and from his home. It meant however that he could not go into most of the area around his home. A power of arrest under section 27 of the Police and Justice Act 2006 was attached to the whole of the order quoted above.

The council's case

4 The judge set out the council's case and the background to it in his judgment, at paras 4 to 9. It may be summarised in this way. In recent years there has unhappily been an increase in violent crime in many of Britain's major cities including Birmingham. It is the council's case that there has been an insidious and worrying gang culture in some parts of the city which has been accompanied by an increase in serious crime. There are two main gangs, known as the Burger Bar Gang and its rival the Johnson Crew, and there are a number of subsidiary gangs which have allegiance to one or other of the main gangs. For example, a gang known as the Birmingham's Most Wanted ("BMW") is loyal to the Burger Bar Gang. The gangs consist of young men who commit crimes both individually and jointly and are, it is said, responsible for much of the crime committed in the city. The crimes include armed robbery, drug dealing, other serious drug-related offences and the possession, display and use of firearms. It is the council's case that the increase in crime has led to an increasing level of fear in the community.

5 The gangs are territorial, so that a gang member is safe (or feels safe) within his own territory but is (or feels) at risk in other territories. Within his own territory a gang member may feel safe to carry weapons, engage in violence and seek reprisals against rivals. Residents are often too frightened to co-operate with the police or give evidence. As a result the police are often faced with a wall of silence and, as the judge put it in describing the council's case at para 9, where witnesses do come forward, they are intimidated into silence or worse. Members of gangs carry weapons for both offensive and defensive reasons. Again as the judge put it, within the community there is a perception that the criminal law is inadequate to control the situation. Gang members regard themselves as untouchable.

6 Historically the authorities have sought to rely upon the criminal law. The council has also sought and obtained anti-social behaviour orders ("ASBOs") in the magistrates' courts. However more recently it has resorted to the civil law by seeking injunctions under section 222 of the Local Government Act 1972, as it did in this case. It has done so as part of a multi-agency initiative in order to try to curb the activities of some of those said to be responsible for the wave of violent crime and thus to stop it or at least to mitigate the impact of the growing urban gang culture. In addition to the council, the agencies include the West Midlands Police, the Birmingham Anti-social Behaviour Unit and the West Midlands Probation Service. In a sentence, as the judge put it at para 15, it is thought that the

A behaviour described above cannot be adequately controlled by normal policing and prosecutions in the Crown Courts and in the magistrates' courts, so that the injunction route is seen by the police and the council as a potentially valuable weapon in their armoury.

7 One advantage of this approach is that it can be based on evidence which could not be adduced at a criminal trial. As the judge put it, at para 8, B much of the evidence available to the council is derived from police intelligence. It cannot be proved by first-hand sworn evidence because the gangs are practised in intimidation of potential witnesses, with the result that, where police officers and community leaders have been informed of relevant events, those who could give evidence about them are unwilling to do so for fear of reprisals.

8 This action is one of many. The judge said, at para 10, that claims C had already been issued against some 30 or 40 individuals and that the council intended to issue many more claims with a view to obtaining injunctions against all known gang members and to bring an end to their activities within the city. It is we think important to note that actions are only brought against adults. Where the council seeks an order against a gang member who is under 18 it does so by application for an ASBO in the D magistrates' court. That is notwithstanding the fact that the order sought is in each case in identical terms. We return to this below because it strikes us as a curious distinction which has not been fully explained on behalf of the council.

9 As appears from the terms of the orders, they are not limited to anti-molestation orders of the kind set out in para (3) of the order quoted above, but operate by preventing the defendant from associating with certain E named individuals in any public place within the city and from entering a large part of central Birmingham, sometimes very close to his home. Before the judge the council sought two further orders. The first was to prohibit MS and TE from wearing green clothing, green being the colour of the gang to which they were said to belong, and the second was to prohibit each from associating with any group larger than two including himself.

F 10 The particulars of claim in the cases of MS and TE are identical save for para 16, where the basic allegation is the same but the particulars are different. Para 16 alleged in each case: "The defendant has repeatedly behaved in a manner which is criminal and tortious, and which, in particular, constitutes a public nuisance and amounts to deliberate and flagrant breaches of the criminal law."

G 11 The particulars of claim further asserted, in paras 17 and 18, that permanent injunctive relief pursuant to section 222 of the 1972 Act restraining each defendant's behaviour was likely to achieve the promotion or improvement of the economic, social or environmental well-being of the council's area or alternatively that it was expedient for the promotion or protection of their area that the defendant be restrained from committing tortious and criminal acts. It was further alleged in para 21 that each H defendant's conduct would continue unless restrained by law and, in particular (albeit without prejudice to the generality of the foregoing), that the criminal law was not an effective remedy in the circumstances and that "his repeated arrests and convictions had failed to ameliorate his behaviour".

The facts found

12 The judge identified two classes of evidence before the court, first the general evidence and secondly the evidence specific to MS and TE. However, as to the evidence as a whole, he noted, at para 13, that much of it came from police intelligence; sometimes from parties who could not be identified. Some of the intelligence was categorised as extremely reliable but some much less so. As to the general evidence relied upon by the council, some was in the form of statements read by consent and some was oral evidence. The statement evidence included a statement from Ian Coghill, who is director of the council's Community and Safety and Environmental Services. The critical oral evidence came from Detective Sergeant Borg of the West Midlands Police, whose statement was also put in evidence. Oral evidence also came from a street warden team leader, a police constable and an anti-social behaviour officer. In addition, both MS and TE gave oral evidence, as did Mrs Yasmin Shafi who is the mother of MS. We note in passing that no problem arose in this case by reason of the fact that the defendants were not told who was the source of the information given to or obtained by the police.

13 As we read his judgment, the judge accepted the council's description of the underlying situation and the problems presented by the gangs described above. In para 15 he stressed the following. Some gang members carry guns and many carry other weapons. There are outbreaks of fighting and public disorder. In June 2007 there were about 30 firearm discharges in the city, an average of one a day. At the highest level there are organised crime groups, orchestrating serious crime, with little street presence. Then there are the Johnson Crew and Burger Bar Gangs and other street gangs loyal to one or other of those. These street gangs engage in street crime and cause fear in the community as described above. At the lowest level are feeder groups where young people are recruited, often from schools, for what the judge described as the second tier groupings.

14 It is in our view unfortunate that, for whatever reason, the cases of MS and TE have become the first such cases in which there has been a test of the injunction approach. That is because they are on any view, as the judge held, at para 16, at the lower end of the scale. The specific evidence of course varies from case to case but the judge said that in some cases there is evidence that a defendant has himself committed robberies, discharged firearms or engaged in what he described as violent and wicked conduct. Some defendants have large and serious criminal records. On the other hand, as here, some defendants are implicated in crime and gang activities to a much lesser extent.

15 The judge summarised the evidence against MS, at paras 18–20. He was said to be a member of the BMW gang, a feeder gang for the Burger Bar Gang. Most members are between 15 and 21. They wear green clothing, particularly bandanas and hoods. They meet in Birmingham City Centre but are also active in Winson Green, Ladywood and elsewhere. They commit public order offences, robberies and shop thefts. MS was born on 5 June 1989 and was thus just 18 when this action was brought on 16 August 2007. MS admits that he is a member of the BMW gang but says that it is a small group which writes and performs music. He denies that he was a part of any general criminal activity. At para 19, the judge quoted the

part of the statement from DS Borg's statement in which he said that MS "has been found to be regularly involved in criminal and anti-social behaviour including violent crimes with the use of weapons".

16 However the judge, in our opinion correctly, added that that is a general statement of little value unless supported by other evidence. The supporting evidence comes from police intelligence and moreover from category A1 intelligence, which is the most reliable category, being described as "always reliable, witnessed by law enforcement agencies or reliable technical evidence". The supporting evidence was 14 pieces of police intelligence between August 2005 and July 2007, during most of which period MS was of course 16 or 17. The judge summarised the evidence as follows, at para 19:

> "All these intelligence logs are categorised A1 or B1. On 14 occasions Shafi has been seen in the company of known members of BMW. Often he and his companions (some of whom had previous convictions) were reported to be wearing green bandanas. Usually the group consisted of only four or five persons, sometimes fewer. On one occasion, one of his companions was found in possession of an imitation firearm; on another, there was a report that a knife had been seen, although none was found when the group was searched. On another occasion, Shafi was removed from a West Midlands bus for disorderly behaviour; on another occasion he had suffered a stab wound to his leg, believed to have been inflicted by a member of a rival gang. At least three of these incidents occurred outside what is now the area from which he is excluded by interim order. On none of these 14 occasions was Shafi himself seen to be engaged in criminal conduct although there was an element of suspicion in two instances (where, for example, he was wearing a top garment with its hood up in hot weather). On no occasion was he in possession of any knife or offensive weapon, nor any other incriminating object."

MS had two previous convictions, one for having in his possession an article which had a blade or was sharply pointed. At the time DS Borg made his statement there were three outstanding prosecutions pending against him but the judge records, at para 20, that by the time of the trial they had all been discontinued.

17 The judge considered the evidence relating to TE, at para 21. He described it as similar to that in the case of MS. He too was a member of BMW and DS Borg described his involvement in precisely the same words as he used in the case of MS. We have quoted them above. TE was born on 3 April 1989 and was therefore about two months older than MS. According to police intelligence TE came to police notice on 12 occasions between November 2006 and August 2007. The judge said that the evidence of at least four of them was of no value in the present context. For example on 2 March 2007 he was stopped by police officers when he was wearing a green bandana and on other occasions he was stopped when with others. The judge described the overall evidence thus:

> "He associates with other people (usually in a small group) who, according to good police intelligence, are members of the BMW gang. On two occasions, the person he was with had possession of a weapon (not a firearm). On another two occasions, he was in the vicinity of a recent

disturbance, giving rise to the possible inference that he had been involved. When stopped, he had been less than co-operative with the police. On another occasion he was in a group of youths who were misbehaving in a public place. He had four previous convictions, three of which were for possession of offensive weapons. With one exception these go back to 2003. The most recent conviction was for having in his possession a bladed knife in the Birmingham city centre on 9 November 2006."

18 At para 91, the judge rejected the defendants' evidence that BMW was simply a small group of music lovers and said that he was satisfied that they both owed allegiance to it. He also said that he was satisfied that members of the gang, acting together, had in the past committed acts which were both criminal and amounted to a public nuisance but he rejected the submission that there was evidence on which he could conclude beyond reasonable doubt that either MS or TE had so participated. It is submitted on behalf of the council that the judge applied the wrong standard of proof. The judge's approach can be seen from this sentence, in para 91:

"Take 6 April 2007 as an example. On that date the defendant Tyrone Ellis was seen by police officers in Corporation Street following a disturbance in the nearby Bull Ring Shopping Centre. It may be that, on the balance of probabilities I might just conclude that he had participated in the disturbance. However, I certainly could not be sure, and thus the evidence in respect of that particular day is of no value at all."

We return below to the correct approach to the standard of proof.

19 We should also refer to para 92 of the judgment, where the judge said that, whatever matters would require proof, he would not make the orders. He correctly said that whether to do so involved the exercise of a discretion and added:

"First and foremost, there is no evidence to show that the defendants or either of them have behaved in the past in a way which would justify making such an order. It may be that in some of the other cases, where the defendants are members of the senior echelons and the evidence can establish frequent participation in gang violence (for example) an order would be justified."

At paras 93 and 94, the judge made some observations about the detail of the orders which are not directly relevant to the issues in this appeal.

The legal principles

20 We were referred to a number of statutory provisions that impose duties upon the council with regard to the maintenance of law and order and the reduction of crime and disorder. They include sections 6(1) and 17 of the Crime and Disorder Act 1998 (as amended by Schedule 9 to the Police and Justice Act 2006) and section 4 of the Local Government Act 2000. The obligations include a duty to formulate and implement a strategy for the reduction of crime and disorder, a duty to exercise the council's functions with due regard to the likely effect of the exercise of those functions on crime and disorder (and the misuse of drugs and alcohol) and a duty to prepare a sustainable community strategy for promoting the well-being of the relevant

A area. To that end the council has produced a series of strategies. It has for example created a group known as the Birmingham Reducing Gang Violence Group.

21 We entirely accept that the applications for these injunctions and other similar applications in other cases are born of the council's determination to deal effectively with the very difficult situation described by the judge. We also applaud the council's multi-agency approach to the B problems. The question is, however, what is the correct approach in principle to the exercise by councils of their power under section 222 of the 1972 Act. Sections 111 and 222 provide, so far as relevant:

> "111(1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act . . . a local authority shall have power to do any thing (whether or not involving the expenditure, C borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions."
>
> "222(1) Where a local authority consider it expedient for the promotion 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 D any civil proceedings, may institute them in their own name . . ."

22 It is common ground that the council is a "local authority" and that it has power under section 222 to seek injunctive relief from the courts, at any rate in some circumstances. Section 37(1) of the Supreme Court Act 1981 provides: "The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears E to the court to be just and convenient to do so." Taking the language of section 222 at its widest, therefore, it might be thought that the only remaining question for the judge was whether it was just and convenient to grant the injunction sought. However, the authorities show that it is not as simple as that because it has long been recognised that the court's power to grant relief by way of injunction is to be exercised only in support of some F legal or equitable right. This gives rise to special considerations in cases where the interests of the public as a whole, or at any rate a section of the public, are affected or where rights enjoyed by the public are infringed. It is likely to be in cases of that kind that the local authority will wish to take action for the benefit of those who live within its area.

23 At common law a local council could not bring an action for interference with public rights unless it had itself suffered special damage G peculiar to itself. Proceedings for the enforcement of public rights could only be brought by the Attorney General, either acting ex officio or through a private citizen known as a "relator" who was authorised to bring proceedings on behalf of the Attorney General and in his name: see *Stoke-on-Trent City Council v B & Q (Retail) Ltd* [1984] AC 754, 770–771, per Lord Templeman. The purpose of section 222, as was recognised by the H House of Lords in that case, was to enable local authorities in such cases to bring and defend proceedings in their own names without the involvement of the Attorney General. Accordingly, in their skeleton argument for this appeal Mr Manning and Mr Bates were right to recognise that the power vested in local authorities by section 222 of the 1972 Act reflects the power available to the Attorney General at common law to bring proceedings in

support of public rights. It is necessary, therefore, to have regard to the nature and extent of that power in order to determine whether this is a case in which the court can properly grant an injunction at the suit of a local authority under that section.

24 It is thus common ground that section 222 does not give councils substantive powers. It is simply a procedural section which gives them powers formerly vested only in the Attorney General. This appeal raises essentially two questions. They are, first, whether this is the type of case in which the court, acting in accordance with established principles, or any logical extension of them, can grant injunctions of the kind sought against the defendants and, secondly, if so, whether it should do so in the exercise of its discretion.

25 The courts have considered the correct approach to the exercise of this power in the public interest in two principal contexts: the restraint of breaches of the criminal law and the suppression of public nuisances. We will consider injunctions in aid of the criminal law first because it is plain from the way in which this case was both pleaded and presented that a principal plank of the council's case is that an injunction is required in aid of the criminal law, or at least in order to prevent the commission of criminal offences in the future. However, we recognise that the council also seeks to justify the injunctions on the basis that they are necessary to avoid the commission of public nuisances in the future. We will therefore briefly consider public nuisance separately before discussing the impact and interpretation of the legislation which introduced the ASBO and its effect upon the proper approach of the court to an injunction.

Injunctions in aid of the criminal law

26 The underlying approach is that described by Lord Templeman, with whom the other members of the Appellate Committee agreed, in the *B & Q* case [1984] AC 754, which was one of the Sunday trading cases, at p 776A–F:

> "The right to invoke the assistance of the civil court in aid of the criminal law is a comparatively modern development. Where Parliament imposes a penalty for an offence, Parliament must consider the penalty is adequate and Parliament can increase the penalty if it proves to be inadequate. It follows that a local authority should be reluctant to seek and the court should be reluctant to grant an injunction which if disobeyed may involve the infringer in sanctions far more onerous than the penalty imposed for the offence. In *Gouriet v Union of Post Office Workers* [1978] AC 435 Lord Wilberforce said at p 481, that the right to invoke the assistance of the civil courts in aid of the criminal law is 'an exceptional power confined, in practice, to cases where an offence is frequently repeated in disregard of a, usually, inadequate penalty . . . or to cases of emergency . . .' In my view there must certainly be something more than infringement before the assistance of civil proceedings can be invoked and accorded for the protection or promotion of the interests of the inhabitants of the area."

27 Lord Templeman accepted that it would not always be necessary for the use of the criminal law to be attempted before recourse was had to the remedy of injunction. He put it in this way, at p 776F–G:

A "It was said that the council should not have taken civil proceedings until criminal proceedings had failed to persuade the appellants to obey the law. As a general rule a local authority should try the effect of criminal proceedings before seeking the assistance of the civil courts. But the council were entitled to take the view that the appellants would not be deterred by a maximum fine which was substantially less than the profits which could be made from illegal Sunday trading. Delay while this B was proved would have encouraged widespread breaches of the law by other traders, resentful of the continued activities of the appellants."

28 Subsequent cases show that injunctions may be granted even where it cannot be shown that criminal penalties would be inadequate. The leading case is *City of London Corpn v Bovis Construction Ltd* [1992] 3 All ER 697, C in which an injunction was granted to restrain Bovis from causing a noise nuisance outside certain hours specified in a notice served by the council under section 60 of the Control of Pollution Act 1974. It was a criminal offence "without reasonable excuse" to contravene the notice. A number of informations were laid against Bovis but they were adjourned and the injunction was sought in the meantime. Bovis appealed to this court contending that an injunction should not be granted unless it was first D established that the defendant had committed an offence and that the defendant was deliberately and flagrantly flouting the law, neither of which could be established.

29 The appeal failed. The basis of the decision is most clearly stated by Bingham LJ. He first expressed the view that there may well have been bases on which the injunction could have been supported other than in support of the criminal law: see e g at p 713D. However he said, at p 713G, E that the proceedings were in fact framed as being in support of the criminal law. On that basis he considered a number of classes of case: see p 714B–G, where he identified such different types of case by reference to *Attorney General v Chaudry* [1971] 1 WLR 1614, *Kent County Council v Batchelor (No 2)* [1979] 1 WLR 213 and *Runnymede Borough Council v Ball* [1986] 1 WLR 353. He noted that in the *Runnymede* case there had F been no resort to the criminal law but an injunction was granted because of the risk of irreversible damage. He also referred to the speech of Lord Diplock in *Gouriet v Union of Post Office Workers* [1978] AC 435 in which he expressed the view that injunctions of this kind should not be granted save where the criminal law had manifestly failed or where there was a risk of grave and irreparable harm. However Bingham LJ noted that, at p 491 in the same case, Viscount Dilhorne disavowed the G suggestion that these were the only types of case in which the civil courts could and should come to the aid of the criminal law by granting injunctions at the instance of the Attorney General, and thus by inference at the instance of a local authority under section 222 of the 1972 Act. All depends upon the circumstances.

30 Bingham LJ identified the guiding principles as follows [1992] 3 All H ER 697, 714G–J:

"The guiding principles must I think be: (1) that the jurisdiction is to be invoked and exercised exceptionally and with great caution: see the authorities already cited; (2) that there must certainly be something more than mere infringement of the criminal law before the assistance of civil

proceedings can be invoked and accorded for the protection or promotion of the interests of the inhabitants of the area: see *Stoke-on-Trent Council v B & Q (Retail) Ltd* . . . [at p 776] and *Wychavon District Council v Midland Enterprises (Special Events) Ltd* (1986) 86 LGR 83, 87; (3) that 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* . . . [at p 89]."

31 On the facts Bingham LJ said, at p 715A–B, that the question was whether the local authority could show anything more—and he would interpolate substantially more—than an alleged and unproven contravention of the criminal law, and whether the inference could be drawn that noise prohibited by the notice would continue unless Bovis were effectively restrained by law and that nothing short of an injunction would effectively restrain them. The essence of the decision can be seen from the next passage in Bingham LJ's judgment, at p 715B–D:

"I am in no doubt that these questions must be answered in favour of the local authority. The conduct which the local authority seek to restrain is conduct which would have been actionable (if not at the suit of the local authority) in the absence of any statute. Even if the conduct were not criminal, it would probably be unlawful. The contrast with the planning and Sunday trading cases is obvious. I see no reason for the court pedantically to insist on proof of deliberate and fragrant breaches of the criminal law when, as here, there is clear evidence of persistent and serious conduct which may well amount to contravention of the criminal law and which may, at this interlocutory stage, be regarded as showing a public and private nuisance. It is quite plain that the service of the notice and the threat of prosecution have proved quite ineffective to protect the residents."

32 The essential basis of the conclusions of O'Connor and Taylor LJJ was to much the same effect. There is a passage in the judgment of O'Connor LJ, at pp 709E–710C, to the effect that the injunction was necessary to prevent the nuisance in circumstances in which, on the one hand, Bovis had refused to say what its "reasonable excuse" was for contravening the notice on the basis that it did not have to do so until the hearing of the informations and, on the other hand, it asserted that the council could not establish the commission of the offence. At p 716J, after referring to the view of the members of the Appellate Committee in the *B & Q* case that great caution should be exercised before granting injunctions of the kind sought and that something more was required than a bare infringement of the criminal law, Taylor LJ said that there was there something more, namely a nuisance gravely affecting the local inhabitants. He added, at pp 716J–717A, that every disturbed night or weekend involved irreversible damage and there would be delay before the criminal proceedings including any appeal were completed. He thus concluded that the criminal proceedings were likely to be ineffective to protect the inhabitants and that it was just to grant an interlocutory injunction.

A **33** The principles summarised by Bingham LJ have been followed and to some extent broadened in later cases. For example, in *Barking and Dagenham London Borough Council v Jones* (unreported) 30 July 1999; [1999] CA Transcript No 1369, Brooke LJ, with whom May and Laws LJJ agreed, said, with regard to Bingham LJ's principles:

> "The application of those principles means that if the court is satisfied
B that nothing short of an injunction will be effective to restrain a defendant's unlawful operations it may grant an injunction even though he has not yet been subjected to the maximum penalty available under the criminal law."

34 In *Guildford Borough Council v Hein* [2005] LGR 797, this court adopted Bingham LJ's principles but Waller LJ expressed the view, at
C paras 75–77, that the court had slightly broadened the principles in *Portsmouth City Council v Richards* (1989) 87 LGR 757. See also the judgment of Clarke LJ in *Hein's* case, at para 44. In *Richards's* case, at p 765, Kerr LJ had expressed the broad test as being that injunctions are only permissible to restrain a threatened breach of the criminal law if in the particular circumstances "criminal proceedings are likely to prove ineffective
D to achieve the public interest purposes for which the legislation in question had been enacted".

35 Further, as Waller LJ observed in *Hein's* case, at para 77, Kerr LJ also cited with approval a passage from the judgment of Millett J in *Wychavon District Council v Midlands (Special Events) Ltd* (1987) 86 LGR 83, where Millett J commended a council for moving for a quia timet injunction in these words:

E

> "If they have good grounds for thinking that in any given case compliance with the law will not be secured by prosecution they are entitled to apply for an injunction. Counsel for the defendants criticised the council for threatening to seek a quia timet injunction even before any threatened breach of the law had actually occurred and when therefore no
F prosecution was possible. In a proper case I do not consider that that is a ground for criticism but for commendation. It must be an eminently sensible and convenient manner of proceeding."

36 Those cases suggest a somewhat broader approach than some of the earlier ones, although, in our judgment the essential principles remain those summarised by Bingham LJ, in so far as the injunction is sought in aid of
G the criminal law, if by that is meant or includes a case where the injunction is sought to prevent the defendant from committing criminal offences. As appears below, it is our view, first, that these principles are subject to any legislation which is designed to deal with the very situation which an injunction is sought to control and, secondly, that the ASBO legislation is designed to do just that.

H *Public nuisance*

37 The council puts its case on the alternative basis that, quite apart from the fact that the injunction will restrain the commission of criminal offences, it is justified on the basis that it will also restrain the commission of a public nuisance. There is we think considerable force in the point that,

where it is sought to restrain a public nuisance, the principles which the court should apply should be less restrictive than in the case where it is sought to restrain the commission of a crime. However, the cases have not to date clearly differentiated between the principles to be applied in the two classes of case where the same facts are relied upon in support of each. As noted above, the point was touched on by Bingham LJ in *City of London Corpn v Bovis Construction Ltd* [1992] 3 All ER 697, 713D, although in the event the appeal was disposed of on the basis that the injunction was sought in aid of the criminal law. The relevant principles were treated as those applicable to that state of affairs, although all the members of the court plainly thought that the fact that the claimant had at least an arguable case that Bovis was committing a public nuisance was a telling factor in favour of granting the injunction.

38 Some consideration was given to the point in *Nottingham City Council v Zain (A Minor)* [2002] 1 WLR 607, where this court allowed an appeal from an order striking out an action seeking an injunction restraining a defendant from entering a housing estate. The injunction was sought on the basis of evidence that drug dealing was taking place publicly on the estate, that the defendant was associating there with well known drug dealers and that he had been arrested on suspicion of drug dealing. The court held that that arguably amounted to a public nuisance and that since the council considered (in the terms of the condition precedent in section 222) that it was expedient for the promotion of the interests of the inhabitants of their area, it was entitled by reason of that section to seek an injunction its own name restraining the commission of the public nuisance whether or not it was also a criminal offence: see in particular per Schiemann LJ, at paras 14–17, and Keene LJ, at paras 26 and 27.

39 The decision is, however, of limited assistance here because, as Keene LJ made clear, at para 27, the court was considering only the power of the council to bring the claim under section 222. It was not considering upon what principles the court should decide whether to grant an injunction to restrain a public nuisance. We also note in passing that the decision itself was academic because, by the time the appeal was heard, the defendant had been sentenced to three years' imprisonment and the council no longer sought the injunction.

40 Nevertheless *Zain's* case [2002] 1 WLR 607 is instructive. In particular both Schiemann and Keene LJJ, who have considerable experience in this area, seem to us to provide some support for the council's case. Schiemann LJ said, at para 13:

> "However . . . it is within the proper sphere of a local authority's activities to try and put an end to all public nuisances in its area provided always that it considers that it is expedient for the promotion or protection of the interests of the inhabitants of its area to do so in a particular case. Certainly my experience over the last 40 years tells me that authorities regularly do this and so far as I know this had never attracted adverse judicial comment. I consider that an authority would not be acting beyond its powers if it spent time and money trying to persuade those who were creating a public nuisance to desist. Thus in my judgment, the county council in *Attorney General v PYA Quarries Ltd* [1957] 2 QB 169 was not acting beyond its powers in seeking the

A Attorney General's fiat in trying to put a stop to the nuisance by dust in that case and thus exposing itself to potential liability in costs. It follows that, provided that an authority considers it expedient for the promotion and protection of the interests of the inhabitants of its area, it can institute proceedings in its own name with a view to putting a stop to a public nuisance."

B For this purpose he accepted, at para 8, Romer LJ's description of a public nuisance in *Attorney General v PYA Quarries Ltd* [1957] 2 QB 169, 184, as a "nuisance . . . which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects".

41 Keene LJ said much the same, at paras 25–27. At para 25 and the first sentence of para 26 he recognised that in both the *B & Q* case [1984] C AC 754 and the *Bovis* case [1992] 3 All ER 697 there was a relevant statutory duty on the local authority and added that that was an element identified by the court as important because the local authority was not seeking to rely on public nuisance. It is submitted with force on behalf of the council in this case that here, by contrast, the council is relying upon public nuisance. Keene LJ added, at para 26:

D "Where there is evidence of a public nuisance, it was historically always the case that the Attorney General could seek an injunction to restrain the nuisance and, before the passing of the Local Government Act 1972, a local authority could . . . sue . . . so long as it obtained the Attorney General's fiat."

He then said that the effect of section 222(1) was to allow the local authority E to sue in its own name without needing the consent of the Attorney General. At the end of para 27 he said that, once it was established that a public nuisance was established, which was of course a question of fact, the court would have to exercise its discretion on the basis of the "well known principles applicable to such injunctions". We suspect that he would have said the same if the local authority was alleging not the fact of a public nuisance but the threat of one.

F **42** It is true that Keene LJ does not suggest that those principles are the same as those applied in cases like the *B & Q* case [1984] AC 754 and the *Bovis* case [1992] 3 All ER 697. On the other hand, as we said earlier, the question what those principles were did not arise in *Zain's* case [2002] 1 WLR 607. So the relationship between the principles in the *B & Q* and *Bovis* cases (and later cases) on the one hand and the classic public nuisance G case on the other remains to be worked out. It is not in our opinion necessary to take the matter further in this appeal, partly because of the judge's conclusions of fact to which we return below, but, more importantly, because of what appears to us to be the significance of the ASBO legislation to which we now turn.

The ASBO legislation

H **43** In *Hein's* case [2005] LGR 797, which was a very unusual case on its facts, Waller LJ considered the decision of this court in *Worcestershire County Council v Tongue* [2004] Ch 236, where a local authority was seeking orders which would enable it to enter land in order to rescue animals which were at risk of being cruelly treated. It was ultimately decided that

there was no power to fill gaps in the criminal law but in the course of his judgment Peter Gibson LJ quoted, at para 29, this statement by Hoffmann J in *Chief Constable of Leicestershire v M* [1989] 1 WLR 20, 23: "The recent and detailed interventions of Parliament in this field suggest that the court should not indulge in parallel creativity by the extension of general common law principles." That principle was applied in the context of animal cruelty in *Hein's* case: see per Waller LJ, at paras 66–70. See also per Clarke LJ, at para 48.

44 The significance of the principle stated by Hoffmann J in this appeal is this. The terms of the injunction sought in this action are typical of an ASBO and, as already indicated, on the facts of this case they are identical or almost identical to the terms of an ASBO. We have already referred to what is in our view a striking feature of the council's approach in this case, namely that it seeks ASBOs against those under 18 and injunctions in identical terms against those over 18. Parliament has laid down a number of specific requirements which apply to ASBOs, some of which may not apply to injunctions granted at common law. In so far as it may be said that it is easier to obtain an injunction than an ASBO, the granting of an injunction in such circumstances would in our view be to infringe Hoffmann J's principle. In any event, it appears to us that where, as here, Parliament has legislated in detail to deal with a particular problem, the courts should in general leave the matter to be dealt with as Parliament intended and, save perhaps in exceptional circumstances, refuse to grant injunctive relief of the kind which can be obtained by an ASBO.

45 We recognise that there is a general principle that, where a claimant in a civil action has two available rights or remedies, he is in general entitled to choose which to rely upon. However, the principle to which we have referred is an exception to that general principle and applies in the kind of case contemplated by Hoffmann J, of which this seems to us to be an example. We recognise that it may be said that in *Chief Constable of Leicestershire v M* Hoffmann J was considering what he regarded as an unprincipled extension of the common law in a field in which Parliament had already legislated and that in this case the jurisdiction to grant an injunction in aid of the criminal law (and indeed to restrain a public nuisance) is already established. However, it seems to us that the thought which underlies Hoffmann J's principle applies here. Parliament has recently legislated to restrain anti-social behaviour in a particular way and subject to particular safeguards. In our view the court should have that fact well in mind in deciding how to exercise its discretion whether or not to grant an injunction in a particular case.

46 We turn therefore to the nature of an ASBO. The ASBO first appeared in the Crime and Disorder Act 1998 ("the CDA 1998"), which has been amended in some important respects since it was first enacted. Section 1, as amended by section 61 of the Police Reform Act 2002, provides, so far as relevant:

> "(1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely— (a) that the person has acted . . . in an anti-social manner, that is to say, in a manner that has caused or was likely to cause harassment,

A alarm or distress to one or more persons not of the same household as himself; and (b) that such an order is necessary to protect relevant persons from further anti-social acts by him."

47 It is not in dispute that the council is a relevant authority. As we see it, the critical features of section 1, as amended, are that the defendant must have acted in an anti-social manner in the past and that an order must be B necessary to protect the public from further anti-social acts in the future. That is precisely the case made against MS and TE. By subsections (3) and (4) a magistrates' court may make an order (i e an ASBO) if it is proved that those conditions are satisfied. By subsection (5) the court must disregard any act of the defendant which he shows was reasonable in the circumstances. By subsection (6) the prohibitions that may be imposed are C those which are necessary for protecting persons from further anti-social acts by the defendant. By subsection (7) an ASBO has effect for "a period (not less than two years) specified in the order or until further order".

48 Subsections (1), (4) and (6), as amended, are of particular importance because of the decision of the House of Lords on two critical points relating to ASBOs in *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787. The first was that the proceedings are civil proceedings D and that hearsay evidence is admissible. The second was that, notwithstanding that the proceedings are civil proceedings, magistrates' courts should apply the criminal standard of proof to the requirements in section 1(1)(a) but not (b). Lord Steyn put it thus, at para 37, after a reference to the speech of Lord Nicholls of Birkenhead in *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, 586D–H:

E "But in my view pragmatism dictates that the task of magistrates should be made more straightforward by ruling that they must in all cases under section 1 apply the criminal standard. If the House takes this view it will be sufficient for the magistrates, when applying section 1(1)(a) *to be sure* that the defendant has acted in an anti-social way, that is to say, in a manner that caused or was likely to cause harassment, alarm or F distress to one or more persons not of the same household as himself. The inquiry under section 1(1)(b), namely that such an order is necessary to protect persons from further anti-social acts by him, does not involve a standard of proof: it is an exercise of judgment or evaluation. This approach should facilitate correct decision-making and should ensure consistency and predictability in this corner of the law. In coming to this conclusion I bear in mind that the use of hearsay evidence will often be G of crucial importance. For my part, hearsay evidence depending on its logical probativeness is quite capable of satisfying the requirements of section 1(1)." (Original emphasis.)

Lord Hope of Craighead reached the same conclusions, at paras 77–83. So too did Lord Hutton, at paras 113 and 114, and Lord Hobhouse of Woodborough and Lord Scott of Foscote, at paras 116 and 117, respectively.

H **49** The whole topic of the standard of proof in civil cases has recently been revisited by the House of Lords in *In re D (Secretary of State for Northern Ireland intervening)* [2008] 1 WLR 1499 and *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2009] 1 AC 11. It was not however suggested by counsel in this appeal that the

reasoning in those cases affects the decision of the House in *McCann's* case [2003] 1 AC 787. We agree that it does not, with the result that the decision in *McCann's* case governs the position in ASBO proceedings. It follows that, if these orders had been sought from a magistrates' court as ASBOs, the court would have to have been sure in each case that MS or TE (as the case might be) had acted in the way alleged and, if it was sure, would then have had to decide whether an order was necessary.

50 The judge approached the standard of proof in that way and concluded that he could not be sure on the evidence in either case. He further said that, whatever the standard of proof, he would not have granted the injunction, no doubt because he did not think that it was necessary to do so. It is submitted on behalf of the council that he was wrong to approach the standard of proof in that way in the context of an application for an injunction (as opposed to an ASBO). It would in our opinion be startling if that were so. In the passage quoted above, Lord Steyn said that the approach to the standard of proof which he identified should facilitate correct decision-making and should ensure consistency and predictability in this corner of the law. By "this corner of the law" he was, as we see it, referring to orders restraining anti-social behaviour of the kind that can be restrained by an ASBO. He was not intending to apply the criminal standard of proof to other types of injunction, whether in aid of the criminal law or to restrain a public nuisance or otherwise.

51 The questions whether an injunction should be granted in this action on the one hand or whether an ASBO should be granted in identical or near identical terms on the other are surely questions which arise in what Lord Steyn would regard as the same corner of the law. It would be bizarre, not to say irrational, if the standard of proof in answering the two questions were different.

52 Suppose two identical cases in which A is under 18 and B is over 18. In one case an ASBO is sought against defendant A in the magistrates' court and in the other defendant B is over 18 and an injunction is sought against him in the High Court or a county court. The orders sought are in identical or near identical terms. It would again surely be bizarre, not to say irrational, if the standard of proof in the two cases were different. What then is the solution? In our view the natural solution is for the High Court or county court to decline to grant an injunction but to leave the council to seek an ASBO in both cases. That approach seems to us to be consistent with Hoffmann J's principle.

53 If, exceptionally, the High Court or the county court does find it necessary to consider whether to grant an injunction in circumstances in which the relief sought is identical or almost identical to an ASBO, it should follow the approach set out by Lord Steyn and the House of Lords in *McCann's* case [2003] 1 AC 787: see further paras 63 and 64 below. In expressing those views we do not wish in any way to undermine the general principle adverted to on behalf of the council and approved in the recent House of Lords cases of *In re D* [2008] 1 WLR 1499 and *In re B* [2009] 1 AC 11 that the standard of proof in civil cases is proof on the balance of probabilities. This will be true of the ordinary case of the kind which Schiemann and Keene LJJ had in mind in *Zain's* case [2002] 1 WLR 607 in which a council seeks an injunction to restrain a public nuisance.

A **54** We return to the ASBO. The CDA 1998 provides a number of safeguards for defendants. For example, section 1E, as inserted by section 66 of the Police Reform Act 2002, imposes consultation requirements. The combined effect of section 1(1) and 1(3) of the CDA 1998, as amended, and section 127(1) of the Magistrates' Courts Act 1980 is that the behaviour relied upon to prove the first limb of the statutory test must have occurred no more than six months prior to the date of the complaint. Moreover, B under section 4 of the CDA 1998, as amended by the 2002 Act, the defendant has a right of appeal to the Crown Court, which is by way of rehearing. All these factors seem to us to point to the conclusion stated above, namely that, save perhaps in exceptional circumstances, the court should not in principle grant an injunction but leave the matter to be dealt with by way of application for an ASBO. While the High Court or a county C court is no doubt capable of ensuring that the application is fairly heard and determined, given the detailed statutory scheme laid down by Parliament, the appropriate course is for the court to decline to grant an injunction but to leave the council to its remedy in the magistrates' court if it can establish it.

55 It is submitted on behalf of the council that the above approach is not consistent with the statutory scheme because there is no statute which D describes the ASBO as an exclusive statutory code and because section 222 itself is aimed at public nuisances. Moreover, by section 91 of the Anti-social Behaviour Act 2003 Parliament provided an ancillary power of arrest specifically where an injunction was granted under section 222 to prohibit conduct which was capable of causing a nuisance or annoyance to a person: see section 91(2). By section 91(3) the power existed where the E court thought that either (a) such conduct consisted of or included the use or threatened use of violence or (b) there was a significant risk of harm to such person.

56 Section 91 of the 2003 Act was repealed by section 52 and re-enacted by section 27 of the Police and Justice Act 2006, which also includes powers of remand and bail which had not been included in section 91. It is observed on behalf of the council that the language of section 27 borrows heavily from F that of sections 153A and 153C of the Housing Act 1996, which created an anti-social behaviour injunction ("ASBI") and was inserted into the Housing Act by the 2003 and 2006 Acts. It is submitted that, given the explicit references to nuisance, annoyance, violence and harm in section 27 of the 2006 Act, it is difficult to conceive of a case where a section 222 injunction could be granted with a power of arrest but an ASBO would not be G available, yet the clear parliamentary recognition and intention that section 222 injunctions would be available in such circumstances renders it impossible to argue that the use of section 222 is an improper means of circumventing the will of Parliament. It is submitted that the judge was wrong to conclude otherwise.

57 There is undoubted force in those submissions. However, as is pointed out on behalf of the defendants, section 91 was only introduced in H 2003 at the same time as sections 153A, 153B and 153C were inserted into the Housing Act 1996 by section 13 of the 2003 Act. An ASBI is defined by section 153A(1), as substituted by section 26 of the 2006 Act, as an injunction that prohibits the defendant from engaging in "housing-related anti-social conduct of a kind specified in the injunction". It is submitted that

both section 91 of the 2003 Act and section 27 of the 2006 Act were designed to complement proceedings instituted under section 222 of the 1972 Act for an ASBI and were not intended to complement any injunction granted under section 222 or enlarge the scope of the injunction which could be granted under section 222.

58 We see the force of that submission because, if it was throughout intended that anti-social behaviour injunctions were within the powers in section 222, it is difficult to see why it was necessary to make specific provision for ASBIs in the housing context. We do not, however, construe section 91 of the 2003 Act or section 27 of the 2006 Act as so limited as a matter of construction. We construe them as wide enough to give the court power to add a power of arrest if the statutory criteria are satisfied.

59 However, that conclusion does not seem to us to affect the conclusions which we reached earlier. Those sections do not themselves extend the jurisdiction contained in section 222. Moreover, as shown in the decided cases to which we have referred, section 222 was essentially intended to confer on local authorities the procedural power, in the public interest, to seek injunctions which had previously been vested only in the Attorney General at common law. The discretion of the court whether or not to grant an injunction derives from section 37 of the Supreme Court Act 1981. In this case, as already stated, the council seeks injunctions in aid of the criminal law (in the sense discussed above) or to prevent a public nuisance. However, the principles upon which such an injunction is to be granted remain to be determined. As stated above, as we see it they have been worked out to a considerable extent in the first class of case and in the classic case of public nuisance, but they remain to be worked out in a case which has elements of both and they also remain to be worked out where what is sought is in effect an ASBO. The critical factor in the present case is in our opinion that, whether the council seeks an injunction in aid of the criminal law or on the basis of an alleged public nuisance, the essential remedy sought is an ASBO.

60 It is in this context that Hoffmann J's principle—or something closely analogous to it—falls to be respected. Thus we conclude, for the reasons we have given, that the court should not indulge in parallel creativity by the extension of general common law principles. Hoffmann J did not of course have the ASBO in mind but it seems to us that, where—as here—a council seeks an injunction in circumstances in which an ASBO would be available, the court should not, save perhaps in an exceptional case, grant an injunction but leave the council to seek an ASBO so that the detailed checks and balances developed by Parliament and in the decided cases will apply.

61 The Judicial Studies Board has issued a detailed guide for the judiciary on ASBOs which is now in its third edition: see *Anti-social Behaviour Orders: A Guide for the Judiciary.* It sets out the position in some detail and makes reference to a number of the decided cases, of which there are now quite a number. It is those cases which at present set out the position in what Lord Steyn described as this corner of the law in the sense explained above. Good sense seems to us to lead to the conclusion that we should not now develop a separate but parallel jurisprudence in respect of identical orders. Put another way, we conclude that in such circumstances, save in an exceptional case, it would not be just and convenient for the court

A to exercise its discretion to grant an injunction under section 37 of the Supreme Court Act 1981.

Jurisdiction and discretion

62 As we said earlier, the judge held that the court had no jurisdiction to grant the orders sought. For the reasons we have given, we do not agree that
B the court had no jurisdiction to grant the injunctions but we do think that it would be wrong in principle for the court to exercise its discretion by doing so. This is not an exceptional case in which the High Court or county court should grant an injunction against MS and TE in aid of the criminal law. It should in principle leave the council to seek an ASBO. The same or similar considerations lead to the conclusion that the court should not, in the exercise of its discretion grant an injunction to restrain future anti-social
C behaviour in the form of a public nuisance. We would therefore dismiss the appeal on that basis.

63 The judge found himself in a position in which (as we think wrongly) a trial had taken place. It appears that no one suggested at the outset that the appropriate course was not to embark upon a trial but to leave it to the council to proceed by way of an ASBO if it wished. For the future, we think
D that in a case of this kind, where the injunctive relief sought is to all intents and purposes identical or almost identical to an ASBO, the appropriate course is for the court to refuse to grant an injunction and to leave the council to apply for an ASBO if it wishes. Indeed, we would not expect the council to seek an injunction in such a case, save perhaps in exceptional circumstances.

E **64** In the present case a trial in fact took place and we can understand why the judge considered and expressed a conclusion on each of the issues debated before him. It was therefore necessary for him to consider the correct approach to the standard of proof. Given that the order sought was essentially the same as an ASBO, the judge was in our view correct to apply the same standard of proof as would be applied in proceedings for an ASBO. For the reasons we have given, the only principled approach, in the
F light of the ASBO legislation and the pragmatic reasoning of Lord Steyn in *McCann's* case [2003] 1 AC 787 (as set out in the passage quoted at para 48 above), was to adopt the same approach as was adopted by the House of Lords in *McCann's* case. The judge was accordingly correct to hold that he had to be sure that MS and TE had acted in the anti-social way alleged.

G **65** Since writing the above we have read Moore-Bick LJ's judgment expressing a different view on the standard of proof. We entirely understand his approach but adhere to our view that Lord Steyn's reasoning should be applied in this case, essentially for narrow pragmatic reasons and for reasons of fairness. The difference between our view and that of Moore-Bick LJ is a very narrow one. We again stress that in reaching this conclusion we do not in any way seek to depart from the principles in *In re D* [2008] 1 WLR 1499
H and *In re B (Children)* [2009] 1 AC 11. In particular we recognise that there may be cases in which the relief sought is not identical or almost identical to an ASBO and where the facts are much more complicated than they are here. In such cases, subject of course to argument in a particular case, we see no reason why the ordinary civil standard of proof should not apply.

66 In this case, even if the approach set out above were for some reason held to be wrong, we would nevertheless dismiss the appeal. This was not an exceptional case of the kind the court had in mind in, say, *City of London Corpn v Bovis Construction Ltd* [1992] 3 All ER 697. In any event, on the facts, the judge not only held that he could not be sure that MS or TE had participated in acts which were either criminal or amounted to a public nuisance, he also said, at para 92, in a passage quoted at para 19 above, that, "whatever matters would require proof", he would not make the orders. In that passage he said that there was no evidence to show that either MS or TE had behaved in the past in a way that would justify making such an order. It was not suggested that, if that was so, there was any proper basis for making the order. The judge had read the evidence and saw the witnesses. Whatever the correct approach to standard of proof, we see no basis upon which this court could properly interfere with that exercise of discretion on the part of the judge.

Conclusion

67 For the reasons we have given, these appeals must be dismissed. It would have been wrong in principle for the court to exercise its discretion to grant these injunctions because the appropriate course was for the council to apply for ASBOs. In any event the judge was correct to conclude that the relevant question was whether he was sure that MS or TE had acted in an anti-social way, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress. He was entitled to conclude that he could not be sure. Further, he was entitled to conclude, in the exercise of his discretion, that it was not necessary or appropriate to make the orders against these defendants.

68 In reaching these conclusions we do not wish to minimise in any way the problems identified by the council. However, we are confident that the courts have ample powers to deal with them. The difficulty for the council here was that, as was submitted on behalf of the defendants, the case against these individuals was very thin on the facts. There is no reason why an ASBO should not be made against those against whom the evidence is sufficient, which must be true in many cases. Moreover, there may be exceptional cases where it would be appropriate to grant an injunction. This is not such a case.

MOORE-BICK LJ

69 I agree that this appeal should be dismissed for the reasons given by Sir Anthony Clarke MR and Rix LJ with which I agree, save in one respect, namely, the standard of proof to be applied in proceedings for an injunction of the kind that were before the judge.

70 The council's application for an injunction was based on allegations that the defendants were members of a gang of youths who on various occasions had harassed, intimidated and sometimes assaulted members of the public going about their lawful business in the centre of Birmingham and that they were likely to continue behaving in that way unless restrained by an order of the court. Although it was an important part of the council's case that the defendants had behaved in that way in the past, it was not necessary for it to prove that as a condition of obtaining the relief it sought.

A What was essential, however, if the council was to have any prospect of persuading the court to grant an injunction against the defendants, was that it should establish facts from which the court could be satisfied that there was a sufficient likelihood that, unless restrained, the defendants would behave in that way in the future.

71 The recent decisions of the House of Lords in *In re D (Secretary of State for Northern Ireland intervening)* [2008] 1 WLR 1499 and *In re* B *B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2009] 1 AC 11 make it clear that, save in a few exceptional cases, the standard of proof in civil proceedings is proof on the balance of probabilities. It follows that, in so far as it is necessary for a claimant seeking an injunction to establish the existence of certain facts in order to obtain relief, he must in principle do so on the balance of probabilities.

C **72** Anti-social behaviour orders ("ASBOs") are the creature of statute and the statutory provisions relating to them require certain facts to be proved before an order can be made: see sections 1(1)(a) and 1(4) of the Crime and Disorder Act 1998. In many respects ASBOs are very similar to injunctions, but there are some important differences between them, principally the fact that the breach of an ASBO is a criminal offence D punishable by up to five years' imprisonment. It was the fact that ASBOs have a flavour of the criminal law about them that the question arose whether proceedings for such orders are to be classified in domestic law as criminal or civil proceedings. However, it has now been finally established by the decision of the House of Lords in *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787 that they are civil in character. Ordinarily that would have led to the conclusion that it is sufficient to establish on the E balance of probabilities the existence of the facts necessary to enable the court to make an order, but their Lordships held, essentially for pragmatic reasons, that the criminal standard of proof should apply, a course which Lord Steyn, in the passage of his speech cited by Sir Anthony Clarke MR and Rix LJ, at para 48 above, considered would "ensure consistency and predictability in this corner of the law".

F **73** In *McCann's* case the House was concerned only with the legislation relating to ASBOs and not with the court's general jurisdiction to grant relief by way of injunction. Accordingly, when Lord Steyn referred to "this corner of the law" I think he meant proceedings under section 1 of the Crime and Disorder Act 1998. He did not, in my view, intend to include in that expression all applications to restrain by injunction in the exercise of the court's general jurisdiction conduct of an anti-social kind G that could, if the requirements of section 1(1) of the Act were satisfied, be controlled by an ASBO.

74 Sir Anthony Clarke MR and Rix LJ have come to a different conclusion on this point, largely because they consider that it would be irrational if the standard of proof were to differ depending on whether the application before the court was for an ASBO or an injunction. However, in H my view the apparent anomaly is not as surprising as it may seem at first sight, because the formal requirements of the proceedings, the persons by whom proceedings may be commenced and the procedure by which the applications are made differ significantly. In particular, the nature of the legislation and the requirement that applications for ASBOs be made to the magistrates' courts were held to provide good reason for the adoption,

exceptionally, of the criminal standard to the proof of the facts which must be established before an order can be made, despite the fact that the proceedings are civil in nature. There is no comparable reason, however, why proceedings for an injunction to restrain conduct that involves intimidation, harassment or assault should require proof to the criminal standard of the facts relied on in support of the claim. The anomaly to which Sir Anthony Clarke MR and Rix LJ draw attention arises only because in this case the conduct which the council seeks to prevent may in principle be amenable to being restrained by an ASBO (if the necessary conditions can be satisfied) or by the grant of an injunction. However, that will often not be the case, as, for example, where the person adversely affected lives in the same household: see section 1(1)(a) of the 1998 Act.

75 It is not uncommon for a claimant to seek an injunction on the basis of allegations that the defendant has acted in a way that involves a breach of the criminal law as well as an infringement of his private rights. Fraud and other examples of dishonesty provide some of the commoner examples, though the relief sought in such cases is not usually directed to restraining further acts of a similar kind. However, in *In re B (Children)* [2009] 1 AC 11 the House of Lords made it clear that, apart from a few exceptions, the same standard of proof applies in all civil proceedings. It is not affected by the seriousness of the allegation or the gravity of the consequences, if it is proved, although regard must always be had to the inherent probabilities when reaching a decision. Since the present proceedings involved nothing more than a claim for an injunction, the civil standard of proof applied, unless the case can be brought within some other, hitherto unidentified, exception to the ordinary rule.

76 In my view it is desirable in the interests of consistency of principle that exceptions to the general rule concerning the standard of proof in civil proceedings should be confined to those cases in which there are strong grounds for departing from it. For the reasons I have given I do not think that there are sufficient reasons for recognising a new exception in cases of this kind, the precise scope of which is not easy to define. Civil proceedings for an injunction cannot as a class form an exception to the general rule and I do not think that proceedings by local authorities for injunctions in aid of the criminal law or to restrain a public nuisance can do so either. Sir Anthony Clarke MR and Rix LJ consider that, because of the anomaly to which he refers, the criminal standard of proof should apply in any proceedings for an injunction in which the claim is based on allegations that correspond to the requirements of section 1(1)(a) of the Crime and Disorder Act 1998. In my view, however, that is to introduce an unnecessary element of uncertainty into an area of the law which has recently been clarified by the decisions in *In re D* and *In re B (Children)*. The anomaly to which Sir Anthony Clarke MR and Rix LJ refer is a product of the particular circumstances of this case; in my view it is not one which justifies the recognition of any new exception to the general rule relating to the standard of proof in civil proceedings. However, I agree that the fact that the principles which apply in proceedings for an ASBO differ in the respects mentioned earlier from those that apply in proceedings for an injunction is an additional reason for declining to grant relief by way of injunction where the ASBO procedure is available.

A 77 For these reasons I think the judge was wrong to direct himself that he needed to be sure that the defendants had committed the acts on which the council based its claim for an injunction. In my view it was sufficient for him to be satisfied on the balance of probabilities of facts that demonstrated a sufficient likelihood that they would commit breaches of the criminal law in the future, unless restrained from doing so, to justify granting an injunction. Equally, in so far as it may have been necessary or desirable for
B the council to prove that the defendants were persistent offenders (see the comments of Bingham LJ in *City of London Corpn v Bovis Construction Ltd* [1992] 3 All ER 697, to which Sir Anthony Clarke MR and Rix LJ have referred), it was sufficient for it to establish that on the balance of probabilities. Having said that, I agree with Sir Anthony Clarke MR and Rix LJ that, even if all those matters had been established in this case, it
C would have been wrong for the court to exercise its discretion in favour of granting an injunction when it was open to the council to proceed by way of an application for an ASBO.

Appeal dismissed.
Permission to appeal refused.

D 12 February 2009. The Appeal Committee of the House of Lords (Lord Rodger of Earlsferry, Lord Carswell and Lord Brown of Eaton-under-Heywood) dismissed a petition by the council for leave to appeal.

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Court of Appeal

*Birmingham City Council *v* Sharif

[2020] EWCA Civ 1488

2020 Nov 3; 10 Sir Terence Etherton MR, Bean, Holroyde LJJ

B

Local government — Powers — Action by local authority — Local authority obtaining injunction to control street cruising — Whether injunction appropriate remedy where local authority having power to make public spaces protection order — Local Government Act 1972 (c 70), s 222(1)(a) — Anti-social Behaviour, Crime and Policing Act 2014 (c 12), ss 22, 59

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Acting pursuant to its powers under section 222(1)(a) of the Local Government Act 1972[1], the local authority applied for an injunction against persons unknown to prohibit "street cruising" throughout the authority's area. A street cruise was defined in the injunction sought as a congregation of drivers of motor vehicles which caused, among other things, excessive noise and danger to other road users by taking part in activities such as driving at excessive speed, driving in convoy or performing stunts. An injunction was granted with a power of arrest attached. Subsequently the local authority applied to commit the respondent for contempt of court for breach of the

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injunction. The judge dismissed the respondent's application for the injunction to be discharged, rejecting his submission that the injunction should not have been granted because the local authority had the alternative remedy of itself making a public spaces protection order under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014[2]. The respondent appealed, contending additionally that another alternative remedy was for the local authority to seek to have individuals who took part in street cruising prosecuted for motoring offences, after which the prosecution could apply to

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the sentencing court for a criminal behaviour order under section 22 of the 2014 Act.

On the appeal—

Held, dismissing the appeal, that a public spaces protection order under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 might well be

[1] Local Government Act 1972, s 222(1): "Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area— (a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may

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institute them in their own name . . ."

[2] Anti-social Behaviour, Crime and Policing Act 2014, s 22: "(1) This section applies where a person ('the offender') is convicted of an offence. (2) The court may make a criminal behaviour order against the offender if two conditions are met. (3) The first condition is that the court is satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person. (4) The second condition is that the court considers that making the order will help in preventing the offender from engaging in such behaviour. (5) A criminal behaviour order is an order which, for the purpose of preventing the offender from engaging in such behaviour— (a) prohibits the offender from doing anything

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described in the order; (b) requires the offender to do anything described in the order."

S 59: "(1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met. (2) The first condition is that— (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect. (3) The second condition is that the effect, or likely effect, of the activities— (a) is, or is likely to be, of a persistent or continuing nature, (b) is, or is likely to be, such as to make the activities unreasonable, and (c) justifies the restrictions imposed by the notice. (4) A public spaces protection order is an order that identifies

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the public place referred to in subsection (2) ('the restricted area') and— (a) prohibits specified things being done in the restricted area, (b) requires specified things to be done by persons carrying on specified activities in that area, or (c) does both of those things. (5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order— (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence."

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ineffective to prevent street cruising since breach of such an order was a non-arrestable offence carrying only a financial sanction and there might also be potential difficulties about what did or did not constitute a "public space", how large that public space could be and whether a public spaces protection order could properly cover the activities of those who organised or advertised street cruises; that, further, the alternative remedy of applying for a criminal behaviour order under section 22 of the 2014 Act following prosecution for a motoring offence was equally likely to be ineffective since it was unclear who, in practice, would initiate and conduct the necessary prosecution, who would be specified to supervise compliance with the criminal behaviour order and who would prosecute in the event of a breach of the criminal behaviour order; that, therefore, in the circumstances, the judge who granted the injunction and the judge who dismissed the respondent's application to discharge the injunction had been entitled to conclude that street cruising in the local authority's area would continue unless and until effectively restrained by the law and that nothing short of an injunction would be effective to restrain it; and that, accordingly, it had been appropriate for the former judge to exercise his discretion to grant the injunction sought by the local authority pursuant to section 222 of the Local Government Act 1972 (post, paras 39–42, 45, 46, 47).

Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] AC 754, HL(E) and *City of London Corporation v Bovis Construction Ltd (No 2)* [1992] 3 All ER 697, CA applied.

Birmingham City Council v Shafi [2009] 1 WLR 1961, CA distinguished.

Decision of Judge McKenna sitting as a judge of the Queen's Bench Division [2019] EWHC 1268 (QB); [2019] LLR 494 affirmed.

The following cases are referred to in the judgment of Bean LJ:

Birmingham City Council v Afsar [2019] EWHC 3217 (QB); [2020] 4 WLR 168; [2020] 3 All ER 756

Birmingham City Council v James [2013] EWCA Civ 552; [2014] 1 WLR 23, CA

Birmingham City Council v Shafi [2008] EWCA Civ 1186; [2009] 1 WLR 1961; [2009] PTSR 503; [2009] 3 All ER 127; [2009] LGR 367, CA

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

Chief Constable of Leicestershire v M [1989] 1 WLR 20; [1988] 3 All ER 1015

City of London Corporation v Bovis Construction Ltd (No 2) [1992] 3 All ER 697, CA

Guildford Borough Council v Hein [2005] EWCA Civ 979; [2005] LGR 797, CA

Ineos Upstream Ltd v Persons Unknown (Friends of the Earth intervening) [2019] EWCA Civ 515; [2019] 4 WLR 100; [2019] 4 All ER 699, CA

Mayor of London (on behalf of the Greater London Authority) v Hall [2010] EWCA Civ 817; [2011] 1 WLR 504, CA

R (McCann) v Crown Court at Manchester [2002] UKHL 39; [2003] 1 AC 787; [2002] 3 WLR 1313; [2002] 4 All ER 593; [2003] LGR 57, HL(E)

Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] AC 754; [1984] 2 WLR 929; [1984] 2 All ER 332; 82 LGR 473, HL(E)

Swindon Borough Council v Redpath [2009] EWCA Civ 943; [2010] PTSR 904; [2010] 1 All ER 1003; [2010] LGR 28, CA

The following additional cases were cited in argument:

Dulgheriu v Ealing London Borough Council (National Council for Civil Liberties (trading as Liberty) intervening) [2018] EWHC 1667 (Admin); [2019] PTSR 706; [2019] EWCA Civ 1490; [2020] 1 WLR 609; [2020] PTSR 79; [2020] 3 All ER 545, CA

West Sussex County Council v Persons Unknown [2013] EWHC 4024 (QB)

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

Ali v Bradford Metropolitan District Council [2010] EWCA Civ 1282; [2012] 1 WLR 161; [2011] PTSR 1534; [2011] 3 All ER 348, CA

Birmingham City Council v Jones (Secretary of State for the Home Department intervening) [2018] EWCA Civ 1189; [2019] QB 521; [2018] 3 WLR 1695, CA

B *Summers v Richmond upon Thames London Borough Council* [2018] EWHC 782 (Admin); [2018] 1 WLR 4729

APPEAL from Judge McKenna sitting as a judge of the Queen's Bench Division

By an application notice served on 27 September 2018 the applicant local C authority, Birmingham City Council, applied to commit the respondent, Harun Mansoor Sharif, for contempt of court, alleging that on 16 September 2018 he had breached an injunction, which the local authority had obtained pursuant to section 222 of the Local Government Act 1972, prohibiting street cruising throughout the local authority's area, by participating in a street cruise within the area covered by the injunction, causing danger and/or nuisance to other road users by racing his motor car against another vehicle D dangerously and at an excessive speed. The respondent applied to have the injunction discharged on the basis that it was plainly wrong to have granted it and that there was an error of principle in the reasoning which led to its grant, contending that instead of applying for an injunction the local authority ought to have made a public spaces protection order under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014. On 23 May 2019 Judge E McKenna sitting as a judge of the Queen's Bench Division [2019] EWHC 2168 (QB); [2019] LLR 494 dismissed the application to discharge the injunction.

By an appellant's notice filed on 10 June 2019 and with permission granted by the Court of Appeal (Floyd LJ) on 23 December 2019 the respondent appealed on the following grounds. (1) The judge had erred in F law in holding that an intention ought not to be imputed to Parliament that a public authority should be obliged to make public spaces protection orders and still less that the court should exercise its discretion to decline to deal with an application on the basis that the local authority should have made an order itself without coming to court. (2) The judge had erred in law in holding that the present case was nearer to *Swindon Borough Council v* G *Redpath* [2010] PTSR 904 than *Birmingham City Council v Shafi* [2009] 1 WLR 1961 and that a public spaces protection order was not identical or even remotely similar to the remedy provided by the High Court. (3) The judge had erred in law in holding that there was no general principle that only in exceptional circumstances should a court grant an injunction where an alternative, specific, statutory remedy was available or the court should not do so where breach could carry more severe sanctions than breach of a H public spaces protection order, nor was there any basis for arguing that local authorities could not seek a remedy with more serious consequences in the event of a breach or that the court could not grant such a remedy if it considered it justified and proportionate so to do.

The facts are stated in the judgment of Bean LJ, post, paras 1, 6–7.

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Ramby de Mello (instructed by *McGrath & Co, Birmingham*) for the respondent.

Jonathan Manning and *Iulia Şaran* (instructed by *Legal and Democratic Services, Birmingham City Council, Birmingham*) for the local authority.

The court took time for consideration.

10 November 2020. The following judgments were handed down.

BEAN LJ

1 Street cruising, or car cruising, is a term used to describe a form of anti-social behaviour which has apparently become a widespread problem in the West Midlands in particular. By a claim issued on 6 September 2016 against "persons unknown" Birmingham City Council sought an injunction pursuant to section 222 of the Local Government Act 1972 to prohibit street cruising throughout their local authority area. On 3 October 2016 Judge Worster, sitting as a judge of the Queen's Bench Division, granted the injunction for a period of three years. On 24 May 2019 Judge McKenna, also sitting as a judge of the Queen's Bench Division, [2019] EWHC 1268 (QB); [2019] LLR 494 refused an application by the present appellant Harun Mansoor Sharif to discharge the injunction. The question on this appeal from Judge McKenna's decision is whether the injunction was properly granted, given what is said to be the alternative remedy available to the council of itself making a public spaces protection order ("PSPO") under Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014.

2 Two witness statements of Mr David Bird of Birmingham's Housing Department were in evidence before Judge Worster and Judge McKenna. They provided powerful evidence that street cruising was a widespread problem and that the council's attempts to deal with it by means short of an injunction had been unsuccessful.

3 Street cruising is not a statutory term. It was defined in a schedule to Judge Worster's order as follows:

> " 'Street cruise'
>
> "1. 'Street cruise' means a congregation of the drivers of two or more motor vehicles (including motor cycles) on the public highway or at any place to which the public have access within the claimant's local government area (known as the City of Birmingham) as shown delineated in blue on the map at Schedule 1, at which any person, whether or not a driver or rider, performs any of the activities set out at paragraph 2 below, so as, by such conduct, to cause any of the following: (i) excessive noise; (ii) danger to other road users (including pedestrians); (iii) damage or the risk of damage to private property; (iv) litter; (v) any nuisance to another person not participating in the street cruise.
>
> "2. The activities referred to at paragraph 1, above, are: (i) driving or riding at excessive speed, or otherwise dangerously; (ii) driving or riding in convoy; (iii) racing against other motor vehicles; (iv) performing stunts in or on motor vehicles; (v) sounding horns or playing radios; (vi) dropping litter; (vii) supplying or using illegal drugs; (viii) urinating in public; (ix) shouting or swearing at, or abusing, threatening or otherwise intimidating another person; (x) obstruction of any other road-user.

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A " 'Participating in a street cruise'

"3. A person participates in a street cruise whether or not he is the driver or rider of, or passenger in or on, a motor vehicle, if he is present and performs or encourages any other person to perform any activity to which paragraphs 1–2 above apply, and the term 'participating in a street cruise' shall be interpreted accordingly."

B A power of arrest, pursuant to section 27 of the Police and Justice Act 2006, was attached to the injunction in relation to anyone participating in a street cruise as the driver or rider of, or passenger in, a vehicle to which paragraphs 1 and 2 applied.

4 The injunction came into force on 24 October 2016 and was to continue for three years. We are informed that it was renewed until 1 September 2022 by Judge Rawlings on 22 October 2019.

C **5** Paragraph 5 of Judge Worster's order provided that any person served with a copy of the order could apply to the court to vary or discharge it on 48 hours' written notice to the council. Schedule 3 to the order provided for service of the injunction to be effected by placing notices in newspapers, online and in prominent locations throughout Birmingham.

6 On 27 September 2018 the council served a notice of application to
D commit for contempt of court on Mr Sharif. The application alleged that on 16 September 2018 he had breached the terms of the injunction by participating in a street cruise within the area covered by the injunction, causing danger and/or nuisance to other road users by racing his black Audi A5 motor car registration number RF63 HBJ against another vehicle dangerously and at an excessive speed. He was arrested and brought before the court.

E **7** He applied to have the injunction discharged on the basis that it was plainly wrong to have granted it and that there was an error of principle in the reasoning which led to its grant. Mr de Mello, who appeared for him below as well as before us, relied on the decision of this court in *Birmingham City Council v Shafi* [2009] 1 WLR 1961 ("*Shafi*"). In that case, as he put it, the Court of Appeal concluded that where a local authority sought an
F injunction on terms that were identical or almost identical to the terms that could have been sought on an application for an anti-social behaviour order ("ASBO"), which latter order was Parliament's preferred remedy for the type of conduct complained of and incorporated safeguards for defendants not available under the civil injunction regime, then while the court retained jurisdiction to grant an injunction, it would not, as a matter of discretion, grant one save in exceptional circumstances.

G **8** As in the case of *Shafi*, the argument runs, Parliament has provided a remedy and a specific procedure in the form of the PSPO to combat the very type of behaviour complained about and, therefore, the courts should give effect to Parliament's intention and only in very rare circumstances would it be appropriate for the court to grant injunctive relief. It was pointed out that Gateshead Metropolitan Borough Council had apparently sought to deal
H with street cruising by making a PSPO for their area.

9 In further support of his argument, it was submitted on behalf of Mr Sharif that the sanctions under the Contempt of Court Act 1981, namely an unlimited fine and/or imprisonment for up to two years, are far more onerous than the sanctions provided for in respect of breaches of PSPOs pursuant to the 2014 Act, a result that Parliament could not have intended,

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and equally, it was said, that Parliament in the PSPO regime expressly provided that a person would not be guilty of an offence if there was a reasonable excuse, a safeguard lacking in respect of committal proceedings. A

10 Judge McKenna dismissed the application to discharge the injunction. The essence of his judgment can be found in paras 27–30 and 32–33:

> "27. To my mind, the 16th respondent [Mr Sharif]'s reliance on the decision in *Shafi* is entirely misplaced. PSPOs are not a specific statutory remedy designed or introduced by Parliament to tackle the specific problem of car cruising. They replace, as I have already indicated, public space orders, restricting problem drinking, gating orders and dog control orders and give local authorities a general power to tackle activities that may cause a detrimental effect to quality of life of those living in their localities. The fact that Gateshead [Metropolitan Borough Council] may have made use of that power to deal with similar issues to those in respect of which the injunction was sought is neither here or there. B C
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> "28. Moreover, as counsel for the applicant submitted in respect of the argument based on the case of *Shafi*, here the choice is not between two different types of court orders but between a remedy which requires a judicial decision and is, therefore, made by an independent and impartial tribunal on the one hand and on the other, the PSPO which the local authority makes for itself. D
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> "29. In those circumstances it does not seem to me that an intention should be imputed to Parliament that a public authority should be obliged to make PSPOs which are orders made without recourse to the courts and still less that the courts should in the exercise of their discretion decline to deal with an application on the basis that the local authority should have made an order itself without coming to court. That would be a very surprising result—even more so when it is remembered that in the *Shafi* case the 'ASBO' regime provided specific safeguards which were lacking in the alternative approach and which made it more difficult for a local authority to obtain an 'ASBO'. E
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> "30. Moreover, *Shafi* has not been followed in other cases. It was expressly distinguished and indeed held to be irrelevant by the Court of Appeal in *Swindon Borough Council v Redpath* [2010] PTSR 904 where the court held that there was no reason why a local authority should not use the [anti-social behaviour injunction] 'ASBI' regime instead of the 'ASBO' regime and in respect of which a civil standard of proof would be applied. Likewise, in *Birmingham City Council v James* [2014] 1 WLR 23 the Court of Appeal held there was no doctrine requiring one statutory remedy to be used in preference to another." F G
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> "32. In short, it is clear from the decisions in *Redpath* and *James* that there has never been a doctrine requiring an authority to apply for the remedy representing the closest fit to the mischief aimed at and, in any event, the alternative remedy contended for on the 16th respondent's behalf, namely the PSPO, is not identical or even remotely similar. H
>
> "33. There is no general principle that only in exceptional circumstances should a court grant an injunction where an alternative, specific statutory remedy is available or the court should not do so where breach can carry more severe sanctions than breach of a PSPO nor is there any basis for the argument that local authorities cannot seek a remedy

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A with more serious consequences in the event of a breach or that the court cannot grant such a remedy if it considers it justified and proportionate so to do. In this case, the court had ample evidence of the previous attempts made by the West Midlands Police to address car cruising and to the effect that those attempts have proved inadequate and therefore to conclude that the granting of the injunction was appropriate."

B **11** Mr Sharif applied for permission to appeal on three grounds.

(1) "The learned judge erred in law in holding that an intention should not be imputed to Parliament that a public authority should be obliged to make public spaces protection orders and still less that the court should in the exercise of their discretion decline to deal with an application on the basis that the local authority should have made an order itself without C coming to court [para 29]."

(2) "The learned judge erred in law in holding that this case was nearer the case of *Swindon Borough Council v Redpath* [2010] PTSR 904 than the case of *Birmingham City Council v Shafi* [2009] 1 WLR 1961 [para 30] and that the PPO [sic] is not identical or even remotely similar to the remedy provided by the High Court [para 32]."

(3) "The learned judge erred in law in holding 'There is no general D principle that only in exceptional circumstances should a court grant an injunction where an alternative, specific, statutory remedy is available or the court should not do so where breach can carry more severe sanctions than breach of a PSPO nor is there any basis for the argument that local authorities cannot seek a remedy without more serious consequences in the event of a breach or that the court cannot grant such remedies if it considers E it justified and proportionate so to do' [para 33]."

12 In his main skeleton argument Mr de Mello added a further point:

> "Section 130 of the Highways Act 1980 was inapplicable. [That section] is concerned with the protection of the legal rights of the public at large to use the public highway and with legal rights of access, not with the safety of the condition of the public highway (*Ali v Bradford* F *Metropolitan District Council* [2012] 1 WLR 161, para 39) or for that matter car cruising on the highway. The court refused to impose liability through the law of private nuisance as it would amount to the use of a blunt instrument to interfere with a carefully regulated statutory scheme and would usurp the proper role of Parliament."

13 Permission to appeal to this court was granted by Floyd LJ in an G order sealed on 23 December 2019. He wrote:

> "The grounds of appeal have a real prospect of success and, even if they did not, the legality of the practice of granting injunctions of this character is of sufficient general importance to amount to a compelling reason for the issue to be considered at this level."

H *Public spaces protection orders*

14 Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") introduced new powers for community protection, including PSPOs. PSPOs replaced designated public place orders, gating orders and dog control orders.

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15 Section 59(4) of the 2014 Act provides that a PSPO is an order which identifies a public place ("the restricted area") and: (a) prohibits specified things being done in the restricted area, (b) requires specified things to be done by persons carrying on specified activities in that area, or (c) does both of those things.

16 By section 59(1)–(2) of the 2014 Act, a local authority may make a PSPO if satisfied on reasonable grounds that: (a) activities carried on in a public place within the authority's area have had a detrimental effect to the quality of life of those in the locality, or (b) it is likely that activities will be carried on that will have such an effect.

17 The effect of the activities must be, or be likely to be: (a) of a persistent or continuing nature; and (b) such as to make the activities unreasonable; and (c) must justify the restrictions imposed by the notice (section 59(3)).

18 By section 59(5), the only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order: "(a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence."

19 Before a PSPO may be made, there are various consultation requirements that must be complied with (section 72). There are also restrictions on the orders that may be made in respect of highways (sections 64–65).

20 Parliament neither repealed nor amended section 130 of the Highways Act 1980, nor any of the other statutory provisions relied on by the council, when introducing PSPOs. The 2014 Act repealed and replaced the ASBO regime with, among other things, criminal behaviour orders ("CBOs").

21 Breach of a PSPO, without reasonable excuse, is a criminal offence (section 67(1)), punishable with a fixed penalty notice (of up to £100) (section 68) or a fine, on summary conviction, not exceeding level 3 (currently up to £1,000) (section 67(2)).

Section 222 of the Local Government Act 1972

22 The centrepiece of Mr de Mello's argument before us, as it was before Judge McKenna, was *Shafi* [2009] 1 WLR 1961, in which it was held that an injunction restraining gang-related activity by three named defendants should not have been granted under section 222 in terms identical or nearly identical to those which could have been included in an ASBO granted by a criminal court under the Crime and Disorder Act 1998.

23 Before examining *Shafi* I should begin with two previous authorities dealing with section 222 of the 1972 Act. The first is the decision of the House of Lords in *Stoke-on-Trent City Council v B & Q (Retail) Ltd* [1984] AC 754. That case was the culmination of an epic struggle between local authorities and DIY supermarkets and others which sought to open on Sundays in breach of the law as it then was (the Shops Act 1950) prior to the enactment of the Sunday Trading Act 1994. The maximum penalty under the Shops Act 1950 was £50 for a first offence and £200 for any subsequent offence.

24 The House of Lords held that an interlocutory injunction to restrain Sunday trading by B & Q had been properly granted. Lord Templeman said at p 776:

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A "It was said that the council should not have taken civil proceedings until criminal proceedings had not persuaded the appellants to obey the law. As a general rule the local authority should try the effect of criminal proceedings before seeking the assistance of the civil courts. But the council were entitled to take the view that the appellants would not be deterred by a maximum fine which was substantially less than the profits which could be made from illegal Sunday trading."

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25 *City of London Corporation v Bovis Construction Ltd (No 2)* [1992] 3 All ER 697 was a decision of this court concerning an injunction under section 222 to tackle nuisance caused by noise. In a well-known passage, cited by Mr de Mello in argument, Bingham LJ said at p 714:

"The guiding principles must, I think, be—

C "(1) that the jurisdiction is to be invoked and exercised exceptionally and with great caution: see the authority already cited [*Gouriet v Union of Post Office Workers* [1978] AC 435];

"(2) that there must certainly be something more than mere infringement of the criminal law before the assistance of civil proceedings can be invoked and accorded for the protection or promotion of the interests of the inhabitants of the area: see the *Stoke-on-Trent* case at

D pp 767B, 776C, and *Wychavon District Council v Midland Enterprises (Special Events) Ltd* (1987) 86 LGR 83, 87;

"(3) that 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

E effective to restrain them: see the *Wychavon* case at p 89."

26 Against that background I turn to *Shafi* [2009] 1 WLR 1961, in which I note that Mr Manning appeared for the council and Mr de Mello for one of the three defendants. In an attempt to mitigate the impact of a growing gang culture and accompanying serious crime in Birmingham the council applied for injunctions under section 222 restraining the defendants

F from entering the city centre, associating with named individuals or wearing green clothing, which was the colour of the gang of which they were alleged to be members. The injunctions sought were in identical or almost identical terms to ASBOs which the council had obtained in the magistrates' court against juvenile gang members. The council obtained interlocutory injunctions against the defendants but these were discharged following a

G trial in the county court before Judge MacDuff QC (as he then was). An appeal by the council to this court was dismissed.

27 In the principal judgment given jointly by Sir Anthony Clarke MR and Rix LJ they referred to the *B & Q* case and to *City of London Corporation v Bovis*. At para 33 they said:

"The principles summarised by Bingham LJ have been followed and to

H some extent broadened in later cases. For example, in *Barking and Dagenham London Borough Council v Jones* (unreported) 30 July 1999; CA Transcript No 1369. Brooke LJ, with whom May and Laws LJJ agreed, said this, with regard to Bingham LJ's principles: 'The application of those principles means that if the court is satisfied that nothing short of an injunction will be effective to restrain a defendant's unlawful

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operations it may grant an injunction even though he has not yet been subjected to the maximum penalty available under the criminal law.' " A

28 After referring to the decision of this court in *Guildford Borough Council v Hein* [2005] LGR 797 they said at para 36:

"Those cases suggest a somewhat broader approach than some of the earlier ones, although, in our judgment the essential principles remain those summarised by Bingham LJ, in so far as the injunction is sought in aid of the criminal law, if by that is meant or includes a case where the injunction is sought to prevent the defendant from committing criminal offences. As appears below, it is our view, first that these principles are subject to any legislation which is designed to deal with the very situation which an injunction is sought to control and secondly that the ASBO legislation is designed to do just that." B C

29 At para 43 they turned to consideration of the ASBO legislation then in force and referred to a decision of Hoffmann J in *Chief Constable of Leicestershire v M* [1989] 1 WLR 20. That was a case in which the police sought an injunction restraining the defendant from dealing with assets which were alleged to represent profits from fraudulent activities. Hoffmann J said in the final paragraph of his judgment: "In my judgment there is no authority for the police having any 'right' in respect of such money which could found a claim for an injunction." He noted that the Drug Trafficking Offences Act 1986 had made what he described as "elaborate provision" for enabling the courts to restrain dispositions of assets suspected of being derived from dealings in drugs, and that even more recently Parliament had enacted similar provisions applicable to all indictable offences in the Criminal Justice Act 1988; but that the latter statute was not yet in force. That gives the context to the observation at the end of his judgment, cited by this court in *Shafi* at para 43, on which Mr de Mello strongly relies, that: "The recent and detailed interventions of Parliament in this field suggest that the court should not indulge in parallel creativity by the extension of general common law principles." D E

30 Sir Anthony Clarke MR and Rix LJ continued: F

"44. The significance of the principle stated by Hoffmann J in this appeal is this. The terms of the injunction sought in this action are typical of an ASBO and, as already indicated, on the facts of this case they are identical or almost identical to the terms of an ASBO. We have already referred to what is in our view a striking feature of the council's approach in this case, namely that it seeks ASBOs against those under 18 and injunctions in identical terms against those over 18. Parliament has laid down a number of specific requirements which apply to ASBOs, some of which may not apply to injunctions granted at common law. In so far as it may be said that it is easier to obtain an injunction than an ASBO, the granting of an injunction in such circumstances would in our view be to infringe Hoffmann J's principle. In any event, it appears to us that where, as here, Parliament has legislated in detail to deal with a particular problem, the courts should in general leave the matter to be dealt with as Parliament intended and, save perhaps in exceptional circumstances, refuse to grant injunctive relief of the kind which can be obtained by an ASBO. G H

"45. We recognise that there is a general principle that, where a claimant in a civil action has two available rights or remedies, he is in

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general entitled to choose which to rely upon. However, the principle to which we have referred is an exception to that general principle and applies in the kind of case contemplated by Hoffmann J, of which this seems to us to be an example. We recognise that it may be said that in *Chief Constable of Leicestershire v M* Hoffmann J was considering what he regarded as an unprincipled extension of the common law in a field in which Parliament had already legislated and that in this case the jurisdiction to grant an injunction in aid of the criminal law (and indeed to restrain a public nuisance) is already established. However, it seems to us that the thought which underlies Hoffmann J's principle applies here. Parliament has recently legislated to restrain anti-social behaviour in a particular way and subject to particular safeguards. In our view the court should have that fact well in mind in deciding how to exercise its discretion whether or not to grant an injunction in a particular case."

31 They went on to refer to the terms of section 1 of the Crime and Disorder Act 1998 which first introduced ASBOs, and to the decision of the House of Lords in *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787 that on applications for ASBOs magistrates' courts should apply the criminal standard of proof to the question of whether it had been shown that the defendant had acted in an anti-social manner. Lord Steyn dealt with that point in particular and said that the application of the criminal standard of proof should ensure consistency and predictability in "this corner of the law". The Master of the Rolls and Rix LJ continued:

"51. The questions whether an injunction should be granted in this action on the one hand or whether an ASBO should be granted in identical or near identical terms on the other are surely questions which arise in what Lord Steyn would regard as the same corner of the law. It would be bizarre, not to say irrational, if the standard of proof in answering the two questions were different.

"52. Suppose two identical cases in which A is under 18 and B is over 18. In one case an ASBO is sought against defendant A in the magistrates court and in the other defendant B is over 18 and an injunction is sought against him in the High Court or a county court. The orders sought are in identical or near identical terms. It would again surely be bizarre, not to say irrational, if the standard of proof in the two cases were different. What then is the solution? In our view the natural solution is for the High Court or county court to decline to grant an injunction but to leave the council to seek an ASBO in both cases. That approach seems to us to be consistent with Hoffmann J's principle."

32 They added:

"59. The discretion of the court whether or not to grant an injunction derives from section 37 of the Supreme Court Act 1981. In this case, as already stated, the council seeks injunctions in aid of the criminal law (in the sense discussed above) or to prevent a public nuisance. However, the principles upon which such an injunction is to be granted remain to be determined. As stated above, as we see it they have been worked out to a considerable extent in the first class of case and in the classic case of public nuisance, but they remain to be worked out in a case which has elements of both and they also remain to be worked out where what is sought is in effect an ASBO. The critical factor in the present case is in our

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opinion that, whether the council seeks an injunction in aid of the criminal law or on the basis of an alleged public nuisance, the essential remedy sought is an ASBO. A

"60. It is in this context that Hoffmann J's principle—or something closely analogous to it—falls to be respected. Thus we conclude, for the reasons we have given, that the court should not indulge in parallel creativity by the extension of general common law principles. Hoffmann J did not of course have the ASBO in mind but it seems to us that, where—as here—a council seeks an injunction in circumstances in which an ASBO would be available, the court should not, save perhaps in an exceptional case, grant an injunction but leave the council to seek an ASBO so that the detailed checks and balances developed by Parliament and in the decided cases will apply." B

33 *Shafi* was almost immediately reversed on its facts by statute: in sections 34–45 of the Policing and Crime Act 2009 Parliament created the "injunction to restrain gang-related violence". It has repeatedly been distinguished in later cases. In *Swindon Borough Council v Redpath* [2010] PTSR 904 this court held that there was no reason why a local authority should not apply for an anti-social behaviour injunction under sections 153A–153E of the Housing Act 1996 (the predecessor to the 2014 Act but in the context of housing) rather than seeking an ASBO in the criminal courts. C D

34 In *Birmingham City Council v James* [2014] 1 WLR 23 Jackson LJ observed that there are many situations in which, on the facts, two different pre-emptive orders are available and that there is no "closest fit" principle which cuts down the court's statutory powers to make pre-emptive orders. He advised at para 31 that "in future cases the Court of Appeal should not be invited to trawl through the legislation in some quest for the closest fit". In *Mayor of London (on behalf of the Greater London Authority) v Hall* [2011] 1 WLR 504 this court upheld the grant of an injunction restraining protestors from occupying Parliament Square, in aid of the enforcement of byelaws which provided for a modest financial penalty only and had proved ineffective: see per Lord Neuberger of Abbotsbury MR at paras 52–57. E

35 In the recent High Court case of *Birmingham City Council v Afsar* [2020] 4 WLR 168 the council, again represented by Mr Manning, sought injunctions to restrain protests outside a maintained school by parents and others critical of the school's teaching of LGBT issues. The case raised issues under articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms which are not applicable to the present case. One of the arguments put forward by Mr de Mello for three of the defendants was that an injunction was inappropriate given that the council could have made a PSPO. Warby J said (at para 34): F G

"Mr de Mello had an alternative submission: that if the legislation allows the council scope to choose between a PSPO or an injunction as the means of combating anti-social behaviour, it should not be granted an injunction, thereby bypassing the statutory safeguards built into the PSPO regime. In support of that submission he cited *Birmingham City Council v Shafi* [2009] 1 WLR 1961, paras 36, 45 and 59. A similar argument was advanced by Mr de Mello in *Birmingham City Council v Sharif* [2019] EWHC 1268 (QB) and rejected by Judge McKenna (sitting as a deputy High Court judge). I share the view expressed by Judge McKenna at para 27 that the argument is entirely misplaced, for the reasons he gave at H

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A paras 28–33. In short, *Shafi* is no authority for the proposition that an injunction under the 2014 Act cannot or should not be sought or granted if the authority could have imposed a PSPO, or other lesser remedy: see *Swindon Borough Council v Redpath* [2010] PTSR 904, *Birmingham City Council v James* [2014] 1 WLR 23 at para 22, 28, 31. A local authority's power to ask the court to determine whether an injunction is a B necessary and proportionate interference with Convention rights is not shackled by rigid rules of this kind. Nor can it be argued that the powers of the court should not be invoked or exercised, on the grounds that court procedures are inferior to the administrative procedures specified in the statute. That is manifestly not the case."

36 Mr Manning distinguishes *Shafi* [2009] 1 WLR 1961 on numerous C grounds. Firstly, he says, *Shafi* concerned two alternative judicial remedies, one (the ASBO) with greater safeguards than the other (the injunction), whereas in the present case the choice is between a judicial remedy (the injunction) and an administrative procedure which the council can operate itself without permission or even oversight from anyone else. Second, the ASBO available in *Shafi* was designed to address precisely the same mischief D as the injunction which the council sought, which is not the position here. Third, the intention of Parliament in creating the ASBO in the Crime and Disorder Act 1998, which is what the court considered in *Shafi*, is no longer relevant because the ASBO has been abolished. Fourth, the leading judgment in *Shafi* clearly envisages that local authorities will still be able to apply for injunctions under section 222 to restrain public nuisances (see paras 53 and 65). Fifth, subsequent decisions of this court have made it clear E that local authorities can seek injunctions in aid of the criminal law, and that there is no doctrine of the "closest fit".

37 The ratio of *Shafi*, in my view, is that it was wrong for the council to apply for a section 222 injunction to restrain anti-social behaviour rather than applying to a magistrates' court or the Crown Court for an ASBO because (1) (as the judgment repeatedly emphasises: see paras 51–53, 61 and F 65) the terms of the injunction sought were "identical or almost identical" to those which would be obtainable in an ASBO; (2) the criminal law could not be said to be ineffective (breach of an ASBO was punishable with imprisonment); and (3) it was unfair to circumvent the criminal standard of proof which the House of Lords had held in *McCann* [2003] 1 AC 787 was required on an application for an ASBO. This was why the court departed G from what they accepted to be the general principles laid down in *B & Q* [1984] AC 754 and *Bovis* [1992] 3 All ER 697. Like Judge McKenna in the present case and Warby J in *Afsar* [2020] 4 WLR 168, I do not regard it on its proper construction as being of any assistance in the present case.

38 The third written ground of appeal argues that the court below was wrong to grant, or to refuse to discharge, an injunction carrying the penalty of up to two years' imprisonment for contempt when the sanctions for H breach of a PSPO are so much less severe. But that seems to me to turn the *B & Q* case on its head, and it was not the way Mr de Mello put the point in oral argument. Rather he submitted that Parliament had created a specific scheme of PSPOs with provision for consultation with persons affected, and by doing so it intended to replace any alternative remedy the council might

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otherwise have invoked such as an injunction under section 222. He told us that PSPOs have been deployed against street cruising both in Gateshead (as Judge McKenna noted) and more recently in Milton Keynes.

39 There was no evidence before Judge McKenna, and there is none before us, of the scope and terms of the Gateshead PSPO, nor how it was originally made, nor of how effective it has been to prevent street cruising. But Mr Bird's evidence in the present case was enough to indicate that a PSPO might well be ineffective. Breach of a PSPO is a non-arrestable offence carrying only a financial sanction (whether by prosecution or by service of a fixed penalty notice). As one item of evidence (among many) mentioned by Mr Bird records, "a caller complains that the vehicles go when police arrive and simply return when the police have moved on". There may also be potential difficulties about what does or does not constitute a "public space"; how large that public space can be; and whether a PSPO can properly cover the activities of those who organise or advertise street cruises.

40 Mr de Mello's case before Judge McKenna was that the council could and should have used a PSPO rather than applying for an injunction; and, as already noted, each of the three pleaded grounds of appeal was to the same effect. However, in a supplementary skeleton argument and oral submissions he sought to argue that another alternative provided by Parliament, which the council should have used rather than seeking an injunction, was to seek to have individuals such as his client prosecuted for an appropriate motoring offence. In the event of conviction, he submitted, the prosecution could apply to the court for a CBO to be made under section 22 of the 2014 Act to address any problems of public nuisance.

41 I would reject that submission, not simply because it was not made in the court below. It seems to me to be as unrealistic as the suggestion of a PSPO, though for different reasons. No submissions were made as to who, in practice, would initiate and conduct such a prosecution; which individual or organisation would be specified under section 24 of the 2014 Act to supervise compliance with the requirements of the CBO; or who would prosecute for an offence contrary to section 30 of the Act in the event of a breach of the CBO. Even assuming (without deciding) that a CBO is an appropriate order to be made on conviction for a motoring offence such as dangerous driving or racing on the highway, it could only be made against an individual who had been prosecuted and convicted of an offence, a process which might well take several months. The purpose of the injunction was to prevent future nuisances, not to impose penalties for past ones.

42 Judge Worster and Judge McKenna were well entitled to conclude, in the words of Bingham LJ's third criterion in *Bovis*, that car cruising in the Birmingham area would continue unless and until effectively restrained by the law and that nothing short of an injunction would be effective to restrain them. I regard this as a classic case for the grant of an injunction.

Section 130 of the Highways Act 1980

43 On the view which I take of the judge's discretion to grant the injunction under section 222 of the 1972 Act it is unnecessary to consider whether section 130 of the 1980 Act would have provided an alternative route to the same conclusion.

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The grant of the injunction against "persons unknown"

44 No point was taken in the court below about whether the original grant of the injunction against persons unknown and the provision for service by advertisements and prominent local notices was open to challenge. Since the order was first made, this question has been considered (though not in relation to an injunction of the same type) in this court in *Ineos Upstream Ltd v Persons Unknown (Friends of the Earth intervening)* [2019] 4 WLR 100 and *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802. It may have to be considered again in any future case about injunctions to restrain anti-social behaviour by persons unknown. I simply record that we were told by Mr Manning that the "persons unknown" issue was the reason why Birmingham did not apply for an anti-social behaviour injunction under section 1 of the 2014 Act.

Conclusion

45 I would dismiss the appeal.

HOLROYDE LJ

46 I agree.

SIR TERENCE ETHERTON MR

47 I also agree.

Appeal dismissed.
Permission to appeal refused.

SUSAN DENNY, Barrister

Supreme Court

*Regina (Elan-Cane) *v* Secretary of State for the Home Department (Human Rights Watch intervening)

2020 Nov 10 Lord Hodge DPSC, Lady Arden, Lord Sales JJSC

APPLICATION by the claimant for permission to appeal from the decision of the Court of Appeal [2020] EWCA Civ 363; [2020] QB 929; [2020] 3 WLR 386

Permission to appeal was given.

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Neutral Citation Number: [2021] EWHC 1201 (QB)

Case Nos: See Appendix 1

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 May 2021

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

(1) London Borough of Barking and Dagenham
(2) Other Local Authorities **Claimants**
(see Appendix 1)

- and -

(1) Persons Unknown
(2) Other named Defendants
(see Appendix 1) **Defendants**

- and -

(1) London Gypsies and Travellers
(2) Friends, Families and Travellers
(3) National Federation of Gypsy Liaison Groups **Interveners**

- -

Caroline Bolton and Natalie Pratt (instructed by **Sharpe Pritchard LLP and LB Barking & Dagenham Legal Services**) for the **1st, 6th, 11th, 16th, 26th, 28th, 33rd and 34th Claimants**
Ranjt Bhose QC and Steven Woolf (instructed by **South London Legal Partnership**) for the **7th and 12th Claimants**
Steven Woolf (instructed by **LB Ealing Legal Services and Reigate & Banstead BC**) for the **4th and 27th Claimants**
Ranjt Bhose QC and Sarah Salmon (instructed by **HB Public Law**) for the **8th Claimant**
Nigel Giffin QC and Simon Birks (instructed by **Walsall MBC Legal Services**) for the **35th Claimant**
Mark Anderson QC and Michelle Caney (instructed by **Wolverhampton CC Legal Services**) for the **36th Claimant**
Marc Willers QC, Tessa Buchanan and Owen Greenhall (instructed by **Community Law Partnership**) for the **Interveners**
Sarah Wilkinson (instructed by **Attorney General**) as **Advocate to the Court**

Hearing dates: 27-28 January 2021

- -

Covid-19 Protocol: This judgment was handed down by the judges remotely by circulation to the parties' representatives and BAILII by email. The date of hand-down is deemed to be as shown above.

- -

Approved Judgment

The Honourable Mr Justice Nicklin :

1. This judgment is divided into the following sections:

A: Introduction

2. In cases before the Court, injunctions have been granted to local authorities that have targeted, principally, unauthorised encampments on land. Although some have named individual defendants, most injunctions have been granted against "Persons Unknown" with varying descriptions.

3. The background to the claims brought by the local authorities and the scope of the injunctions that had been granted was described by Coulson LJ in ***Bromley London Borough Council -v- Persons Unknown*** **[2020] EWCA Civ 12**; **[2020] PTSR 1043** ("***LB Bromley***").

> [1] This is an appeal against the refusal by the High Court to grant what the judge called "a de facto borough-wide prohibition of encampment and upon entry/occupation ... in relation to all accessible public spaces in Bromley except cemeteries and highways". Although the stated target of the injunction was "persons unknown", it was common ground that the injunction was aimed squarely at the gipsy and traveller community. The points arising from the appeal itself are of relatively narrow compass, but all parties were anxious that, in the light of the recent spate of similar cases, this court should provide some guidance as to how local authorities might address this issue in future.
>
> [2] Numerous similar injunctions have been granted by the High Court in recent years and months. We refer to a number of those judgments below. One common feature of those cases was that the gipsy and traveller community was not represented before the court at either the interim or final hearing. Although that did not stop the judges concerned looking very carefully at the orders which they were being asked to make, I do not doubt that, in an adversarial system, there can be no substitute for reasoned submissions from those against whom an injunction is directed.
>
> [3] This, therefore, was the first case involving an injunction in which the gipsy and traveller community were represented before the High Court. As a result of their success in discharging the interim injunction, it is also the first such case to be argued out at appellate level…"

4. In [4] to [14], Coulson LJ set out the background and history of applications by local authorities and the grant of injunctions against "Persons Unknown" prohibiting unauthorised occupation or use of land ("Traveller Injunctions"). Often, although not exclusively, such injunctions were granted in respect of all public spaces within the relevant local authority area. The Court of Appeal noted a "*long-standing and serious shortage*" of sites for Gypsies and Travellers which threatened their traditional nomadic lifestyle that was part of the Gypsy and Traveller tradition and culture. At the date of the Court of Appeal's decision, there were no transit sites to cater for the needs of the Gypsy and Traveller community in the London Borough of Bromley, or anywhere else in Greater London. The nearest site was a transit site at South Mimms in Hertfordshire. This lack of adequate resource led to increasing incidents of unauthorised occupation and use of land. Coulson LJ noted that there was a reasonably direct correlation between the lack of adequate transit sites and unauthorised occupation and use of land. In 2015, one local authority – Harlow DC (see further [102]-[104] below) – sought and obtained a borough-wide injunction to prevent this unauthorised use and occupation of land.

The perceived success of this injunction led to a surge in applications for Traveller Injunctions by other local authorities. Coulson LJ explained:

> [10] In the South East, the recent spate of wide-ranging injunctions has been aimed at the gipsy and traveller community. This process began in 2015 with ***Harlow District Council -v- Stokes*** **[2015] EWHC 953 (QB)**. The prohibition on encampments in that borough, and the subsequent perception that the injunction had been effective, led to a large number of similar injunctions in 2017–2019. Most of these injunctions, such as the injunction granted in the recent case of ***Kingston upon Thames London Borough Council v Persons Unknown*** **[2019] EWHC 1903 (QB)**, as well as the interim injunction granted in this case, did not identify any named defendants. The second and fourth interveners in this case all obtained similar injunctions following what were uncontested hearings.
>
> [11] It appears that, in total, there are now 38 of these injunctions in place nationwide. It would be unrealistic to think that their widespread use has not led to something of a feeding frenzy in this contentious area of local authority responsibility. First, these injunctions have had the effect of forcing the gipsy and traveller community out of those boroughs which have obtained injunctions, thereby imposing a greater strain on the resources of those boroughs or councils which have not yet applied for such an order. Secondly, they have created an understandable concern amongst those local authorities who have not yet obtained such injunctions to seek them forthwith.

5. The history of these Traveller Injunctions shows how they have developed. They started out targeting actual trespass on land by named individuals. Typically, the local authority would name, as defendants to the proceedings, those who could be identified, and would additionally seek relief against "Persons Unknown", being those who were alleged also to be unlawfully occupying land but whose identity was not known. Before long, however, most local authorities started to take a different approach. Claims were not brought against named individuals. Instead, they were brought simply against "Persons Unknown", using a variety of descriptions (and sometimes no description at all). A further significant change was that Traveller Injunctions were granted in cases on the basis of threatened, rather than actual, unauthorised use or occupation of land. Traveller Injunctions were granted typically for periods of 3 years, although there are examples of longer periods. In a short time, injunctions previously granted against identified trespassers based on evidence of historic trespass had been transformed into *quia timet* injunctions to prohibit threatened unlawful encampment on land by anyone.

6. This judgment addresses some issues of principle that have arisen as to the legal basis for and scope of these Traveller Injunctions. The central issue to be determined is whether a "final injunction" granted against "Persons Unknown" is subject to the principle that final injunctions bind only the parties to the proceedings. The Court of Appeal in ***Canada Goose UK Retail Ltd -v- Persons Unknown*** **[2020] 1 WLR 2802** held that it did. The local authorities in the claims before me contend that it should not.

7. Before I come to the issues that require determination, I need to set out the development of the law affecting Traveller Injunctions and to describe and explain the features of the claims in which they have been granted.

B: The Changing Legal Landscape

8. Since the first Traveller Injunction was granted in 2015, there have been significant developments in the law, principally at appellate level. These decisions concentrate on two aspects: claims and injunctions against "Persons Unknown", and specific considerations in relation to extensive (sometimes borough-wide) Traveller Injunctions and their potential adversely to affect the Article 8 rights of Gypsies and Travellers.

9. Chronologically, the key cases are ***Cameron -v-Liverpool Victoria Insurance Co Ltd*** **[2019] 1 WLR 1471** (Supreme Court, 20 February 2019); ***Ineos Upstream Ltd -v- Persons Unknown*** **[2019] 4 WLR 100** (Court of Appeal, 3 April 2019); ***Bromley LBC -v- Persons Unknown*** **[2020] PTSR 1043** (Court of Appeal, 21 January 2020); ***Cuadrilla Bowland Ltd -v- Persons Unknown*** **[2020] 4 WLR 29** (Court of Appeal, 23 January 2020); and ***Canada Goose UK Retail Ltd -v-Persons Unknown*** **[2020] 1 WLR 2802** (Court of Appeal, 5 March 2020). Of those, ***Cameron***, ***LB Bromley*** and ***Canada Goose*** have the greatest impact upon the grant of Traveller Injunctions.

(1) *Cameron -v- Liverpool Victoria Insurance*

10. In ***Cameron***, the Claimant had brought a claim following a road traffic collision. She had been unable to identify the driver of the other vehicle, but she sought to bring her claim against "*the person unknown driving [the other vehicle] who collided with [the claimant's vehicle]*". There was no prospect of identifying the other driver, but a judgment against him/her would enable the claimant to make a claim under s.151 Road Traffic Act 1988. The District Judge refused to allow the claim. The Court of Appeal allowed the claimant's appeal and held that it was consistent with the CPR, and the policy of the Road Traffic Act 1988, for proceedings to be brought against the unnamed driver, in order that the insurer could be made liable under s.151.

11. The Supreme Court allowed the appeal and held that it was a fundamental principle of justice that a person could not be made subject to the jurisdiction of the Court without having such notice of the proceedings as to enable him to be heard. It was not legitimate to issue (or amend) a Claim Form to bring a claim against an unnamed defendant if it was conceptually impossible to bring the claim to his/her attention. Lord Sumption gave the judgment of the Court. Extracting the key principles from [8]-[26] ("the *Cameron* principles"):

The importance of service of the originating process:

(1) 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. In ***Jacobson -v- Frachon*** **(1927) 138 LT 386, 392**, Atkin LJ described the principles of natural justice as follows:

> "Those principles seem to me to involve this, first of all that the court being a court of competent jurisdiction, has given notice to the litigant that they are about to proceed to determine the rights between him and the other

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

(2) Service of originating process is central to the domestic litigation process and was required long before statutory rules of procedure were introduced following the Judicature Acts of 1873. Different modes of service were permitted, but each had the common object of bringing the proceedings to the attention of the defendant.

(3) CPR 6.15 does not, in terms, include an express requirement that the method authorised should be likely to bring the proceedings to the person's notice, but "*service*" is defined in the indicative glossary of the Civil Procedure Rules as "*steps required by rules of court to bring documents used in court proceedings to a person's attention*".

(4) However, the whole purpose of service is to inform the defendant of the contents of the Claim Form and the nature of the claimant's case: ***Abela -v- Baadarani* [2013] 1 WLR 2043** [37] *per* Lord Clarke. Subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant.

(5) CPR 6.16 enables the court to dispense with service of a Claim Form, but it is difficult to envisage the circumstances in which it would be right to dispense with service in circumstances where there was no reason to believe that the defendant was aware of the proceedings. To do so would expose the defendant to a default judgment without having had the opportunity to be heard or otherwise to defend his/her interests.

Proceedings against "Persons Unknown"

(6) A Claim Form may be issued against a named defendant even though, at the time, it is not known where, how or indeed whether s/he can be served. The legitimacy of issuing a Claim Form against an unnamed defendant can properly be tested by asking whether it is conceptually (not just practically) possible to serve it.

(7) The court generally acts *in personam*. An action is completely constituted when the Claim Form is *issued*, but it is not until the Claim Form is *served* that the defendant becomes subject to the court's jurisdiction: ***Barton -v- Wright Hassall LLP* [2018] 1 WLR 1119** [8].

(8) Where it is possible to locate or communicate with the anonymous defendant, and to identify him as the person described in the Claim Form, then it is possible to serve the Claim Form, if necessary, by alternative service under CPR 6.15 (e.g. in ***Brett Wilson LLP -v- Persons Unknown* [2016] 4 WLR 69** alternative service of the Claim Form was effected by e-mail to a website which had published the defamatory material and in trespass cases, CPR 55.6 permits service on the anonymous trespassers by attaching copies of the documents to the main door or placing them in some other prominent place on the land where the trespassers are to be found).

(9) Nevertheless, the general rule remains that proceedings may not be brought against unnamed parties. Apart from representative actions under CPR 19.6, the only express provision of the CPR that permits claims against an unnamed defendant is CPR 55.3(4), which allows a claim for possession of land to be brought against trespassers whose names are unknown. There are also certain specific statutory exceptions to broadly the same effect, e.g. proceedings for an injunction to restrain "*any actual or apprehended breach of planning controls*" under s.187B Town and Country Planning Act 1990.

(10) The court has permitted actions, and made orders, against unnamed wrongdoers where the identities of some of the alleged wrongdoers were known. They could be sued both personally and as representing unidentified associates, e.g. copyright piracy claims: ***EMI Records Ltd -v- Kudhail*** **[1985] FSR 36**.

(11) A wider jurisdiction permitting claims against persons unknown was first recognised in ***Bloomsbury Publishing Group plc -v- News Group Newspapers Ltd*** **[2003] 1 WLR 1633**. Copies of the latest book in the Harry Potter series had been stolen from printers before publication and offered to the press by unnamed persons. Sir Andrew Morritt V-C held that a person could be sued by a description, provided that the description was "*sufficiently certain as to identify both those who are included and those who are not*": [21].

(12) There are therefore two distinct categories of case in which the defendant cannot be named: (1) anonymous defendants who are identifiable but whose names are unknown, e.g. squatters who are identifiable by their location, although they cannot be named ("Category 1"); and (2) defendants who are not only anonymous but cannot even be identified, e.g. most hit-and-run drivers ("Category 2"). The distinction is that in Category 1 the defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further inquiry whether he is the same as the person described in the Claim Form, whereas in Category 2 it is not.

(13) In some cases, *quia timet* injunctions have been granted against "Persons Unknown", where the defendants could be identified only as those persons who might in future commit the relevant acts. However, the grant of interim relief before the proceedings have been served (or even issued) is the exercise of an emergency jurisdiction and is both provisional and strictly conditional.

(14) In proceedings against "Persons Unknown" where the court grants an interim injunction to restrain specified acts, the terms of that injunction may mean that a person can become both a defendant and a person to whom the injunction was addressed by doing one of the prohibited acts: ***South Cambridgeshire District Council -v- Gammell*** **[2006] 1 WLR 658** [32].

(15) Defining an unknown person by reference to something that he has done in the past does not identify anyone. It is impossible to know whether any particular person is the one referred to and there is no way of bringing the proceedings to his/her attention. The impossibility of service in such a case is due not just to the fact that the defendant cannot be found but also to the fact that it is not known who the defendant is. The problem is conceptual, and not just practical. It is not enough that the wrongdoer him/herself knows who s/he is.

(2) *LB Bromley -v- Persons Unknown*

12. ***LB Bromley*** was the first occasion on which the Court of Appeal considered Traveller Injunctions. At first instance, the case was also the first occasion on which the Court had given a reasoned judgment, refusing a Traveller Injunction, after adversarial submissions ([2019] EWHC 1675 (QB)). The Court of Appeal identified judgments in eight other cases at first instance in which Traveller Injunctions were granted, but in which only the local authority had been represented: [38]. As noted by the Court of Appeal, a hallmark of litigation against "Persons Unknown" is the absence of any person opposing the claim. As will appear from this judgment, a legal system based on an adversarial model is vulnerable to failure or error where only one party participates in the proceedings.

13. The Court of Appeal dismissed the local authority's appeal against the refusal to grant an injunction prohibiting trespass on land by "Persons Unknown". Applying the principles set out in ***Ineos Upstream Ltd -v- Persons Unknown*** **[2019] 4 WLR 100**, the Court held:

    (1) that the requirements necessary for the grant of a *quia timet* injunction against "Persons Unknown" were that [29]:

        (a) there had to be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief;

        (b) it was impossible to name the persons who were likely to commit the tort unless restrained;

        (c) it was possible to give effective notice of the injunction and for the method of such notice to be set out in the order;

        (d) the terms of the injunction had to correspond to the threatened tort and not to be so wide that they prohibited lawful conduct;

        (e) the terms of the injunction had to be sufficiently clear and precise as to enable persons potentially affected to know what they could not do; and

        (f) the injunction should have clear geographical and temporal limits;

    (2) that, as a matter of procedural fairness, a court should always be cautious when considering granting injunctions against persons unknown, particularly on a final basis, in circumstances where they were not there to put their side of the case [34]; and

    (3) that the nature and extent of the likely harm which the claimant had to show in order to obtain a Traveller Injunction was that of irreparable harm [35].

14. In respect of *quia timet* injunctions to prevent likely trespass, Coulson LJ cited (in [36]) the decision of the Supreme Court in ***Secretary of State for the Environment, Food and Rural Affairs -v- Meier*** **[2009] 1 WLR 828**. That case concerned trespass by a group of Travellers of parts of woodland owned by the Forestry Commission. The claim raised the rather technical issue of whether a possession order could be granted in

relation to land that was not presently occupied by trespassing Travellers, who on the evidence, if evicted from that camp, would simply move to another part of the same woodland. The Supreme Court held that, however desirable it might be to fashion or develop a remedy to meet the practical problem that arose in the case, in a possession claim against trespassers, an order for possession of land not presently occupied by the trespassers could not be justified. Nevertheless, the Court could, in addition to granting a possession order in respect of the land presently occupied by the Travellers, also grant an injunction to prohibit further threatened acts of trespass by the Travellers on other parts of the woodland. Baroness Hale's judgment included the following statement of principle:

> [40] … Provided that an order can be specifically tailored against known individuals who have already intruded upon the claimant's land, are threatening to do so again, and have been given a proper opportunity to contest the order, I see no reason in principle why it should not be so developed…"

15. In [40]-[48], Coulson LJ considered the Article 8 rights of the Gypsy and Traveller community. In particular, he identified the following principles established by the decisions of ECtHR in ***Chapman -v- United Kingdom* (2001) 33 EHRR 18**; ***Connors -v- United Kingdom* (2004) 40 EHRR 9**; ***Yordanova -v- Bulgaria* (25446/06, 24 April 2012)**; ***Buckland -v- United Kingdom* (2012) 56 EHRR 16**; ***Winterstein -v- France* (27013/07, 17 October 2013)**:

(1) The occupation of a caravan by a member of the Gypsy and Traveller community was an "*integral part of … ethnic identity*" and measures affecting the stationing of caravans and/or his/her removal from the site interfered with his/her Article 8 rights not only because it interfered with her home, but also because it affected his/her ability to maintain her identity as a Gypsy/Traveller: ***Chapman*** [73]; ***Connors*** [68]; ***Winterstein*** [142].

(2) There was an emerging international consensus amongst Council of Europe states recognising the special needs of minority communities and an obligation to protect their security, identity and lifestyle: ***Chapman*** [93].

(3) Members of the Gypsy and Traveller community were in a vulnerable position as a minority. In consequence, "*special consideration should be given to their needs and their different lifestyle*" and, to that extent, there was a positive obligation on states to facilitate the Gypsy way of life: ***Chapman*** [96]; ***Connors*** [84]; ***Yordanova*** [129]. The underprivileged status of the community "*must be a weighty factor in considering approaches to dealing with their unlawful settlement and, if their removal is necessary, in deciding on its timing, modalities, and, if possible, arrangements for alternative shelter*": ***Yordanova*** [133].

(4) Although it was legitimate for the authorities to seek to regain possession of land from persons who did not have a right to occupy it, orders should not be enforced without regard to the consequences upon the Gypsy and Traveller residents or without the securing of alternative shelter for the community: ***Yordanova*** [111] and [126].

(5) The authorities should consider approaches specifically tailored to the needs of the Gypsy and Traveller community: ***Yordanova*** [128].

(6) The fact that a home had been established unlawfully was highly relevant: ***Chapman*** [102].

(7) If no alternative accommodation is available, the interference was more serious than where such accommodation is available: ***Chapman*** [103].

(8) If the person was rendered homeless by the particular decision under challenge, then "*particularly weighty reasons of public interest*" were required by way of justification with the Article 8 rights: ***Connors*** [86].

(9) The mere fact that anti-social behaviour occurred on local authority Gypsy and Traveller sites could not, in itself, justify a summary power of eviction: ***Connors*** [89].

(10) Individuals affected by a planning enforcement notice ought to have a full and fair opportunity to put any relevant material before the decision-maker before enforcement action was taken: ***Chapman*** [106].

(11) Judicial review was not a satisfactory safeguard as it did not establish the facts and because there was no means of testing the individual proportionality of the decision to evict: ***Connors*** [92] and [95]. The loss of a home is the most extreme form of interference with the right to respect for the home under Article 8. Any person at risk of an interference of this magnitude should, in principle, be able to have the proportionality of the measure determined by an independent tribunal, notwithstanding that, under domestic law, his right to occupation has come to an end: ***Buckland*** [65].

16. The relevant statutory provisions and government guidance were identified in [49]-[56], including:

(1) the recognition of Romany Gypsies and Irish Travellers as separate ethnic minorities under the Equality Act 2010, engaging the public sector equality duty under s.149: [49]-[53];

(2) the Department for the Environment Circular 18/94 "*Gypsy Sites Policy and Unauthorised Camping*", which provided that "*it is a matter for local discretion whether it is appropriate to evict an unauthorised gipsy encampment*"; that where there are no authorised sites but an unauthorised encampment is not causing a level of nuisance which cannot be effectively controlled, the authorities should consider providing basic services; that local authorities should try and identify possible emergency stopping places as close as possible to the transit routes used by Gypsies where Gypsy families would be allowed to camp for short periods; that, where Gypsies are unlawfully camped, it is for the local authority to take any necessary steps to ensure that the encampment "*does not constitute a hazard to public health*"; and that "*local authorities should not use their powers to evict gipsies needlessly ... local [authorities] should use their powers in a humane and compassionate way*": [54];

(3) the Home Office *Guide to Effective Use of Enforcement Powers (Part 1; Unauthorised Encampments)*, published in February 2006, which provided that local authorities needed to consider "*whether enforcement is absolutely necessary*": [55]; and

(4) the Department for Communities and Local Government *Guidance on Managing Unauthorised Camping*, published in May 2006, which stressed the importance of striking the balance between "*the needs of all parties*": [56].

17. At first instance, the Judge had been satisfied that the six requirements from ***Ineos*** (see [13(1)] above) were met, but she had refused the injunction on the basis that the relief sought was not proportionate. Upholding the Judge's refusal of the injunction, Coulson LJ held that the Judge had been rightly concerned about the width of the injunction being sought and was entitled to have regard, on the issue of the proportionality of the injunction sought, to:

(1) the absence of any substantial evidence of past criminality;

(2) the absence of any transit or other alternative sites;

(3) the cumulative effect of other injunctions that had been granted in other local authority areas;

(4) the local authority's failure to comply with its public sector equality duty having regard to the absence of an equality impact assessment and lack of proper engagement with the Gypsy and Traveller community; and

(5) the extent of the injunction that was sought, both in terms of duration (five years) and land covered (borough-wide).

18. In the final section of his judgment, Coulson LJ set out the following important "*Wider Guidance*":

> [100] I consider that there is an inescapable tension between the article 8 rights of the gipsy and traveller community (as stated in such clear terms by the European case law summarised at [44]-[48] above), and the common law of trespass. The obvious solution is the provision of more designated transit sites for the gipsy and traveller community. It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.
>
> [101] This tension also manifests itself in much of the guidance documentation to which I have referred at [54]-[56] above. That guidance presupposes that there will be unlawful encampments, and does not suggest, save as a last resort, that such encampments should be closed down, unless there are specific reasons for so doing. There is no hint in the guidance that it is or could be a satisfactory solution to seek a wide injunction of the sort in issue in this case: indeed, on one view, much of that guidance would be irrelevant if the answer was a borough-wide prohibition on entry or encampment.

[102] It therefore follows that local authorities must regularly engage with the gipsy and traveller community (and/or, in the Greater London area, the first intervener). Through a process of dialogue and communication, and following the copious guidance set out above, it should be possible for the need for this kind of injunction to be avoided altogether. "Negotiated stopping" is just one of many ways referred to in the English case law in which this might be achieved.

[103] If a local authority considers that a *quia timet* injunction may be the only way forward, then it will still be of the utmost importance to seek to engage with the gipsy and traveller community before seeking any such order if time and circumstances permit. Welfare assessments should be carried out, particularly in relation to children. An up-to-date EIA will always be important because the impact on the gipsy and traveller community will vary from borough to borough and area to area. In my view, if the appropriate communications, and assessments (like the EIA) are not properly demonstrated, then the local authority may expect to find its application refused.

[104] Three particular considerations should be at the forefront of a local authority's mind when considering whether a *quia timet* injunction should be sought against persons unknown, and where the proposed injunction is directed towards the gipsy and traveller community:

(a) Injunctions against persons unknown are exceptional measures because they tend to avoid the protections of adversarial litigation and article 6 of the Convention.

(b) In order for proportionality (or an equilibrium) to be met in these cases, it is important that local authorities understand and respect the gipsy and traveller community's culture, traditions and practices, in so far as those factors are capable of being realised in accordance with the rule of law. That will normally require some positive action on the part of the authority to consider the circumstances in which the article 8 rights of the members of those communities are "lived rights" i.e. are capable of being realised.

(c) The vulnerability and protected status of the gipsy and traveller community, as well as the integral role that the nomadic lifestyle plays as part of their ethnic identities, will be given weight in any assessment as to the proportionality of an injunction or eviction measure.

(d) The equitable doctrine of "clean hands" may require local authorities to demonstrate that they have complied with their general obligations to provide sufficient accommodation and transit sites for the gipsy and traveller community.

(e) Common sense requires the court, when carrying out the proportionality exercise, to have careful regard to the cumulative effect of other injunctions granted against the gipsy and traveller community.

[105] In my view, borough-wide injunctions are inherently problematic. They give the gipsy and traveller community no room for manoeuvre. They are much

more likely to be refused by the court as a result (as happened here). The solution in *Wolverhampton* [2018] EWHC 3777, which identified particularly vulnerable sites but did not include all the sites owned by the council, seems to me to be a much more proportionate answer. I do not accept that this automatically means that the remaining sites will be the subject of unauthorised encampment, as Mr Kimblin suggested, but even if that happens, it is likely to be a better solution than a potentially discriminatory blanket ban.

[106] The same is true of the duration of the injunction. Again, in the *Wolverhampton* case, the injunction was limited to a period of one year after which there was a review. That again seems to me to be sensible. I consider that it is - without more - potentially fatal to any application for a local authority to seek a combination of a borough-wide injunction and a duration of a period as long as five years.

[107] Credible evidence of criminal conduct in the past, and/or of likely risks to health and safety, are important if a local authority wishes to obtain a wide injunction. In my view, the injunctions in the *Harlow* cases were explicable on the grounds of criminality and the grave risks to health and safety. Injunctions which are designed to prevent entry and encampment only, and without evidence of such matters, should be correspondingly more difficult to obtain.

[108] Whilst I do not accept the written submissions produced on behalf of the third intervener, to the general effect that this kind of injunction should never be granted, the following summary of the points noted above may be a useful guide:

(a) When injunction orders are sought against the gipsy and traveller community, the evidence should include what other suitable and secure alternative housing or transit sites are reasonably available. This is necessary if the nomadic lifestyle of the gipsy and traveller community is to have effective protection under article 8 and the Equality Act 2010.

(b) If there is no alternative or transit site, no proposal for such a site, and no support for the provision of such a site, then that may weigh significantly against the proportionality of any injunction order.

(c) The submission that the gipsy and traveller community can "go elsewhere" or occupy private land is not a sufficient response, particularly when an injunction is imposed in circumstances where multiple nearby authorities are taking similar action.

(d) There should be a proper engagement with the gipsy and traveller community and an assessment of the impact an injunction might have, taking into account their specific needs, vulnerabilities and different lifestyle. To this end, the carrying out of a substantive EIA, so far as the needs of the affected community can be identified, should be considered good practice, as is the carrying out of welfare assessments of individual members of the community (especially children) prior to the initiation of any enforcement action.

(e) Special consideration is to be given to the timing and manner of approaches to dealing with any unlawful settlement and as regards the arrangements for alternative pitches or housing.

[109] Finally, it must be recognised that the cases referred to above make plain that the gipsy and traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act 2010, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise.

19. The underlined sections emphasise that, as the Article 8 rights of Gypsies and Travellers are engaged by Traveller Injunctions, the court must carefully consider the necessity for any order and the proportionality of the terms of the injunction that is sought by the local authority.

(3) *Canada Goose UK Retail Limited -v- Persons Unknown*

20. The third important decision bearing upon the limits of litigation against "Persons Unknown" is the Court of Appeal decision in ***Canada Goose***.

21. The claimants operated a retail store in central London selling clothing and other items made of animal fur and down. This had made it a target of protests by those opposed to the sale of fur and animal products. From its opening, the store had become a focus of demonstrations outside (and occasionally, inside) the premises. The Claimants obtained a without notice interim injunction against "Persons Unknown", who were the protesters, on various grounds including alleged harassment, trespass and/or nuisance. After a period of about a year, in which the proceedings were stayed, the Claimant applied for summary judgment against the defendants. At first instance ([2020] 1 WLR 417), the application for summary judgment was refused and the injunction was discharged. The Court found:

(1) the Claim Form had not been validly served on the "Persons Unknown" defendants: [138]. There had not been personal service on the "Persons Unknown" Defendants, and no order for alternative service had been made by the Court: [140];

(2) in any event, it was impossible to grant summary judgment against the class of "Persons Unknown" because it included within it both wrongdoers and people who had not committed any tort: [146]; and

(3) the grant of a final injunction would not bind newcomers, i.e. people who later fell within the definition of "Persons Unknown" by committing the prohibited acts but only after judgment had been granted: [157]-[159].

22. The claimants' appeal to the Court of Appeal was dismissed. As to service of the Claim Form on "Persons Unknown", the Court emphasised the procedural importance of proper service of the Claim Form being effective in bringing the proceedings to the attention of the defendants to the claim:

> [45] … The legal context for considering this point is the importance of service of proceedings in the delivery of justice. As Lord Sumption, with whom the other justices of the Supreme Court agreed, said in ***Cameron*** [14], 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 (at [17]): "It is a fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard."
>
> [46] Lord Sumption, having observed (at [20]) that CPR r6.3 considerably broadens the permissible methods of service, said that the object of all of them was to enable the court to be satisfied that the method used either had put the recipient in a position to ascertain the contents of the proceedings or was reasonably likely to enable him to do so within any relevant period of time. He went on to say (at [21]) with reference to the provision for alternative service in CPR r 6.15, that:
>
> > "subject to any statutory provision to the contrary, it is an essential requirement for any form of alternative service that the mode of service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant."

23. In relation to the grant of interim injunctions against "Persons Unknown", and following the Court of Appeal decision in ***Ineos***, the Court accepted that, in principle, an interim *quia timet* injunction could be granted against newcomers, i.e. persons who had not committed any of the prohibited acts at the time when the injunction was granted: [72]. Following further consideration of ***Cuadrilla Bowland Ltd -v- Persons Unknown*** **[2020] 4 WLR 29**, and building upon ***Cameron***, the Court of Appeal identified the following principles which governed the grant of interim relief against "Persons Unknown": [82] ("the *Canada Goose* principles"):

> "(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…"

24. However, the Court held that injunctions granted by final order against "Persons Unknown" could bind only those who were parties to the proceedings at the date of the grant of the order, not newcomers:

[89] A final injunction cannot be granted in a protestor case against "persons unknown" who are not parties at the date of the final order, that is to say Newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the "persons unknown" and who have not been served with the claim form. There are some very limited circumstances, such as in ***Venables -v- News Group Newspapers Ltd*** **[2001] Fam 430**, in which a final injunction may be granted against the whole world. Protestor actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: ***Attorney General -v- Times Newspapers Ltd (No.3)*** **[1992] 1 AC 191, 224**. That is consistent with the fundamental principle in ***Cameron*** [17] that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard.

[90] In Canada Goose's written skeleton argument for the appeal, it was submitted that ***Vastint Leeds BV -v- Persons Unknown*** **[2019] 4 WLR 2** (Marcus Smith J) is authority to the contrary. Leaving aside that ***Vastint*** is a first instance decision, in which only the claimant was represented and which is not binding on us, that case was decided before, and so took no account of, the Court of Appeal's decision in ***Ineos*** and the decision of the Supreme Court in ***Cameron***. Furthermore, there was no reference in ***Vastint*** to the confirmation in ***Attorney General -v- Times Newspapers (No.3)*** of the usual principle that a final injunction operates only between the parties to the proceedings.

> [91] That does not mean to say that there is no scope for making "persons unknown" subject to a final injunction. That is perfectly legitimate provided the persons unknown are confined to those within Lord Sumption's Category 1 in ***Cameron***, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date. The proposed final injunction which Canada Goose sought by way of summary judgment was not so limited. Nicklin J was correct (at [159]) to dismiss the summary judgment on that further ground (in addition to non-service of the proceedings). Similarly, Warby J was correct to take the same line in ***Birmingham City Council -v- Afsar*** **[2019] 4 WLR 168** [132].
>
> [92] In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose [counsel for Canada Goose] submitted that, if there is no power to make a final order against "persons unknown", it must follow that, contrary to ***Ineos***, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also "persons unknown" who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that.

25. Finally, the Court of Appeal warned of the limits as to what could be achieved by civil litigation against "Persons Unknown" [93]:

> "… Canada Goose's problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protestors. It wishes to use remedies in private litigation in effect to prevent what it sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protestors. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, ***Dulgheriu -v- Ealing London Borough Council*** **[2020] 1 WLR 609**. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it."

C: The Cohort Claims

(1) Assembling the Cohort Claims and their features

26. Appendix 1 to this judgment contains a table setting out the 38 claims in which Traveller Injunctions are known to have been granted ("the Cohort Claims"). The table lists the claims and, in respect of each claim, identifies the claimants and defendants, provides key information about the history of the claim and the current status of the claim (including whether there is any subsisting injunction, interim or final).

27. The Cohort Claims were gathered together, to be managed by a single judge, in October 2020. From mid-2020, applications had been made in some of the Cohort Claims to extend and/or vary Traveller Injunctions that were coming to the end of the period for which they had been originally granted. Following a hearing in one of these claims – that brought by LB Enfield – in September 2020 ([2020] EWHC 2717 (QB) (see further [105]-[107] below), the issues raised suggested that there was a need for a review of the entire Cohort.

28. In consequence, on 16 October 2020, with the concurrence of the President of the Queen's Bench Division and Mr Justice Stewart, the Judge in charge of the Civil List in the Queen's Bench Division, an order was made in each of the Cohort Claims fixing a case management hearing in December 2020. Actions that had been commenced in District Registries or in the County Court were transferred to the Royal Courts of Justice. Basic information about each claim was collected by requiring completion of a questionnaire. The Order explained the Court's approach:

> "(A) The recent hearing in the ***Enfield*** case has led to the identification of issues that are likely to arise in other cases involving the grant of local authority wide injunctions to prohibit trespass on land granted against Persons Unknown who have typically, but not exclusively, been defined as Gypsies or Travellers ("Traveller Injunction"). The issues concern existing injunctions that have previously been granted (in most cases for several years) as well as applications for new or renewed injunctions of this type. The principles upon which such injunctions are granted have been subject to review in a series of cases: ***Cameron -v-Liverpool Victoria Insurance Co Ltd*** **[2019] 1 WLR 1471**; ***Boyd -v-Ineos Upstream Ltd*** **[2019] 4 WLR 100**; ***Bromley LBC -v-Persons Unknown*** **[2020] PTSR 1043**; ***Cuadrilla Bowland Ltd -v-Persons Unknown*** **[2020] 4 WLR 29**; and ***Canada Goose UK Retail Ltd -v-Persons Unknown*** **[2020] 1 WLR 2802**.
>
> (B) The Court has identified the [Cohort Claims] as claims in which Traveller Injunctions may have been granted in the past. The Court has held, in the ***Enfield*** case [32], that a local authority which has, in the past, obtained a Traveller Injunction is under a duty to restore the claim before the court if it becomes aware that there exist grounds upon which there is a realistic prospect that the injunction would be modified or discharged by the Court. This includes grounds that arise as a result of a change in the legal principles that apply. Any local authority not identified in [the Cohort Claims] which has been granted a Traveller Injunction should provide the details to the Clerk to Mr Justice Nicklin.

> (C) It is likely that common issues will arise between the ***Enfield*** case and [the Cohort Claims] (and any other cases in which a Traveller Injunction has been granted). The Court wants to manage the resolution of any common issues in an effective and proportionate manner. The Order provides (a) for transfer of [the Cohort Claims] to the Queen's Bench Division of the High Court at the Royal Courts of Justice; (b) for completion of a Questionnaire to gather information about the [Cohort Claims]; and (c) a Case Management Hearing on 17 December 2020 which will enable the Court to identify the extent of common issues and determine the best way of resolving them.
>
> (D) Prior to formulation of any common issues, the Court's first objective is to identify those local authorities with existing Traveller Injunctions who wish to maintain such injunctions (possibly with modification), and those who wish to discontinue their claims and/or discharge the current Traveller Injunction granted in their favour."

29. In the remaining part of this section of the judgment, I shall set out and describe common features typical in the Cohort Claims and the orders that have been sought and granted in them, under the broad headings:

(1) service of the Claim Form on "Persons Unknown";

(2) description of "Persons Unknown" in the Claim Form and CPR 8.2A;

(3) the bases of the civil claims;

(4) powers of arrest attached to injunction orders;

(5) use of the Interim Applications Court of the Queen's Bench Division; and

(6) failure to progress claims after the grant of an interim injunction.

30. I will also summarise the fate of three Cohort Claims which returned to Court during 2020 following an application by the relevant local authority to extend (sometimes with modifications) the Traveller Injunction that it had been originally granted. Consideration of these three claims – Harlow DC, LB Enfield and Canterbury CC – identified flaws in the approach and ultimately led to the formal gathering of the Cohort Claims for further investigation/management and the Case Management Hearing on 17 December 2020.

(2) Service of the Claim Form on Persons Unknown

31. Service of the Claim Form is the act by which the defendant is subjected to the court's jurisdiction in civil proceedings in England & Wales: ***Barton -v- Wright Hassall LLP*** **[2018] 1 WLR 1119** [8] *per* Lord Sumption. Whilst the Court may grant interim relief against a defendant before the Claim Form has been served (and, in cases of particular urgency, even before the Claim Form has been issued), that is an emergency jurisdiction which is "*both provisional and strictly conditional*": ***Cameron -v- Liverpool Victoria Insurance Co Ltd*** **[2019] 1 WLR 1471** [14] *per* Lord Sumption.

32. In relation to service of the Claim Form on "Persons Unknown", whilst there may be difficulties in effecting personal service of a Claim Form under CPR 6.5 on "Persons

Unknown", an identifiable but anonymous defendant can be served with the Claim Form, if necessary, by alternative service under CPR 6.15. This is because it is possible to locate or communicate with the defendant and to identify him as the person described in the Claim Form: ***Cameron*** [15].

33. CPR 6.15 provides:

> "(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
>
> (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.
>
> (3) An application for an order under this rule –
>
> (a) must be supported by evidence; and
>
> (b) may be made without notice.
>
> (4) An order under this rule must specify –
>
> (a) the method or place of service;
>
> (b) the date on which the claim form is deemed served; and
>
> (c) the period for –
>
> (i) filing an acknowledgment of service;
>
> (ii) filing an admission; or
>
> (iii) filing a defence."

34. Reflecting the 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, an order for alternative service of the Claim Form can only be made where the Court is satisfied, on evidence, that the proposed method of alternative service "*can reasonably be expected to bring the proceedings to the attention of the defendant*": ***Cameron*** [21].

35. In none of the Cohort Claims was the Claim Form personally served upon "Persons Unknown" or an order made, exceptionally, dispensing with service of the Claim Form under CPR 6.16. The Cohort Claims can therefore be divided into three groups:

(1) claims in which no application or order was made for alternative service of the Claim Form pursuant to CPR 6.15;

(2) claims in which an order, purporting to authorise alternative service of the Claim Form on "Persons Unknown" has been made, but no application was made (or supported by evidence) and the order fails to comply with CPR 6.15(4); and

(3) claims in which, following an application by the relevant local authority, orders were made granting permission to serve the Claim Form upon "Persons Unknown" by alternative means.

36. In respect of the claims in the first category, the failure to serve the Claim Form on "Persons Unknown" meant, simply, that they had not been made defendants to the relevant claim. In respect of each claim in this category, the period for service of the Claim Form under CPR 7.5 had long since expired. As noted in ***LB Enfield -v- Persons Unknown*** **[2020] EWHC 2717 (QB)** [24], the consequence of failing to serve the Claim Form (or to obtain an order under CPR 6.15 for alternative service) is "*pretty stark*":

> "… The failure to serve the Defendants in this case means that the Interim and Final orders were made in this case without jurisdiction over any Defendant. The period of validity of the original Claim Form has long since expired: CPR 7.5. For the last three years, therefore, an injunction has been posted at up to 130 sites, directed at Persons Unknown, prohibiting certain conduct, on pain of committal for breach, when jurisdiction had not been established over any individual Defendant because of the failure validly to serve the Claim Form."

37. In total, 14 local authorities failed validly to serve the Claim Form or to obtain an order for alternative service; they were: LB Bromley (2nd Claimant); LB Croydon (3rd Claimant); RB Greenwich (5th Claimant); LB Merton (10th Claimant); LB Sutton (13th Claimant); LB Waltham Forest (14th Claimant); Canterbury CC (20th Claimant); Central Bedfordshire Council (21st Claimant); Elmbridge BC (22nd Claimant); Epsom & Ewell BC (23rd Claimant); Hertsmere BC (25th Claimant); Rugby BC (29th Claimant); Solihull MBC (32nd Claimant); and LB Enfield (36th Claimant). The injunctions granted in these claims have been discharged by the Court between October-December 2020 and most of the claims have also been dismissed (in most instances, as a result of an application made by the local authority itself to discharge the injunction).

38. In respect of the second category, purported orders for alternative service of the Claim Form were made in 11 claims, but the relevant order fails to comply with CPR 6.15(4) and, in most cases, there was no Application Notice (or evidence in support) seeking an order for alternative service of the Claim Form. They were: LB Ealing (4th Claimant); LB Hillingdon (7th Claimant); LB Hounslow (8th Claimant); RB Kingston-upon-Thames (9th Claimant); LB Richmond-upon-Thames (12th Claimant); LB Wandsworth (15th Claimant); Birmingham CC (18th Claimant); Boston BC and Lincolnshire CC (19th Claimants); Reigate and Banstead BC (27th Claimant); Runnymede BC (30th Claimant); and Buckinghamshire Council (formerly Wycombe DC) (37th Claimant). Since the case management of the Cohort Claims has commenced, some of these local authorities have issued Applications seeking relief under CPR 3.10 in respect of defects in the orders for alternative service. If necessary, those Applications will be resolved later as part of the continued management of the Cohort Claims. However, injunctions granted in the claims brought by RB Kingston-upon-Thames, LB Wandsworth, Birmingham CC, Runnymede BC and Buckinghamshire Council have been discharged (either as a result of an application made by the local authority itself or as a result of the relevant claimant failing to comply with an unless order) and the claim dismissed.

39. In total, since October 2020, the Court has discharged the injunctions in 19 cases, i.e. half the Cohort Claims. In these cases, there were fundamental failures properly to serve the Claim Form or to obtain valid orders for alternative service on Persons Unknown. I have not attempted to ascertain the total number of sites that were covered by the Traveller Injunctions in these 19 cases, but they easily reach into the thousands.

40. Even in the third category of case – where applications were made for orders for alternative service of the Claim Form on "Persons Unknown" – there are grounds for concern about whether, in light of the clear statements of principle from ***Cameron***, such orders were properly granted.

41. An example of the order, typically made in these claims following an application, is that made in the claim brought by LB Barking & Dagenham.

(1) The Application Notice, dated 9 March 2017, sought "*an order for alternative service as per attached draft order*".

(2) A witness statement in support of the application was provided by Adam Rulewski, dated 6 March 2017. In relation to the application for an order for alternative service against "Persons Unknown", Mr Rulewski stated:

> "The Claimants also seek an Order that the Claims and Application shall be deemed served on Persons Unknown by serving a copy of the Claim Form, Application Notice and Draft Order on all 140 sites identified in Schedule 2 of this Order by affixing them in a prominent place on the Land with a notice to Persons Unknown that a copy of the supporting evidence can be obtained from Barking Town Hall, Town Hall Square, 1 Clockhouse Avenue, Barking IG11 7LU and by contacting LBBD Legal Services on [telephone number given]."

(3) The application for an order for alternative service of the Claim Form on "Persons Unknown" was granted on 9 March 2017 – the same day the Claim Form was issued – in the following terms:

> "5. The claim forms and application shall be deemed served on Persons Unknown… pursuant to CPR Part 6.14, 6.15, 6.27 and 6.27 (sic) by serving a copy (as opposed to an original) of the claim form, application notice and draft order on all 140 sites identified in Schedule 2 of this Order by affixing them in a prominent place on the Land with a notice to Persons Unknown that a copy of the supporting evidence can be obtained from the Council offices [details given].
>
> 6. The Defendants shall acknowledge service of the claim form 21 days after the date of deemed service and file any written evidence in support of the Defence by the same date."

42. The order for alternative service in LB Barking & Dagenham's claim was technically defective; it did not state the date on which the Claim Form was deemed to be served on Persons Unknown (CPR 6.15(4)(b)). It was impossible, therefore, to identify the date for compliance under Paragraph 6. No doubt this was an oversight, but it is consistent with a theme that has emerged on investigation of the Cohort Claims: a lack of consideration of the fundamental question whether the proposed method of

alternative service of the Claim Form on "Persons Unknown" could be reasonably expected to bring the proceedings to the attention of those who it was sought to make defendants to the civil claim.

43. My impression is that, insofar as service of the Claim Form on Persons Unknown was considered at all in the Cohort Claims, it was done perfunctorily. Mr Rulewski's witness statement, for example, did not address why an order for alternative service of the Claim Form was justified or appropriate, or the basis on which the Court could be satisfied that the method of alternative service was likely to be an effective way of bringing the proceedings to the attention of the defendants. In fairness, Mr Rulewski prepared his witness statement, and the application for alternative service, before the Supreme Court's decision in ***Cameron***. He did not have the benefit of the decision's focus upon the need to demonstrate that the proposed method of alternative service could reasonably be expected to bring the proceedings to the attention of the "Persons Unknown" the local authority was attempting to make defendants to the claim.

44. Nevertheless, had Mr Rulewski asked himself, for example, *when* the Claim Form was likely to come to the attention of the "Persons Unknown" defendants, he might perhaps have identified the artificiality and unreality of the method he was proposing as being likely to bring the proceedings to the attention to anyone other than those presently in occupation at any of the injunction sites.

45. I recognise that the method of service he proposed reflected the well-established regime for possession claims against unknown trespassers (CPR 55.6). And there can be no real doubt that, in a claim against alleged trespassers in present occupation whose names are not known, displaying prominently the Claim Form (or copies of it), on or around the various sites in respect of which an injunction was to be sought, can usually be expected to bring the proceedings to the attention of the defendants. However, the whole point of Traveller Injunctions was to bind persons who turned up at the land only after the injunction had been granted. In respect of that category of defendant, posting copies of the Claim Form at the various sites was not likely to be an effective means of bringing the proceedings to their attention. To take an obvious example, displaying copies of the Claim Form at the Dagenham Road Car Park (or at any of the other sites covered by the injunction granted to LB Barking & Dagenham) was not likely to bring the proceedings to the attention of a family of Travellers in Rochdale. The first such a family was likely to discover about the proceedings, that had led to an injunction being granted against them, was when they subsequently pitched their caravan for an overnight stay in the Dagenham Road Car Park.

46. It may well be that the importance of this aspect of the decision in ***Cameron*** on claims against "Persons Unknown" has not been fully appreciated in the Cohort Claims. However, since the Supreme Court decision in ***Cameron*** the point has been authoritatively determined. In a claim against "Persons Unknown", the method of alternative service of the Claim Form that the Court permits must be one that can reasonably be expected to bring the proceedings to the notice of *all* of those who fall within the definition of "Persons Unknown". Without that safeguard, there is an obvious risk that the method of alternative service will not be effective in bringing the proceedings to a (perhaps significant) number of those in a broadly defined class of "Persons Unknown". By dint of the alternative service order, they would be deemed to have been served, when in fact they have not (a point that becomes important when the Court comes to consider granting final relief against "Persons Unknown"). Such an

outcome offends the fundamental principle of justice that each person who is made subject to the jurisdiction of the court had sufficient notice of the proceedings to enable him to be heard (see *Cameron* principles (1) and (4) (see [11] above)).

47. The unfortunate history of service of the Claim Form on "Persons Unknown" defendants (or lack of it) in the Cohort Claims demonstrates very clearly that the Court must adopt a vigilant and more rigorous process when considering applications under CPR 6.15 for alternative service of the Claim Form on "Persons Unknown". If the requirements of ***Cameron*** cannot be met, permission for alternative service should be refused. Such applications are typically, if not inevitably, made *ex parte*, so advocates presenting such applications will be under a duty to ensure that the Court is fully aware of all relevant authorities and any arguments that could be raised by the absent party. In practical terms, the advocate will be expected to demonstrate, by evidence filed in compliance with CPR 6.15(3)(a), how the proposed method of alternative service on the Person(s) Unknown can reasonably be expected to bring the proceedings to the attention of *all* of those who are sought to be made defendant(s). The greater and more ambitious the width of the definition of "Persons Unknown" in the Claim Form correspondingly the more difficult it is likely to be to satisfy the requirements for an order for alternative service.

48. Save in respect of the exceptional category of claims brought *contra mundum*, it is difficult to conceive of circumstances in which a Court would be prepared to grant an order dispensing with the requirement to serve the Claim Form upon "Persons Unknown" under CPR 6.16 (*Cameron* principle (5)). Consequently, if the Court refuses an order, under CPR 6.15, for alternative service of the Claim Form against "Persons Unknown", the jurisdiction of the Court cannot be established over the "Persons Unknown" defendants. Without having established jurisdiction, there will be no viable civil claim against them. With no civil claim, there can be no question of granting (or maintaining) interim injunctive relief against "Persons Unknown". (I deal below (see [167]-[173]) with the argument – based on ***South Cambridgeshire District Council -v- Gammell*** **[2006] 1 WLR 658** – that a person can become a defendant to proceedings when they commit the act prohibited by the injunction order).

(3) Description of "Persons Unknown" in the Claim Form and CPR 8.2A

49. Since the advent of the CPR, civil proceedings brought against "Persons Unknown" have always required that the description of the "Persons Unknown" defendants in the Claim Form be "*sufficiently certain as to identify both those who are included and those who are not*": ***Bloomsbury Publishing plc -v- News Group Newspapers Ltd*** **[2003] 1 WLR 1633** [19]-[21]; and "Persons Unknown" must be described "*by reference to… conduct which is alleged to be unlawful*" ***Canada Goose*** [82(2)] ("the Description Requirement"). In ***Birmingham City Council -v- Afsar*** **[2020] EWHC 864 (QB)**, Warby J held that the failure properly to describe "Persons Unknown" in the Claim Form was a "*fundamental defect*", adding, "*a person given notice of the proceedings, [cannot] fairly be expected to work their way through the body of a lengthy statement of case to work out whether they are a target of the claim*": [21(2)].

50. CPR Part 8.2A(1) and Practice Direction 8A impose further specific requirements in respect of certain categories of claim brought against "Persons Unknown". Paragraph 20 applies to claims and applications made under s.187B Town & County Planning Act

1990 (set out in Appendix 2 and discussed further in [61]-[63] below). The relevant sub-paragraphs provide:

> "20.2 An injunction may be granted under [s.187B] against a person whose identity is unknown to the applicant.
>
> 20.3 In this paragraph, an injunction refers to an injunction under [s.187B] and 'the defendant' is the person against whom the injunction is sought.
>
> 20.4 In the claim form, the applicant must describe the defendant by reference to –
>
> (1) a photograph;
>
> (2) a thing belonging to or in the possession of the defendant; or
>
> (3) any other evidence.
>
> 20.5 The description of the defendant under paragraph 20.4 must be sufficiently clear to enable the defendant to be served with the proceedings.
>
> (The court has power under Part 6 to dispense with service or make an order permitting service by an alternative method or at an alternative place).
>
> 20.6 The application must be accompanied by a witness statement. The witness statement must state –
>
> (1) that the applicant was unable to ascertain the defendant's identity within the time reasonably available to him;
>
> (2) the steps taken by him to ascertain the defendant's identity;
>
> (3) the means by which the defendant has been described in the claim form; and
>
> (4) that the description is the best the applicant is able to provide.
>
> 20.7 When the court issues the claim form it will –
>
> (1) fix a date for the hearing; and
>
> (2) prepare a notice of the hearing date for each party.
>
> 20.8 The claim form must be served not less than 21 days before the hearing date.
>
> 20.9 Where the claimant serves the claim form, he must serve notice of the hearing date at the same time, unless the hearing date is specified in the claim form.
>
> (CPR rules 3.1(2) (a) and (b) provide for the court to extend or shorten the time for compliance with any rule or practice direction, and to adjourn or bring forward a hearing)

20.10 The court may on the hearing date –

(1) proceed to hear the case and dispose of the claim; or

(2) give case management directions."

The requirements imposed by §§20.4-20.6 are of potential significance to the issues I have to decide (see further [63] below).

51. In the Cohort Claims there are repeated examples of claims brought against "Persons Unknown" which breach the Description Requirement. In Appendix 1, the column marked "Defendants" sets out how the "Persons Unknown" were described in the Claim Form (if at all). Where a description was given, few comply with the requirement that the "Persons Unknown" must be defined in the Claim Form by reference to conduct alleged to be unlawful (*Canada Goose* principle (2) – see [23] above). For example, several Claim Forms identify "Persons Unknown" as "*Persons Unknown occupying land*". Such a description would embrace every householder in England & Wales. In several Cohort Claims, there are also concerning examples of the description given of "Persons Unknown" in the injunction order being different from that in the Claim Form, without any amendment being sought to the description in the Claim Form. For example:

(1) In the claim brought by Basingstoke & Deane BC and Hampshire CC (16th Claimants), the Claim Form was issued against "Persons Unknown (owner and/or occupiers of land at various addresses set out in the attached Schedule)". The underlined words were added to the Claim Form by amendment. However, both the interim and final injunctions were directed simply at "Persons Unknown" (without any description).

(2) In the claim brought by Thurrock Council (34th Claimant), the Claim Form was issued against "Persons Unknown" (without description). The interim injunction was granted on 3 September 2019, "*pending the final injunction hearing*" against "*Persons Unknown forming unauthorised encampments within the borough of Thurrock*". There is no final injunction as no steps were taken to progress the claim to a final hearing following the grant of the interim injunction.

52. Finally, in respect of the Claim Forms in the Cohort Claims which did not name any individual defendant, and were therefore brought simply against "Persons Unknown", there is scant evidence of compliance with Practice Direction 8A, particularly §§20.4 to 20.6. This is so even though, excluding Walsall, every one of the Cohort Claimants based the claim (at least in part) upon s.187B.

(4) The bases of the civil claims against "Persons Unknown"

53. The local authorities have variously relied upon the following statutory powers/torts when applying for Traveller Injunctions:

(1) all claimants relied upon s.222 Local Government Act 1972 ("s.222") and s.187B Town and Country Planning Act 1990 ("s.187B");

(2) the 1st, 11th, 35th and 36th Claimants relied upon s.1 Anti-Social Behaviour, Crime and Policing Act 2014 ("s.1 ASBCPA") (albeit that relief was not granted under this section in the claim brought by the 36th Claimants – see [67] below);

(3) the 36th Claimant relied upon s.130 Highways Act 1980 ("s.130"); s.27 Police and Justice Act 2006; s.37 Supreme Court Act 1981 and trespass; and

(4) the 16th Claimant relies upon ss.61 and 77 Criminal Justice and Public Order Act 2014.

These statutory provisions are set out in Appendix 2 to this judgment.

54. Only actions for trespass or brought under s.1 ASBCPA constitute tortious causes of action capable of being tried between the claimants and any defendants. In Wolverhampton's claim, unusually for a Part 8 claim, Particulars of Claim were served which included a claim in trespass (see further [191]-[207] below).

(a) s.222 Local Government Act 1972

55. s.222 does not create any substantive cause of action. It simply confers standing upon local authorities to bring (or defend) legal proceedings, which, in respect of proceedings brought to enforce public rights, had previously vested only in the Attorney General: ***Birmingham City Council -v- Shafi*** **[2009] 1 WLR 1961** [22]-[24].

56. A local authority can apply for a civil injunction to restrain breaches of the criminal law: ***Stoke on Trent City Council -v- B&Q Retail Limited*** **[1984] AC 754**. In ***City of London Corporation -v- Bovis Construction Limited*** **[1992] 3 All ER 697**, a civil injunction had been granted to the local authority to restrain noise nuisance by the defendant. The local authority had issued 18 summonses against the defendant alleging breaches of s.60 Control of Pollution Act 1974. Bingham LJ set out the basis on which such jurisdiction was to be exercised. He noted that the jurisdiction to grant a civil injunction in support of the criminal law was "*exceptional and one of great delicacy to be exercised with great caution*" (714b, applying ***Gouriet -v- Union of Post Office Workers*** **[1978] AC 435, 481, 491, 500, 521**). He said that the "*guiding principles*" were (714g-j):

"(1) … the jurisdiction is to be invoked and exercised exceptionally and with great caution: see [***Gouriet***];

(2) … there must certainly be something more than mere infringement of the criminal law before the assistance of civil proceedings can be invoked and accorded for the protection or promotion of the interests of the inhabitants of the area: see the ***Stoke-on-Trent*** case at 767B, 776C, and ***Wychavon District Council -v- Midland Enterprises (Special Events) Ltd*** **[1987] 86 LGR 83, 87**;

(3) … 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*** at page 89."

57. Upholding the grant of an injunction, Bingham LJ explained, by reference to the facts of the case (715c-e):

> "… The conduct which the local authority seek to restrain is conduct which would have been actionable (if not at the suit of the local authority) in the absence of any statute. Even if the conduct were not criminal, it would probably be unlawful. The contrast with the planning and Sunday trading cases is obvious. I see no reason for the court pedantically to insist on proof of deliberate and flagrant breaches of the criminal law when, as here, there is clear evidence of persistent and serious conduct which may well amount to contravention of the criminal law and which may, at this interlocutory stage, be regarded as showing a public and private nuisance. It is quite plain that the service of the notice and the threat of prosecution have proved quite ineffective to protect the residents.
>
> The local authority have issued 18 summonses but, even if convictions are obtained, the delay before the hearing will deprive the residents of Petticoat Square of any but (at best) minimal benefit. The local authority are charged with a power – and perhaps a corresponding duty – to protect their interests if their interests in the present case were left without protection. In my view the deputy judge was entitled to grant an injunction and was right to do so."

58. s.222 empowers local authorities to seek injunctive relief to restrain a public nuisance "*which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects*": ***Attorney-General -v- PYA Quarries Ltd*** **[1957] 2 QB 169, 184** *per* Romer LJ. Mr Bhose QC submitted that the case law demonstrates that s.222 provides a valuable and potentially powerful means by which a local authority can seek to ensure compliance with matters of public law, which all citizens have to obey for their mutual benefit. He referred to the judgment of Lawton LJ in the ***B&Q*** case in the Court of Appeal:

> "… [it is] in everyone's interest, and particularly so in urban areas, that a local authority should do what it can within its powers to establish and maintain an ambience of a law-abiding community; and what should be done for this purpose is for the local authority to decide." (emphasis added)

59. The underlined words are consistent with the principle that s.222 confers a status on the local authority to bring proceedings in its own name rather than granting any independent cause of action. Although not completely free from doubt, the balance of authority supports the view that, when bringing proceedings under s.222, the local authority must be able to establish a legal or equitable right in support of its claim and any application for an injunction (see discussion in §2-526(e)(5) *Encyclopaedia of Local Government Law*, Sweet & Maxwell). Whatever its limits, it is clear that s.222 does not provide a free-standing right to bring a claim simply on the grounds that the relief sought is "*expedient for the promotion or protection of the interests of the inhabitants of their area*": see ***Worcestershire County Council -v- Tongue*** **[2004] Ch 236** [30]-[32], [35] *per* Peter Gibson LJ.

60. Mr Bhose QC has pointed to the decision of Johnson J in ***London Borough of Hackney -v- Persons Unknown*** **[2020] EWHC 3049** as an example of an interim injunction granted to a local authority to restrain public nuisance by "Persons Unknown" under s.222.

(b) s.187B Town & Country Planning Act 1990

61. As s.187B(1) makes clear, the relevant cause of action in relation to any application for an injunction is an alleged breach of the duty to comply with planning controls in s.57(1), which provides that planning permission be obtained for the carrying out of any development of land as defined in s.55; ***South Buckinghamshire District Council -v- Porter*** **[2003] 2 AC 558** [11] *per* Lord Bingham.

62. s.187B itself does not, therefore, provide a cause of action. Rather, s.187B(1) provides *locus standi* for a local authority to apply for an injunction for actual or apprehended breach of planning controls required by s.57(1). s.187B(3) enables rules of Court to provide for injunctions to be granted against individuals the identity of whom is unknown.

63. In ***Cameron***, Lord Sumption referred to s.187B, and also to CPR 8.2A (see [50] above). He suggested that no such practice direction had been made. Whatever the position in ***Cameron***, insofar as concerns the Cohort Claims, Practice Direction 8A had been issued and, in paragraph 20, it set out requirements for various claims brought to obtain injunctions in respect of "*environmental harm or unlicensed activities*", including claims under s.187B: §20.1(1) (see [50] above). Importantly, §§20.4 to 20.6 of PD 8A clearly envisage that proceedings will be brought against, and the Claim Form served upon, *existing* known defendants, who can be described even if they cannot presently be named. The terms of PD 8A provide no support for a regime of granting injunctions against "Persons Unknown" under s.187B which will bind newcomers. Indeed, it would be impossible to comply with §20.4, in particular, in respect of a claim which sought to include newcomers in the definition of "Persons Unknown".

(c) s.1 Anti-Social Behaviour, Crime and Policing Act 2014

64. s.1 ASBCPA does create a cause of action - with an injunctive remedy - against persons engaging in anti-social behaviour as defined in s.2. The conditions of liability are set out in ss.1(2)-(3), including the standard of proof to be applied by the court. s.4 enables a Court to attach a power of arrest to an injunction if the conditions in s.4(1) are met (see further [79]-[81] below). s.5(1) provides that an application for an injunction under s.1 may be made only by specified bodies (which include a local authority: s.5(1)(a)). Applications can be made without notice being given to the respondent: s.6(1).

65. Rules of Court have been made under s.18 ASBCPA in CPR Part 65, Section VIII. CPR 65.43 provides (so far as material):

> "(1) An application for an injunction under … Part 1 of the 2014 Act is subject to the Part 8 procedure as modified by this rule and Practice Direction 65.
>
> (2) The application –
>
> (a) must be made by a claim form in accordance with Practice Direction 65;
>
> (b) may be made at any County Court hearing centre; and
>
> (c) must be supported by a witness statement which must be filed with the claim form

(2A) If the application –

(a) is on notice; and

(b) is made at a County Court hearing centre which does not serve the address where

(i) the defendant resides or carries on business; or

(ii) the claimant resides or carries on business,

the application will be issued by the County Court hearing centre where the application is made and sent to the hearing centre serving the address at (b)(i) or (ii), as appropriate…

(3) The claim form must state -

(a) the matters required by rule 8.2; and

(b) the terms of the injunctions applied for.

(4) An application under this rule may be made without notice and where such an application without notice is made –

(a1) the application may –

(i) be made at any County Court hearing centre;

(ii) be heard at the hearing centre where the application is made;

(iii) at any stage of the proceedings, be transferred by the court to-

(aa) the hearing centre which serves the address where the defendant resides or where the conduct complained of occurred; or

(bb) another hearing centre as the court considers appropriate;

(a) the witness statement in support of the application must state the reasons why notice has not been given; and

(b) the following rules do not apply –

(i) 8.3;

(ii) 8.4;

(iii) 8.5(2) to (6);

(iv) 8.6(1);

(v) 8.7; and

(vi) 8.8.

(5) In every application made on notice, the application notice must be served, together with a copy of the witness statement, by the claimant on the defendant personally.

(6) An application made on notice may be listed for hearing before the expiry of the time for the defendant to file acknowledgement of service under 8.3, and in such case –

(a) the claimant must serve the application notice and witness statement on the defendant not less than 2 days before the hearing; and

(b) the defendant may take part in the hearing whether or not the defendant has filed an acknowledgement of service."

66. Practice Direction 65, provides (so far as material)

"**Issuing the Claim**

1.1 (1) An application for an injunction under… Part 1 of the 2014 Act must be made by Form N16A and for the purposes of applying Practice Direction 8A to applications under … Section VIII of Part 65, Form N16A shall be treated as the Part 8 claim form.

(2) An application on notice under [rule 65.43] will be issued by the County Court hearing centre where the claim is made but will then be sent to the County Court hearing centre which serves the address where the defendant resides or the conduct complained of occurred…"

Form N16A is the general form of application for an injunction. For present purposes, the form requires the full name of the person against whom the injunction is sought to be stated along with the names and addresses of all persons upon whom it is intended to serve the application. Applications under s.1 ASBCPA are not included in the actions which may be commenced under CPR Part 8 without naming a defendant: CPR Part 8.2A and Practice Direction 8A.

67. In the claim brought by Wolverhampton, Jefford J refused to grant an injunction on the basis of s.1 ASBCPA ([2018] EWHC 3777 (QB)). She considered that the s.1 envisaged the grant of an injunction to restrain anti-social behaviour by an identified individual, not "Persons Unknown": [2]. With respect, I agree with that conclusion. Part 1 of the Act (and the relevant provisions of the CPR) envisages a claim being made against an individual identified respondent and an injunction being used as part of targeted measures against anti-social behaviour committed by that respondent:

(1) s.1(1) provides a jurisdictional threshold: an injunction can only be granted against someone who is aged 10 or over.

(2) The court can grant an injunction under s.1 if two conditions are met:

a) s.1(2) requires the court to be satisfied on the balance of probabilities that "the respondent" has engaged in or threatens to engage in anti-social behaviour; and

b) s.1(3) requires that the court considers it is just and convenient to grant the injunction "*for the purpose of preventing the respondent from engaging in anti-social behaviour*"

Assessment of whether these conditions are met can only be done by the court focusing on the alleged conduct of the particular respondent and whether the terms of the injunction are likely to prevent the respondent from engaging in anti-social behaviour.

(3) Different courts have jurisdiction to make the injunction depending upon the age of the respondent. s.1(8) provides that the application for an injunction has to be made to a Youth Court if the respondent is under the age of 18 (and the appeal route is to the Crown Court in such cases: s.15), otherwise, in respect of those aged 18 and above the Act provides that the application is to be made to "*the High Court or the County Court*": s.1(8)(b). (Note, however, s.1(8)(b) is expressly made "*subject to any rules of court*" made under s.18(2). The relevant provisions of the CPR made under the section direct that the application must be made to the County Court.)

(4) s.14 imposes requirements to consult the local youth offending team about any application for an injunction that is made if the respondent is under the age of 18 when the application is made.

(5) s.1(4)(b) permits the court to impose positive requirements upon the respondent, but if such requirements are imposed, the injunction must specify who is to be responsible for supervising compliance with the requirement: s.3(1); and the court must have evidence about their suitability and enforceability: s.3(2). It is the duty of the person responsible for supervising compliance with the requirements imposed by the court to make the necessary arrangements in connection with the requirements and to promote the respondent's compliance with the relevant requirements. If the supervising person considers that the respondent has complied with (or failed to comply with) the relevant requirements, s/he must inform the person who applied for the injunction and the chief officer of police. A respondent subject to a requirement included in an injunction under s.1 is required to keep in touch with the supervising officer and notify that person of any change of address.

68. Whether or not a court could grant an injunction, under s.1 ASBCPA, against a person whose name was not known, but who could be identified, is a point that would require further argument. Whilst I can see force in the argument, for example, that it would be difficult to conduct any meaningful consultation with the local youth offending team if the respondent cannot be identified by name, it is not a point I need to determine. What, in my judgment, is clear is that the scope for wide-ranging "Persons Unknown" injunctions which bind newcomers (or are made *contra mundum*) under s.1 ASBCPA, particularly where they are targeting not individuals but particular forms of activity, are very difficult to justify as either being consistent with the structure of the Act or permitted under the CPR:

(1) The Act itself does not contain an express provision enabling injunctions under Part 1 of the Act to be granted against "Persons Unknown" or *contra mundum*. Furthermore, Part 4 of the same Act (ss.59-75) conveys powers upon local

authorities to tackle certain forms of anti-social behaviour by means of Public Spaces Protection Orders ("PSPOs"). I accept Mr Willers QC's submission, on behalf of the Interveners, that Part 4 of the Act enables the local authority to tackle general anti-social behaviour by making PSPOs. Part 1 contains measures to be targeted at individuals.

(2) Unlike the authorisation under CPR 8.2A and Practice Direction 8A §20 to commence proceedings under s.187B against "Persons Unknown", the CPR do not authorise proceedings to be brought against "Persons Unknown" under s.1 ASBCPA.

(3) Insofar as the local authority seeks an injunction under s.1 ASBCPA the terms of which are intended to bind newcomers, then I cannot presently see how the local authority could satisfy the requirement, ultimately, to give notice to the respondent(s) and personally serve a copy of the application notice and witness statement in support: CPR 65.43(5). Whilst both the Act and the CPR permit without notice applications, the relief that can be granted without notice is limited to an interim injunction: s.6. The claim could only be progressed to a final hearing by serving the application upon the respondent(s). As the N16A Application Notice is treated as the Claim Form (PD63 §1.1(1)), the principles governing service of the Claim Form would apply.

69. None of the local authorities has made oral submissions seeking to support the grant of Traveller Injunctions under s.1 ASBCPA. Ms Bolton and Mr Giffin QC represented the three local authorities who had been granted an injunction on grounds that included s.1 ASBCPA: LB Barking & Dagenham (1st Claimant) and LB Redbridge (11th Claimant). However, they did not advance any oral arguments seeking to support the grant of the injunctions on this basis.

70. I should perhaps here mention ***Sharif -v- Birmingham City Council*** **[2020] EWCA Civ 1488** (see further [177]-[180] below). It is clear from the Court of Appeal's decision that the local authority had not made its application for an injunction pursuant to s.1 ASBCPA, but under s.222 to restrain breaches of the criminal law. For present purposes, as the decision (a) did not concern an injunction granted under s.1 ASBCPA; and (b) specifically left undecided the ***Canada Goose*** point about civil injunctions granted against "Persons Unknown" and whether they can bind "newcomers", I do not consider that it assists the claimants in the Cohort Claims. Specifically, it does not assist on whether injunctions against "Persons Unknown" or *contra mundum* can be made under s.1 ASBCPA and it is not authority for the proposition that the Court can make civil *contra mundum* orders under s.222; the injunction was expressly granted against "Persons Unknown".

(d) s.130 Highways Act 1980

71. Only Wolverhampton has relied upon s.130 as a basis for the injunction it obtained, and Mr Anderson QC has not sought to argue that s.130 is an important underpinning of the injunction that was granted. I accept the submissions of the Interveners and Ms Wilkinson that s.130 does not itself create a cause of action. The relevant cause of action is an alleged public nuisance caused by the obstruction of the free passage of the public along the highway. Section 130 imposes a number of duties on highway authorities to assert and protect the right of the public to that unobstructed and

unhindered free passage along the highway and it gives them *locus standi* to bring or defend proceedings in performance of those duties, including applications for an injunction using its locus under s.222 in an appropriate case. Local authorities also have further powers under the Highways Act 1980 to deal with obstructions to the highway in ss.137ZA(4) and s.149.

72. In reality, however, an alleged public nuisance arising from an obstruction of the highway is an unpromising basis for a civil injunction against "Persons Unknown" (or *contra mundum* order), for the reasons explained by Longmore LJ in ***Ineos*** [40]:

> "… the concept of 'unreasonably' obstructing the highway is not susceptible of advance definition. It is, of course, the law that for an obstruction of the highway to be unlawful it must be an unreasonable obstruction (see ***Director of Public Prosecutions -v- Jones (Margaret)*** **[1999] 2 AC 240**), but that is a question of fact and degree that can only be assessed in an actual situation and not in advance. A person faced with such an injunction may well be chilled into not obstructing the highway at all."

73. Mr Willers QC is right when he submitted that the Court would not grant an injunction *contra mundum* to prevent *all* encampments on a highway because it is impossible for the court to be satisfied, in advance, that *all* encampments would represent a public nuisance. It is one thing for a court to grant an injunction against a large encampment which currently is blocking traffic on a road (even assuming that the police have been unable to resolve the issue using their own powers), but it is another for the court prospectively to grant an injunction against the whole world prohibiting a single caravan stopping on the carriageway which does not impede the passage of other road users. An injunction that prohibits both, without discrimination, is wrong in principle, even before the Court makes an assessment, as it must, of the extent of the interference with the Article 8 rights of Gypsies and Travellers that the grant of such an injunction would represent and the proportionality and necessity for any such interference.

(e) ss.61 and 77-79 Criminal Justice and Public Order Act 1994

74. Section 61 provides that, where a senior police officer present at the scene reasonably believes (a) that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period; (b) that reasonable steps have been taken by or on behalf of the occupier to ask them to leave; and (c) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or that those persons have between them six or more vehicles on the land, the officer may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land. A failure to comply with the direction of the police officer is an offence punishable with up to 3 months' imprisonment.

75. Section 61 therefore does not create a cause of action but instead gives the police power to direct trespassers on land to leave and to remove their property.

76. Section 77 provides a power for a local authority to direct unauthorised campers to leave the land; s.78 provides a power for local authorities to apply for orders from the magistrates' court for the removal of persons and their vehicles unlawfully on land; and

s.79 prescribes the requirements for service of directions and orders made under ss.77 and 78.

77. Basingstoke & Deane BC and Hampshire CC (16th Claimant) is the only remaining local authority that has purported to rely on these statutory provisions in support of its civil claim against "Persons Unknown". In the Claim Form in its action, the local authority stated: "*The Claimants seeks* (sic) *to restrain the repeated breaches of directions to leave the land, served pursuant to s.61 and 77 Criminal Justice and Public Order Act 1994.*" Ultimately, the injunction orders were stated to be made pursuant to s.222 and s.187B. None of the provisions in ss.61 and 77-79 of CJPOA creates a cause of action triable between the local authorities and the alleged defendants in respect of the actual and threatened trespasses in the present cases. The statutory provisions confer enforcement powers for local authorities. They do not contain or provide any *locus standi* to a local authority to seek injunctive relief.

(f) Trespass

78. Trespass is a common law tort consisting of any unjustifiable intrusion by one person upon land in the possession of another. It does not require proof of damage to be actionable. At common law, the local authority has *locus standi* to bring claims in trespass in respect of both land it owns in its own right and public spaces within its borough. Mr Bhose QC submits that where the Cohort Claims rely upon trespass as the cause of action, the local authority is bringing the claim on behalf of and for the benefit of the public to enforce their rights.

(5) Powers of arrest attached to injunction orders

79. In 23 Cohort Claims, the injunctions granted against "Persons Unknown" contained a power of arrest pursuant to s.27 Police and Justice Act 2006 and/or s.4 ASBCPA. These are unusual provisions that require clear and separate consideration and justification before being included in a civil injunction against identified defendants. Adding a power of arrest in an injunction against "Persons Unknown", where the definition of the defendants includes newcomers, presents real difficulties in satisfying the relevant statutory requirements and rules of court.

80. CPR 65.9 provides (so far as material):

> (1) An application under… section 27(3) of the 2006 Act for a power of arrest to be attached to any provision of an injunction must be made in the proceedings seeking the injunction by -
>
> (a) the claim form; or
>
> …
>
> (d) application under Part 23.
>
> (2) Every application must be supported by written evidence.
>
> (3) Every application made on notice must be served personally, together with a copy of the written evidence, by the local authority on the person against whom the injunction is sought not less than 2 days before the hearing.

81. It may be that there was evidence justifying the inclusion of a power of arrest against named individuals in injunctions granted in the Cohort Claims. However, it is difficult to see how a Court can be satisfied, on evidence, under s.27 Police and Justice Act 2006 and/or s.4 ASBCPA, that unidentified people, who have not yet even been present on the land, threaten conduct which consists of or includes the use or threatened use of violence, or that their actions present a significant risk of harm to others, sufficient to justify a power of arrest. There is also the issue of compliance with CPR 65.9(3). In the Cohort Claims, where a power of arrest was attached to the injunction order directed at "Persons Unknown", a person who simply parked his/her caravan overnight on land subject to the injunction was immediately liable to arrest. If the Court had simply granted an injunction against the hypothetical trespassing caravan owner in Dagenham Road Car Park (see [45] above), absent some very unusual feature in the evidence, the Court simply would not have had jurisdiction to attach a power of arrest as the conditions of s.27(3) and/or s.4(1) would not have been met.

82. I have found two instances in the Cohort Claims where the Court addressed specifically whether a power of arrest should be attached to an injunction against "Persons Unknown" in the Cohort cases are in the claims brought by LB Hillingdon (7th Claimant) and Rugby BC (29th Claimant).

LB Hillingdon

(1) In LB Hillingdon, Stewart J refused to attach a power of arrest to the interim injunction he granted on 29 March 2019 because the requirements of s.27(3) Police and Justice Act 2006 were not met.

Rugby Borough Council

(2) In Rugby BC, the Claim Form dated 22 August 2018, extraordinarily, was issued against six persons identified only by surname and a 7th Defendant "Persons Unknown", who were neither described nor identified (in breach of the Description Requirement – see [49] above). No order for alternative service of the Claim Form on "Persons Unknown" was sought or granted. An injunction, "*until further order*", was granted at the first hearing on 31 August 2018. A power of arrest was attached to the order under s.27 Police and Justice Act 2006. In a witness statement, dated 18 November 2020, the Legal Officer of Rugby BC, stated that she had represented the Council at the hearing at Nuneaton County Court on 31 August 2018. She had not prepared a skeleton argument, but she exhibited a copy of the "*advocacy notes*" she had prepared for the hearing. No judgment was given and no record or notes of the hearing are available. The advocacy notes indicate that the local authority relied upon the grant of an injunction to LB Bromley in similar terms. The notes make no reference to the power of arrest that was being sought, whether against the named defendants or "Persons Unknown", or the grounds upon which the council contended that such an order was justified by reference to the requirements of s.27(3).

(3) On 15 April 2020, the council applied to renew the power of arrest that had been granted under the original injunction order. On 3 June 2020, Deputy District Judge Leong at Nuneaton County Court refused the application, without a hearing. The Judge noted, succinctly:

> "The first 6 Defendants have not breached order since 2018/2019. In effect Rugby Borough Council are asking for an arrest power in relation to persons unknown (7th Defendant). That is not appropriate, nor are [the requirements] under s.27(3) Police and Justice Act 2006 met."

(4) The council did not renew the application to extend the power of arrest. As a result of a failure to comply with an unless order, dated 4 November 2020, the injunction order against "Persons Unknown" of 31 August 2018 was discharged. Upon further application by the council on 18 November 2020, the injunction granted against the named defendants in the order of 31 August 2018 was also discharged and the claim was dismissed.

(6) Use of the Interim Applications Court of the Queen's Bench Division ("Court 37")

83. Applications for interim injunctions are subject to the provisions of CPR Part 25 and Practice Direction 25A. The key procedural requirements are:

(1) the Application Notice must state the order sought and the date, time and place of the hearing: PD25A §2.1;

(2) subject to any order abridging time under CPR 23.7(4), the Application Notice and evidence in support must be served as soon as practicable after issue and in any event not less than three days before the court is due to hear the application: PD25A §2.2;

(3) except in cases where secrecy is essential, in any urgent application or application made without giving the required period of notice, the applicant should take steps to notify the respondent informally of the application: PD25A §4.3(3);

(4) the application must be supported by evidence and, where an application is made without notice to the respondent, the evidence must state why notice was not given: CPR 25.3(2), CPR 25.3(3), PD25A §§3.2 and 3.4;

(5) unless the court otherwise orders, any order for an injunction, made without notice to any other party, must contain a return date for a further hearing: PD25A §5.1(3); and

(6) an order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until trial or further order: PD25A §5.4.

84. In a large number of claims (but not all of them), applications for interim injunctions were brought before the interim applications Judge of the Queen's Bench Division (or brought using equivalent procedures in District Registries or the County Court) ("Court 37"). Notwithstanding the procedural requirements I have identified, in most cases, no notice of the Application was given to the respondents, "Persons Unknown", whether by the placing of notice on the land in respect of which the injunction was sought or otherwise; the Claim Form was issued on the date on which the interim injunction application was made; and inevitably, the time the Court had to consider the application was very limited. Frequently, no skeleton argument was provided to the court.

85. In my judgment, the use of the urgent applications procedure, in Court 37, was almost always unjustified. Indeed, on 29 March 2019, Stewart J, the Judge in Charge of the Civil List of the Queen's Bench Division, told Counsel, who had applied for an injunction on an urgent basis in one of the Cohort Cases, that applications for this type of injunction should not be made in Court 37 unless there was "*real urgency*". Nevertheless, the same Counsel appeared, again in Court 37, on two further occasions seeking an interim injunction in Cohort Claims on 10 May 2019 and 12 June 2019. I am not presently satisfied that there was any real urgency that justified the applications being made in Court 37 on these subsequent occasions. The evidence in support of the application made on 12 June 2019 certainly does not demonstrate that there was any present unlawful activity or any credible immediate threat of any so as to justify making an application to Court 37. The transcript of the hearing on 10 May 2019 supports a similar conclusion.

(7) Failure to progress claims after the grant of an interim injunction

86. Another risk inherent in claims made against "Persons Unknown" is that, unless a defendant is identified (or comes forward), the claim can easily become dormant, if the claimant permits it to. Traveller Injunctions represent an interference with the Article 8 rights of members of the Gypsy and Traveller communities (for the reasons explained by the Court of Appeal in ***LB Bromley***). The wider the scope of the injunction, the greater the extent of the interference with the Article 8 rights. Any failure to prosecute a claim in which an interim injunction has been granted is a matter of serious concern.

87. It has been recognised, in other types of claim brought against "Persons Unknown", that a failure to progress a claim where an interim injunction has been granted can amount to an abuse of process.

88. Interim non-disclosure orders, granted in cases of alleged breach of confidence or misuse of private information, is another area in which proceedings are occasionally brought against "Persons Unknown", typically because the identity of the person threatening to disclose the information is not known to the claimant. An interim non-disclosure injunction directly and immediately interferes with the Article 10 right of the individuals(s) restrained, but it also has the potential to bind third parties who have knowledge of the order under the ***Spycatcher*** principle (see further discussion below in [184]-[185]), representing a further interference with the Article 10 rights of third parties.

89. It was recognised in several cases, in which an interim non-disclosure injunction had been granted, that there was potential for claims against "Persons Unknown" being allowed by claimants to become dormant when no defendant was identified or came forward. If that happened, the interim injunction became practically a permanent injunction restraining third parties by reason of the ***Spycatcher*** principle.

(1) In ***X -v- Persons Unknown*** **[2007] EMLR 10**, Eady J observed:

> [77] … if a claimant is content to sit back and make no attempt at all to serve the defendant against whom an injunction has been obtained, with the order or the evidence on which it was based, then the tail will be wagging the dog. The ***Spycatcher*** doctrine has been acknowledged by the Court of Appeal and the House of Lords over

> the past 20 years because it is recognised that third parties should not knowingly frustrate orders of the court whether made *inter partes* or *contra mundum*: see, e.g. ***Attorney General -v- Punch Ltd*** **[2003] 1 AC 1046** [32]. The primary relief will usually have been obtained against a party who, it is anticipated, will otherwise infringe the claimant's rights. It is not desirable that this remedy should be sought as matter of formality, while depending primarily on the ancillary ***Spycatcher*** doctrine - salutary though it is.
>
> [78] Some effort should be made to trace and serve the primary wrongdoer. If appropriate, advantage can be taken of the provisions of [the CPR] for service by an alternative method (formerly "substituted service"). Otherwise, the litigation will go to sleep indefinitely, which is hardly consistent with the policy underlying the CPR, and what is supposed to be a temporary holding injunction becomes a substitute for a full and fair adjudication."

(2) In ***Terry (formerly LNS) -v- Persons Unknown*** **[2010] EMLR 16** [20], Tugendhat J summarised the unsatisfactory position where a claim had been brought against a person, who could not be identified by the claimant, who was threatening to disclose private information and photographs to a newspaper:

> "The overall likely effect of the order sought appeared to me to be as follows. The applicant was likely to notify a limited number of media third parties promptly. After the hearing that was done, as set out below. If it were not intended to do that, there would be no point in the court making the order (since it is admitted the respondent has not been identified). In my view, on the information now before me, the applicant is unlikely ever to serve the Claim Form on any respondent. Journalists do not normally reveal their sources and can rarely be obliged to do so: ***Financial Times Ltd -v- United Kingdom*** **[2010] EMLR 21**. As that case showed, even leak enquiries conducted with the resources of a major corporation, backed up by specialist investigators, commonly fail to identify the source of a leak. But that will not trouble the applicant. There is no provision for a return date. Since service on the respondent is unlikely, it follows that no trial is likely to be held. Unless a third party is prepared to take the risk in costs of applying to vary this order, this interim application is likely to be the only occasion on which the matter comes before the court. The real target of this application is the media third parties who are not respondents. The only third parties who will ever hear of the proceedings are those whom the applicant chooses to notify. According to the terms of the draft order, no one else will have any means of discovering that an order has been made at all. The third parties who will be notified will be told nothing by the applicant about the grounds for the claim, or any possible defence to it. If they want to know more, they will be at risk as to costs in making an application to the court. In short, the effect of the interim order sought is likely to be that of a permanent injunction (without any trial) binding upon any person to whom LNS chooses to give notice that the order exists."

90. The remedy to prevent actions becoming dormant in this way was to make directions that ensured the claimant progressed the claim. In ***Terry***, Tugendhat J noted that CPR PD 25A §5.1(3) required that, where an interim injunction had been granted without

notice to the defendant(s), the order must provide for a return date for a further hearing. That return date, the Judge noted, served two important functions in relation to claims brought against "Persons Unknown" the second of which was [136]:

> "… it [enables] the court to monitor the progress of any attempts to find a respondent and to serve him. As Eady J noted in ***X -v- Persons Unknown*** [78], it is not consistent with the CPR for litigation to be commenced and for the subsequent steps required of claimant to be deferred indefinitely to suit the interests of the claimant. CPR 1 provides that cases are to be dealt with expeditiously and fairly, and that the court has a duty to manage the case, including by fixing timetables and otherwise controlling the progress of the case, and giving directions to ensure that the trial of a case proceeds quickly and efficiently. If the Claim Form cannot be served expeditiously, then the action will be at risk of dismissal. Or a substitute defendant who can be served may be added by amendment."

91. In the ***Practice Guidance (Interim Non-Disclosure Orders)*** **[2012] 1 WLR 1003**, under a heading "*Active Case Management*", the Master of the Rolls gave further guidance:

> "Where an interim non-disclosure order… is made, and return dates are adjourned for valid reasons on one or more occasions, or it is apparent, for whatever reason, that a trial is unlikely to take place between the parties to proceedings, the court should either dismiss the substantive action, proceed to summary judgment, enter judgment by consent, substitute or add an alternative defendant, or direct that the claim and trial proceed in the absence of a third party (***XJA -v- News Group Newspapers*** **[2010] EWHC 3174 (QB)** [13]; ***Gray -v- UVW*** **[2010] EWHC 2367 (QB)** [37]; ***Terry*** [134]-[136])."

92. In ***Kerner -v- WX*** **[2015] EWHC 178 (QB)**, as a condition of being granted an interim injunction to restrain harassment of her and her son by "Persons Unknown", the claimant was required to give an undertaking that she would use all reasonable endeavours to attempt to identify the "Persons Unknown". Reflecting the ***Practice Guidance***, Warby J also required the claimant to give an undertaking that, if she had been unable to identify the "Persons Unknown" within three months of grant of the injunction, she would apply to a Judge for directions as to the further conduct of the action. The Judge explained:

> [7] [The ***Practice Guidance***] relates to actions involving interim non-disclosure orders which affect the Convention right to freedom of expression. Active case management in accordance with this guidance is of particular importance in cases of that kind. The injunctions in this case do not include non-disclosure provisions. However, they do relate to the activities of individuals who are involved with the news media and some at least of the principles that apply in non-disclosure cases are applicable on that account. It is in any event inconsistent with modern litigation principles for the court to allow an interim orders to remain in place with the case otherwise "going to sleep".
>
> [8] Active case management in such actions is only practicable if the action is brought before the court to enable such management to take place. Unless

> an order is made or an undertaking is given that ensures the case will be brought back, the risk exists that it will simply lie dormant.
>
> [9] I express no view at this stage as to what might be appropriate means of disposing of this claim if the defendants or one of them cannot be traced and served. That issue can be addressed if and when the need arises. What would not be appropriate, however, is to leave an interim order in force in perpetuity.

93. A similar order to prevent the action simply becoming dormant following the grant of an interim injunction against Persons Unknown was made in ***LJY -v- Persons Unknown*** **[2018] EMLR 19**; and in ***GYH -v- Persons Unknown*** **[2017] EWHC 3360 (QB)**, Warby J again gave directions to ensure the action was properly progressed after the grant of an interim injunction:

> [44] … A return date for the injunction application is provided for in the usual way. The draft order then provides that if the claimant is able to identify the defendant or a viable means of contacting him, "then she shall serve the claim form, this order and any other documents in these proceedings on the defendant as soon as reasonably practicable by email or text message". If she is unable to do this within 28 days, then "the filing of the Claim Form at Court on 1 December 2017 shall be deemed good service pursuant to CPR 6.15(2) and the claimant shall either (a) apply at the return date … for default judgment and/or final determination of the claim; or alternatively (b) discontinue the proceedings."
>
> [45] The claimant will need to give an undertaking to (continue to) use her best endeavours to trace and serve the defendant: cf. ***Kerner -v- WX***. Subject to that, and provided that the return date is set not less than 7 days beyond the expiry of the 28-day period for service, this regime seems satisfactory."

94. The precise directions that are necessary to ensure the proper prosecution of the claim will depend on the circumstances of the case. The defendant(s) in ***GYH*** fell into Category 1 in Lord Sumption's analysis in ***Cameron*** (see [11(12)] above): anonymous defendants who are identifiable (and can be communicated with) but whose names are unknown. The defendant(s) in ***Kerner*** fell into Category 2: not only anonymous but could not, at that stage, even be identified.

95. As these cases demonstrate, albeit in a different area of law, directions can and should be made by the Court that ensure that, in claims brought against "Persons Unknown" in which interim injunctions are granted, the Court retains active supervision of the proceedings (see further [248] below). At the return date, the Court can investigate whether the claimant has established jurisdiction over any defendant by serving the Claim Form, which may include, where justified, by an order permitting a method of alternative service. If the claimant has failed to serve the Claim Form, any interim injunction is liable to be discharged and the claim dismissed (see further [46]-[48] above).

96. It is a striking feature of the Cohort Claims that in most cases in which an interim injunction was granted, no date was fixed for a further hearing (arguably in breach of PD25A §5.1(3)). In consequence, it was entirely up to the relevant local authority to take the initiative to move the claim forward. A significant number of claims have just ground to a halt after the interim injunction was granted. For example,

(1) in the claim brought by Rochdale MBC (28th Claimant), on 9 February 2018, an interim injunction was granted, without notice and "*until further order*", against absent defendants, including "Persons Unknown" (the interim injunction was subsequently discharged against two named defendants on 6 February 2019);

(2) in the claim brought by Nuneaton and Bedworth BC and Warwickshire CC (26th Claimants), on 19 March 2019, an interim injunction "*until further order*" was granted against absent defendants, including "Persons Unknown", expressly "*pending the final injunction hearing*"; and

(3) in the claim brought by Thurrock Council (34th Claimant), on 3 September 2019 an interim injunction was granted against absent defendants, including "Persons Unknown", again expressly "*pending the final injunction hearing*".

97. In all three of these claims, a power of arrest was attached to the injunction and no return date or date for the final hearing of the claim was provided. The relevant claimants took no further steps to progress the claims to a final hearing. Apart from the discharge application made by two named defendants in the Rochdale claim, the next development in each case was my order of 16 October 2020, assembling the Cohort Claims. It is necessarily a matter of conjecture how long it would have been before each of these local authorities would have taken any steps to progress the claim to a final hearing had it not been for the Court's intervention on 16 October 2020.

98. Overall, in a significant number of Cohort Claims the relevant local authority appears to have failed to progress the claim to a final hearing after having been granted an interim injunction. In addition to the three claims identified in [96] above, claims in which there appears, prima facie, to have been a failure properly to prosecute the claim after the grant of the interim injunction include: LB Havering (6th Claimant); LB Hillingdon (7th Claimant); LB Hounslow (8th Claimant); LB Richmond-upon-Thames (12th Claimant); Boston BC & Lincolnshire CC (19th Claimant); and Buckinghamshire Council (37th Claimant).

99. Periods of delay in prosecuting claims after the Court of Appeal handed down judgment in ***LB Bromley*** on 21 January 2020, and ***Canada Goose*** on 3 March 2020 are potentially more serious still. In combination, the effect of the decisions in ***Cameron***, ***LB Bromley*** and ***Canada Goose*** on the Traveller Injunctions obtained by local authorities was significant. It called into question the very basis on which many, if not the majority, of these injunctions had been granted and their terms. During March 2020, the First Intervener sent letters to most local authorities in the Cohort Claims specifically raising the appropriateness of the injunctions that had been granted in Cohort Claims in the light of the Court of Appeal decision in ***LB Bromley***. In the closing paragraphs of the letter, each local authority was asked to confirm that it would "*urgently reconsider the injunction [it had] in place*" and expressed the view that the injunction should be withdrawn. However, not a single local authority, which had been granted such an injunction, took steps that were effective in ensuring that the claims were listed for further hearing so that the Court could consider the impact of the ***LB Bromley*** and ***Canada Goose*** decisions. So far as the Court is aware, they continued to enforce the injunction that they had been granted. That was so despite the fact that several Cohort Claims, in which interim injunctions had been granted, had been adjourned *specifically*

on the ground that it was necessary to await the outcome of the Court of Appeal decision in ***LB Bromley*** before the claims could be progressed.

100. In fairness, I should record that some local authorities have filed evidence explaining that they were under considerable strain responding to the pandemic. LB Hillingdon has explained that it had obtained a hearing fixed for 7 May 2020, but this hearing was subsequently vacated, due to the pandemic, following a request by the local authority on 15 April 2020. LB Hounslow has explained that, whilst it has been considering the impact of ***LB Bromley***, it has permitted an encampment to remain for periods from 23 March to 31 May 2020 and then from 5 June to 18 August 2020, due to the pandemic.

101. Nevertheless, local authorities which had been granted interim Traveller Injunctions and failed to take steps promptly to restore the claims seem to me to be open to potential criticism for having failed to do so. In ***LB Enfield***, I held that a party who had (i) obtained an injunction against Persons Unknown *ex parte*, and (ii) become aware of a material change of circumstances, including for these purposes a change in the law, which gives rise to a real prospect that the court would amend or discharge the injunction, was under a duty to restore the case within a reasonable period to the court for reconsideration: [2020] EWHC 2717 (QB) [32]. In the absence of any effective respondent who could take the initiative to seek the Court's reconsideration of whether, in the light of the decisions of ***LB Bromley*** and ***Canada Goose***, the injunction should be maintained in the terms in which it had been granted, or at all, injunctions potentially vulnerable to challenge on similar grounds continued in full force. The only reason that the Court has had an opportunity to reconsider any of these orders is because some local authorities, whose injunctions were approaching the end of the period for which they had been granted, made applications to the Court to "extend" them. Although I recognise that the pandemic has placed very unusual strains on the resources of local authorities, it did not, apparently, prevent several local authorities from applying to "extend" Traveller Injunctions that they had previously been granted.

(8) Particular Cohort Claims

(a) Harlow District Council and Essex County Council (24th Claimants)

102. As noted by the Court of Appeal in ***LB Bromley*** [10], the prototype of the "Persons Unknown" Traveller Injunction, targeting Gypsies and Travellers, was granted in 2015 to Harlow DC and Essex CC. An interim injunction was granted on 3 March 2015, followed by a final injunction on 16 December 2015. It was granted against 35 named defendants, but also against "Persons Unknown" (without any description of them). It was a borough-wide injunction in respect of Harlow DC.

103. On 26 May 2017, the two local authorities applied to "vary" the final injunction; they sought to extend the period of the injunction by a further three years and to add further named defendants to the claim. The application was granted on 14 June 2017. The judgment does not address the jurisdictional basis on which a "final injunction" could be "extended", or further defendants added to the claim, but a revised injunction was granted until 20 June 2020 and further named defendants were added to the claim.

104. On 8 June 2020, the local authorities made a further application to "extend" the "final injunction" for a further two years. The Application came before Tipples J on 10 July

2020. Perhaps understandably, the Judge questioned whether the Court had jurisdiction to extend a final injunction. The Claimants withdrew their application. In consequence, the local authority's injunction lapsed on 20 June 2020. No further similar claim has been issued, or Traveller Injunction sought, by Harlow DC and/or Essex CC.

(b) London Borough of Enfield (38th Claimant)

105. The London Borough of Enfield was granted a borough-wide interim injunction on 21 July 2017. The Claim Form was issued that same day simply naming the defendants as "Persons Unknown" (in breach of the Description Requirement – see [49] above). The injunction application was made to Court 37. A final injunction in similar terms was granted on 4 October 2017 for a period of three years. No respondent attended the hearings, and the orders were made without opposition. LB Enfield did not apply for, and was not granted, any order permitting service of the Claim Form by alternative means.

106. On 22 September 2020, little more than 10 days before the injunction was due to expire, LB Enfield issued an Application Notice seeking to amend the description of the defendants in the Claim Form and to extend the "final injunction" it had been granted. The application came before me, as the Judge in Court 37, on 29 September 2020. No notice had been given of the application to any defendants/respondents and there was no urgency (save that generated by delay on the local authority's part). Apart from the issue of whether the Court had any jurisdiction to amend the description of defendants or to extend an injunction that had been granted as a final order, more fundamentally it was apparent that LB Enfield had not served the Claim Form on any defendant and it had not obtained an order for alternative service under CPR 6.15. Confronted with these difficulties, Counsel for LB Enfield withdrew the application to amend the Claim Form and extend the injunction.

107. Nevertheless, on 30 September 2020, LB Enfield issued a further Application Notice seeking an order under CPR 6.15(2) retrospectively validating the steps LB Enfield had taken to bring the original Claim Form to the attention of the defendants. I refused that application on 2 October 2020: [2020] EWHC 2717 (QB). Separately, LB Enfield issued a fresh Part 8 Claim Form substantially seeking a final injunction in terms that they had sought as variation of the original injunction against two categories of "Persons Unknown", in summary to restrain unlawful encampments on land and fly-tipping. The council's application for an interim injunction against the latter category was also refused on 2 October 2020. The claim was adjourned, and directions given for a final hearing of the fresh Part 8 claim. Subsequently, on 11 January 2021, LB Enfield discontinued its second claim.

(c) Canterbury City Council (20th Claimant)

108. Canterbury CC had applied for, and was granted, an interim injunction, on 10 April 2019, to prevent encampment on any of 82 sites within the city. The application was made in Court 37. The Claim Form, naming the defendants as "Persons Unknown" (with no description in breach of the Description Requirement – see [49] above), was also issued on 10 April 2019. As noted in the judgment I gave in the claim on 30 October 2020 ([2020] EWHC 3153 (QB) [16]), there was no urgency (the Council had been contemplating making the application for at least three weeks), no notice was given to the respondents, the evidence in support contained no explanation why no notice of the

application had been given to the respondents (as required by CPR Part 25 APD §3.4), no skeleton argument was provided to the Court and no note of the hearing could be provided. The injunction order contained no provision regarding service of the Application Notice on the Defendants. As was later to prove important, the Council had also not applied for any Order permitting the Claim Form to be served by alternative means under CPR 6.15. The evidence in support of the injunction application did not address the issue of service of the Claim Form at all.

109. The matter returned to Court on 3 June 2019. The Council asked the Court to make a final order against "Persons Unknown" substantially in the terms of the interim injunction. A final injunction was granted, but only for 1 year, not the 3 years sought by the Council. The Council did not address the issue of service of the Claim Form and the 4-month period within which to serve it upon the defendants expired at midnight on 10 August 2019. No order for alternative service had been sought or made and no application had been made to extend the period within which to serve the Claim Form.

110. On 23 June 2020, Canterbury CC issued an Application Notice seeking to "*renew the order for injunction… which is due to expire, but on a narrower basis than previously for a period of two years*". The application initially came before the Court on 30 July 2020. Thornton J expressed concerns about several aspects of the application. She gave permission to amend the name of the defendants to comply with the requirement to identify "Persons Unknown" by reference to conduct which is alleged to be unlawful, but otherwise adjourned the application to be fixed in October 2020. The injunction was extended until that further hearing.

111. The hearing was fixed for 30 October 2020. Shortly before the hearing, Canterbury CC indicated that it wished to withdraw its application to renew/extend its injunction. Recognising that it had failed to serve the Claim Form on "Persons Unknown", or to obtain an order for alternative service, it proposed that the injunction order should be discharged, and its claim dismissed. I made the order that the claimant sought. The judgment identifies a series of failures in relation to the claim: [2020] EWHC 3153 (QB).

(9) Case Management Hearing: 17 December 2020 – Identification of the issues of principle to be determined

112. By the time of the Case Management Hearing on 17 December 2020, the remaining active local authorities had largely grouped themselves, and were represented, as they were at the hearing on 27-28 January 2021. Permission to intervene was granted to the three organisations that represent the interests of the Gypsy and Traveller communities. Largely by agreement, the following issues of principle were identified to be determined at the hearing on 27-28 January 2021:

    (1) Whether the Court has the power – either generally under CPR 3.1(7) or otherwise, or specifically having regard to the particular terms of the relevant order – to case manage the proceedings and/or to vary or discharge injunctions that have previously been granted by final order? ("The First Issue: Jurisdiction over Final Orders")

    (2) Whether the Court has jurisdiction, and/or whether it is correct in principle, generally or in any relevant category of claim, to grant a claimant local authority

final injunctive relief either against "Persons Unknown" who are not, by the date of the hearing of the application for a final injunction, persons whom the law regards as parties to the proceedings, and/or on a *contra mundum* basis? ("The Second Issue: Final Orders against Newcomers or *Contra Mundum* Orders")

(3) In the event that the Court finds that it does not have jurisdiction to grant a final injunction in the circumstances set out in (2) above, whether:

(a) it is possible to identify the Defendants in the category of persons unknown who were parties to the proceedings at the date the final order was granted and are bound by it; and

(b) insofar as the final injunction binds newcomers, it should be discharged.

("The Third Issue: Ascertaining the parties to the Final Order")

(4) If there is no jurisdiction to grant such final injunctive relief in all or any of the cases identified above, in what circumstances (if any) should the Court be prepared to grant interim injunctive relief against "Persons Unknown" Defendants in such a claim, in a form in which final relief would not be granted? ("The Fourth Issue: the Conundrum of Interim Relief")

The labelling of the issues is mine, following the hearing and reflecting the way the arguments developed.

113. At the request of the Court, the Attorney General instructed an advocate to the Court to make written and oral submissions on the issues to be decided by the Court. Sarah Wilkinson, who had appeared as advocate to the Court in the Court of Appeal in the ***Canada Goose*** case was counsel instructed by the Attorney General. I should record the Court's gratitude for the clarity of Ms Wilkinson's oral and written submissions, and indeed those of all Counsel instructed in the case. The issues to be determined at the 2-day hearing were complex and detailed. Time was allocated fairly and economically. I am extremely grateful for the cooperative way in which Counsel, their instructing solicitors and parties have approached this hearing and the necessary preparations for it.

D: An overview and summary of conclusions

114. Before embarking on consideration of the detailed submissions on each of the issues of principle, it is useful to have a summary of the position of each of the main groups and my conclusions (for the reasons explained in detail in the following paragraphs).

Issue 1: Jurisdiction over Final Orders

115. Ms Bolton's group of local authorities was the only group who argued that the Court has no jurisdiction to revisit the terms of the final injunctions that were granted to LB Barking & Dagenham (1st Claimant), LB Redbridge (11th Claimant), and Basingstoke & Deane BC and Hampshire CC (16th Claimants).

116. Apart from Walsall MBC and Sandwell MBC (35th Claimants) ("Walsall") and Wolverhampton CC (36th Claimant) ("Wolverhampton"), every other local authority

with a subsisting injunction has an interim injunction. It is common ground that, in respect of interim injunctions, the Court retains jurisdiction over both the claim and any injunction that has been granted.

117. The terms of the injunction orders made in Walsall and Wolverhampton are unusual in the Cohort Claims. Wolverhampton, uniquely in the remaining cases, has an order the terms of which are truly *contra mundum* (see further [191]-[207] below). Although Walsall's order has some characteristics that suggest it is a "final" injunction (albeit containing a permission to apply), Wolverhampton's injunction is not easy to categorise in terms of an "interim" or "final" order, as those terms are conventionally understood in *inter partes* civil litigation (see [207] below). Wolverhampton's order has, since it was originally granted, expressly provided for review hearings. There have been two such reviews. On each occasion the injunction has been continued. If *contra mundum* orders of this type and scope are permissible (a point that arises for determination under the Second Issue), then the Wolverhampton model avoids many of the pitfalls and difficulties – particularly proper identification and description of the "Persons Unknown" and service of the Claim Form – that have been encountered in the other Cohort Claims.

118. Contrary to Ms Bolton's arguments, it is an essential part of the submissions of both Walsall and Wolverhampton that, whether the orders are called "interim" or "final" and whether directed at "Persons Unknown" or *contra mundum*, the Court must retain jurisdiction over the injunction orders prohibiting trespass or breach of planning control. Both submit that, to be effective, the injunction orders must bind newcomers and they recognise that, if that is so, then the Court must retain jurisdiction over the terms of the order so as to be able to modify or discharge the injunction in the light of changing circumstances.

119. The Interveners contend that the Court does generally retain jurisdiction over the injunctions that have been granted as part of a "final order" but that, in any event, the Court need not resolve this issue because each of the injunction orders in the relevant claims contains specific express provisions which permit the terms of the injunction to be reconsidered by the Court, by expressly providing that the relevant order is to continue "*until further order*" and/or by inclusion of a paragraph granting permission to apply to vary or discharge the injunction to "*the Defendants or anyone notified of this order*".

120. I have rejected Ms Bolton's arguments and conclude that the Court does retain jurisdiction to consider the terms of the final injunctions in the claims brought by LB Barking & Dagenham, LB Redbridge, and Basingstoke & Deane BC and Hampshire CC. The Court has jurisdiction over these "final" injunctions because their terms (a) expressly provide for the continuing jurisdiction of the Court; and, in any event (b) apply to "newcomers" who were not parties to the proceedings when the relevant order was granted.

Issue 2: Final Orders against Newcomers or Contra Mundum Orders

121. This is the central issue. All the local authorities contend that, to be effective, injunctions to prohibit trespass and/or breach of planning control, must bind newcomers. They argue that injunctions of this type do not fall within the principle – from ***Attorney General -v- Times Newspapers Ltd (No.3)*** **[1992] 1 AC 191, 224**

("*Spycatcher*") and endorsed by the Court of Appeal in ***Canada Goose*** [89]-[90] – that a final injunction operates only between the parties to the proceedings. They contend that ***Canada Goose*** is limited to "protester" cases and that various statutory provisions permit local authorities, acting in the public interest and/or for the public good, to obtain injunctions that do bind newcomers. Reliance is placed, variously, upon s.222 Local Government Act 1972, s.187B Town & Country Planning Act 1990, s.1 Anti-social Behaviour, Crime and Policing Act 2014, s.130 Highways Act 1980 and ss.77-79 Criminal Justice and Public Order Act 1994.

122. As noted above, Wolverhampton goes further. It argues that injunctions against "Persons Unknown" are artificial. Local authorities wanting to restrain actual or threatened trespass or breach of planning control should be entitled to seek orders *contra mundum*.

123. The Interveners and Ms Wilkinson submit that Traveller Injunctions are subject to the principle that final orders bind the parties to the claim at the date of the order and *contra mundum* orders are available only in a very limited category of case which does not include the type of injunctions sought and obtained by the local authorities in the Cohort Claims.

124. I have rejected the local authorities' submissions. The Traveller Injunctions granted in the Cohort Claims:

(1) are subject to the principle – from ***Spycatcher*** and endorsed by the Court of Appeal in ***Canada Goose*** – that a final injunction operates only between the parties to the proceedings; and

(2) do not fall into the exceptional category of civil injunction that can be granted *contra mundum*.

Issue 3: Ascertaining the parties to the Final Order

125. If the answer to the second issue is that Traveller Injunctions made by final order bind only the parties at the date of the order, then the next issue is whether the relevant local authority can identify anyone in the category of "Persons Unknown" at the time the final order was granted. If it can, then the final injunction order binds each person who can be identified. If not, then the final injunction granted against "Persons Unknown" binds nobody. Some local authorities believe that they may be able to identify people who were parties to the proceedings falling within the definition of "Persons Unknown" at the date on which the final order was granted in their case.

Issue 4: The 'conundrum' of interim relief

126. This issue has, in fact, resolved itself as a result of consideration of, primarily, Issue 2.

E: Issue 1: Jurisdiction over Final Orders

(1) Submissions

127. Ms Bolton's argument is that a first instance Court has no (or very limited) jurisdiction to revisit or reconsider an injunction that has been granted by way of final order disposing of a claim.

(1) The general principle concerning injunctions granted by final orders are the same as for any final order, namely that "*[t]he interests of justice, and of litigants generally, require that a final order remains such unless proper grounds for appeal exist*": ***Roult -v- North West Strategic Health Authority*** **[2010] 1 WLR 487**.

(2) Once judgment has been given in a claim, the cause of action upon which it was based is merged in the judgment and its place is taken by the rights created by the judgment: ***Terry -v- BCS Corporate Acceptance Ltd*** **[2018] EWCA Civ 2422** [56]; ***Virgin Atlantic Airways Limited -v- Zodiac Seats UK Limited*** **[2014] AC 160** [17].

(3) A court of first instance cannot case manage a claim after final judgment, as there is no claim to manage: ***Terry*** [54].

(4) Even a material change in circumstances, or a misstatement of the facts, would not be sufficient to justify varying or revoking a final Order*:* ***Terry*** [75].

(5) Even if a final order contains a provision granting permission to apply, the judgment is no less final. Permission to apply does not permit a court to disturb, or case manage a final order, and only permits the Court to consider an application properly made by a party who has standing to make such an application, and only within the terms of the permission to apply.

(6) The court does not have the power generally to disturb a final order, save for the limited exceptions provided for under CPR 40.9, and to deal with any matters properly to be dealt with under a provision granting permission to apply.

128. Ms Bolton submits that, in cases where final orders have been made, the Court has no case management powers and, specifically, the Court cannot vary or discharge these orders pursuant to CPR 3.1(7).

(1) The power in CPR 3.1(7) does not extend to final orders: ***Roult*** [15]. To hold to the contrary would undermine the principle of finality.

(2) Further or alternatively, the power at CPR 3.1(7) does not extend to final injunction orders as such orders are not made pursuant to the CPR. The orders were made pursuant to s.37 Senior Courts Act 1981, s.187B and s.222 (and, in the case of the London Borough of Barking & Dagenham and the London Borough of Redbridge, s.1 ASBCPA). Accordingly, the power to revoke or vary under CPR 3.1(7) does not arise in relation to these orders. Any power to vary or discharge must be found elsewhere: ***DEG-Deutsche Investitions-und Entwicklungsgesellschaft mbH -v- Koshy*** **[2005] 1 WLR 2434** ("***Koshy***").

129. Ms Bolton argues that provision within an order for permission to apply does not prevent it from being a final order: ***Serious Organised Crime Agency -v- O'Docherty*** **[2013] EWCA Civ 518** [28], [82] and [83]). The scope of what may be considered by the court on any application to vary or discharge is limited by "*fundamental principles of the finality of court orders and the requirements of legal certainty*": ***O'Docherty*** [83].

130. A change of law does not permit reconsideration of an order under a permission to apply contained in a final order: ***O'Docherty*** [20] and [68]-[71]; ***Cadder -v- HM Advocate General for Scotland*** **[2010] UKSC 43**.

131. Finally, Ms Bolton contends that the permission to apply provisions contained in the final orders granted to LB Barking & Dagenham (1st Claimant), LB Redbridge (11th Claimant), and Basingstoke & Deane BC and Hampshire CC (16th Claimants) do not give the Court power unilaterally to disturb these final orders. An application must be made by a party who is directly affected by the Order and no such application has been made: ***O'Docherty*** [83].

132. Ms Wilkinson addressed this point last in her written submissions. She did so because she contended, I consider correctly, a proper understanding of the jurisdiction of the Court to reconsider injunctions granted against "Persons Unknown" does engage wider considerations of the nature of the relief that the Court has granted.

133. Ms Wilkinson agreed, broadly, with Ms Bolton's submission that a permission to apply provision in a final order does not permit a party to reargue the merits. She disagreed with the submission that a change of law cannot be relied upon as a change of circumstances that might justify a reconsideration under a permission to apply. She referred to §24-050 in *Gee on Commercial Injunctions* (7th edition), which contains the following summary:

> "… When a final injunction is granted following adjudication of the substantive claim the defendant who seeks discharge or variation of that injunction cannot be allowed to reopen the underlying merits and to reargue the case for the injunction on the merits, unless there has been some special element, such as misleading the court to procure the injunction, or abuse of the process in procuring the injunction, or a material unforeseen change in circumstances, or that there has been a material change in the law (***Advent Capital Plc -v- Ellinas Imports-Exports*** **[2005] 2 Lloyd's Rep 607** [63]-[74]). The remedy otherwise is by appeal. The words "liberty to apply" inserted into a final injunction do not permit a rearguing of the merits or an application based on matters which were foreseeable at the time the injunction was granted (***Co-operative Insurance Society Ltd -v- Argyll Stores Holdings Ltd*** **[1998] AC 1, 18A-C** *per* Lord Hoffmann.) Their ambit is a matter of interpretation of the order and depends upon the wording of the final order and the circumstances which existed at the time the order was made. Where it is desired to reserve the power to vary an injunction by references to certain foreseeable matters which might arise subsequently, clear wording should be inserted reserving this power. CPR r.3.1(7) provides that a power under the Rules to make an order includes a power to vary or revoke an order. However this does not detract from the general principle that the merits of a case are to be adjudicated upon once and once only, and that relitigation of those merits once adjudicated upon finally, is not permitted (***Thevarajah -v- Riordan*** **[2016] 1 WLR 76**)

134. Finally, Ms Wilkinson submitted that ***Koshy*** was not authority for the broad proposition, advanced by Ms Bolton, that CPR 3.1(7) cannot be a source of jurisdiction for the Court to reconsider the terms of an injunction granted by way of final order. The reason why reliance could not be placed on CPR 3.1(7) in ***Koshy*** was because the original order had been made under the Rules of the Supreme Court, rather than the Civil Procedure Rules. Ms Wilkinson argued that all injunctions are made under

s.37 Supreme Court Act 1981 (or other express statutory provisions), but they were nevertheless made under CPR 40.

(2) Decision

135. Ms Bolton's submissions represent the orthodox position where a final judgment is granted in conventional civil litigation between identifiable parties. The requirements of finality in litigation underpin the principles that she has identified. The analysis begins to break down once the attempt is made to apply these principles to litigation where the defendants are "Persons Unknown". It remains conceptually sound if applied to "Persons Unknown" where the defendants are identifiable at the point at which judgment is granted; they are defendants to the claim and bound by the order. Their rights to apply to vary or discharge the order will probably be as limited as the rights that would have been available to a named defendant.

136. However, it is legally unsound to attempt to impose concepts of "finality" against "Persons Unknown" who are newcomers and who only later discover that they fall within the definition of "Persons Unknown" and after judgment has been granted. It is quite obvious that the permission to apply provisions in the orders granted to LB Barking & Dagenham, LB Redbridge, and Basingstoke & Deane BC and Hampshire CC were included precisely because it was recognised that it would be fundamentally unjust not to afford to such newcomers the opportunity to ask the Court to reconsider the terms of the order. A simple review of the terms of these three orders demonstrates how inappropriate and unfair it would be to apply any notion of "finality" so as to oust the jurisdiction of the Court to reconsider the terms of the injunction.

137. The operative parts of the injunction order in the three cases were in the same terms (even with similar same spelling and grammar errors). In respect of the relevant "Land", "Persons Unknown" were prohibited from:

> "(1) Setting up an encampment on any Land identified on the attached map and list of sites without written permission from the local planning authority, or planning permission granted by the planning inspector.
>
> (2) … entering and/or occupying any part of the Land identified on the attached map and list of sites for residential purposes (temporary or otherwise) including the occupation of caravans/mobile homes, storage of vehicles, caravans and residential paraphernalia
>
> (3) … bringing onto the Land or stationing on the Land any caravans/mobile homes other than when driving through the London Borough of Barking and Dagenham or in compliance with the parking orders regulating the use of car parts (sic) or with express permission from the owners of the Land.
>
> (4) deposit (sic) or cause to be deposited, controlled waste in or on the Land unless a waste management license (sic) or environmental permit is in force and the deposit is in accordance with the license (sic) or permit."

138. The orders in the claims brought by LB Barking & Dagenham and Basingstoke & Deane BC and Hampshire CC were directed at "Persons Unknown". In the claim brought by LB Barking & Dagenham, in the Claim Form, the "Persons Unknown" were defined as "*Persons Unknown being members of the traveller community who <u>have</u>*

unlawfully encamped within the borough of Barking and Dagenham" (emphasis added), i.e. those who had *in the past* set up encampments. In the LB Redbridge claim, the 70th Defendants "Persons Unknown" were described in the injunction order as "*Persons Unknown forming unauthorised encampments within the London Borough of Redbridge*" (the Claim Form had defined "Persons Unknown" as "*Persons Unknown forming or intending to form unauthorised encampments in the London Borough of Redbridge*"), by contrast people who *in the future* would set up encampments. The orders in the cases of LB Redbridge and Basingstoke & Deane BC and Hampshire CC even contained, exceptionally, a power of arrest, requiring the arresting officer to bring any person found to be in breach of the order before the Court within 24 hours of his/her arrest.

139. No doubt recognising that the injunction order was intended to bind people who had had no notice of the proceedings, each order contained an express permission to apply in the following terms:

> "The Defendants may each of them (or anyone notified of this Order) apply to the Court on 72 hours written notice to the Court and the Claimant to vary or discharge this Order (or so much of as if (sic) it affects that person)."

140. The three orders share the following common features:

(1) The geographical areas made subject of each injunction were wide-ranging and practically borough-wide. For members of the Gypsy and Traveller community (but not limited to them), the injunctions represented a total ban on stationing a caravan or other vehicle on the defined Land for any period. If a person, with knowledge of the injunction, stayed overnight in a caravan at one of the locations, without permission, s/he was liable to be in contempt of court even if the stay caused no damage or other inconvenience. For the two orders that included power of arrest, it also rendered the individual liable to arrest.

(2) The orders granted to LB Barking & Dagenham and Basingstoke & Deane BC and Hampshire CC, were granted against "Persons Unknown" without any description of them. Even at the time these orders were granted, this form of injunction was not in accordance with the Description Requirement (see [49] above). For this reason, at least, an injunction would not now be granted against "Persons Unknown" in the terms that they were granted to LB Barking & Dagenham and Basingstoke & Deane BC and Hampshire CC. The lack of description of "Persons Unknown", coupled with the width of the terms of the injunction, also meant that, for all practical purposes, the relevant injunction was made *contra mundum*. There is no way of identifying (other than the named defendants) who was a defendant at the grant of the final order, but (as was the clear intention) it certainly applied to newcomers once they had notice of its terms.

(3) All three injunctions were intended to bind newcomers. Even in the case of LB Redbridge, where there was some attempt to describe the "Persons Unknown" defendants, the injunction was not limited to those who had, by 23 November 2018, formed an unauthorised encampment on the relevant land.

(4) Despite being "final orders" all three injunctions contained express permission to apply, and two were expressly made subject to "further order" of the Court.

141. In my judgment, the inclusion of such a permission to apply in a final order is an implicit recognition that the relevant proceedings were not likely to have been brought to the attention of all of those who fell within the definition of the Persons Unknown defendants. The permission to apply was a necessary – but belated – safeguard to prevent unfairness to such unnotified defendants. As Mr Anderson QC submitted, between the relevant claimant and the newcomers, there could be no *res judicata*. That is clearly correct. For such newcomers, an application to the Court to vary or discharge the injunction order would not be an attempt at re-litigation; for them it would be the first opportunity to be heard and to ask the Court to consider their own circumstances.

142. But the implications go further. The express recognition by the claimant, and the Court, that there existed a group of unidentified defendants who were never made aware of the proceedings and, in respect of whom fairness required a permission to apply be provided, calls into question whether the order for alternative service was correctly granted in the first place; and, with it, the whole foundation of the jurisdiction over the defendants for the reasons explained in ***Cameron***. This is just one of the problems when an order sought against "Persons Unknown" seeks to capture newcomers.

143. To an extent, the debate about the particular provisions granting permission to apply in these three cases is something of a distraction. Even had such provisions not been included in the final injunction orders, it is tolerably clear that such newcomers, not having been parties to the litigation at the time when the order was granted, would have been able to apply to the Court to vary or discharge the injunction, as it affected them, under CPR 40.9. Ms Wilkinson is correct to submit that the exercise by the Court of any jurisdiction to set aside or vary an injunction granted by final order is, in cases against "Persons Unknown", dependent upon the nature of the judgment that the Court has actually granted.

144. I can deal with Ms Bolton's final point – that the Court can act only in response to an application to vary/discharge – relatively shortly. During her submissions, I pressed Ms Bolton as to how far her argument went. I posited the example of a group of 1,000 individuals who fell within the category of persons unknown, but who were newcomers in the sense that they had not set up an encampment on any of the parts of the land covered by the injunction until after the grant of the final order. Assuming for the purposes of this argument that the final injunction bound them as newcomers, Ms Bolton's submission was that, as the order was "final", the Court could do nothing about the injunction of its own initiative. The Court could only act in response to an application to vary or discharge made by one or more of the 1,000 newcomers. Further, even if one newcomer's application to discharge the order were successful, the Court could only discharge the injunction in respect of the single person who had made the application; the injunction would continue to bind the other 999.

145. The case of ***O'Docherty*** provides no support for this stark submission of judicial impotence. It is authority for the proposition that, in conventional *inter partes* litigation, a permission to apply in a final order does not permit an application to be made to vary or discharge an order based upon a subsequent change in interpretation of the law. This principle is premised on the recognition that, following an *inter partes* determination

on the merits, the court has made its decision and granted an order in consequence. A party cannot have a second bite at the cherry (at least at first instance) under the guise of a permission to apply. Newcomers to the litigation brought by LB Barking & Dagenham, LB Redbridge, and Basingstoke & Deane BC and Hampshire CC, by exercising the right given to them under the permission to apply, would be having their first cherry bite. It is simply impossible to apply concepts of "merger" of cause of action upon judgment in circumstances when the claim is brought against a class of "Persons Unknown" only some of whom (if any) are even capable of being identified at the point at which judgment is entered.

146. In my judgment, it is a fundamental requirement of justice that, where an injunction has been granted by the Court, whether interim or final, that has the potential to bind people who have not had the opportunity to be heard before the order was granted, the Court must retain jurisdiction to set aside or vary that order, whether on application by the person affected or, if necessary, on its own initiative. I reject Ms Bolton's jurisdictional argument that, once a Court has granted an injunction by final order, the Court cannot exercise the power granted under CPR 3.1(7). In the case of final orders, there are, for good reason, well-established and significant limits on the Court's use of CPR 3.1(7) to revisit orders (reflecting and respecting the principle of finality to litigation), but the jurisdiction is not extinguished by a final order. The authority of ***Roult*** does not support Ms Bolton's submission. On the contrary, it recognises the continuing role of CPR 3.1(7) in instances where there are "*continuing orders which may call for revocation or variation as they continue*": [15] *per* Hughes LJ.

147. I prefer, and accept, Ms Wilkinson's submission that final orders are granted by the Court under CPR Part 40 and, consequently, CPR 3.1(7) continues to apply. By the same token, the Court retains jurisdiction to act of its own initiative to vary or discharge a "final order" under CPR 3.3. Taking the example of the group of 1,000 newcomers, the Court can act to vary or discharge the injunction made against the whole group of 1,000 whether in response to an application by one member of the group, or even of its own motion. The Court will not stand idly by and allow an injunction to be enforced (*a fortiori*, with the power of arrest) against persons who had no opportunity to be heard when the injunction was granted in circumstances where the Court is satisfied that the injunction should be varied or discharged.

148. Of course, the issue of whether the Court would need to have a jurisdiction to vary or discharge an injunction made by final order that binds newcomers leads on to the next issue for determination: whether final orders can bind newcomers.

F: Issue 2: Final orders against Newcomers or *contra mundum* orders

149. This is the central issue that arises in the Cohort Claims. Can a court grant an injunction, by way of final order against "Persons Unknown", the effect of which is to bind people who were not parties to the litigation at the date on which the order was granted (the so-called "newcomers")? Although a final injunction has been granted only in a minority of the Cohort Claims (see [115] above), those local authorities that have been granted interim injunctions recognise that, if a final injunction against "Persons Unknown" does not bind newcomers, these injunctions will not achieve what the local authorities hoped they would. If the Court rules that final orders cannot bind non-parties, then I need to consider whether a *contra mundum* injunction order, like

that granted in the Wolverhampton case, can properly be granted. If so, that may potentially achieve what the "Persons Unknown" injunctions could not.

(1) Do final injunctions in the Cohort Claims bind newcomers?

150. The immediate issue that confronts the local authorities is the Court of Appeal's decision in ***Canada Goose*** [89]-[90] which established that a final injunction against "Persons Unknown" binds only those who are parties to the proceedings at the date of the grant of the final order, not newcomers (see [24] above).

(a) Submissions

151. Ms Bolton and Mr Bhose QC argue that the principle from ***Canada Goose*** does not apply to the type of litigation brought by the local authorities in the Cohort Claims. They submit that the claims are brought by the local authorities pursuant to statutory powers conferred by s.222 and s.187B. These sections confer powers upon a local authority to bring legal proceedings, and to seek injunctive relief, to restrain actual or threatened wrongs. The claims brought in the Cohort Claims were brought not to vindicate civil wrongs committed (or threatened) against the local authority itself as a private entity but against the wrongs to the public by unauthorised encampments on land.

152. Ms Bolton argued that, in respect of s.187B:

(1) an injunction pursuant to section 187B is capable of binding newcomers: ***South Cambridgeshire DC -v- Gammell*** [29], [31], [33]; ***Cameron*** [9] and [15];

(2) service of a Claim Form and order on a newcomer served with a statutory injunction is capable of being sufficient where it is placed in a prominent position on the land that is to be caught by the injunction: ***Mid Bedfordshire DC -v- Brown*** **[2005] 1 WLR 1460** [25]-[28]; ***Gammell*** at [29], [33]; ***Cameron*** [9], [15];

(3) the newcomer will become a party to the proceedings when they do an act which brings them within the definition of defendants in the particular case: ***Mid Bedfordshire -v- Brown*** [25]-[28]; ***Gammell*** [33];

(4) the newcomer will be in breach of an injunction where they act in breach of the terms of the Order, with knowledge of the order, before seeking to set it aside: ***Mid Bedfordshire*** [25]-[28]; ***Gammell*** [33]; and

(5) the order itself should indicate the correct way in which to challenge the injunction, by containing an express provision giving the newcomer permission to apply: ***Gammell*** [25].

153. Ms Bolton, Mr Bhose QC and Mr Giffin QC submitted that the decision of the Court of Appeal in ***Canada Goose*** that a final injunction binds only the parties at the date of judgment is either (a) limited to protester cases, and does not extend to Traveller Injunctions obtained by local authorities in exercise of their statutory powers; or (b) *obiter dicta* and should be distinguished or not followed.

154. Mr Bhose QC advanced four arguments as to why ***Canada Goose*** should be distinguished:

(1) ***Canada Goose*** was a protest case in which Articles 10 and 11 were engaged. At the start of its judgment, the Court framed the appeal as concerning "*the way in which, and the extent to which, civil proceedings for injunctive relief against 'persons unknown' can be used to restrict public protests*" [1]. The procedural guidelines it gave in relation to interim relief were said to be applicable in "*protester cases like the present one*" [82]. Then, when the Court was considering final relief in [89] it qualified what was said by referring to "*protestor case against "persons unknown"*" and to "*protestor actions*", before noting that the appellant's "*problem*" was that it was seeking to invoke the court's civil jurisdiction as a means of controlling "*ongoing public demonstrations*" [93]. Had the Court intended [89]-[95] to have any broader effect than in "protest" cases, it would not have framed its judgment in these terms, in particular the phrases of limitation in [89].

(2) Second, like ***Ineos*** and ***Caudrilla***, it was a case where a private claimant was seeking to protect its own commercial interests against interference with its private law rights against newcomers. Here, by contrast, the claims are brought by public authorities for the public good and the Court of Appeal heard no argument as to whether different principles apply in claims such as these. Mr Bhose QC accepts that the Court did hold ([91]) that, in ***Birmingham CC -v- Afsar*** [132], Warby J was correct to "*take the same line*" as had been taken in ***Canada Goose*** at first instance. ***Afsar*** was a case brought by a local authority, seeking to restrain a protest outside a school, in which reliance was placed, *inter alia*, on s.222 and s.130. However, Mr Bhose QC argues it is not clear from Warby J's judgment what argument was advanced on the point. The Judge said (having referred to the reasoning in ***Canada Goose*** as "*persuasive*") that it seemed to him, "*subject to any further argument*", that a final injunction could not be made against newcomers. In addition, there is no consideration in Warby J's judgment as to whether the principles for the grant of final relief are different in claims brought in reliance on those statutory provisions. In these circumstances it cannot be said that the arguments made by the Claimant in the instant claim are closed-off by the Court of Appeal's short-form treatment of ***Afsar***.

(3) There is nothing in the judgment to call into question, or qualify, the Court of Appeal's judgment the previous month in ***LB Bromley***. In that case, the only judgment was given by Coulson LJ who was then part of the constitution which delivered the judgment of the court in ***Canada Goose***. ***LB Bromley*** was similar to the Cohort Claims in that injunctive relief was sought on a *quia timet* basis to restrain the unauthorised occupation and/or deposit of waste on land owned and managed by the local authority. The judge granted final injunctions in respect of fly-tipping and waste against "persons unknown", i.e. newcomers ([2019] EWHC 1675 (QB)). However, none of the "Persons Unknown" attended. London and Gypsy Travellers intervened, by counsel, but it was no part of their argument that final injunctions should not be granted to restrain this form of behaviour [16]. Nor was any argument addressed to whether a final injunction could be granted because of the *in personam* principle. The appeal in

> ***LB Bromley*** was by the local authority against the refusal to grant final injunctions relating to residential encampment. There was no respondent's notice against the injunctions that had been granted. It is right to note that Coulson LJ did refer to the *in personam* principle [33], although ***Cameron*** was not referred to. Nevertheless, Coulson LJ did not go on to say that final injunctions cannot in fact be granted against newcomers. Mr Bhose QC argues that Coulson LJ's comments in [34] suggest that he considered they could be, and he rejected Liberty's submission that injunctions of this type should *never* be granted: [108]. Had the Court in ***Canada Goose*** meant [89] to apply also to claims such as those made by LB Bromley, and in which it had offered guidance just the previous month, it would have explained this. It did not.

(4) Fourth, it is clear from ***Sharif***, that the Court of Appeal does not regard ***Canada Goose*** as necessarily applying to injunctions under s.222. No issue was taken by the appellant in relation to the newcomer point. If ***Canada Goose*** at [89] has universal application in claims for injunctions against newcomers, the court in ***Sharif*** would have been bound so to hold.

Alternatively, Mr Bhose QC (and Mr Anderson QC for Wolverhampton) reserved the argument that, on this point, ***Canada Goose*** was wrongly decided.

155. Mr Giffin QC developed an argument that if a final injunction binds only the parties to the claim at the date of the order, then it leads to many unsatisfactory consequences. He submitted that, if this principle were correct, then its application and effect had apparently been overlooked by the Courts in ***Meier***, ***Cameron*** and ***LB Bromley*** and he pointed to the apparent endorsement of the availability of such injunctions by Lord Sumption in ***Cameron*** [15] and Coulson LJ in ***LB Bromley*** [34]. He also referred to my observations in the ***LB Enfield*** case ([2020] EWHC 2717 (QB)), when I refused to grant an interim injunction to restrain fly-tipping by "Persons Unknown":

> [41] The difficulty is this: even if I were to grant an interim injunction in terms that were proportionate and targeted at the type of fly tipping that I have described, there would be no real prospect of serving the injunction order. No-one is presently occupying any of the land and carrying out fly-tipping on it. The Claimant seeks orders for alternative service of the Claim Form and any injunction. But, even assuming that such orders were made, the court would shortly thereafter move to consider what final relief should be granted. In a typical Persons Unknown claim like this, no Acknowledgement of Service is filed and there is no attendance by, or representation of, any defendant at the final hearing. In this case, for example, the Interim Order was granted on 21 July 2017 and the Final Order at a hearing on 4 October 2017, i.e. less than three months between initial and final hearings.
>
> [42] The point can be demonstrated in this way. Assume that the Court were to make a final order in the terms sought by the Claimant against Persons Unknown. It would not provide any real protection to the Claimant because, in all probability, the Claimant would not be able to demonstrate whether any individual person had become a defendant to the claim. If no one can be identified as a defendant, the final order binds no-one. ***Canada Goose*** establishes that final injunctions against "Persons Unknown" do not bind newcomers. The consequence is that a hypothetical fly tipper who turned up at any of the ninety-six sites in respect of which the Court had made the final

> order would not actually be restrained by the injunction: s/he is not bound as an original defendant to the claim and s/he is not bound as a newcomer.
>
> [43] The result would be most unsatisfactory: barring some unusual development in the case, any interim injunction the Court granted would be more effective and more extensive in its terms than any final order the court could grant. As there is unlikely to be much by way of development between the grant of the interim and final order in this case, this raises the question as to whether the court ought to grant any interim relief at all. This arises because, unlike ***Canada Goose***, at the date of grant of any interim injunction, no people exist in the category of Persons Unknown.
>
> [44] In terms of practical reality, the only way that the London Borough of Enfield could achieve what it seeks to do, is to have a rolling programme of applications for interim orders. As soon as a final order was granted it would become worthless against "newcomers". To continue effective injunctive relief against "newcomers" the Council would have to commence fresh proceedings and seek a new interim order. That would be litigation without end. It presents a real challenge to the conventional understanding of adversarial civil litigation as it is conducted in this jurisdiction.

156. Mr Giffin QC's simple submission is that a programme of rolling interim injunctions – required because a final injunction would be practically worthless – would be anomalous and absurd. On the facts of Walsall's own case, some 14 caravans and their occupiers came onto the specified sites in breach of the interim injunction and before the final injunction was granted. Those occupiers (although still not known by name) were party to the proceedings and therefore "identifiable" before the date of the final order. If the effect of ***Canada Goose*** is that a final injunction could be granted against those 14 or so persons as "Persons Unknown", but not against anyone else, there is no logical reason why the final injunction should not bind those who come onto the land after the order is made. The quality of their wrongdoing is no different and the impact on the claimant is no different; yet, Mr Giffin QC submits, the legal result is said to be radically different.

157. He argues that the position of the "newcomers" is safeguarded by their having permission to apply. What is the problem, he asks, about the newcomers being bound by the injunction if they choose not to take advantage of the permission to apply? Maintaining such a sharp distinction between those who do the prohibited act – and therefore become a defendant to the claim – before or after the date of the final order will serve as a perverse incentive to claimants not to use their best efforts to bring cases to trial speedily. He suggests that, if final orders bind only the parties to the proceedings, the result will be that local authorities will adopt the expedient of immediately applying for a further interim injunction as soon as a final order is granted. If that were not permitted, then he argues that "*the whole* **Bloomsbury Publishing** *and* **Ineos** *jurisdiction would in effect have disappeared, save in a small proportion of unusual cases*". Alternatively, local authorities will adopt the procedure that was utilised prior to ***Bloomsbury Publishing*** of identifying one defendant and then seeking an order under CPR 19.6 making him/her a representative defendant for a wider class.

158. Ms Wilkinson submitted that the answer to Issue 2 is that, whilst the court does have the power to grant orders against "Persons Unknown", it is wrong in principle to grant

final injunctions that bind newcomers and that there is no justification in the present cases for extending the exceptional *contra mundum* jurisdiction to such orders.

159. She argued that some of the conceptual difficulties arise because the local authorities' submissions tend to treat a final injunction as a freestanding remedy flowing from the court's undoubted power to prohibit an apprehended breach of a right, rather than as a remedy granted as a result of the determination of rights between the parties, as ***Cameron*** and ***Canada Goose*** made clear.

160. Ms Wilkinson drew the Court's attention to one further way in which a final Traveller Injunction might bind non-parties: a claim against a representative defendant under CPR 19.6. That rule enables the court to permit a claim to be maintained against a defendant as a representative of a group of others who have the "*same interest in a claim*". Representative actions do offer an important safeguard. CPR 19.6(4)(b) only permits an order to be enforced against a person who is not a party to the claim with the permission of the Court. I do not consider, however, that a representative claim is a viable option by which to obtain a Traveller Injunction. The class of person that the local authorities are seeking to target is so large that it would be impossible to suggest that each member of the class had the same interest in the claim (even applying a liberal approach to what amounts to the "same interest"). The circumstances of different members of the Gypsy and Traveller communities would vary significantly, and although members of these communities are the principal target of the Traveller Injunctions, they are not the only ones who would be bound by its terms. None of the local authority claimants in the Cohort Claims has sought to bring a claim against a representative defendant. Mr Giffin QC in his submissions noted that HHJ Pelling QC rejected the representative defendant option in ***Cuadrilla -v- Persons Unknown*** **(unreported QB, 11 July 2018)**.

(b) Decision

161. The Court undoubtedly has *the power* to grant an injunction that binds non-parties to proceedings. For the High Court, that jurisdiction comes from s.37 Senior Courts Act 1981: ***South Carolina Insurance Co -v- Assurantiue Maatschappij 'De Zeven Provincien' NV*** **[1987] AC 24, 39-40** *per* Lord Brandon and **44** *per* Lord Goff; ***Mercedes Benz -v- Leiduck*** **[1996] AC 284, 308** *per* Lord Nicholls; ***Broadmoor Special Hospital Authority -v- Robinson*** **[2000] QB 775** [20]-[21] *per* Lord Woolf; ***In re BBC*** **[2010] 1 AC 145** [57] *per* Lord Brown. The power extends, exceptionally, to making *contra mundum* injunction orders: ***Venables -v- News Group Newspapers Ltd*** **[2001] Fam 430**.

162. As to the circumstances in which the Court will exercise this power to grant relief by way of injunction, Ms Wikinson has, in my judgment, identified the correct starting point: recognition of the fundamental difference between interim and final injunctions.

(1) Interim injunctions were described by Lord Diplock in ***Siskina (Owners of cargo lately laden on board) -v- Distos Compania Naviera SA (The Siskina)*** **[1979] AC 210, 256** as intended to protect the *status quo* pending a final determination of the merits of the claim:

> "A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing

> cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction to the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the *status quo* pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction."

(2) *Snell's Equity* (34th edition) (at §18-02) describes a final injunction in these terms:

> "A perpetual (or final) injunction can only be granted after the court has been able to adjudicate upon the matter. A perpetual injunction is so called because it is granted at the final determination of the parties' rights and not because it will necessarily operate forever. For instance, a perpetual injunction may be granted so as to continue only during the currency of a lease. By contrast an interlocutory (or interim) injunction is granted before the trial of an action; its object is to keep matters in *status quo* until the question at issue between the parties can be determined." (emphasis added)

163. When the Court grants a final injunction, it is (or is part of) the *remedy* to which the Court considers the claimant has demonstrated an entitlement, in respect of those against whom judgment is granted ("the Trial Defendants"), based upon a cause of action or other entitlement following either a trial on the merits or other judgment in his/her favour (for example default or summary judgment). An interim injunction is a provisional protective measure, usually granted at an early stage in the proceedings pending resolution of the claim.

164. In appropriate cases, an interim injunction can be granted before the issue of a Claim Form. However, the emergency jurisdiction to grant such orders is provisional and strictly conditional: ***Cameron*** [14]. It is provisional, in the sense that it is an interim order designed to protect the *status quo*, and conditional because the claimant must, thereafter, serve the Claim Form on the defendant in order to establish the Court's jurisdiction to determine the claimant's claim against the defendant. If a claimant fails to serve the Claim Form on the defendant, jurisdiction will not have been established and any interim injunction will be refused or is liable to be discharged (see [46]-[48] above).

165. The defendants to a civil claim, against whom an interim injunction has been granted, may not, ultimately, be persons against whom a final injunction is granted as a Trial Defendant. The claimant may fail to establish liability in respect of a particular defendant, or, in respect of those against whom liability is established, the court may refuse to grant an injunction as part of the final relief. Before final judgment, the defendants to the claim may also fluctuate; defendants may be added or removed.

166. These principles also apply equally to proceedings which are brought against (or include) "Persons Unknown". The Claim Form must be served on "Persons Unknown". Ordinarily, that will require an order for alternative service under CPR 6.15. If the claimant cannot obtain an order for alternative service – because no method can be devised that can reasonably be expected to bring the proceedings to the attention of all of those identified as the "Persons Unknown" – and the Court does not

dispense with service of the Claim Form – then the Court's jurisdiction cannot be established over the "Persons Unknown". In that event, there will be no viable civil claim and there will be no question of any injunction being granted, whether interim or final.

167. It is now well-established that the Court can grant an interim injunction against "Persons Unknown" which will bind all of those who fall within the description of the "Persons Unknown" in the interim injunction order. That may include people who only fall within the definition of Persons Unknown as a result of doing some act after the grant of the interim injunction: ***Cameron*** [15]; ***Ineos*** [30]; ***Canada Goose*** [66]. The key decision underpinning this principle is ***South Cambridgeshire District Council -v- Gammell*** **[2006] 1 WLR 658**. It is upon this authority that Ms Bolton advanced her submission (see [152(3)] above) that the newcomer becomes a party to the underlying proceedings when they do an act which brings them within the definition of the defendants to the claim ("the *Gammell* principle").

168. At the interim injunction stage, there is no conceptual difficulty with the *Gammell* principle. At that point, the Court has not determined the liability of the Trial Defendants or made any final order against them. ***Gammell*** was a case of breach of an interim injunction. The local authority had brought a claim, pursuant to s.187B, against some 18 individuals but also against "Persons Unknown" who were described in the Claim Form (as amended) as:

> "Persons unknown (being persons other than [the named defendants]) causing or permitting hardcore to be deposited and/or to station caravans, mobile homes or other forms of residential accommodation to be stationed, or existing caravans on land to be occupied at Victoria View, Smithy Fen, Cottenham, Cambridge"

169. At first instance, the Judge refused to grant an interim injunction against "Persons Unknown" on the grounds that he lacked jurisdiction to do so. His decision was reversed by the Court of Appeal ([2004] EWCA Civ 1280) and, on 17 September 2004, the Court of Appeal granted an interim injunction in the following terms:

> "Persons unknown [other than the named defendants] causing or permitting hardcore to be deposited other than for agricultural purposes on land known as plots 1-11, Victoria View… caravans, mobile homes or other forms of residential accommodation to be stationed other than for agricultural purposes on the said land; or existing caravans, mobile homes or other forms of residential accommodation on the said land to be occupied other than for agricultural purposes."

170. Subsequently, on 20 April 2005, an individual, "KG", moved on to plot 10 with her caravan. The terms of the interim injunction were communicated to KG on 21 April 2005 and so, from that point, she was in breach of the interim injunction. At first instance, KG was found guilty of contempt of court. The Court of Appeal dismissed her appeal ([2006] 1 WLR 658), finding [32]:

> "…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."

171. KG became a defendant to the proceedings, whilst they were still at an interim stage, because she did an act – stationing her caravan on plot 10 – which placed her in the definition of "Persons Unknown" in the interim injunction order. By so doing, she became an individual who fell within the description of defendants to the claim. She was also identified by name, but the result would have been the same had "KG" not been identifiable by name, but by photograph. Critically, however, she was capable of being identified as having become someone who, by her actions, had come within the definition of "Persons Unknown" in the interim injunction. Had a final injunction subsequently been granted in the ***Gammell*** case, then KG would have been bound by it because she was, by that point, identifiable as a party to the claim.

172. As has been recognised in subsequent authorities, there can be no objection to the operation of the *Gammell* principle at the interim stage. Providing the Court's jurisdiction has been established over a defendant by service of the Claim Form (whether a named defendant or a "Person Unknown" in respect of whom service of the Claim Form can be effected by an alternative service order), then there is jurisdiction to grant an interim injunction in terms which will apply not only to those who have already carried out the allegedly wrongful acts but also newcomers who may commit the wrongful acts in the future. Similarly, at the interim stage, there is no objection, in principle, to adding further defendants to the claim, even if that is done in the dynamic way endorsed by the *Gammell* principle.

173. However, ***Gammell*** is not authority for the proposition that a person can become a defendant to proceedings, after a final injunction is granted, by doing an act which brings him within the definition of "Persons Unknown" in that order if s/he was not a party when the final injunction was granted. ***Mid Bedfordshire -v- Brown*** adds nothing to ***Gammell*** on this point.

174. To have jurisdiction over the Trial Defendants, the Claim Form has to have been served on the Trial Defendants (whether personally or pursuant to an order for alternative service). An order made by way of final judgment results either from default on the part of a properly served defendant, or of the court's adjudication of the merits of the claimant's claim against the Trial Defendants (whether by way of summary judgment or judgment after trial). If at the date of the judgment, there remain Trial Defendants that the claimant still cannot *name*, relief granted against these "Persons Unknown" nevertheless requires them to be *identified*. It is fundamental to our process of civil litigation that the Court cannot grant a final order against someone who is not party to the claim. A Court cannot, at a trial, adjudicate whether a claimant has established an entitlement to a remedy against a defendant unless it is possible to identify who that defendant is and whether the claimant has demonstrated, by evidence, that s/he has committed some act that entitles the claimant to relief (see ***Canada Goose*** at first instance [146], [155]-[162]). Fundamentally, a person who, at the date of grant of the final order, is not already party to a claim, cannot subsequently *become* one. As the Court of Appeal noted in ***Canada Goose*** [92]:

> "The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end."

175. I reject the submissions that Traveller Injunctions are not subject to these fundamental rules of civil litigation or that the principle from ***Canada Goose*** is limited only to 'protester' cases, or cases involving private litigation. The principles enunciated by the

Court of Appeal in ***Canada Goose*** (drawn from the Supreme Court decision in ***Cameron***) are of universal application to civil litigation in this jurisdiction. Local authorities, bringing litigation for the public good, may be afforded certain privileges, for example that, generally, they are excused from the requirement to give a cross-undertaking in damages when seeking an interim injunction, but otherwise they are subject to the same rules that apply to all litigants who pursue civil claims.

176. Nothing in s.222, s.187B, or s.1 ASBCPA (or any of the authorities) suggests that Parliament has granted to local authorities, exceptionally, the ability to obtain final injunctions in civil proceedings against "Persons Unknown" which apply to and bind newcomers. Given that, in my judgment, the granting of such a power would represent a radical (and unprecedented) departure from the principles of civil litigation in this jurisdiction, one would have expected to see such a power granted by express words. There is no hint of such a power in the legislation. On the contrary, as already noted, s.222 does not provide any cause of action (see [55] above); the procedural rules that apply to s.187B positively appear to rule out commencing proceedings against "Persons Unknown" who cannot be identified by the means required in Practice Direction §20.4, still less obtaining final relief against newcomers (see [63] above); and my analysis of s.1 ASBCPA had led me to conclude that it cannot be used as a basis for a "Persons Unknown" injunction and specifically not one made by way of final order (see [67]-[68] above). Warby J was correct to apply the *Canada Goose* principles when refusing a final order against "Persons Unknown" in ***Afsar***, and this authority supports the conclusion that the argument that local authorities are in some privileged position to obtain final orders that bind newcomers must be rejected.

177. I also reject Mr Bhose QC's submissions as to the effect of ***Sharif -v- Birmingham City Council*** **[2020] EWCA Civ 1488**. In that case, the local authority had obtained an injunction against "Persons Unknown", on 3 October 2016, to prohibit 'street cruising' throughout its local authority area for a period of three years (subsequently, on 22 October 2019, the injunction was extended until 1 October 2022). "Street-cruising" was defined in a schedule to the order and is set out in [3] of the Court of Appeal decision. The key facts of the case are as follows:

(1) On 27 September 2018, the council served an Application Notice on Mr Sharif seeking his committal for contempt of court. It was alleged that he had breached the terms of the injunction by participating in a 'street cruise' in the prohibited area and had caused danger to other road users by dangerously racing his vehicle against another. He had been arrested and had applied to discharge the injunction.

(2) On 24 May 2019, the application to discharge was refused. Mr Sharif appealed. In summary, he argued that where Parliament has provided a remedy and procedure in the form of PSPOs to combat anti-social behaviour, the Court should give effect to Parliament's intention and injunctive relief should be granted only in very rare circumstances. In support of this argument he relied, principally, on ***Birmingham City Council -v- Shafi*** **[2009] 1 WLR 1961**.

178. In the final paragraph of his judgment, Bean LJ said this, under the heading "*The grant of injunction against 'Persons Unknown'*":

> [44] No point was taken in the court below about whether the original grant of the injunction against persons unknown and the provision for service by advertisements and prominent local notices was open to challenge. Since the order was first made, this question has been considered (though not in relation to an injunction of the same type) in this court in ***Ineos*** and ***Canada Goose***. It may have to be considered again in any future case about injunction to restrain anti-social behaviour by persons unknown. I simply record that we were told by [counsel for the local authority] that the "persons unknown" issue was the reason why Birmingham did not apply for an anti-social behaviour injunction under s.1 of the 2014 Act.

179. As noted, the local authority had not made its application an injunction pursuant to s.1 ASBCPA, but under s.222 to restrain breaches of the criminal law. The appeal was argued on the ground that the Court should not make an injunction in the terms granted where the local authority could have applied for a PSPO; an argument that was rightly rejected on the basis of previous authorities including ***Birmingham City Council -v- James*** **[2014] 1 WLR 23**.

180. The short point in answer to Mr Bhose QC's submissions on ***Sharif*** is that the appeal did not consider the point about whether final injunctions granted against "Persons Unknown" can bind newcomers; indeed, the Court specifically left open the point for decision in later cases. Likewise, insofar as any support can be found in ***LB Bromley*** for the contention that Traveller Injunction granted by final order can bind newcomers, the simple point is the Court of Appeal was not in that case considering the point that I have to decide.

181. ***LB Hackney -v- Persons Unknown*** **[2020] EWHC 3049** was an application for an interim injunction in which Johnson J was satisfied the *Canada Goose* principles were met. It will remain to be seen whether the local authority claimant in that case will, by the time of the final hearing of the claim, have identified (by name or other description) any individuals who are defendants to the claim at the point at which the Court comes to consider what, if any, final relief should be granted.

182. The submissions of Mr Bhose QC indirectly, and those of Mr Anderson QC (and probably Mr Giffin QC) directly, sought a form of remedy that is not *in personam* but *in rem*; the ability to bring a claim and seek relief not against particular individuals, but to prohibit certain conduct generally (whoever engages in it). However, the authorities make clear that civil litigation in this jurisdiction is (with the particular exception of a narrow category of *contra mundum* orders) limited to the former: ***Iveson -v- Harris*** **(1802) 7 Ves. Jun. 251, 256–7** *per* Lord Eldon: ***Spycatcher*** 224A-B, *per* Lord Oliver; ***Attorney General -v- Newspaper Publishing plc*** **[1988] Ch 333, 369**, *per* Sir John Donaldson MR; ***Environment Secretary -v- Meier*** **[2009] 1 WLR 2780** [6] *per* Lord Rodger; ***Cameron*** [14] *per* Lord Sumption; ***Canada Goose*** [89] *per* Coulson LJ. The latter is a form of quasi-legislation, not litigation (see the discussion in Berryman, *Recent developments in the Law of Equitable Remedies: What Canada can do for you* (2002) 33 VUWLR 51, 61 and further [230] below).

183. In civil proceedings, the Court's processes are limited to considering the evidence and submissions of the parties (and anyone likely to be affected by the grant of an injunction). That adversarial process has certain inherent weaknesses, particularly so where, as the Cohort Claims demonstrate, litigation against "Persons Unknown" is

likely to be wholly one-sided and not adversarial at all. In ***LB Bromley***, Coulson LJ explained:

> [31] It is, however, appropriate to add something about procedural fairness, because that has arisen starkly in this and the other cases involving the gipsy and traveller community.
>
> [32] Article 6 of the Convention provides: "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
>
> [33] This is reflective of a principle of English law that civil litigation is adversarial: "English civil courts act *in personam*. They adjudicate disputes between the parties to an action and make orders against those parties only." (***Attorney General -v- Newspaper Publishing plc*** **[1988] Ch 333, 369C** *per* Sir John Donaldson MR.) This allows disputes to be decided fairly: a defendant is served with a claim, obtains disclosure of the evidence against them, and can substantially present their case before the court (***Jacobson -v- Frachon*** **(1927) 138 LT 386, 393** *per* Atkins LJ). This allows arguments to be fully tested.
>
> [34] The principle that the court should hear both sides of the argument is therefore an elementary rule of procedural fairness. This has the consequence that a court should always be cautious when considering granting injunctions against persons unknown, particularly on a final basis, in circumstances where they are not there to put their side of the case."

184. Although certain interim injunctions, granted in civil claims, can effectively prohibit certain conduct by non-parties, who have notice of its terms, under the ***Spycatcher*** principle, the fundamental principle remains that injunction orders do not bind third parties. Lord Nicholls explained in ***Attorney General -v- Punch Ltd*** **[2003] 1 AC 1046** [4]:

> "… It is a contempt of court by a third party, with the intention of impeding or prejudicing the administration of justice by the court in an action between two other parties, himself to do the acts which the injunction restrains the defendant in that action from committing if the acts done have some significant and adverse affect on the administration of justice in that action: see Lord Brandon of Oakbrook in ***Spycatcher*** 203D, 206G-H, and, for the latter part, Lord Bingham of Cornhill CJ in ***Attorney General -v- Newspaper Publishing plc*** **[1997] 1 WLR 926, 936**. Lord Phillips MR **[2001] QB 1028** [87] neatly identified the rationale of this form of contempt:
>
> > 'The contempt is committed not because the third party is in breach of the order – the order does not bind the third party. The contempt is committed because the purpose of the judge in making the order is intentionally frustrated with the consequence that the conduct of the trial is disrupted.'

185. The paradigm example of an interim injunction to which the ***Spycatcher*** principle applies is an interim non-disclosure order to prohibit publication of certain information. In ***Spycatcher*** itself, Lord Brandon (206A-C) identified an interim injunction to prohibit trespass as one that did *not* engage the principle. An interim injunction to

prohibit trespass on A's land by B would not prohibit trespass on the same by C, even if s/he had knowledge of the terms of the injunction that had been granted against B.

186. I reject Mr Giffin QC's arguments based on absurdity or perverse incentives. The concerns I expressed in the *ex-tempore* judgment in ***LB Enfield*** (see [155] above) do not, with the benefit of further consideration and on proper analysis, actually arise. Application of the *Canada Goose* principles will not lead to, or permit, a "rolling programme" of interim injunctions.

(1) First, on a proper application of the guidance from ***Ineos*** and ***Canada Goose***, a court would not grant an interim injunction against "Persons Unknown" unless it is satisfied that there exist people who, even if they cannot be named, are capable of being identified and served with the proceedings, if necessary, by an order for alternative service such as can reasonably be expected to bring the proceedings to their attention: ***Canada Goose*** [82(1)].

(2) Second, if a claimant is not able to serve the Claim Form upon the "Persons Unknown" defendants by a means of alternative service that the Court is satisfied can reasonably be expected to bring the proceedings to their attention, there will be no civil claim in which to grant or maintain an injunction. The claimant will simply not have established jurisdiction over the "Persons Unknown": see [46]-[48] and [164]-[166] above.

(3) Third, an interim injunction will only be granted against "Persons Unknown" if there is a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief: ***Canada Goose*** [82(3)]. If the evidence in support of an interim injunction application only demonstrated a general risk that there might, at some point, be an unauthorised encampment on land by some unspecified person, the court would simply refuse the injunction. If the evidence does disclose a real and imminent threat of a tort being committed to justify a *quia timet* interim injunction against "Persons Unknown", the claimant will then have the period between then and the final hearing to identify the "Persons Unknown" defendants. Any final order, if granted, will bind only those identified parties as defendants.

187. In my judgment, once a final injunction is seen as a remedy flowing from the final determination of rights between the claimant and the Trial Defendants, rather than a remedy between the claimant and anyone who might ever infringe that right in the future, the importance of identification of the Trial Defendants becomes much clearer. As identified above, the final injunction in the cases brought by LB Barking & Dagenham (1st Claimant) and Basingstoke & Deane BC and Hampshire CC (16th Claimants) was sought and granted against "Persons Unknown" without further description. That is tantamount to a remedy *contra mundum*, was justified by evidence of actions of only a minority, to protect a right that has been, and is only likely to be, infringed by a few. More importantly, an order against "Persons Unknown", without further description, makes it impossible to identify the Trial Defendant(s); to assess, on the evidence, whether they have committed (or threatened) any wrongdoing justifying the grant of any remedy; or even for the Court to know whether they have been served with the Claim Form and thus brought within the jurisdiction of the Court.

188. Whilst, as recognised both in ***Cameron*** and ***Canada Goose***, there is a legitimate role for interim injunctions against "Persons Unknown", such remedies are conditional and are granted to protect the *status quo* pending determination of the parties' rights at a trial: ***Canada Goose*** [92].

189. In cases where a claimant wishes to bring a claim against defendants who are (or include) "Persons Unknown", then an interim injunction can be granted where the evidence demonstrates actual or threatened commission of a tort or other civil wrong by the "Persons Unknown". In the period between grant of any interim injunction and subsequent trial, the claimant must identify either by name or other method the persons against whom s/he seeks a final judgment. If a judgment is granted against the defendants, it will be against the defendants who can be named or identified by description even if some of them may be, at the date of the judgment, anonymous. They have to be identified sufficiently to enable the Court to consider whether the claimant is entitled to any remedy against them by way of final order. Consistent with the analysis in ***Cameron***, however, the final judgment cannot be granted against Category 2 defendants: defendants who are not only anonymous, but cannot be identified.

(2) Can the Court grant a Traveller Injunction *contra mundum*?

190. In the light of my decision that Traveller Injunctions are subject to the principle that a final injunction only binds the parties to the action at the date of the order, I must consider whether the Court can grant similar relief, not against "Persons Unknown" but *contra mundum*.

(a) The injunction granted to Wolverhampton CC

191. As already noted (see [117] above), in the Cohort Claims, Wolverhampton (36th Claimant) has been granted what, on its face, is a *contra mundum* injunction order. I should set out some of the history of this claim and the orders that have been made.

192. The Claim form was issued on 29 June 2018. Under Defendant, the Claim Form simply stated, "Persons Unknown". Under "details of claim", the council stated the following:

> "1. By this claim, the Claimant seeks to restrain unauthorised encampments from being set up by Persons Unknown on 60 sites in Wolverhampton which have been identified as being vulnerable to such encampments.
>
> 2. The Claimant seeks the following relief:
>
> (i) an injunction order;
>
> (ii) a power of arrest;
>
> (iii) declaratory relief;
>
> (iv) further or other relief;
>
> (v) costs.

3. The claim is brought pursuant to the following statutory provisions:

   (i) Section 222 of the Local Government Act 1972;

   (ii) Section 130 of the Highways Act 1972;

   (iii) Section 187B of the Town and Country Planning Act 1990

   (iv) Section 1 and 4 of the Anti-social Behaviour, Crime and Policing Act 2014;

   (v) Section 37 of the Senior Courts Act 1981; and/or

   (vi) Section 27 of the Police and Justice Act 2006

4. The Claimant has taken steps to ascertain the Defendant's (sic) identity but has been unable to obtain sufficient details to enable them to name individual defendants for the reasons set out in paragraph 37 of the Witness Statement of Shaun Walker dated 31 May 2018. The claim is therefore brought against Persons Unknown.

5. For the purposes of this claim, the Defendant is described as: "any person who enters and/or attempts to enter onto land in Wolverhampton for the purpose of setting up an unauthorised encampment and/or occupies and/or attempts to occupy any such land as part of an unauthorised encampment whether temporary or otherwise…"

193. Although issued under Part 8, Wolverhampton filed Particulars of Claim dated 28 June 2018. In it, particulars were given of alleged unauthorised encampments which had been set up by "Persons Unknown" since 2015; and incidents of anti-social behaviour alleged to have been committed by "Persons Unknown". The Particulars of Claim contained details of the alleged impact of the activities complained of on business, community, Wolverhampton CC and West Midlands Police. Under a heading, "*risk of displacement*", the council stated:

> "When an encampment is moved on, this frequently has the effect of displacing the problem as another encampment is set up elsewhere in Wolverhampton, whilst the Claimant is left to clear up the previous site and take steps to deal with the new one. The Claimant therefore becomes involved in an expensive game of 'cat and mouse' as the travellers simply move to a new site when they are evicted from their original site. The Claimant has also experienced displacement from other local authority areas, some of whom have been granted an injunction in relation to unauthorised encampments."

194. In support of the claim for an injunction, the Particulars of Claim averred:

> "Unless restrained… there is a significant likelihood that Persons Unknown will continue setting up unauthorised encampments in Wolverhampton.
>
> …
>
> For the reasons particularised above, the Claimant respectfully invites the Court to find that it is just and convenient and to exercise its discretion under section 37(1)

> of the Senior Courts Act 1981 to grant an injunction in the terms of the draft injunction which accompanies the application, or alternatively in such terms as the Court thinks fit
>
> The Claimant further invites the Court to attach a power of arrest to the injunction pursuant to section 27 of the Police and Justice Act 2006 and/or section 4 of the Anti-social Behaviour, Crime and Policing Act 2014 as the anti-social conduct has involved the use or threat of violence and/or poses a significant risk of harm to other persons." (emphasis added)

195. In respect of "Persons Unknown", the council stated:

> "The Claimant has attempted to ascertain the identity of the individuals who have trespassed upon land in order to set up unauthorised encampments but the Claimant has been unable to obtain sufficient details to enable them to name the individual defendants. Officers of the Claimant seek to obtain details when an unauthorised encampment occurs, but the people who are present are very reluctant to disclose their true identity.
>
> The Claimant has no way of ascertaining whether any details which are given are true or false as it is generally the intention of those present to frustrate the process so that they can remain on the land for as long as possible. When details are provided, this is frequently preceded by an individual asking an earlier caravan what name they gave. The Claimant can have no confidence that the details given are correct. There is further the risk of mistaken identity if a name were to be relied upon which is inaccurate. In any event, no address is provided due to their nomadic way of life. In the circumstances, it has been necessary to seek the injunction against Persons Unknown".

196. Also on 28 June 2018, Wolverhampton issued an Application Notice seeking an order for alternative service of the Claim Form pursuant to CPR 6.15. An order under CPR 6.15 was made on 6 July 2018, permitting service of the Claim Form on "Persons Unknown" by (a) making available on the Council's website ("the Website Page") copies of the Notice of Hearing, Part 8 Claim Form, Particulars of Claim, Injunction Application and draft injunction order and power of arrest; (b) posting on Twitter and Facebook a link to the website page with the documents; (c) issuing a press release to the Council's standard media contacts; (d) placing an editorial in the Wolverhampton edition of the *Express and Star* newspaper; (e) uploading a video to YouTube and the Council's website providing details of the application; and (f) posting the Notice of Hearing and a document outlining the nature of the application for the injunction with a link to the Website Page.

197. It is not necessary to consider whether this order for alternative service could reasonably be expected to bring the proceedings to the attention of those whom it was sought to make defendants to the claim. However, it is clear, from the documents filed by Wolverhampton in support of their claim and application, that there was a fundamental underlying tension or contradiction between the historic acts of "Persons Unknown", who were identifiable even if they could not be named, relied upon to support the claim, and the terms of the injunction, which were directed prospectively at anyone who in the future might set up an encampment in Wolverhampton (i.e. newcomers). The term "Persons Unknown" therefore covered two very distinct groups: historic wrongdoers and newcomers. Outside the area of "Persons Unknown" injunctions the inadequacy of

proof of historic wrongdoing by A as a justification for a *quia timet* injunction against B would be immediately apparent. Further, whatever might be said about the likelihood of the alternative service methods utilised by the council bringing the proceedings to the attention of the historic wrongdoers (in respect of acts alleged to have taken place up to 3 years previously), there could be no reasonable expectation that they would bring the proceedings to the attention of all of the newcomers (for the reasons explained in [45] above).

198. The claim came before Jefford J on 2 October 2018. Ms Caney, who represented Wolverhampton at the hearing, had provided a skeleton argument. A transcript of the hearing has been obtained. There was no attendance by or representation of the Defendants. The claim was presented, both in the skeleton argument and in the submissions to the Court, as a conventional *inter partes* claim against "Persons Unknown", not as a *contra mundum* injunction. The skeleton argument referred specifically to ***Bloomsbury Publishing*** and several of the Cohort Claims in which "Persons Unknown" injunctions had by that stage been granted. There was no reference to or consideration of ***Venables*** or any other *contra mundum* authorities. Reference was made to the service of the Claim Form by alternative means and the failure by the defendants to file an acknowledgement of service. Yet, the injunction that the council was asking the Court to make, and which was ultimately granted, was in terms a *contra mundum* injunction; "*IT IS FORBIDDEN for anyone…*" to set up encampments at the 60 sites. It is also plain from Jefford J's judgment ([2]) that she understood that she was exercising the jurisdiction to grant an injunction against "Persons Unknown", not making an order *contra mundum*.

199. Ms Caney's skeleton argument did refer to Practice Direction 8A §20. She submitted that the Practice Direction confirmed "*that an injunction may be granted under s.187B Town & Country Planning Act 1990 against a person whose identity is unknown to the Claimant*". However, Ms Caney did not deal, either in her skeleton argument or at the hearing, with §§20.4 to 20.6 of the Practice Direction (set out in [50] above). Had she done so, the fact that the claim was being brought against two distinct categories of "Persons Unknown" – historic wrongdoers and newcomers – would likely have become apparent. On the basis of the *pleaded* claim against historic wrongdoers, there was every reason to believe that the council *could* have complied with PD 8A §20.4 by describing the historic wrongdoers, for example by a photograph or other evidence (see further [204] below). The pleaded claim explained reasons why the Council could not provide the names of the historic wrongdoers (or lacked confidence in the accuracy of any names that it had been given). That did not explain why the simple expedient of photographing the alleged wrongdoers was not practicable as a method of identifying those who were sought to be made defendants to the claim. Crucially, had attention been paid to PD 8A §20.5, focus would have been drawn to the need to describe the "Persons Unknown" defendants "*sufficiently clearly to enable the defendant to be served with the proceedings*". As the definition of "Person Unknown" in Paragraph 5 of the Claim Form and in the injunction was directed exclusively at newcomers, there were very real obstacles to the council being able to satisfy the requirements of the Practice Direction.

200. The injunction was granted for a period of 3 years (with a power of arrest under s.27 Police and Criminal Justice Act 2006), "*unless before then it is revoked or varied by further order of the Court*", but the Judge directed that a review hearing should take

place after a year. The injunction was granted pursuant to s.187B and s.130, but not s.1 ASBCPA (see [2] of the judgment). A point that particularly concerned the Judge was the absence of any transit site provision by Wolverhampton. As the Judge noted in argument, one potential consequence of the grant of a Traveller Injunction to a local authority was the risk that it substantially removed the impetus to provide a transit site. She therefore expressly provided that, before the review hearing, the council was to provide a witness statement setting out the progress with regard to the proposed transit site.

201. The first review hearing took place on 5 December 2019. The Council applied to vary the injunction to remove four sites and to add three new sites, but otherwise sought the continuation of the injunction in the terms in which it had originally been granted. Ms Caney again represented the council at the review hearing and provided a skeleton argument. Evidence was filed by the Council. In summary, although work had been carried out to try and establish a transit site, none had been provided. The Court was told that "*a development plan [to provide one] is in place to move forward as quickly as possible*" and that the Claimant "*remains committed and resolutely determined to establishing a suitable transit site*".

202. By order of 5 December 2019, the injunction was amended as sought by the council and extended (with the same power of arrest) until 5 December 2021, "*unless before then it is revoked or varied by further order of the court*", with a further review hearing to take place in July 2020.

203. The second review hearing took place on 20 July 2020. Ms Caney represented the council and provided a skeleton argument. On this occasion, although no defendants attended or were represented, the Court did receive written submissions from Chris Johnson, of the Community Law Partnership on behalf of the National Federation of Gypsy Liaison Groups (the Third Intervener in these proceedings). The transit site had still not opened. Planning permission had been granted for the site, but it was limited to 13 caravans and available only to Travellers who had been evicted from unauthorised encampments within the administrative area of Wolverhampton. Ms Caney's skeleton addressed the Court of Appeal decision in ***LB Bromley***.

204. In his submissions, Mr Johnson argued that Wolverhampton could not demonstrate compliance with all of the requirements of ***LB Bromley***. Mr Johnson noted that the Court of Appeal in ***LB Bromley*** had considered ([39(b)]) that the "*positive evidence*" in respect of the planned transit site had had a "*major impact*" on Jefford J's original decision to grant the injunction. Further, the Council's evidence in support of the original application for the injunction had suggested that the injunction was part of a "*dual strategy*", the other part of which was provision of a transit site, which had still not materialised. In relation to the action against "Persons Unknown" Mr Johnson submitted:

> "It is not clear why the Travellers against whom allegations of nuisance and anti-social behaviour are made cannot be identified (e.g. by use of vehicle registration details) and named in the proceedings. There are a large number of photographs in the original Trial Bundle which show fly-tipping and depositing of waste. Whilst we accept that there is evidence of such criminality linked to some unauthorised encampments, we would point out that it is well known that others may take advantage of the existence of unauthorised encampment by fly-tipping near the

> encampment on the basis that the occupants of the encampment will get the blame."

205. Finally, Mr Johnson referred in his written submissions to ***Canada Goose*** in support of his argument that the injunction obtained by Wolverhampton, even if justifiable, could only bind those who were parties to the proceedings (i.e. those who were encamped on the relevant land at the date of the final order).

206. Martin Spencer J continued the injunction order. Whilst he expressed concern about the planning conditions attached to the transit site, which meant that it offered no practical solution to the issues faced by the Gypsy and Traveller communities, he was satisfied that there were other transit sites available in the West Midlands and that the injunction was in accordance with the "*letter and spirit*" of the decision in ***LB Bromley***. The Judge did not deal with ***Canada Goose*** in his judgment (although, during argument, he stated the Wolverhampton claim and ***Canada Goose*** "*are not equivalent*") and no point was raised about the *contra mundum* issue.

207. There was some discussion, at the hearing before me, as to whether Wolverhampton's injunction is an interim or final order. In his skeleton argument, Mr Anderson QC suggested that the order of 2 October 2018 was a final order. The Interveners submitted likewise. Ms Wilkinson expressed doubt as to this because there had been no interim injunction, but that is not necessarily determinative. A final injunction can be granted in a claim even if no interim injunction has been granted. On this point, and applying the principles set out in [161] above, my conclusion is that Wolverhampton's injunction is a final order. The order was not granted to protect the *status quo* pending a final determination. It was granted ostensibly following a determination of Wolverhampton's claim. It was not a perpetual injunction - it was granted for 3 years – and the court required a review. Certainly, Martin Spencer J regarded Jefford J as having determined the claim (see [2020] EWHC 2280 (QB) [20]) and no further reviews have been ordered. No final hearing has been listed. As matters stand, therefore, unless varied or discharged by the court in the meantime, Wolverhampton has a subsisting *contra mundum* injunction (with power of arrest) made by final order until 5 December 2021 prohibiting any encampment at the 60 or so sites identified in the 5 December 2019 order.

(b) Submissions

208. Mr Anderson QC, on behalf of Wolverhampton, has argued that the *contra mundum* order granted to his client is a pragmatic, sensible and effective solution to the problem of unlawful encampments. He submits that the court has jurisdiction to grant a *contra mundum* Traveller Injunctions and that such an injunction was justified in Wolverhampton's case.

209. Mr Anderson QC accepted that, when Wolverhampton's claim was commenced, there was no ongoing trespass, and the council did not seek any remedy in respect of past acts of trespass. The claim was brought *quia timet*; to protect against the threat of wrongdoing. He argues that the situation confronted by Wolverhampton was quintessentially one justifying injunctive relief. Mr Anderson QC relies on the evidence filed in the proceedings to demonstrate that prior to the grant of the injunction, the inhabitants of Wolverhampton were suffering from escalating unauthorised encampments, up to 39 incidents by 2 October 2018. The land affected included

highways, public open spaces, playing fields, business parks, industrial estates, public and private car parks and development land. There were instances where damage was caused to gain access to the land. The immediate impact was to inhibit the use of the areas by those who were otherwise entitled to use and enjoy the land. He submitted that the evidence demonstrated anti-social behaviour regularly associated with encampments, comprising abuse, noise, nuisance, threats of violence and intimidation. The absence of toilet facilities caused a public health nuisance. Encampments on the highway caused risks to the safety of the public and waste was regularly left behind, resulting in substantial clean-up costs. The total cost to Wolverhampton of dealing with the encampments in 2016 and 2017 (and excluding costs to the police service) was estimated to be £250,000. Mr Anderson QC defended the grant of the injunction and warned that the Court "*should be highly reluctant to deny the people of Wolverhampton its protection*".

210. Mr Anderson QC argued that the Courts have always had the power to grant injunctions *contra mundum* in appropriate cases: ***Venables***; ***OPQ -v- BJM*** **[2011] EWHC 1059**. The modern foundation of the jurisdiction is s.37 Senior Courts Act 1981. Mr Anderson QC recognises that the Court of Appeal in ***Canada Goose*** stated [89]:

> "… There are some very limited circumstances, such as in ***Venables -v- News Group Newspapers Ltd*** **[2001] Fam 430**, in which a final injunction may be granted against the whole world. Protestor actions, like the present proceedings, do not fall within that exceptional category…"

211. He contends, however, that it is wrong to suggest that there is any "*usual principle*" that *contra mundum* orders are not granted. He suggests that the injunction orders granted in all the Cohort Claims are, in fact, *contra mundum* orders, albeit he concedes that "*not all of the 38 were granted for adequate reason and with adequate safeguards, and some have been discharged already*". He nevertheless submits, stirringly:

> "… those which were granted for adequate reason and with adequate safeguards should not be thrown out for imagined legal incompetence which has the effect of extracting the teeth from several statutory provisions."

212. Wolverhampton accepts that it is a fundamental principle of natural 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: ***Cameron*** [17]. And, on a practical level, the absence of a defendant can make the entire judicial process, which is supposed to be adversarial, one-sided: injunctions are more likely to be granted in the absence of a defendant and, in such absence, there is no prospect of an appeal.

213. Nevertheless, Mr Anderson QC argues that the principle – that both sides must be heard – should not be a bar to an injunction against persons defined by reference to their future conduct, and who therefore do not exist at the time at which the order is made. There are some cases where the claimant cannot obtain justice if such persons cannot be sued: ***Ineos*** [29]. He submits that the absence of a defendant is not a conceptual problem. ***Ineos*** and ***Canada Goose*** show that there is no difficulty in a person being bound by an injunction without having been personally served with the Claim Form nor with the application for an injunction nor even with the injunction itself. In the Wolverhampton case, no one was personally served with the Claim Form but that does not matter so long as fair notice was devised, which, he submits, it was.

214. Mr Anderson QC referred to Baroness Hale's observation in ***Meier*** [25]:

> "… 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. So the questions are: what is the right to be protected? And what is the appropriate remedy to fit it?"

215. He argues that the Court of Appeal in ***LB Bromley***, expressly referred to Wolverhampton's case and approved the approach taken by Jefford J (see [39(b)], [70], [105] and [106]). In particular, Coulson LJ observed (at [70]) that the approach of identifying specific sites, coupled with the proposal for a transit site, was *"in accordance with the ECtHR authorities"* detailed at [44]-[48] of his judgment. He further observed ([105]) that the solution of identifying particularly vulnerable sites in Wolverhampton was a more proportionate answer to a borough-wide order. The provision for a review after 12 months was also considered sensible ([106]). These "*important safety valves*" were, he submits, absent in ***LB Bromley***.

216. Mr Anderson QC argues that, in Wolverhampton's case, Jefford J was correct to grant *contra mundum* relief because it was a reasonable and proportionate way of protecting the inhabitants of Wolverhampton against the situation described in her judgment: [3]-[8].

217. Although not an order that was granted, in terms, to any of her clients, Ms Bolton also supports Mr Anderson QC's contention that the Court can grant *contra mundum* orders under s.222 "*where there is evidence of a widespread impact on the Article 8 rights of the inhabitants of [the local authority]'s area*". Environmental harm and harm to the well-being of the inhabitants of a local area is capable of infringing Article 8 rights: ***Lopez Ostra -v- Spain*** **(1995) 20 EHRR 277**; as can harm to mental and physical health: ***OPQ -v- BJM*** [19]; ***X (formerly Bell) -v- O'Brien*** **[2003] EMLR 37** [22].

218. Mr Bhose QC similarly argues that the court has jurisdiction under s.37 Senior Courts Act 1981 to grant final relief on a *contra mundum* basis: ***Ambrosiadou -v- Coward*** **[2013] EWHC 58 (QB)** [13]; extending particularly to cases where local authorities are proceeding to restrain breaches of the criminal law, the commission of public nuisance, or to uphold public rights and privileges over land owned by them.

219. Mr Giffin QC also argues that the Court has jurisdiction to grant *contra mundum* injunctions. True *contra mundum* orders undoubtedly infringe the principle of natural justice that a person should not be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard: ***Cameron*** [17]. Consequently, Mr Giffin QC submitted – on the basis of ***Venables*** [98]-[100] – *contra mundum* orders were limited to cases in which justice cannot be achieved, or fundamental rights (including in particular Convention rights) cannot be protected, in any other way.

220. Mr Willers QC on behalf of the Interveners submits that the court has jurisdiction to grant *contra mundum* injunction orders: ***Venables***. Whatever its origins, the modern basis of statutory jurisdiction is s.6 Human Rights Act 1998: ***RXG -v- Ministry of Justice*** **[2020] QB 703** [24]. However, the claimants in the Cohort Claims cannot

invoke this jurisdiction because they cannot meet the criteria. A *contra mundum* Traveller Injunction is almost by definition disproportionate; it does not discriminate between a large encampment causing massive disruption, damage and nuisance, and a single caravan peacefully parked overnight in a local authority car park. Where, as recognised in ***LB Bromley***, the Article 8 rights of the Gypsy and Traveller communities are affected by the grant of such Traveller injunctions, the Court has to consider the necessity for and proportionality of the interference that a Traveller Injunction represents.

221. On the point of whether the local authorities can demonstrate that it is necessary for the Court to grant *contra mundum* injunctions, Mr Willers QC relied upon guidance published in March 2015: "*Dealing with illegal and unauthorised encampments*". This Guidance noted that it was "*primarily aimed at public authorities*", and identified what were described as "*extensive powers*" available to local authorities, including: stop notices (and temporary stop notices), under ss.171E and 183 Town & Country Planning Act 1990; licensing controls of caravan sites under the Caravan Sites and Control of Development Act 1960; possession orders (including interim possession orders, where available) against trespassers under CPR Part 55; local byelaws made under s.235 Local Government Act 1972 (including the ability to attach powers of seizure and retention of property in connection with any breach of a byelaw under s.150(2) Police Reform and Social Responsibility Act 2011); directions pursuant to s.77 Criminal Justice and Public Order Act 1994 (see further [76] below); various provisions of the Highways Act 1980 to deal with obstructions of this highway causing a nuisance; planning contravention notices under s.171C Town & Country Planning Act 1990; and enforcement notices under s.172 Town & Country Planning Act 1990. The guide also identified powers that the police could exercise to tackle unauthorised encampments.

222. Insofar as reliance was placed on the permission to apply provisions that were included in the Wolverhampton injunction (and generally), Mr Willers QC submitted that this did not make up for the disproportionate impact of the injunction order. He argued that it was fanciful to suggest that a family of Travellers who arrived at a location to find that an injunction is in place prohibiting them from stopping there would lodge an application to the High Court asking for the injunction to be varied.

223. In agreement with the Interveners' submissions, Ms Wilkinson contended that the *Venables* jurisdiction to grant *contra mundum* orders was to give effect to the positive obligation placed upon the Court to take steps to give effect to Convention rights; principally Articles 2, 3 and 8. Ms Wilkinson noted that none of the claimants in the claims before the Court had indicated in their Claim Forms that any issue under the Human Rights Act 1998 arises. She submitted that this was plainly not tenable. At the very least, the Article 8 and 14 rights of Gypsies and Travellers are engaged. Ms Bolton's clients, she noted, appeared to acknowledge only the Article 8 rights of the inhabitants of the relevant local authority area.

(c) Decision

224. In my judgment, in civil proceedings, s.37 Senior Courts Act 1981 confers jurisdiction on the Court to grant *contra mundum* injunction orders: ***In re BBC*** **[2010] 1 AC 145** [57]. However, the circumstances in which the Court will exercise this jurisdiction are very limited, and are practically restricted to cases where the *contra mundum* order is the only way to protect an engaged Convention right and where a refusal to grant the

injunction would put the Court in breach of s.6 Human Rights Act 1998: ***In re S* [2005] 2 AC 593** [23]; ***OPQ -v- BJM*** [18]; ***RXG*** [24]. This self-denying limit on the grant of *contra mundum* orders recognises and gives effect to a fundamental principle of justice, explained by the Court of Appeal in ***Canada Goose*** [89]:

> "… that a final injunction operates only between the parties to the proceedings: ***Attorney General -v- Times Newspapers Ltd (No.3)* [1992] 1 AC 191, 224**. That is consistent with the fundamental principle in ***Cameron*** [17] that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard."

225. As the Divisional Court noted in ***RXG*** [33], the "*Venables* jurisdiction" to grant *contra mundum* injunctions had been exercised on only three further occasions after ***Venables***. Since the decision in ***RXG***, (and excluding the orders made in the Cohort Claims) I am aware of one further claim in which a court has granted a *contra mundum* injunction: ***D & F -v- Persons Unknown* [2021] EWHC 157 (QB)**. The Court of Appeal in ***Canada Goose*** correctly described the circumstances in which *contra mundum* orders are granted as "*very limited*" [89].

226. The submissions made by Counsel for the local authorities urging development of the law to fashion a civil remedy to the problem of unauthorised encampments on land are superficially attractive and powerfully argued. Rightly, they give pause for thought. Mr Anderson QC refers to Baroness Hale's call to action, "*ubi ius, ibi remedium*" (see [214] above) to encourage the Court to expand the reach of the civil law. However, in the very passage he cited, there is the following important check: "*provided that there is proper procedural protection for those against whom the remedy may be granted*" (see to similar effect also Baroness Hale's observations in [40] quoted in [14]).

227. Mr Willers QC countered that there are clear limits to how creative the Court can be in pursuit of a remedy for a wrong. One of those limits is the position where a party's rights are infringed by an unidentifiable wrongdoer. That is precisely what happened in ***Cameron***. There was no dispute that Ms Cameron had been injured by the negligence of another, but because she could not identify that other, the Court could not assist her. It made no difference that this deprived her of a remedy. Mr Willers QC argued that this neatly demonstrates the limits to the maxim quoted by Baroness Hale. He argues that it was responding to this siren call that led the majority in the Court of Appeal in ***Cameron*** into error: finding jurisdiction when there was none (see [7] *per* Lord Sumption).

228. Mr Willers QC, in his submissions, also encapsulated the danger of not respecting the proper limits to civil litigation:

> "The civil courts determine disputes between parties. They uphold rights but they do so within the context of *inter partes* disputes. The Court's role as arbiter – rather than inquisitor – is why the system is adversarial… The proceedings brought by these Claimants are of a qualitatively different nature to the *inter partes* arguments the Court is designed to decide. These proceedings are not, and are not intended by the Claimants to be, a determination of a dispute. Rather, they are intended to confer on the Claimants a new power enabling them to police public disorder using the Court's enforcement mechanisms. This is not an appropriate use of civil litigation. The purpose of the Court's enforcement powers is to give effect to its

> own judgments. They are not designed as a general control on wide-ranging anti-social behaviour over large geographical areas. Moreover, it puts the Court – whose role is to determine disputes – in an invidious position, because it makes a process which is designed to be adversarial inherently one-sided. This is contrary to the principles outlined by Lord Sumption in ***Cameron*** [17]".

229. Broadly, I accept that submission subject to the following point. As recognised by the Court of Appeal in ***Canada Goose*** and ***Ineos*** the Court does have a legitimate role, at an interim injunction stage, and in an appropriate case, in granting civil injunctions against "Persons Unknown" which may have the effect of temporarily subjecting "newcomers" to the Court's jurisdiction and coercive orders, and even to restrain otherwise lawful activity. However, the Court will only grant such interim remedies where the claimant demonstrates that they are necessary and there is "*no other proportionate means of protecting the claimant's rights*": ***Canada Goose*** [82(5)]. An interim injunction in those terms is a temporary measure and must be time limited: [82(7)]. The claimant must identify defendants to the claim and then advance the proceedings to a final hearing at which the Court will determine the dispute between the parties. An interim injunction that, as an unavoidable consequence, places restrictions upon strangers to the litigation and/or limits lawful activity can be tolerated only for as long as is strictly necessary to progress the claim to a final hearing; *a fortiori* if the injunction interferes with Convention rights. As the Court of Appeal explained in ***Canada Goose*** [92]:

> "An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's Category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also 'persons unknown' who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the trial has taken place and the rights of the parties have been determined, the litigation is at an end."

230. 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. Parliament has required that local authorities seeking PSPOs must carry out consultation before making/extending/varying a PSPO: s.72(3) ASBCPA. Leaving aside the constitutional objections based on separation of powers, the Court has no way of carrying out any sort of consultation as part of determining a civil claim for an injunction. As the Court of Appeal noted in ***Canada Goose*** [93], "*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".

231. Respecting those boundaries, the grant of *contra mundum* injunctions is strictly limited to circumstances where the Court is compelled to act. The cases in which *contra mundum* orders have been granted demonstrate that they are instances where, having considered the evidence, the Court is left with only one option: to grant the injunction. The fundamental principle that persons to be restrained by an order of the court made in civil proceedings must be served with proceedings and given an opportunity to be heard, in this exceptional category of case, has to yield to more important considerations. The clearest examples are cases in which the Court was satisfied, on evidence, that if the injunction were not granted there would be a real and immediate risk of serious physical harm or death. At that point, Articles 2 and/or 3 of the Convention are engaged, and there is no question of that risk being balanced against any other Convention rights (for example Article 10): ***RXG*** [35(v)]. In other cases – like ***RXG*** itself – the evidence, whilst not demonstrating a threat at a level engaging Articles 2 and/or 3, establishes that, without an injunction, there will be a serious interference with the applicant's Article 8 right. As Article 8 is a qualified right, the Court would have to resolve any conflict with other engaged Convention rights using the now well-established parallel analysis: ***Re S*** [17]:

> "First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case."

232. When considering whether to grant a *contra mundum* order in these exceptional cases, the Court will always strive, so far as circumstances permit, to enable representations to be made and considered before an order is made. Typically, they also include provisions to enable the orders to be reconsidered. But, unlike other civil proceedings, there is no requirement for there to be a defendant to the proceedings; the order is sought and, if the claim is successful, granted *contra mundum*.

233. Can the local authorities demonstrate that Traveller Injunctions fall into the exceptional category where the court is compelled to act by way of *contra mundum* injunction? In my judgment, the answer is plainly no. There is no doubt that Traveller Injunctions engage the Article 8 rights of Gypsies and Travellers: ***LB Bromley*** (see [15] above). Insofar as the remaining local authorities in the Cohort Claims, now raise an argument that the relief sought also engages the Article 8 rights of denizens of its area, then the Court would be required to perform the required parallel analysis when considering whether to grant an injunction and, if so, in what terms. The Court's task in doing so was explained by Sir Mark Potter P in ***A Local Authority -v- W*** **[2006] 1 FLR 1** [53]:

> "… The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. It is not a mechanical exercise to be decided upon the basis of rival generalities. An intense focus on the comparative importance of the specific

> rights being claimed in the individual case is necessary before the ultimate balancing test in terms of proportionality is carried out…"

234. The submissions made by the remaining local authorities in support of Traveller Injunctions might be thought to be paradigmatic examples of "*rival generalities*". Indeed, the whole structure of "Persons Unknown" litigation, and *a fortiori* claims for injunctions *contra mundum*, because there is no focus on individuals, means that Court can only carry out any assessment based on rival generalities. Worse, it is an assessment that risks a significant element of in-built prejudice. On the basis of evidence of the worst examples of historic wrongdoing by some, unidentified persons, the Court is asked to impose an injunction to restrain future conduct of unidentified (and unlimited) newcomers, including those who were not guilty of any of the acts of wrongdoing relied upon to support the injunction application. If the Court cannot identify the individuals who will be restrained by the injunction, it cannot begin to assess the particular circumstances of each person to be restrained, whether an injunction is necessary in that person's case and whether the terms of the injunction are proportionate (see ***LB Bromley*** [104]). It is difficult to see how the claimant would begin to demonstrate the required evidence of "*irreparable harm*" if it cannot identify the persons who it claimed would cause it (see [13(3)] above). Put shortly, it is impossible to carry out the required parallel analysis of and intense focus upon the engaged rights. In ***LB Bromley*** the Court of Appeal expressed concern that closing down unlawful encampments on land and moving on Gypsies and Travellers must be regarded as a last resort: [101]. Prospectively making a *contra mundum* injunction prohibiting all encampments is arguably worse.

235. Members of the Gypsy and Traveller communities are generally entitled to have the proportionality of measures affecting their Article 8 rights considered by an independent tribunal (see [15(10)-(11)] above). I do not consider that the availability of a permission to apply to challenge a final injunction order after it has been granted (particularly where the likelihood of it being exercised is illusory, for the reasons articulated by Mr Willers QC ([222] above)) is an adequate substitute for proper consideration of the proportionality of the order before it is granted. Whatever a court might exceptionally be prepared to grant, on an emergency basis by way of interim injunction, it could not countenance granting an injunction in such broad terms by way of final *contra mundum* order.

236. To illustrate this, I would return to the hypothetical example of the Traveller family pitching their caravan overnight at the Dagenham Road Car Park (see [45] above). If LB Barking & Dagenham applied for an injunction against the Traveller family to require them to vacate the site, the Court would be able to carry out a meaningful parallel analysis of engaged rights. It could assess the necessity for, and proportionality, of an injunction, for example, by considering the circumstances of the Traveller family, the evidence of availability of other sites where the caravan could be pitched, the impact of any injunction on the Article 8 rights of the Traveller family, any evidence that the family had previously caused damage or engaged in anti-social or other criminal behaviour, any evidence of adverse impact or harm that would be caused by the family staying overnight in the car park and any Article 8 rights of nearby residents. Perhaps most importantly, in the adversarial process, the Traveller family would have the opportunity to make submissions to the Court as to whether an order should be made and, if so, in what terms. The result of that analysis could well lead to the refusal of an injunction, or to the Traveller family being given a period of time before they were

required to move on. In reality, and consistent with the guidance issued to local authorities (see [16] and [221] above), a short-lived "encampment", that was not likely to cause damage or nuisance, would be unlikely to lead to an application for an injunction in the first place. However, if a *contra mundum* injunction had already been granted, the Traveller family would discover, on arrival at Dagenham Road Car Park, that the Court has already pre-judged their circumstances and granted an injunction (with a power of arrest attached) prohibiting them from pitching up even for a single night.

237. It cannot be argued by the local authorities that a *contra mundum* order is the only way in which they can tackle the problem of unauthorised encampments that cause the sort of damage and harm upon which Wolverhampton relied. As noted (see [221] above), local authorities already possess what have been described as "*extensive powers*" to tackle unauthorised encampments and the harm associated with them. In some of the evidence filed by the local authorities in the Cohort Claims, complaints are made that some of these remedies are not as effective (and/or are more expensive) than civil injunctions. This evidence falls a very long way short of demonstrating that *contra mundum* civil injunctions are the only way of preventing the harm caused by unauthorised encampments: ***LB Bromley*** [109]. For the reasons already mentioned, civil injunctions may have a role to play in tackling unauthorised encampments, but, as targeted measures, where justified by evidence, against actual wrongdoers (or those who present a real and imminent threat of wrongdoing), in proceedings in which those to be made subject to the Court's jurisdiction have an opportunity to be heard.

238. In my judgment, for the reasons I have given, Traveller Injunctions granted in the Cohort Claims do not fall into the exceptional category that permits the Court to grant a *contra mundum* injunction.

G: Issue 3 – Ascertaining the parties to the Final Order

(1) Submissions

239. In summary, the parties made the following submissions on this issue:

(1) Mr Bhose QC has not advanced any submissions on this issue as he represents local authorities that have only interim injunctions.

(2) Mr Giffin QC, for Walsall, has indicated that his local authority would be able to identify a limited number of people who have become defendants to the proceedings prior to the grant of the final order in its claim on 21 October 2016. Otherwise, he accepts that (if Issue 2 is decided as I have done) the injunction order should be discharged against "newcomers".

(3) Mr Anderson QC limited his submissions to Issue 2.

(4) Ms Bolton stated that the local authorities that she represents who were granted final orders (LB Barking & Dagenham (1st Claimant), LB Redbridge (11th Claimant), and Basingstoke & Deane BC and Hampshire CC (16th Claimants)) may be able to identify individuals who were parties to the proceedings before the date of the final order. Ms Bolton makes the fair point, which is borne out by the practice demonstrated in the claims brought by her

local authorities, that her clients did undertake significant work to identify as many defendants by name as they were able before the claim was issued: 64 named defendants in LB Barking & Dagenham's claim; 100 named defendants in LB Redbridge's claim; and 115 named defendants in Basingstoke & Deane BC and Hampshire CC's claim. The three local authorities had not ascertained, at the date of the hearing before me, whether they would be able to demonstrate that there were any further persons under the definition of "Persons Unknown" who had by the date of the relevant final order become defendants to the claim. Ms Bolton suggested that the three local authorities affected should be given time to consider their position on this issue.

(5) Mr Willers QC submitted for the Interveners that insofar as any final order made in the Cohort Claims binds or purports to bind newcomers then it should be discharged.

(6) Ms Wilkinson submitted that the Court of Appeal in ***Canada Goose*** had given guidance as to what steps should be taken following the grant of an interim injunction against "Persons Unknown" to identify the persons who are (or are to be made) parties to the action before the grant of any final order.

(2) Decision

240. In my judgment, Ms Wilkinson has correctly identified that the Court, in ***Canada Goose***, has not only established the principle that final injunctions bind only the parties to the proceedings, including in claims brought against "Persons Unknown" but also given guidance as to the steps to be taken between the grant of any interim injunction and the final resolution of the claim at trial or earlier determination. During that period, the claimant must take steps to identify each of the wrongdoers in the category of "Persons Unknown", either by name or other description that enables his/her identification: see ***Canada Goose*** [91]-[92]. These principles were followed by Warby J in ***Birmingham City Council -v- Afsar*** **[2020] EWHC 864 (QB)** [22].

241. It is a relatively straightforward exercise, now, to apply these principles to the Cohort Claims in which final orders have been granted against "Persons Unknown". The injunctions will be discharged against newcomers. I will give the affected local authorities a limited period to identify, if they can, any individuals whom they contend were parties to the proceedings under the relevant definition of "Persons Unknown" (if the definition of "Persons Unknown" complies with the Description Requirement) at the time that the final order was granted. In fairness to those people, and in order to achieve certainty, it seems to me that any such individuals that are bound by the final injunction by this route should, where practicable, be specifically advised of this fact. This will enable them to decide whether they wish to challenge the injunction order made against them.

H: Issue 4 – The 'conundrum' of interim relief

242. This issue arose in the context of the second claim brought by LB Enfield, which, before the claim was discontinued, was a point that had troubled me when LB Enfield had applied for interim relief against "fly-tippers" (see [2020] EWHC 2717 (QB) [41]-[44] quoted in [155] above).

243. The resolution of Issue 2 has led me to conclude that, on analysis, there is no 'conundrum'. The answer is contained in the Court of Appeal's decision in ***Canada Goose*** [92] and a proper application of the *Canada Goose* principle and the principles relating to orders for alternative service of the Claim Form. If these are followed, there is no real likelihood of any 'rolling programme' of applications for interim injunctions, for the reasons I have explained (see [186] above).

J: Consequences and Next steps

244. In respect of the remaining Cohort Claims, subject to further submissions at a hearing to be fixed, the following orders appear to be consequent on the judgment:

(1) subject to (2), injunction orders against "Persons Unknown" in the claims brought by (a) LB Barking & Dagenham; (b) LB Redbridge; (c) Basingstoke & Deane BC and Hampshire CC; (d) Walsall MBC; and (e) Wolverhampton CC will be discharged;

(2) I will grant (a) LB Barking & Dagenham; (b) LB Redbridge; (c) Basingstoke & Deane BC and Hampshire CC; and (d) Walsall MBC a short period in which to identify, if they can, any defendants in the category of "Persons Unknown" who can be demonstrated to have been a defendant to the proceedings prior to the grant of the final order in the relevant claim; and

(3) in the remaining Cohort Claims, where interim injunctions have been granted, the relevant local authority will have 7 days from the date of this judgment to consider whether they wish to proceed with or discontinue their claim against "Persons Unknown". If they opt to proceed, I will give directions that will lead to the prompt identification of the "Persons Unknown" defendants and bring these claims speedily to a final hearing. As I have noted (see [96]-[101] above), many of the Cohort Claims have not been prosecuted with due expedition towards a final hearing. As an interim injunction currently remains in force in these claims, there must be no further delay.

245. I am also minded to discharge any power of arrest that has been granted in the remaining interim injunctions against "Persons Unknown". The parties have not had an opportunity to make submissions on this point. They will be able to do so at the hearing which will be fixed to consider consequential orders.

246. As set out in more detail above, my overall consideration of the Cohort Claims has led me to conclude that there are grounds to suspect that, in a significant number of applications for interim injunctions, there were material and serious breaches of the procedural requirements and the procedures of the Court (and Court 37 in particular) have been abused. As I have already noted, a significant number of the Cohort Claims were allowed to go to sleep following the grant of an interim injunction, and no local authority, which had been granted a Traveller Injunction, returned the claims to Court for reconsideration following the decisions of ***LB Bromley*** and ***Canada Goose***. This judgment is not the place to go into these matters further, but I will ensure, so far as possible, that they will be properly investigated.

247. Looking to the future, the experience in the Cohort Claims demonstrates that the Court needs to adopt measures to ensure that "Persons Unknown" injunctions (and powers of

arrest) are only granted in appropriate cases and are subject to proper safeguards. In her written submissions, Ms Wilkinson submitted that the Court could adopt procedures, similar to those that have been adopted in cases where non-disclosure injunctions have been sought (see [88]-[94] above), to ensure that cases are properly case managed, not allowed to become dormant and that active steps are taken by the claimant to name (or at least to identify) the defendants who are within the category of "Persons Unknown" and against whom a final remedy is sought.

248. Based on the procedure that is now established for claims for interim non-disclosure orders, and reflecting the existing authorities, I consider that claims against "Persons Unknown" should be subject to the following safeguards:

(1) The "Persons Unknown" must be described in the Claim Form (or other originating process) (a) with sufficient certainty to identify those who are defendants to the claim and those who are not; and (b) by reference to conduct which is alleged to be unlawful: see [49] above.

(2) Where they apply, the Claim Form must comply with the requirements of CPR 8.2A(1) and Practice Direction 8A.

(3) The "Persons Unknown" defendants identified in the Claim Form are, by definition, people who have not been identified at the time of commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. "Persons Unknown", against whom relief is sought, must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary, by alternative service of the Claim Form: *Canada Goose* principle (1).

(4) Any application for permission to serve the Claim Form on "Persons Unknown" must comply with CPR 6.15(3) and the claimant must demonstrate, by evidence, that the proposed method of alternative service is such as can reasonably be expected to bring the proceedings to the attention to all of those in the category of "Persons Unknown" sought to be made defendants to the proceedings: *Cameron* principle (4); and any order under CPR 6.15 must comply with CPR 6.15(4).

(5) Applications for interim injunctions against "Persons Unknown" must comply with the requirements of Practice Direction 25A (see [83] above) and, unless justified by urgency, must be fixed for hearing and a skeleton argument provided.

(6) At the hearing of an application for an interim injunction against "Persons Unknown" the applicant should be expected to explain why it has not been possible to name individual defendants to the claim in the Claim Form and why proceedings need to be pursued against "Persons Unknown".

(7) An interim injunction will only be granted *quia timet* if the applicant demonstrates, by evidence, that there is a sufficiently real and imminent risk of a tort being committed by the respondents: *Canada Goose* principle (3).

(8) If an interim injunction is granted:

a) the claimant should provide an undertaking to the Court to use its best endeavours to identify the "Persons Unknown" whether by name or other identifying information (e.g. photograph) and serve them personally with the Claim Form;

b) the terms of the injunction must comply with *Canada Goose* principles (5) to (7);

c) the Court must be satisfied that the inclusion of any power of arrest is justified by evidence demonstrating that the relevant statutory test is met; and

d) the Court in its order should fix a date on which the Court will consider the claim and injunction application further ("the Further Hearing"). What period is allowed before the Further Hearing is fixed will depend on the particular circumstances, but I would suggest it should not be more than 1 month from the date of the interim order, and in many cases a shorter period would be appropriate.

(9) At the Further Hearing, the claimant should provide evidence of the efforts to identify the "Persons Unknown" and make any application to amend the Claim Form to add named defendants. The Court should give directions requiring the claimant, with a defined period:

a) if the "Persons Unknown" have not been identified sufficiently that they fall with Category 1 "Persons Unknown", to apply to discharge the interim injunction against "Persons Unknown" and discontinue the claim under CPR 38.2(2)(a);

b) otherwise, as against the Category 1 "Persons Unknown" defendants to apply for (i) default judgment; or (ii) summary judgment; or (iii) a date to be fixed for the final hearing of the claim,

and, in default of compliance, that the claim be struck out and the interim injunction against "Persons Unknown" discharged.

(10) Assuming that the claimant has demonstrated an entitlement to relief against a party to the claim, in respect of any final order that is granted against "Persons Unknown" (whether by default judgment, summary judgment or after a final hearing), unless falling in the exceptional category where a *contra mundum* order is justified, the order:

a) can only be made against parties to the proceedings: those named defendants, or those who fall into Category 1 of "Persons Unknown", who have been served with the Claim Form;

b) must clearly identify by description the Category 1 "Persons Unknown" defendants that are bound by the order; and

c) must not be drafted in terms that would capture newcomers, i.e. persons who are not parties when the order is granted: ***Canada Goose*** [91]-[92].

Appendix 1: List of Actions

	Claimant(s) & Claim No. and Current Status	Defendants (as described in Claim Form)	Key History of the Claim:
1.	**LB Barking and Dagenham** QB-2017-006899 (HQ17X00849) **Current status:** Final injunction in force against Persons Unknown until further order	(1) Tommy Stokes (2)-(64) other named Defendants (65) Persons Unknown being members of the traveller community who have unlawfully encamped within the borough of Barking and Dagenham	Claim Form issued on 10 March 2017. Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 10 March 2017. Interim injunction granted on 29 March 2017 Final injunction granted on 30 October 2017 "until further order" against 23 named defendants and "Persons Unknown". The final injunction contains a permission to apply to the Defendants or "anyone notified of this Order" to vary or discharge on 72 hours' written notice.
2.	**LB Bromley** QB-2018-003485 (HQ18X02920) **Current status**: Claim dismissed and injunction(s) discharged.	Persons Unknown	Interim injunction (without notice) granted on 15 August 2018 against "Persons Unknown Occupying Land and/or Depositing Waste". Claim Form issued on 15 August 2018 not served during its period of validity. No order for alternative service of Claim Form. Final injunction granted on 24 May 2019 against "Persons Unknown Depositing Waste or Fly-Tipping" until 15 May 2022. 21 January 2020: Court of Appeal dismisses Claimant's appeal against Order of 24 May 2019 ([2020] PTSR 1043) On application by the Claimant, injunction discharged and action dismissed on 9 November 2020.
3.	**LB Croydon** QB-2018-003395 (HQ18X03041) **Current status:** Claim dismissed and injunction(s) discharged.	Persons Unknown	Interim injunction (without notice) granted on 18 July 2018 against "Persons Unknown Occupying Land and/or Depositing Waste" with power of arrest. Claim Form issued on 24 August 2018 not served during its period of validity. No order for alternative service of Claim Form. Final injunction granted on 17 October 2018 until 16 October 2021 On application by the Claimant, injunction discharged and action dismissed on 10 November 2020.

4.	**LB Ealing** QB-2019-001696 **Current status:** Interim injunction in force against Persons Unknown.	(1) Persons Unknown occupying land (2) Persons Unknown depositing waste or fly-tipping	Interim injunction (without notice) granted on 10 May 2019 with power of arrest. The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). Claim Form issued 10 May 2019. 15 July 2019: Claim adjourned pending decision of the Court of Appeal in LB Bromley case.
5.	**RB Greenwich** QB-2018-003037 (HQ18X04086) **Current status:** Claim dismissed and injunction(s) discharged.	Persons Unknown	Interim injunction (without notice) granted on 19 December 2017. Claim Form issued on 19 December 2017 not served during its period of validity. No order for alternative service of the Claim Form. Final injunction granted on 19 March 2018 until 18 March 2021. On application by the Claimant, injunction discharged and action dismissed on 13 November 2020.
6.	**LB Havering** QB-2019-002737 **Current status:** Interim injunction in force against Persons Unknown	(1) William Stokes (2)-(105) other named Defendants (106) Persons Unknown	Claim form issued on 31 July 2019. Order for alternative service by affixing copy of the Claim Form at each site, dated 31 July 2019. Interim injunction granted on 11 September 2019 "pending the final injunction hearing" with power of arrest.
7.	**LB Hillingdon** QB-2019-001138 **Current status:** Interim injunction in force against Persons Unknown	(1) Persons Unknown occupying land (2) Persons Unknown depositing waste or fly-tipping on land	Interim injunction (without notice) granted on 29 March 2019. Power of arrest refused by Stewart J. The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). Claim Form issued on 29 March 2019.

			Order of 17 June 2019 adjourned the final hearing of the claim until the decision of the Court of Appeal in LB Bromley.
8.	**LB Hounslow** QB-2019-002113 **Current status:** Interim injunction in force against Persons Unknown	(1) Persons Unknown occupying land (2) Persons Unknown depositing waste or fly-tipping on land	Interim injunction (without notice) granted on 12 June 2019 with power of arrest. The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). Claim Form issued on 12 June 2019 Order of 3 October 2019 adjourned the final hearing of the claim until the decision of the Court of Appeal in LB Bromley.
9.	**RB Kingston-upon-Thames** QB-2019-000150 **Current status:** Claim dismissed and injunction(s) discharged.	(1) Persons Unknown possessing or occupying land (2) Persons Unknown depositing waste or flytipping on land	Interim injunction (without notice) granted on 15 January 2019 with power of arrest. The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). Claim Form issued on 15 Jan 2019. Final injunction granted on 15 April 2019 until 14 April 2022. On application by the Claimant, injunction discharged and action dismissed on 10 November 2020.
10.	**LB Merton** QB-2018-000452 **Current status:** Claim dismissed and injunction(s) discharged.	(1) Persons Unknown occupying land (2) Persons Unknown depositing waste on land	Interim injunction (without notice) granted on 12 December 2018 with power of arrest. Claim Form issued on 12 December 2018 not served during its period of validity. No order for alternative service of Claim Form. Final injunction granted on 13 March 2019 until 13 March 2022.

			On application by the Claimant, injunction discharged and action dismissed on 10 November 2020.
11.	**LB Redbridge** QB-2018-003983 (HQ18X01522) **Current status:** Final injunction in force against Persons Unknown until 21 November 2021	(1) Martin Stokes (2)-(100) other named Defendants (101) Persons Unknown forming or intending to form unauthorised encampments in the London Borough of Redbridge	Claim Form issued on 26 April 2018. Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 26 April 2018. Interim injunction granted against 70 named Defendants and Persons Unknown on 4 June 2018 with power of arrest. Final injunction granted on 12 November 2018 until 21 November 2021 against 69 named Defendants and Persons Unknown. The final injunction contains a permission to apply to the Defendants "and anyone notified of this Order" to vary or discharge on 72 hours' written notice.
12.	**LB Richmond-upon-Thames** QB-2019-000777 **Current status:** Interim injunction in force against Persons Unknown	(1) Persons Unknown possessing or occupying land (2) Persons Unknown depositing waste or flytipping on land	Interim injunction (without notice) granted on 6 March 2019. The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). Claim Form issued on 6 March 2019. Order of 10 May 2019 adjourned the final hearing of the claim until the decision of the Court of Appeal in LB Bromley.
13.	**LB Sutton** QB-2018-003487 (HQ18X02913) **Current status:** Claim dismissed and injunction(s) discharged.	Persons Unknown occupying land and/or depositing waste on land	Interim injunction (without notice) granted on 14 August 2018 and continued on 24 August 2018. Both contain powers of arrest. Claim Form issued on 14 August 2018 not served during its period of validity. No order for alternative service of Claim Form. Final injunction granted on 7 November 2018 until 7 November 2021 with power of arrest. On application by the Claimant, injunction discharged and action dismissed on 10 November 2020.

14.	**LB Waltham Forest** QB-2017-005691 (HQ17X03769) **Current status:** Claim dismissed and injunction(s) discharged.	(1) Persons Unknown possessing or occupying land (2) Persons Unknown depositing waste or flytipping on the land	Interim injunction (without notice) granted on 16 October 2017. Claim Form issued on 16 October 2017 not served during its period of validity. No order for alternative service of the Claim Form. Final injunction granted on 23 February 2018 against "Persons Unknown Occupying the Land (as defined in the Order)" until 12 January 2021. On application by the Claimant, injunction discharged and action dismissed on 11 November 2020.
15.	**LB Wandsworth** QB-2019-000778 **Current status:** Interim injunction discharged and claim struck out.	(1) Persons Unknown possessing or occupying land (2) Persons Unknown depositing waste or flytipping on the land	Interim injunction (without notice) granted on 6 March 2019. The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). Claim Form issued on 6 March 2019. Order of 2 June 2020 discharged the interim injunction order and adjourned the claim generally with permission to restore. If no request to restore the claim was made by 25 November 2020, the Claim to be stuck out. No request to restore was received and so claim struck out.
16.	**(1) Basingstoke and Deane Borough Council** **(2) Hampshire County Council** QB-2018-003748 (HQ18X02304) **Current status:** Final injunction in force against Persons Unknown until 3 April 2024 or further order	(1) Henry Loveridge (2)-(115) other named Defendants (116) Persons Unknown (owner and/or occupiers of land at various addresses set out in the attached Schedule)	Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 28 June 2018. Claim Form issued 2 July 2018. Interim injunction granted on 30 July 2018 with power of arrest. Final injunction granted on 26 April 2019 "until 3 April 2024 or further order" against 115 named defendants and "Persons Unknown" with power of arrest. The final injunction contains a permission to apply to the Defendants or "anyone notified of this Order" to vary or discharge on 72 hours' written notice.

17.	**(1) Basildon Borough Council** **(2) Essex County Council** QB-2017-005724 (HQ17X03732) **Current status:** Interim injunction discharged and claim discontinued.	(1) Dennis Ainey (2)-(45) other named Defendants (46) Persons Unknown	Order for alternative service on persons unknown by affixing copy of the Claim Form at each site, 9 October 2017. Claim Form issued 12 October 2017. Interim injunction granted on 6 November 2017. On application by the Claimant, interim injunction discharged on 18 November 2020 and Claimant given permission to discontinue claim. Claim discontinued on 4 December 2020.
18.	**Birmingham City Council** QB-2020-003833 (formerly Birmingham District Registry D90BM148-149) **Current status:** Final injunction discharged.	Persons Unknown	Claim Form issued on 5 July 2017. Final injunction (without notice) granted on 5 July 2017 with power of arrest. Order extended time for service of the Claim Form to 14 July 2019. Order dated 27 September 2017 varying the final injunction. Order dated 3 July 2019 extending and varying the final injunction and extending the period to serve the Claim Form to 1 July 2021. On application by the Claimant, the final injunction discharged on 1 December 2020.
19.	**(1) Boston Borough Council** **(2) Lincolnshire County Council** QB-2020-003835 (formerly Birmingham District Registry E90BM073) **Current status:** Interim injunction discharged and claim dismissed.	Persons Unknown	Interim injunction (without notice) granted on 3 April 2019. The order contains purported order for alternative service of the Claim Form by affixing Claim Form at each site, but no Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). The claim was "adjourned generally with liberty to restore". Claim Form issued on 3 April 2019. On application by the claimants, the interim injunction discharged and claim dismissed on 13 November 2020.
20.	**Canterbury City Council** QB-2019-001304 **Current status:** Final injunction discharged and claim dismissed.	Persons Unknown	Interim injunction (without notice) granted on 10 April 2019 against "Persons Unknown occupying land". Claim Form issued on 10 April 2019 not served during its period of validity. No order for alternative service of the Claim Form. Final injunction granted on 3 June 2019 against "Persons Unknown Occupying

			the sites listed in this Order" until 3 June 2020. Application by the Claimant to extend the final injunction withdrawn on 28 October 2020. Interim and final injunction orders discharged and claim dismissed on 30 October 2020: [2020] EWHC 3153 (QB)
21.	**Central Bedfordshire** QB-2020-003858 (formerly Bedford District Registry E01LU344) **Current status:** Final injunction lapsed on 5 October 2020 and no application made to extend or renew.	(1) Levi Parker (2)-(22) other named Defendants (23) Persons Unknown entering or remaining without planning consent on those parcels of land coloured in Schedule 2 of the draft order.	Unclear when the Claim Form was issued, but not served during its period of validity. No order for alternative service of the Claim Form. Final Injunction (without notice) granted against Persons Unknown with power of arrest from 5 October 2018 until 5 October 2020.
22.	**Elmbridge Borough Council** QB-2018-003423 (HQ18X02948) **Current status:** Final injunction discharged and claim dismissed.	Persons Unknown occupying land and/or depositing waste on land	Interim injunction (without notice) granted on 16 August 2018 with power of arrest. Claim Form issued on 16 August 2018 not served during its period of validity. No order for alternative service of the Claim Form. Final injunction granted on 8 November 2018 until 8 November 2021 with power of arrest. On application by the claimant, final injunction discharged and claim dismissed on 11 November 2020.
23.	**Epsom and Ewell Borough Council** QB-2018-000383 **Current status:** Final injunction discharged and claim dismissed.	(1) Persons Unknown possessing or occupying land (2) Persons Unknown depositing waste on land	Interim injunction (without notice) granted on 7 December 2018 with power of arrest. Claim Form issued on 7 December 2018 not served during its period of validity. No order for alternative service of the Claim Form. Final injunction granted on 20 May 2019 against "(1) Persons Unknown occupying the land as part of an encampment of ten (10) vehicles or more (2) Persons Unknown depositing waste and fly-tipping on the land (as defined in the Order" until 15 May 2022 with power of arrest. On application by the claimant, final injunction discharged and claim dismissed on 10 November 2020.

24.	**(1) Harlow District Council** **(2) Essex County Council** QB-2015-002380 (HQ15X00825) **Current status:** Injunction lapsed on 14 June 2020 and application to extend final injunction withdrawn on 10 July 2020.	(1) Michael Stokes (2)-(53) other named Defendants (54) Persons Unknown	Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 20 February 2015. Interim injunction granted on 3 March 2015. Final injunction granted on 16 December 2015 against 35 named defendants and Persons Unknown until 15 June 2017. Order of 14 June 2017 extending the final injunction until 14 June 2020. Application by the Claimant, issued on 8 June 2020 to extend further the final injunction, withdrawn on 10 July 2020 at a hearing before Tipples J.
25.	**Hertsmere Borough Council** QB-2018-000333 **Current status:** Final injunction discharged and claim dismissed.	Persons Unknown occupying land and/or depositing waste on land	Interim injunction (without notice) granted on 5 December 2018 with power of arrest. Claim Form issued on 5 December 2018 not served during its period of validity. No order for alternative service of the Claim Form. Final injunction granted on 17 January 2019 against (1) Persons Unknown occupying land (2) Persons Unknown depositing waste on land until 17 January 2022 with power of arrest. On application by the claimant, final injunction discharged and claim dismissed on 13 November 2020.
26.	**(1) Nuneaton and Bedworth Borough Council** **(2) Warwickshire County Council** QB-2019-000616 **Current status:** Interim injunction in force against Persons Unknown	(1) Thomas Corcoran (2)-(53) other named Defendants (54) Persons Unknown forming unauthorised encampments within the Borough of Nuneaton and Bedworth	Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 22 February 2019. Claim Form issued 22 February 2019. Interim injunction granted on 19 March 2019 with power of arrest. No steps taken by the Claimant to bring the claim to a final hearing.
27.	**Reigate and Banstead Borough Council** QB-2019-002297 **Current status:** Interim injunction in force against Persons Unknown	(1) Persons Unknown possessing or occupying land (2) Persons Unknown depositing waste or fly-tipping on land	Interim injunction (without notice) granted on 25 June 2019 with power of arrest. The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking

			order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). Claim Form issued on 25 June 2019. Order of 25 November 2019 adjourned the final hearing of the claim until the decision of the Court of Appeal in LB Bromley.
28.	**Rochdale Metropolitan Borough Council** QB-2017-005202 (HQ17X04668) **Current status:** Interim injunction in force against Persons Unknown	(1) Shane Heron (2)-(89) other named Defendants (90) Persons Unknown (being members of the travelling community who have unlawfully encamped within the borough of Rochdale)	Claim form issued 21 December 2017. Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 22 December 2017. Interim injunction granted on 9 February 2018 with power of arrest. No steps taken by the Claimant to bring the claim to a final hearing.
29.	**Rugby Borough Council** QB-2020-003852 (formerly Nuneaton County Court E00NU379) **Current status:** Final injunction discharged and claim dismissed.	(1) McDonough (surname only) (2)-(6) other Defendants identified by surname only (7) Persons Unknown	Claim Form issued 22 August 2018 not served during its period of validity. No order for alternative service of the Claim Form. Final injunction (without notice) granted on 31 August 2018 against Persons Unknown "until further order" with power of arrest. Application to renew power of arrest refused on 4 June 2020. As a result of the Claimant's failure to comply with an unless Order dated 4 November 2020, the injunction order against Persons Unknown was discharged on 13 November 2020. On application by the Claimant, injunction order against the First to Sixth Defendants discharged and claim dismissed on 20 November 2020.
30.	**Runnymede Borough Council** QB-2017-006165 (HQ17X02485) **Current status:** Final injunction against Persons Unknown discharged.	(1) Callum Wooding (2)-(23) other named Defendants (24) Persons Unknown (Occupiers of land at Thorpe Green Open Space, Egham, Surrey, TW20 8QL and other areas of land within Runnymede Borough Council)	Interim injunction (without notice) granted on 14 July 2019 against "Persons Unknown (occupiers of land at Thorpe Green open space, Egham, Surrey TW20 8QL and other areas of land within Runnymede Borough Council as identified in the Schedules to this Order and shown on the plan attached to this Order)". The order contains purported order for alternative service of the Claim Form by affixing Claim Form at each site, but no Application Notice was issued seeking order for alternative service of Claim

			Form and the order does not comply with CPR 6.15(4). Claim Form issued 14 July 2017. Final injunction granted on 22 September 2017 against "Persons Unknown (Occupiers of Land as defined within this Order as identified in the Schedules to this order and shown on the plan attached to this Order)". Order contains no end date, but provides permission to apply to vary/discharge. On application by the claimant, final injunction against Persons Unknown discharged on 9 December 2020.
31.	**Sandwell Metropolitan Borough Council** QB-2020-003841 (formerly Birmingham District Registry D90BM116) **Current status:** Injunction against Persons Unknown discharged.	(1) John Cassidy (2)-(14) other named Defendants (15) Persons Unknown	Claim Form issued 26 May 2017. Order for alternative service dated 26 May 2017 deeming service of the Claim Form on "Persons Unknown" after it has been served on the First Defendant. Injunction (without notice) granted against Persons Unknown on 6 June 2017 until 6 June 2018 (unclear whether interim or final). Further injunction granted on 5 June 2018 against Persons Unknown until 6 June 2023 with power of arrest. On application by the claimant, injunction against Persons Unknown discharged on 27 November 2020.
32.	**Solihull Metropolitan Borough Council** QB-2020-003848 (formerly Birmingham District Registry E90BM026) **Current status:** Injunction against Persons Unknown discharged.	(1) John Cassidy (2)-(14) other named Defendants (15) Persons Unknown	Claim Form issued 5 February 2018. No order for alternative service of the Claim Form upon Persons Unknown. Injunction (without notice) granted against Persons Unknown on 13 March 2018 until 13 March 2021 (unclear whether interim or final). As a result of the Claimant's failure to comply with an unless Order dated 6 November 2020, the injunction order against Persons Unknown was discharged on 20 November 2020.
33.	**Test Valley Borough Council** QB-2020-002112 **Current status:** Interim injunction in force against Persons Unknown	(1) Albert Bowers (2)-(89) other named Defendants (90) Persons Unknown forming unauthorised encampments within the borough of Test Valley	Claim Form issued 18 June 2020. Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 18 June 2020. Interim injunction granted on 28 July 2020 with power of arrest.
34.	**Thurrock Council**	(1) Martin Stokes	Claim Form issued 31 July 2019

	QB-2019-002738 **Current status:** Interim injunction in force against Persons Unknown	(2)-(107) other named Defendants (108) Persons Unknown	Order for alternative service on persons unknown, by affixing copy of the Claim Form at each site, dated 31 July 2019. Interim injunction granted on 3 September 2019 with power of arrest. No steps taken by the Claimant to bring the claim to a final hearing.
35.	**Walsall Metropolitan Borough Council** QB-2020-003850 (formerly Walsall County Court C00WJ967) **Current status:** Final injunction in force against Persons Unknown	(1) Brenda Bridges (2)-(18) other named Defendants (19) Persons Unknown	No separate Claim Form issued. The Claimant states that the claim was brought using the modified Part 8 procedure provided by CPR Part 65.43 for applications for injunctions under Anti-Social Behaviour, Crime and Policing Act 2014 (see judgment [65]-[66]). Interim injunction (without notice) granted on 23 September 2016. The order of 23 September 2016 includes: "service of the proceedings may be effected by displaying the notice of application together with the written evidence on the land edged red on the map annexed to this order". If this is an order for alternative service, then it does not comply with CPR 6.15(4). Final injunction granted on 21 October 2016 until "further order of the Court."
36.	**Wolverhampton City Council** QB-2020-003838 (formerly Birmingham District Registry E90BM139) **Current status:** Contra mundum injunction in force prohibiting encampments within the boundaries of 59 sites	Persons Unknown	Claim Form issued 29 June 2018. Order for alternative service on persons unknown, by various methods and affixing a notice of hearing of the Claimant's Application for an injunction and directions how to inspect documents. Injunction granted on 2 October 2018 ([2018] EWHC 3777 (QB)). The injunction is contra mundum, but in places refers to "the Defendants". It contains a power of arrest. The judgment considers the principles governing injunctions against "persons unknown" (see [2]) but does not address whether the Court has the jurisdiction to grant a contra mundum order. The order provided for a review hearing to take place on the first available date after 1 October 2019. Further injunction order granted on 5 December 2019, again contra mundum and with power of arrest. The order provided for a further review hearing to take place on 20 July 2020.

			Hearing on 20 July 2020 which led to an order of 29 July 2020 continuing the injunction ([2020] EWHC 2280 (QB)).
37.	**Buckinghamshire Council (formerly) Wycombe District Council** QB-2019-002783 **Current status:** Interim injunction discharged and claim dismissed.	(1) Persons Unknown occupying land (2) Persons Unknown depositing waste or fly-tipping on land	Interim injunction (without notice) granted on 2 August 2019 with power of arrest. The order contains purported order for alternative service of the Claim Form by affixing at each site a copy of the injunction Order and a notice that the Part 8 Claim Form could be obtained from the Claimant's offices. No Application Notice was issued seeking order for alternative service of Claim Form and the order does not comply with CPR 6.15(4). Claim Form issued 2 August 2019. Order of 10 December 2019 adjourning the final hearing of the claim until the determination of the appeal in LB Bromley. On application by the Claimant, interim injunction discharged and claim dismissed on 12 November 2020.
38.	**LB Enfield** QB-2017-006080 (HQ17X02619) (1st Claim) QB-2020-003471 (2nd Claim) **Current status:** No injunction in force against persons unknown. 2nd Claim discontinued on 11 January 2021.	1st Claim: Persons Unknown 2nd Claim: (1) Persons Unknown who enter and/or occupy any of the locations listed in this order ("the locations") for residential purposes (whether temporary or otherwise) including siting caravans, mobile homes, associated vehicles and domestic paraphanelia (sic) (2) Persons Unknown who enter and/or occupy any of the locations listed in this order ("the locations") for the purposes of fly-tipping or discarding waste including entering with caravans, mobile homes, pick-up trucks, vans or lorries and any associated vehicles	1st Claim: Interim injunction (without notice) granted on 21 July 2017. Claim Form issued on 21 July 2017 not served during its period of validity. No order for alternative service of the Claim Form. Final injunction granted on 4 October 2017 until 3 October 2020. Application by the Claimant to extend final injunction and to amend the Claim Form withdrawn on 28 September 2020. Application by the Claimant for an order for alternative service of the Claim for under CPR 6.15(2) (validation of steps already taken) refused on 2 October 2020: [2020] EWHC 2717 (QB). 2nd Claim: Claim Form issued 5 October 2020. Interim injunction application against second Defendant refused on 2 October 2020. Hearing of Part 8 Claim fixed for 27-28 January 2021. Notice of Discontinuance filed on 11 January 2021.

Appendix 2: Statutory provisions (in chronological order)

Local Government Act 1972:

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

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

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

Highways Act 1980:

130. Protection of public rights

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

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

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

(a) the highways for which they are the highway authority, and

(b) any highway for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area.

(4) Without prejudice to the foregoing provisions of this section, it is the duty of a local highway authority to prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are the highway authority.

(5) Without prejudice to their powers under section 222 of the Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient.

(6) If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local highway authority—

(a) that a highway as to which the local highway authority have the duty imposed by subsection (3) above has been unlawfully stopped up or obstructed, or

(b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority, it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name.

(7) Proceedings or steps taken by a council in relation to an alleged right of way are not to be treated as unauthorised by reason only that the alleged right is found not to exist.

…

137. Penalty for wilful obstruction.

(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 a fine not exceeding level 3 on the standard scale.

137ZA. Power to order offender to remove obstruction.

(1) Where a person is convicted of an offence under section 137 above in respect of the obstruction of a highway and it appears to the court that—

(a) the obstruction is continuing, and

(b) it is in that person's power to remove the cause of the obstruction,

the court may, in addition to or instead of imposing any punishment, order him to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for removing the cause of the obstruction.

(2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of the time as originally fixed or as extended under this subsection, as the case may be.

(3) If a person fails without reasonable excuse to comply with an order under subsection (1) above, he is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale; and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding one-twentieth of the greater of £5,000 or level 4 on the standard scale for each day on which the offence is so continued.

(4) Where, after a person is convicted of an offence under subsection (3) above, the highway authority for the highway concerned exercise any power to remove the cause of the obstruction, they may recover from that person the amount of any expenses reasonably incurred by them in, or in connection with, doing so.

(5) A person against whom an order is made under subsection (1) above is not liable under section 137 above in respect of the obstruction concerned—

(a) during the period fixed under that subsection or any extension under subsection (2) above, or

(b) during any period fixed under section 311(1) below by a court before whom he is convicted of an offence under subsection (3) above in respect of the order.

…

149. Removal of things so deposited on highways as to be a nuisance etc.

(1) If any thing is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited it there to remove it forthwith and if he fails to comply with the notice the authority may make a complaint to a magistrates' court for a removal and disposal order under this section.

(2) If the highway authority for any highway have reasonable grounds for considering—

(a) that any thing unlawfully deposited on the highway constitutes a danger (including a danger caused by obstructing the view) to users of the highway, and

(b) that the thing in question ought to be removed without the delay involved in giving notice or obtaining a removal and disposal order from a magistrates' court under this section,

the authority may remove the thing forthwith.

(3) The highway authority by whom a thing is removed in pursuance of subsection (2) above may either—

(a) recover from the person by whom it was deposited on the highway, or from any person claiming to be entitled to it, any expenses reasonably incurred by the authority in removing it, or

(b) make a complaint to a magistrates' court for a disposal order under this section.

(4) A magistrates' court may, on a complaint made under this section, make an order authorising the complainant authority—

(a) either to remove the thing in question and dispose of it or, as the case may be, to dispose of the thing in question, and

(b) after payment out of any proceeds arising from the disposal of the expenses incurred in the removal and disposal, to apply the balance, if any, of the proceeds to the maintenance of highways maintainable at the public expense by them.

(5) If the thing in question is not of sufficient value to defray the expenses of removing it, the complainant authority may recover from the person who deposited it on the highway the expenses, or the balance of the expenses, reasonably incurred by them in removing it.

(6) A magistrates' court composed of a single justice may hear a complaint under this section.

Town & Country Planning Act 1990:

187B. Injunctions restraining breaches of planning control

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

(2) On an application under subsection (1), the court may grant such 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.

Criminal Justice and Public Order Act 1994

61. Power to remove trespassers on land.

(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land,

he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.

(3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(4) If a person knowing that a direction under subsection (1) above has been given which applies to him—

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

…

(6) In proceedings for an offence under this section it is a defence for the accused to show—

(a) that he was not trespassing on the land, or

(b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) In its application in England and Wales to common land this section has effect as if in the preceding subsections of it—

(a) references to trespassing or trespassers were references to acts and persons doing acts which constitute either a trespass as against the occupier or an infringement of the commoners' rights; and

(b) references to "the occupier" included the commoners or any of them or, in the case of common land to which the public has access, the local authority as well as any commoner.

(8) Subsection (7) above does not—

(a) require action by more than one occupier; or

(b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.

(9) In this section—

"common land" means—

(a) land registered as common land in a register of common land kept under Part 1 of the Commons Act 2006; and

(b) land to which Part 1 of that Act does not apply and which is subject to rights of common as defined in that Act;

"commoner" means a person with rights of common as defined in section 22 of the Commons Registration Act 1965;

"land" does not include—

(a) buildings other than—

(i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the Local Government Finance Act 1988… or

(ii) scheduled monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;

(b) land forming part of—

(i) a highway unless it is a footpath, bridleway or byway open to all traffic within the meaning of Part III of the Wildlife and Countryside Act 1981, is a restricted byway within the meaning of Part II of the Countryside and Rights of Way Act 2000]or is a cycle track under the Highways Act 1980 or the Cycle Tracks Act 1984; …

"the local authority", in relation to common land, means any local authority which has powers in relation to the land under section 9 of the Commons Registration Act 1965;

"occupier" (and in subsection (8) "the other occupier") means—

(a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him…

"property", in relation to damage to property on land, means—

(a) in England and Wales, property within the meaning of section 10(1) of the Criminal Damage Act 1971…

and "damage" includes the deposit of any substance capable of polluting the land;

"trespass" means, in the application of this section—

(a) in England and Wales, subject to the extensions effected by subsection (7) above, trespass as against the occupier of the land…

"trespassing" and "trespasser" shall be construed accordingly;

"vehicle" includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960;

and a person may be regarded for the purposes of this section as having a purpose of residing in a place notwithstanding that he has a home elsewhere.

77. Power of local authority to direct unauthorised campers to leave land

(1) If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area -

(a) on any land forming part of a highway;

(b) on any other unoccupied land; or

(c) on any occupied land without the consent of the occupier,

the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.

(2) Notice of a direction under subsection (1) must be served on the persons to whom the direction applies, but it shall be sufficient for this purpose for the direction to specify the land and (except where the direction applies to only one person) to be addressed to all occupants of the vehicles on the land, without naming them.

(3) If a person knowing that a direction under subsection (1) above has been given which applies to him -

(a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction, or

(b) having removed any such vehicle or property again enters the land with a vehicle within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A direction under subsection (1) operates to require persons who re-enter the land within the said period with vehicles or other property to leave and remove the vehicles or other property as it operates in relation to the persons and vehicles or other property on the land when the direction was given.

78. Orders for removal of persons and their vehicles unlawfully on land

(1) A magistrates' court may, on a complaint made by a local authority, if satisfied that persons and vehicles in which they are residing are present on land within that authority's area in contravention of a direction given under section 77, make an order requiring the removal of any vehicle or other property which is so present on the land and any person residing in it.

(2) An order under this section may authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the authority, by its officers and servants—

(a) to enter upon the land specified in the order; and

(b) to take, in relation to any vehicle or property to be removed in pursuance of the order, such steps for securing entry and rendering it suitable for removal as may be so specified.

(3) The local authority shall not enter upon any occupied land unless they have given to the owner and occupier at least 24 hours notice of their intention to do so, or unless after reasonable inquiries they are unable to ascertain their names and addresses.

(4) A person who wilfully obstructs any person in the exercise of any power conferred on him by an order under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Where a complaint is made under this section, a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed—

(a) to the occupant of a particular vehicle on the land in question; or

(b) to all occupants of vehicles on the land in question, without naming him or them.

(6) Section 55(2) of the Magistrates' Courts Act 1980 (warrant for arrest of defendant failing to appear) does not apply to proceedings on a complaint made under this section.

(7) Section 77(6) of this Act applies also for the interpretation of this section.

79. Provisions as to directions under s.77 and orders under s.78.

(1) The following provisions apply in relation to the service of notice of a direction under section 77 and of a summons under section 78, referred to in those provisions as a "relevant document".

(2) Where it is impracticable to serve a relevant document on a person named in it, the document shall be treated as duly served on him if a copy of it is fixed in a prominent place to the vehicle concerned; and where a relevant document is directed to the unnamed occupants of vehicles, it shall be treated as duly served on those occupants if a copy of it is fixed in a prominent place to every vehicle on the land in question at the time when service is thus effected.

(3) A local authority shall take such steps as may be reasonably practicable to secure that a copy of any relevant document is displayed on the land in question (otherwise than by being fixed to a vehicle) in a manner designed to ensure that it is likely to be seen by any person camping on the land.

(4) Notice of any relevant document shall be given by the local authority to the owner of the land in question and to any occupier of that land unless, after reasonable inquiries, the authority is unable to ascertain the name and address of the owner or occupier; and the owner of any such land and any occupier of such land shall be entitled to appear and to be heard in the proceedings.

(5) Section 77(6) applies also for the interpretation of this section.

Police and Justice Act 2006:

27.Injunctions in local authority proceedings: power of arrest and remand

(1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (c. 70) (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants of their area).

(2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.

(3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either—

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection.

(4) Where a power of arrest is attached to any provision of an injunction under subsection (2), a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of that provision.

(5) After making an arrest under subsection (4) the constable must as soon as is reasonably practicable inform the local authority.

(6) Where a person is arrested under subsection (4)—

(a) he shall be brought before the court within the period of 24 hours beginning at the time of his arrest, and

(b) if the matter is not then disposed of forthwith, the court may remand him.

(7) For the purposes of subsection (6), when calculating the period of 24 hours referred to in paragraph (a) of that subsection, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(8) Schedule 10 applies in relation to the power to remand under subsection (6).

(9) If the court has reason to consider that a medical report will be required, the power to remand a person under subsection (6) may be exercised for the purpose of enabling a medical examination and report to be made.

(10) If such a power is so exercised the adjournment shall not be in force—

(a) for more than three weeks at a time in a case where the court remands the accused person in custody, or

(b) for more than four weeks at a time in any other case.

(11) If there is reason to suspect that a person who has been arrested under subsection (4) is suffering from mental disorder within the meaning of the Mental Health Act

1983 the court shall have the same power to make an order under section 35 of that Act (remand for report on accused's mental condition) as the Crown Court has under that section in the case of an accused person within the meaning of that section.

(12) For the purposes of this section—

(a) "harm" includes serious ill-treatment or abuse (whether physical or not);

(b) "local authority" has the same meaning as in section 222 of the Local Government Act 1972 (c. 70);

(c) "the court" means the High Court or the county court and includes—

(i) in relation to the High Court, a judge of that court, and

(ii) in relation to the county court, a judge of that court.

Anti-Social Behaviour, Crime and Policing Act 2014:

1. Power to grant injunctions

(1) A court may grant an injunction under this section against a person aged 10 or over ("the respondent") if two conditions are met.

(2) The first condition is that the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in anti-social behaviour.

(3) The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.

(4) An injunction under this section may for the purpose of preventing the respondent from engaging in anti-social behaviour—

(a) prohibit the respondent from doing anything described in the injunction;

(b) require the respondent to do anything described in the injunction.

(5) Prohibitions and requirements in an injunction under this section must, so far as practicable, be such as to avoid—

(a) any interference with the times, if any, at which the respondent normally works or attends school or any other educational establishment;

(b) any conflict with the requirements of any other court order or injunction to which the respondent may be subject.

(6) An injunction under this section must—

(a) specify the period for which it has effect, or

(b) state that it has effect until further order.

In the case of an injunction granted before the respondent has reached the age of 18, a period must be specified and it must be no more than 12 months.

(7) An injunction under this section may specify periods for which particular prohibitions or requirements have effect.

(8) An application for an injunction under this section must be made to—

(a) a youth court, in the case of a respondent aged under 18;

(b) the High Court or the county court, in any other case.

Paragraph (b) is subject to any rules of court made under section 18(2).

2. Meaning of "anti-social behaviour"

(1) In this Part "anti-social behaviour" means—

(a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,

(b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or

(c) conduct capable of causing housing-related nuisance or annoyance to any person.

(2) Subsection (1)(b) applies only where the injunction under section 1 is applied for by—

(a) a housing provider,

(b) a local authority, or

(c) a chief officer of police.

(3) In subsection (1)(c) "housing-related" means directly or indirectly relating to the housing management functions of—

(a) a housing provider, or

(b) a local authority.

(4) For the purposes of subsection (3) the housing management functions of a housing provider or a local authority include—

(a) functions conferred by or under an enactment;

(b) the powers and duties of the housing provider or local authority as the holder of an estate or interest in housing accommodation.

3. Requirements included in injunctions

(1) An injunction under section 1 that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.

The person may be an individual or an organisation.

(2) Before including a requirement, the court must receive evidence about its suitability and enforceability from—

(a) the individual to be specified under subsection (1), if an individual is to be specified;

(b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.

(3) Before including two or more requirements, the court must consider their compatibility with each other.

(4) It is the duty of a person specified under subsection (1)—

(a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the "relevant requirements");

(b) to promote the respondent's compliance with the relevant requirements;

(c) if the person considers that the respondent—

(i) has complied with all the relevant requirements, or

(ii) has failed to comply with a relevant requirement,

to inform the person who applied for the injunction and the appropriate chief officer of police.

(5) In subsection (4)(c) "the appropriate chief officer of police" means—

(a) the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the respondent lives, or

(b) if it appears to that person that the respondent lives in more than one police area, whichever of the relevant chief officers of police that person thinks it most appropriate to inform.

(6) A respondent subject to a requirement included in an injunction under section 1 must—

(a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;

(b) notify the person of any change of address.

These obligations have effect as requirements of the injunction.

4. Power of arrest

(1) A court granting an injunction under section 1 may attach a power of arrest to a prohibition or requirement of the injunction if the court thinks that—

(a) the anti-social behaviour in which the respondent has engaged or threatens to engage consists of or includes the use or threatened use of violence against other persons, or

(b) there is a significant risk of harm to other persons from the respondent.

"Requirement" here does not include one that has the effect of requiring the respondent to participate in particular activities.

(2) If the court attaches a power of arrest, the injunction may specify a period for which the power is to have effect which is shorter than that of the prohibition or requirement to which it relates.

5. Applications for injunctions

(1) An injunction under section 1 may be granted only on the application of—

(a) a local authority,

(b) a housing provider,

(c) the chief officer of police for a police area,

(d) the chief constable of the British Transport Police Force,

(e) Transport for London,

(ea) Transport for Greater Manchester,

(f) the Environment Agency,

(g) the Natural Resources Body for Wales,

(h) the Secretary of State exercising security management functions, or a Special Health Authority exercising security management functions on the direction of the Secretary of State, or

(i) the Welsh Ministers exercising security management functions, or a person or body exercising security management functions on the direction of the Welsh Ministers or under arrangements made between the Welsh Ministers and that person or body.

(2) In subsection (1) "security management functions" means—

(a) the Secretary of State's security management functions within the meaning given by section 195(3) of the National Health Service Act 2006;

(b) the functions of the Welsh Ministers corresponding to those functions.

(3) A housing provider may make an application only if the application concerns anti-social behaviour that directly or indirectly relates to or affects its housing management functions.

(4) For the purposes of subsection (3) the housing management functions of a housing provider include—

(a) functions conferred by or under an enactment;

(b) the powers and duties of the housing provider as the holder of an estate or interest in housing accommodation.

(5) The Secretary of State may by order—

(a) amend this section;

(b) amend section 20 in relation to expressions used in this section.

6. Applications without notice

(1) An application for an injunction under section 1 may be made without notice being given to the respondent.

(2) If an application is made without notice the court must either—

(a) adjourn the proceedings and grant an interim injunction (see section 7), or

(b) adjourn the proceedings without granting an interim injunction, or

(c) dismiss the application.

7. Interim injunctions

(1) This section applies where the court adjourns the hearing of an application (whether made with notice or without) for an injunction under section 1.

(2) The court may grant an injunction under that section lasting until the final hearing of the application or until further order (an "interim injunction") if the court thinks it just to do so.

(3) An interim injunction made at a hearing of which the respondent was not given notice may not have the effect of requiring the respondent to participate in particular activities.

(4) Subject to that, the court has the same powers (including powers under section 4) whether or not the injunction is an interim injunction.

...

14. Requirements to consult etc

(1) A person applying for an injunction under section 1 must before doing so—

(a) consult the local youth offending team about the application, if the respondent will be aged under 18 when the application is made;

(b) inform any other body or individual the applicant thinks appropriate of the application.

This subsection does not apply to a without-notice application.

(2) Where the court adjourns a without-notice application, before the date of the first on-notice hearing the applicant must—

(a) consult the local youth offending team about the application, if the respondent will be aged under 18 on that date;

(b) inform any other body or individual the applicant thinks appropriate of the application.

(3) A person applying for variation or discharge of an injunction under section 1 granted on that person's application must before doing so—

(a) consult the local youth offending team about the application for variation or discharge, if the respondent will be aged under 18 when that application is made;

(b) inform any other body or individual the applicant thinks appropriate of that application.

(4) In this section—

"local youth offending team" means—

(a) the youth offending team in whose area it appears to the applicant that the respondent lives, or

(b) if it appears to the applicant that the respondent lives in more than one such area, whichever one or more of the relevant youth offending teams the applicant thinks it appropriate to consult;

"on-notice hearing" means a hearing of which notice has been given to the applicant and the respondent in accordance with rules of court;

"without-notice application" means an application made without notice under section 6.

…

18. Rules of court

(1) Rules of court may provide that an appeal from a decision of the High Court, the county court or a youth court—

(a) to dismiss an application for an injunction under section 1 made without notice being given to the respondent, or

(b) to refuse to grant an interim injunction when adjourning proceedings following such an application,

may be made without notice being given to the respondent.

(2) Rules of court may provide for a youth court to give permission for an application for an injunction under section 1 against a person aged 18 or over to be made to the youth court if—

(a) an application to the youth court has been made, or is to be made, for an injunction under that section against a person aged under 18, and

(b) the youth court thinks that it would be in the interests of justice for the applications to be heard together.

(3) In relation to a respondent attaining the age of 18 after proceedings under this Part have begun, rules of court may—

(a) provide for the transfer of the proceedings from the youth court to the High Court or the county court;

(b) prescribe circumstances in which the proceedings may or must remain in the youth court.

19. Guidance

(1) The Secretary of State may issue guidance to persons entitled to apply for injunctions under section 1 (see section 5) about the exercise of their functions under this Part.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

20. Interpretation etc

(1) In this Part—

"anti-social behaviour" has the meaning given by section 2;

"harm" includes serious ill-treatment or abuse, whether physical or not;

"housing accommodation" includes—

(a) flats, lodging-houses and hostels;

(b) any yard, garden, outhouses and appurtenances belonging to the accommodation or usually enjoyed with it;

(c) any common areas used in connection with the accommodation;

"housing provider" means—

(a) a housing trust, within the meaning given by section 2 of the Housing Associations Act 1985, that is a charity;

(b) a housing action trust established under section 62 of the Housing Act 1988;

(c) in relation to England, a non-profit private registered provider of social housing;

(d) in relation to Wales, a Welsh body registered as a social landlord under section 3 of the Housing Act 1996;

(e) any body (other than a local authority or a body within paragraphs (a) to (d)) that is a landlord under a secure tenancy within the meaning given by section 79 of the Housing Act 1985;

"local authority" means—

(a) in relation to England, a district council, a county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in relation to Wales, a county council or a county borough council;

"respondent" has the meaning given by section 1(1).

(2) A person's age is treated for the purposes of this Part as being that which it appears to the court to be after considering any available evidence.

…

Public Spaces Protection Orders

59. Power to make orders

(1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

(2) The first condition is that—

(a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or

(b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

(3) The second condition is that the effect, or likely effect, of the activities—

(a) is, or is likely to be, of a persistent or continuing nature,

(b) is, or is likely to be, such as to make the activities unreasonable, and

(c) justifies the restrictions imposed by the notice.

(4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and—

(a) prohibits specified things being done in the restricted area,

(b) requires specified things to be done by persons carrying on specified activities in that area, or

(c) does both of those things.

(5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—

(a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or

(b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

(6) A prohibition or requirement may be framed—

(a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;

(b) so as to apply at all times, or only at specified times, or at all times except those specified;

(c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.

(7) A public spaces protection order must—

(a) identify the activities referred to in subsection (2);

(b) explain the effect of section 63 (where it applies) and section 67;

(c) specify the period for which the order has effect.

(8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.

60. Duration of orders

(1) A public spaces protection order may not have effect for a period of more than 3 years, unless extended under this section.

(2) Before the time when a public spaces protection order is due to expire, the local authority that made the order may extend the period for which it has effect if satisfied on reasonable grounds that doing so is necessary to prevent—

(a) occurrence or recurrence after that time of the activities identified in the order, or

(b) an increase in the frequency or seriousness of those activities after that time.

(3) An extension under this section—

(a) may not be for a period of more than 3 years;

(b) must be published in accordance with regulations made by the Secretary of State.

(4) A public spaces protection order may be extended under this section more than once.

61. Variation and discharge of orders

(1) Where a public spaces protection order is in force, the local authority that made the order may vary it—

(a) by increasing or reducing the restricted area;

(b) by altering or removing a prohibition or requirement included in the order, or adding a new one.

(2) A local authority may make a variation under subsection (1)(a) that results in the order applying to an area to which it did not previously apply only if the conditions in section 59(2) and (3) are met as regards activities in that area.

(3) A local authority may make a variation under subsection (1)(b) that makes a prohibition or requirement more extensive, or adds a new one, only if the prohibitions and requirements imposed by the order as varied are ones that section 59(5) allows to be imposed.

(4) A public spaces protection order may be discharged by the local authority that made it.

(5) Where an order is varied, the order as varied must be published in accordance with regulations made by the Secretary of State.

(6) Where an order is discharged, a notice identifying the order and stating the date when it ceases to have effect must be published in accordance with regulations made by the Secretary of State.

62. Premises etc to which alcohol prohibition does not apply

(1) A prohibition in a public spaces protection order on consuming alcohol does not apply to—

(a) premises (other than council-operated licensed premises) authorised by a premises licence to be used for the supply of alcohol;

(b) premises authorised by a club premises certificate to be used by the club for the supply of alcohol;

(c) a place within the curtilage of premises within paragraph (a) or (b);

(d) premises which by virtue of Part 5 of the Licensing Act 2003 may at the relevant time be used for the supply of alcohol or which, by virtue of that Part, could have been so used within the 30 minutes before that time;

(e) a place where facilities or activities relating to the sale or consumption of alcohol are at the relevant time permitted by virtue of a permission granted under section 115E of the Highways Act 1980 (highway-related uses).

(2) A prohibition in a public spaces protection order on consuming alcohol does not apply to council-operated licensed premises—

(a) when the premises are being used for the supply of alcohol, or

(b) within 30 minutes after the end of a period during which the premises have been used for the supply of alcohol.

(3) In this section—

"club premises certificate" has the meaning given by section 60 of the Licensing Act 2003;

"premises licence" has the meaning given by section 11 of that Act;

"supply of alcohol" has the meaning given by section 14 of that Act.

(4) For the purposes of this section, premises are "council-operated licensed premises" if they are authorised by a premises licence to be used for the supply of alcohol and—

(a) the licence is held by a local authority in whose area the premises (or part of the premises) are situated, or

(b) the licence is held by another person but the premises are occupied by a local authority or are managed by or on behalf of a local authority.

63. Consumption of alcohol in breach of prohibition in order

(1) This section applies where a constable or an authorised person reasonably believes that a person (P)—

(a) is or has been consuming alcohol in breach of a prohibition in a public spaces protection order, or

(b) intends to consume alcohol in circumstances in which doing so would be a breach of such a prohibition.

In this section "authorised person" means a person authorised for the purposes of this section by the local authority that made the public spaces protection order (or authorised by virtue of section 69(1)).

(2) The constable or authorised person may require P—

(a) not to consume, in breach of the order, alcohol or anything which the constable or authorised person reasonably believes to be alcohol;

(b) to surrender anything in P's possession which is, or which the constable or authorised person reasonably believes to be, alcohol or a container for alcohol.

(3) A constable or an authorised person who imposes a requirement under subsection (2) must tell P that failing without reasonable excuse to comply with the requirement is an offence.

(4) A requirement imposed by an authorised person under subsection (2) is not valid if the person—

(a) is asked by P to show evidence of his or her authorisation, and

(b) fails to do so.

(5) A constable or an authorised person may dispose of anything surrendered under subsection (2)(b) in whatever way he or she thinks appropriate.

(6) A person who fails without reasonable excuse to comply with a requirement imposed on him or her under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

64.Orders restricting public right of way over highway

(1) A local authority may not make a public spaces protection order that restricts the public right of way over a highway without considering—

(a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;

(b) the likely effect of making the order on other persons in the locality;

(c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

(2) Before making such an order a local authority must—

(a) notify potentially affected persons of the proposed order,

(b) inform those persons how they can see a copy of the proposed order,

(c) notify those persons of the period within which they may make representations about the proposed order, and

(d) consider any representations made.

In this subsection "potentially affected persons" means occupiers of premises adjacent to or adjoining the highway, and any other persons in the locality who are likely to be affected by the proposed order.

(3) Before a local authority makes a public spaces protection order restricting the public right of way over a highway that is also within the area of another local authority, it must consult that other authority if it thinks it appropriate to do so.

(4) A public spaces protection order may not restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.

(5) A public spaces protection order may not restrict the public right of way over a highway that is the only or principal means of access to a dwelling.

(6) In relation to a highway that is the only or principal means of access to premises used for business or recreational purposes, a public spaces protection order may not restrict the public right of way over the highway during periods when the premises are normally used for those purposes.

(7) A public spaces protection order that restricts the public right of way over a highway may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction.

(8) A local authority may install, operate and maintain barriers authorised under subsection (7).

(9) A highway over which the public right of way is restricted by a public spaces protection order does not cease to be regarded as a highway by reason of the restriction (or by reason of any barrier authorised under subsection (7)).

(10) In this section—

"dwelling" means a building or part of a building occupied, or intended to be occupied, as a separate dwelling;

"highway" has the meaning given by section 328 of the Highways Act 1980.

65.Categories of highway over which public right of way may not be restricted

(1) A public spaces protection order may not restrict the public right of way over a highway that is—

(a) a special road;

(b) a trunk road;

(c) a classified or principal road;

(d) a strategic road;

(e) a highway in England of a description prescribed by regulations made by the Secretary of State;

(f) a highway in Wales of a description prescribed by regulations made by the Welsh Ministers.

(2) In this section—

"classified road", "special road" and "trunk road" have the meaning given by section 329(1) of the Highways Act 1980;

"highway" has the meaning given by section 328 of that Act;

"principal road" has the meaning given by section 12 of that Act (and see section 13 of that Act);

"strategic road" has the meaning given by section 60(4) of the Traffic Management Act 2004.

66.Challenging the validity of orders

(1) An interested person may apply to the High Court to question the validity of—

(a) a public spaces protection order, or

(b) a variation of a public spaces protection order.

"Interested person" means an individual who lives in the restricted area or who regularly works in or visits that area.

(2) The grounds on which an application under this section may be made are—

(a) that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);

(b) that a requirement under this Chapter was not complied with in relation to the order or variation.

(3) An application under this section must be made within the period of 6 weeks beginning with the date on which the order or variation is made.

(4) On an application under this section the High Court may by order suspend the operation of the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied), until the final determination of the proceedings.

(5) If on an application under this section the High Court is satisfied that—

(a) the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied), or

(b) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under this Chapter,

the Court may quash the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied).

(6) A public spaces protection order, or any of the prohibitions or requirements imposed by the order (or by the order as varied), may be suspended under subsection (4) or quashed under subsection (5)—

(a) generally, or

(b) so far as necessary for the protection of the interests of the applicant.

(7) An interested person may not challenge the validity of a public spaces protection order, or of a variation of a public spaces protection order, in any legal proceedings (either before or after it is made) except—

(a) under this section, or

(b) under subsection (3) of section 67 (where the interested person is charged with an offence under that section).

67.Offence of failing to comply with order

(1) It is an offence for a person without reasonable excuse—

(a) to do anything that the person is prohibited from doing by a public spaces protection order, or

(b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.

(4) Consuming alcohol in breach of a public spaces protection order is not an offence under this section (but see section 63).

68.Fixed penalty notices

(1) A constable or an authorised person may issue a fixed penalty notice to anyone he or she has reason to believe has committed an offence under section 63 or 67 in relation to a public spaces protection order.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to a local authority specified in the notice.

(3) The local authority specified under subsection (2) must be the one that made the public spaces protection order.

(4) Where a person is issued with a notice under this section in respect of an offence—

(a) no proceedings may be taken for the offence before the end of the period of 14 days following the date of the notice;

(b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(5) A fixed penalty notice must—

(a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;

(b) state the period during which (because of subsection (4)(a)) proceedings will not be taken for the offence;

(c) specify the amount of the fixed penalty;

(d) state the name and address of the person to whom the fixed penalty may be paid;

(e) specify permissible methods of payment.

(6) An amount specified under subsection (5)(c) must not be more than £100.

(7) A fixed penalty notice may specify two amounts under subsection (5)(c) and specify that, if the lower of those amounts is paid within a specified period (of less than 14 days), that is the amount of the fixed penalty.

(8) Whatever other method may be specified under subsection (5)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under subsection (5)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(9) Where a letter is sent as mentioned in subsection (8), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(10) In any proceedings, a certificate that—

(a) purports to be signed by or on behalf of the chief finance officer of the local authority concerned, and

(b) states that payment of a fixed penalty was, or was not, received by the dated specified in the certificate,

is evidence of the facts stated.

(11) In this section—

"authorised person" means a person authorised for the purposes of this section by the local authority that made the order (or authorised by virtue of section 69(2));

"chief finance officer", in relation to a local authority, means the person with responsibility for the authority's financial affairs.

…

70. Byelaws

A byelaw that prohibits, by the creation of an offence, an activity regulated by a public spaces protection order is of no effect in relation to the restricted area during the currency of the order.

…

72. Convention rights, consultation, publicity and notification

(1) A local authority, in deciding—

(a) whether to make a public spaces protection order (under section 59) and if so what it should include,

(b) whether to extend the period for which a public spaces protection order has effect (under section 60) and if so for how long,

(c) whether to vary a public spaces protection order (under section 61) and if so how, or

(d) whether to discharge a public spaces protection order (under section 61),

must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.

(2) In subsection (1) "Convention" has the meaning given by section 21(1) of the Human Rights Act 1998.

(3) A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before—

(a) making a public spaces protection order,

(b) extending the period for which a public spaces protection order has effect, or

(c) varying or discharging a public spaces protection order.

(4) In subsection (3)—

"the necessary consultation" means consulting with—

(a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;

(b) whatever community representatives the local authority thinks it appropriate to consult;

(c) the owner or occupier of land within the restricted area;

"the necessary publicity" means—

(a) in the case of a proposed order or variation, publishing the text of it;

(b) in the case of a proposed extension or discharge, publicising the proposal;

"the necessary notification" means notifying the following authorities of the proposed order, extension, variation or discharge—

(a) the parish council or community council (if any) for the area that includes the restricted area;

(b) in the case of a public spaces protection order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area.

(5) The requirement to consult with the owner or occupier of land within the restricted area—

(a) does not apply to land that is owned and occupied by the local authority;

(b) applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land.

(6) In the case of a person or body designated under section 71, the necessary consultation also includes consultation with the local authority which (ignoring subsection (2) of that section) is the authority for the area that includes the restricted area.

(7) In relation to a variation of a public spaces protection order that would increase the restricted area, the restricted area for the purposes of this section is the increased area.

73. Guidance

(1) The Secretary of State may issue—

(a) guidance to local authorities about the exercise of their functions under this Chapter and those of persons authorised by local authorities under section 63 or 68;

(b) guidance to chief officers of police about the exercise, by officers under their direction or control, of those officers' functions under this Part.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

74. Interpretation of Chapter 2

(1) In this Chapter—

"alcohol" has the meaning given by section 191 of the Licensing Act 2003;

"community representative", in relation to a public spaces protection order that a local authority proposes to make or has made, means any individual or body appearing to the authority to represent the views of people who live in, work in or visit the restricted area;

"local authority" means—

(a) in relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London (in its capacity as a local authority) or the Council of the Isles of Scilly;

(b) in relation to Wales, a county council or a county borough council;

"public place" means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

"restricted area" has the meaning given by section 59(4).

(2) For the purposes of this Chapter, a public spaces protection order "regulates" an activity if the activity is—

(a) prohibited by virtue of section 59(4)(a), or

(b) subjected to requirements by virtue of section 59(4)(b),

whether or not for all persons and at all times.

Court of Appeal

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

[2022] EWCA Civ 13

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

Sir Geoffrey Vos MR, Lewison, Elisabeth Laing LJJ

Injunction — Final — Persons unknown — Local authorities obtaining final injunctions against persons unknown to restrain unauthorised encampments on land — Judge calling in injunctions for reconsideration in light of subsequent legal developments — Whether court having power to grant final injunctions against persons unknown — Whether procedure adopted by judge appropriate — Whether limits on court's power to grant injunctions against world — Senior Courts Act 1981 (c 54), s 37[1] — Town and Country Planning Act 1990 (c 8), s 187B[2]

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

On appeal by some of the local authorities—

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

[1] Senior Courts Act 1981, s 37: see post, para 72.
[2] Town and Country Planning Act 1990, s 187B: see post, para 114.

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

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

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

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

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

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

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

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

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

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

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

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

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

Attorney General v Times Newspapers Ltd (No 3) [1992] 1 AC 191; [1991] 2 WLR 994; [1991] 2 All ER 398, HL(E)

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

Birmingham City Council v Afsar [2019] EWHC 3217 (QB); [2020] 4 WLR 168; [2020] 3 All ER 756

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

Bromley London Borough Council v Persons Unknown [2020] EWCA Civ 12; [2020] PTSR 1043; [2020] 4 All ER 114, CA

Burris v Azadani [1995] 1 WLR 1372; [1995] 4 All ER 802, CA

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

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

Canary Wharf Investments Ltd v Brewer [2018] EWHC 1760 (QB)

Chapman v United Kingdom (Application No 27238/95) (2001) 33 EHRR 18, ECtHR (GC)

Chelsea FC plc v Brewer [2018] EWHC 1424 (Ch)

Cuadrilla Bowland Ltd v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29, CA

Davis v Tonbridge and Malling Borough Council [2004] EWCA Civ 194; The Times, 5 March 2004, CA

Dresser UK Ltd v Falcongate Freight Management Ltd [1992] QB 502; [1992] 2 WLR 319; [1992] 2 All ER 4507, CA

Enfield London Borough Council v Persons Unknown [2020] EWHC 2717 (QB)

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

Hubbard v Pitt [1976] QB 142; [1975] 3 WLR 201; [1975] ICR 308; [1975] 3 All ER 1, CA

Ineos Upstream Ltd v Persons Unknown [2017] EWHC 2945 (Ch); [2019] EWCA Civ 515; [2019] 4 WLR 100; [2019] 4 All ER 699, CA

Jacobson v Frachon (1927) 138 LT 386, CA

Manchester City Council v Pinnock [2010] UKSC 45; [2011] 2 AC 104; [2010] 3 WLR 1441; [2011] PTSR 61; [2011] 1 All ER 285, SC(E)

Mid-Bedfordshire District Council v Brown [2004] EWCA Civ 1709; [2005] 1 WLR 1460, CA

Secretary of State for the Environment, Food and Rural Affairs v Meier [2009] UKSC 11; [2009] 1 WLR 2780; [2010] PTSR 321; [2010] 1 All ER 855, SC(E)

South Bucks District Council v Porter [2003] UKHL 26; [2003] 2 AC 558; [2003] 2 WLR 1547; [2003] 3 All ER 1, HL(E)

South Cambridgeshire District Council v Gammell [2005] EWCA Civ 1429; [2006] 1 WLR 658, CA

South Cambridgeshire District Council v Persons Unknown [2004] EWCA Civ 1280, CA

Speedier Logistics Co Ltd v Aadvark Digital Ltd [2012] EWHC 2276 (Comm)

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Starmark Enterprises Ltd v CPL Distribution Ltd [2001] EWCA Civ 1252; [2002] Ch 306; [2002] 2 WLR 1009; [2002] 4 All ER 264, CA
Terry v BCS Corporate Acceptances [2018] EWCA Civ 2422, CA
Vastint Leeds BV v Persons Unknown [2018] EWHC 2456 (Ch); [2019] 4 WLR 2
Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908
Young v Bristol Aeroplane Co Ltd [1944] KB 718, CA

The following additional cases were cited in argument:

Attorney General v Harris [1960] 1 QB 31; [1959] 3 WLR 205
Bank of Scotland plc (formerly Governor and Company of the Bank of Scotland) v Pereira (Practice Note) [2011] EWCA Civ 241; [2011] 1 WLR 2391; [2011] 3 All ER 392, CA
Birmingham City Council v Sharif [2020] EWCA Civ 1488; [2021] 1 WLR 685; [2021] 3 All ER 176, CA
Bromsgrove District Council v Carthy (1975) 30 P & CR 34, DC
Claimants in the Royal Mail Group Litigation v Royal Mail Group Ltd [2021] EWCA Civ 1173, CA
Crédit Agricole Corporate and Investment Bank v Persons Having Interest in Goods Held by the Claimant [2021] EWHC 1679 (Ch); [2021] 1 WLR 3834; [2022] 1 All ER 83
Iveson v Harris (1802) 7 Ves Jun 251
Newbury District Council v Secretary of State for the Environment [1978] 1 WLR 1241; [1979] 1 All ER 243, CA
OPQ v BJM [2011] EWHC 1059 (QB); [2011] EMLR 23
Persons formerly known as Winch, In re [2021] EWHC 1328 (QB); [2021] EMLR 20, DC
Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment [1985] AC 132; [1984] 3 WLR 32; [1984] 2 All ER 358, HL(E)
R (Youngsam) v Parole Board [2019] EWCA Civ 229; [2020] QB 387; [2019] 3 WLR 33; [2019] 3 All ER 954, CA
Rickards v Rickards [1990] Fam 194; [1989] 3 WLR 748; [1989] 3 All ER 193, CA
Roult v North West Strategic Health Authority [2009] EWCA Civ 444; [2010] 1 WLR 487, CA
Serious Organised Crime Agency v O'Docherty [2013] EWCA Civ 518; [2013] CP Rep 35, CA
Test Valley Investments Ltd v Tanner (1963) 15 P & CR 279, DC
University of Essex v Djemal [1980] 1 WLR 1301; [1980] 2 All ER 742, CA
Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd) [2013] UKSC 46; [2014] AC 160; [2013] 3 WLR 299; [2013] 4 All ER 715, SC(E)
X (formerly Bell) v O'Brien [2003] EWHC 1101 (Fam); [2003] EMLR 37

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

Akerman v Richmond upon Thames London Borough Council [2017] EWHC 84 (Admin); [2017] PTSR 351, DC
Ashford Borough Council v Cork [2021] EWHC 476 (QB)
Attorney General v Harris [1961] 1 QB 74; [1960] 3 WLR 532; [1960] 3 All ER 207, CA
Attorney General v Premier Line Ltd [1932] 1 Ch 303
Attorney General v Punch Ltd [2002] UKHL 50; [2003] 1 AC 1046; [2003] 2 WLR 49; [2003] 1 All ER 289, HL(E)
Basingstoke and Deane Borough Council v Eastwood [2018] EWHC 179 (QB)
Basingstoke and Deane Borough Council v Thompson [2018] EWHC 11 (QB)
Bensaid v United Kingdom (Application No 44599/98) (2001) 33 EHRR 10, ECtHR

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Birmingham City Council v Shafi [2008] EWCA Civ 1186; [2009] 1 WLR 1961; [2009] PTSR 503; [2009] 3 All ER 127, CA
British Broadcasting Corpn, In re [2009] UKHL 34; [2010] 1 AC 145; [2009] 3 WLR 142; [2010] 1 All ER 235, HL(E)
Broadmoor Special Hospital Authority v Robinson [2000] QB 775; [2000] 1 WLR 1590; [2000] 2 All ER 727, CA
Cadder v HM Advocate [2010] UKSC 43; [2010] 1 WLR 2601, SC(Sc)
Carr v News Group Newspapers Ltd [2005] EWHC 971 (QB)
Cartier International AG v British Sky Broadcasting Ltd [2016] EWCA Civ 658; [2017] Bus LR 1; [2017] 1 All ER 700, CA
Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd [1993] AC 334; [1993] 2 WLR 262; [1993] 1 All ER 664, HL(E)
City of London Corpn v Bovis Construction Ltd (No 2) [1992] 3 All ER 697, CA
City of London Corpn v Persons Unknown [2021] EWHC 1378 (QB)
City of London Corpn v Samede [2012] EWCA Civ 160; [2012] PTSR 1624; [2012] 2 All ER 1039, CA
D v Persons Unknown [2021] EWHC 157 (QB)
Fourie v Le Roux [2007] UKHL 1; [2007] 1 WLR 320; [2007] Bus LR 925; [2007] 1 All ER 1087, HL(E)
Guardian News and Media Ltd, In re [2010] UKSC 1; [2010] 2 AC 697; [2010] 2 WLR 325; [2010] 2 All ER 799, SC(E)
Hall v Beckenham Corpn [1949] 1 KB 716; [1949] 1 All ER 423
Hatton v United Kingdom (Application No 36022/97) (2003) 37 EHRR 28, ECtHR (GC)
Independent Publishing Co Ltd v Attorney General of Trinidad and Tobago [2004] UKPC 26; [2005] 1 AC 190; [2004] 3 WLR 611; [2005] 1 All ER 499, PC
Lambeth Overseers v London County Council [1897] AC 625, HL(E)
Local Authority, A v W [2005] EWHC 1564 (Fam); [2006] 1 FLR 1
Lopez Ostra v Spain (Application No 16798/90) (1994) 20 EHRR 277, ECtHR
Marengo v Daily Sketch [1948] 1 All ER 406
Masri v Consolidated Contractors International (UK) Ltd (No 2) [2008] EWCA Civ 303; [2009] QB 450; [2009] 2 WLR 621; [2009] Bus LR 168; [2008] 2 All ER (Comm) 1099, CA
Mayor of London (on behalf of the Greater London Authority) v Hall [2010] EWCA Civ 817; [2011] 1 WLR 504, CA
Mileva v Bulgaria (Application Nos 43449/02 and 21475/04) (2010) 61 EHRR 41, ECtHR
Moreno Gómez v Spain (Application No 4143/02) (2004) 41 EHRR 40, ECtHR
R v Hatton (Jonathan) [2005] EWCA Crim 2951; [2006] 1 Cr App Rep 16, CA
RXG v Ministry of Justice [2019] EWHC 2026 (QB); [2020] QB 703; [2020] 2 WLR 635, DC
S (A Child) (Identification: Restrictions on Publication), In re [2004] UKHL 47; [2005] 1 AC 593; [2004] 3 WLR 1129; [2004] 4 All ER 683, HL(E)
Scott v Scott [1913] AC 417, HL(E)
Siskina (Owners of cargo lately laden on board) v Distos Cia Naviera SA (The Siskina) [1979] AC 210; [1977] 3 WLR 818; [1977] 3 All ER 803, HL(E)
Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] Ch 1; [1983] 3 WLR 78; [1983] 2 All ER 787, CA
Tewkesbury Borough Council v Smith [2016] EWHC 1883 (QB)
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch); [2019] JPL 161
Von Hannover v Germany (Application No 59320/00) (2004) 40 EHRR 1, ECtHR
Wellesley v Duke of Beaufort (1827) 2 Russ 1
Wokingham Borough Council v Scott [2017] EWHC 294 (QB)
X (A Minor) (Wardship: Injunction), In re [1984] 1 WLR 1422; [1985] 1 All ER 53
X and Y v Netherlands (Application No 8978/80) (1985) 8 EHRR 235, ECtHR

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A **APPEALS** from Nicklin J

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

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

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

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

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

By a claim form issued on 2 July 2018 Basingstoke and Deane Borough Council and Hampshire County Council applied for a traveller injunction against Henry Loveridge and 114 other named defendants and persons unknown, the owner and/or occupiers of land at various addresses set out in a schedule attached to the claim form. On 30 July 2018 an interim H injunction was granted with a power of arrest. A final injunction was granted on 26 April 2019 until 3 April 2024 or further order against 115 named defendants and persons unknown with a power of arrest. The final injunction contained a permission to apply to the defendants or "anyone notified of this order" to vary or discharge on 72 hours' written notice.

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

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

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

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

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

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

On 16 October 2020 Nicklin J made an order of his own motion, but with the concurrence of Dame Victoria Sharp P and Stewart J (the judge in charge of the Queen's Bench Civil List), ordering each claimant in 38 sets of proceedings, including those detailed above, to complete a questionnaire in the form set out in a schedule to the order with a view to identifying those local authorities with existing "traveller injunctions" who wished to maintain such injunctions (possibly with modification), and those who wished to discontinue their claims and/or discharge the current traveller injunction granted in their favour. On 27 and 28 January 2021, as a consequence of local authorities having completed the questionnaire, Nicklin J conducted a hearing in which he considered the injunctions granted in those proceedings. By a judgment handed down on 12 May 2021 Nicklin J [2021] EWHC 1201 (QB) held that the court could not grant final injunctions which prevented persons who were unknown and unidentified at the date of the order from occuping and trespassing on local authority land. By an order dated 24 May

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2021 Nicklin J discharged certain of the injunctions that the local authorities had obtained.

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

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

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

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

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

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

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

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

Tristan Jones (instructed by *Attorney General*) as advocate to the court.

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

The court took time for consideration.

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13 January 2022. The following judgments were handed down. A

SIR GEOFFREY VOS MR

Introduction

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

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

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

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

5 In addition, there are subsidiary questions as to whether (a) the statutory jurisdiction to make orders against persons unknown under H section 187B of the Town and Country Planning Act 1990 ("section 187B") to restrain an actual or apprehended breach of planning control validates the

* *Reporter's note*. The superior figures in the text refer to notes which can be found at the end of the judgment of Sir Geoffrey Vos MR, on p 982.

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A orders made, and (b) the court may in any circumstances like those in the present case make final orders against all the world.

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

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

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

E *The essential factual and procedural background*

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

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

H **11** It is important to note at the outset that these claims were all started under the procedure laid down by CPR Pt 8, which is appropriate where the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact (CPR r 8.1(2)(a)). Whilst CPR r 8.2A(1) contemplates a practice direction setting out circumstances in which a claim form may be issued under Part 8 without naming a defendant, no such

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practice direction has been made (see *Cameron* at para 9). Moreover, CPR r 8.9 makes clear that, where the Part 8 procedure is followed, the defendant is not required to file a defence, so that several other familiar provisions of the CPR do not apply and any time limit preventing parties taking a step before defence also does not apply. A default judgment cannot be obtained in Part 8 cases (CPR r 8.1(5)). Nonetheless, CPR r 70.4 provides that a judgment or order against "a person who is not a party to proceedings" may be enforced "against that person by the same methods as if he were a party".

12 These proceedings seem to have their origins from 2 October 2020 when Nicklin J dealt with an application in the case of *Enfield London Borough Council v Persons Unknown* [2020] EWHC 2717 (QB) ("*Enfield*"), and raised with counsel the issues created by *Canada Goose*. Nicklin J told the parties that he had spoken to the President of the Queen's Bench Division (the "PQBD") about there being a "group of local authorities who already have these injunctions and who, therefore, may following the decision today, be intending or considering whether they ought to restore the injunctions in their cases to the court for reconsideration". He reported that the PQBD's current view was that she would direct that those claims be brought together to be managed centrally. In his judgment in *Enfield*, Nicklin J said that "the legal landscape that [governed] proceedings and injunctions against persons unknown [had] transformed since the interim and final orders were granted in this case", referring to *Cameron*, *Ineos*, *Bromley*, *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 ("*Cuadrilla*"), and *Canada Goose*.

13 Nicklin J concluded at para 32 in *Enfield* that, in the light of the decision in *Speedier Logistics Co Ltd v Aadvark Digital Ltd* [2012] EWHC 2276 (Comm) ("*Speedier*"), there was "a duty on a party, such as the claimant in this case who (i) has obtained an injunction against persons unknown without notice, and (ii) is aware of a material change of circumstances, including for these purposes a change in the law, which gives rise to a real prospect that the court would amend or discharge the injunction, to restore the case within a reasonable period to the court for reconsideration". He said that duty was not limited to public authorities.

14 At paras 42–44, Nicklin J said that *Canada Goose* established that final injunctions against persons unknown did not bind newcomers, so that any "interim injunction the court granted would be more effective and more extensive in its terms than any final order the court could grant". That raised the question of whether the court ought to grant any interim relief at all. The only way that Enfield could achieve what it sought was "to have a rolling programme of applications for interim orders", resulting in "litigation without end".

15 On 16 October 2020, Nicklin J made an order expressed to be with the concurrence of the PQBD and the judge in charge of the Queen's Bench Division Civil List. That order ("the 16 October order") recited the orders that had been made in *Enfield,* and that it appeared that injunctions in similar terms might have been made in 37 scheduled sets of proceedings, and that similar issues might arise. Accordingly, Nicklin J ordered without a hearing and of the court's own motion, that, by 13 November 2020, each claimant in the scheduled actions must file a completed and signed questionnaire in the form set out in schedule 2 to the order. The 16 October order also made provision for those claimants who might want, having considered *Bromley* and *Canada Goose*, to discontinue or apply to vary or

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discharge the orders they had obtained in their cases. The 16 October order stated that the court's first objective was to "identify those local authorities with existing traveller injunctions who [wished] to maintain such injunctions (possibly with modification), and those who [wished] to discontinue their claims and/or discharge the current traveller injunction granted in their favour".

16 Mr Giffin and Mr Anderson emphasised to us that they had not objected to the order the court had made. The 16 October order does, nonetheless, seem to me to be unusual in that it purports to call in actions in which final orders have been made suggesting, at least, that those final orders might need to be discharged in the light of a change in the law since the cases in question concluded. Moreover, Mr Anderson expressed his client's reservations about one judge expressing "deep concern" over the order that had been made in favour of Wolverhampton by three other judges. By way of example, Jefford J had said in her judgment on 2 October 2018 that she was satisfied, following the principles in *Bloomsbury Publishing Group Ltd v News Group Newspapers Ltd* [2003] 1 WLR 1633 ("*Bloomsbury*") and *South Cambridgeshire District Council v Persons Unknown* [2004] EWCA Civ 1280 ("*South Cambridgeshire*"), that it was appropriate for the application to be made against persons unknown.

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

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

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

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

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

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

(v) The court should give directions requiring the claimant, within a defined period: (a) if the persons unknown have not been identified sufficiently that they fall within category 1 persons unknown[2], to apply to discharge the interim injunction against persons unknown and discontinue the claim under CPR r 38.2(2)(a), (b) otherwise, as against the category 1 persons unknown defendants, to apply for (i) default judgment[3]; or (ii) summary judgment; or (iii) a date to be fixed for the final hearing of the claim, and, in default of compliance, that the claim be struck out and the interim injunction against persons unknown discharged.

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

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

The main authorities preceding the judge's decision

20 It is useful to consider these authorities in chronological order, since, as the judge rightly said in *Enfield*, the legal landscape in proceedings against persons unknown seems to have transformed since the injunction was granted in that case in mid-2017, only $4\frac{1}{2}$ years ago.

Bloomsbury: judgment 23 May 2003

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

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

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

South Cambridgeshire: judgment 17 September 2004

23 In *South Cambridgeshire* [2004] EWCA Civ 1280 the Court of Appeal (Brooke and Clarke LJJ) granted a without notice interim injunction against persons unknown causing or permitting hardcore to be deposited, or caravans being stationed, on certain land, under section 187B.

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

B *Gammell: judgment 31 October 2005*

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

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

27 Sir Anthony noted at para 10 that in *Porter*, the defendants were in occupation of caravans in breach of planning law when the injunctions were granted. The House had (Lord Bingham of Cornhill at para 20) approved paras 38–42 of Simon Brown LJ's judgment, which suggested that injunctive relief was always discretionary and ought to be proportionate. That meant F that it needed to be: "appropriate and necessary for the attainment of the public interest objective sought—here the safeguarding of the environment—but also that it does not impose an excessive burden on the individual whose private interests—here the gypsy's private life and home and the retention of his ethnic identity—are at stake". He cited what Auld LJ (with whom Arden and Jacob LJJ had agreed) had said in *Davis v Tonbridge and Malling* G *Borough Council* [2004] EWCA Civ 194 ("*Davis*") at para 34 to the additional effect that it was "questionable whether article 8 adds anything to the existing equitable duty of a court in the exercise of its discretion under section 187B", and that the jurisdiction was to be exercised with due regard to the purpose for which it was conferred, namely to restrain breaches of planning control. Auld LJ at para 37 in *Davis* had explained that *Porter* recognised two stages: first, to look at the planning merits of the matter, H according respect to the authority's conclusions, and secondly to consider for itself, in the light of the planning merits and any other circumstances, in particular those of the defendant, whether to grant injunctive relief. The question, as Sir Anthony saw it in *Gammell* [2006] 1 WLR 658 at para 12, was whether those principles applied to the cases in question.

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

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

29 In dismissing the appeals against the findings of contempt, Sir Anthony summarised the position at para 33 including the following: (i) *Porter* applied when the court was considering granting an injunction against named defendants. (ii) *Porter* did not apply in full when a court was considering an injunction against persons unknown because the relevant personal information was, ex hypothesi, unavailable. That fact made it "important for courts only to grant such injunctions in cases where it was not possible for the applicant to identify the persons concerned or likely to be concerned". (iii) In deciding a newcomer's application to vary or discharge an injunction against persons unknown, the court will take account of all the circumstances of the case, including the reasons for the injunction, the reasons for the breach and the applicant's personal circumstances, applying the *Porter* and *Brown* principles.

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

31 There is nothing in *Gammell* to suggest that any part of its reasoning depended on whether the injunctions had been granted on an interim or final basis. Indeed, it was essential to the reasoning that such injunctions, whether interim or final, applied in their full force to newcomers with knowledge of them. It may also be noted that there was nothing in the decision to suggest that it applied only to injunctions granted specifically

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A under section 187B, as opposed to cases where the claim was brought to restrain the commission of a tort.

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

32 In *Meier*, the Forestry Commission sought an injunction against
B travellers who had set up an unauthorised encampment. The injunction was granted by the Court of Appeal against "those people trespassing on, living on, or occupying the land known as Hethfelton Wood". The case did not, therefore, concern newcomers. Nonetheless, Lord Rodger of Earlsferry JSC made some general comments at paras 1–2 which are of some relevance to this case. He referred to the situation where the identities of trespassers were not known, and approved the way in which Sir Andrew Morritt V-C had
C overcome the procedural problems in *Bloomsbury* [2003] 1 WLR 1633 and *Hampshire Waste* [2004] Env LR 9. Referring to *South Cambridgeshire* [2004] EWCA Civ 1280, he cited with approval Brooke LJ's statement that "there was some difficulty in times gone by against obtaining relief against persons unknown, but over the years that problem has been remedied either by statute or by rule"[4].

D

Cameron: Judgment 20 February 2019

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

E **34** Lord Sumption said at para 1 that the question in the case was in what circumstances it was permissible to sue an unnamed defendant. Lord Sumption said at para 11 that, since *Bloomsbury*, the jurisdiction had been regularly invoked in relation to abuse of the internet, trespasses and other torts committed by protesters, demonstrators and paparazzi. He said that in some of the cases, proceedings against persons unknown were allowed in support of
F an application for precautionary injunctions, where the defendants could only be identified as those persons who might in future commit the relevant acts. It was that body of case law that the majority of the Court of Appeal (Gloster and Lloyd-Jones LJJ) had followed in deciding that an action was permissible against the unknown driver who injured Ms Cameron. He said that it was "the first occasion on which the basis and extent of the jurisdiction [had] been considered by the Supreme Court or the House of Lords".

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

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

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

38 Lord Sumption proceeded to explain at para 16 that one did not identify unknown persons by referring to something they had done in the past, because it did not enable anyone to know whether any particular persons were the ones referred to. Moreover, service on a person so identified was impossible. It was not enough that the wrongdoers themselves knew who they were. It was that specific problem that Lord Sumption said at para 17 was more serious than the recent decisions of the courts had recognised. It was a fundamental principle of justice that a person could not be made subject to the jurisdiction of the court without having such notice of the proceedings as would enable him to be heard[5].

39 Pausing once again, one can see that, assuming these statements were part of the essential decision in *Cameron*, they do not affect the validity of the orders against newcomers made in *Gammell* (whether interim or final) because before any steps could be taken against such newcomers, they

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would, by definition, have become aware of the proceedings and of the orders made, and made themselves parties to the proceedings by violating those orders (see para 32 in *Gammell*).

40 At para 19, Lord Sumption explained why the treatment of the principle that a person could not be made subject to the jurisdiction of the court without having notice of the proceedings had been "neither consistent nor satisfactory". He referred to a series of cases about road accidents, before remarking that CPR rr 6.3 and 6.15 considerably broadened the permissible modes of service, but that the object of all the permitted modes of service was to enable the court to be satisfied that the method used either had put the recipient in a position to ascertain its contents or was reasonably likely to enable him to do so. He commented that the Court of Appeal in *Cameron* appeared to "have had no regard to these principles in ordering alternative service of the insurer". On that basis, Lord Sumption decided at para 21 that, subject to any statutory provision to the contrary, it was an essential requirement for any form of alternative service that the mode of service should be such as could reasonably be expected to bring the proceedings to the attention of the defendant. The Court of Appeal had been wrong to say that service need not be such as to bring the proceedings to the defendant's attention. At para 25, Lord Sumption commented that the power in CPR r 6.16 to dispense with service of a claim form in exceptional circumstances had, in general, been used to escape the consequences of a procedural mishap. He found it hard to envisage circumstances in which it would be right to dispense with service in circumstances where there was no reason to believe that the defendant was aware that proceedings had been or were likely to be brought. He concluded at para 26 that the anonymous unidentified driver in *Cameron* could not be sued under a pseudonym or description, unless the circumstances were such that the service of the claim form could be effected or properly dispensed with.

Ineos: judgment 3 April 2019

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

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

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

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

Bromley: judgment 21 January 2020

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

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

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A hear both sides of the argument [was] therefore an elementary rule of procedural fairness".

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

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

49 At paras 102–108, Coulson LJ said that local authorities must regularly engage with the travelling communities, and recommended a process of dialogue and communication. If a precautionary injunction were
D thought to be the only way forward, then engagement was still of the utmost importance: "welfare assessments should be carried out, particularly in relation to children". Particular considerations included that: (a) injunctions against persons unknown were exceptional measures because they tended to avoid the protections of adversarial litigation and article 6 of the Convention, (b) there should be respect for the travelling communities'
E culture, traditions and practices, in so far as those factors were capable of being realised in accordance with the rule of law, and (c) the clean hands doctrine might require local authorities to demonstrate that they had complied with their general obligations to provide sufficient accommodation and transit sites, (d) borough-wide injunctions were inherently problematic, (e) it was sensible to limit the injunction to one year with subsequent review, as had been done in the *Wolverhampton* case (now before this court), and
F (f) credible evidence of criminal conduct or risks to health and safety were important to obtain a wide injunction. Coulson LJ concluded with a summary after saying that he did not accept the submission that this kind of injunction should never be granted, and that the cases made plain that "the gypsy and traveller community have an enshrined freedom not to stay in one place but to move from one place to another": "An injunction which
G prevents them from stopping at all in a defined part of the UK comprised a potential breach of both the Convention and the Equality Act 2010, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise."

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

H

Cuadrilla: judgment 23 January 2020

51 In *Cuadrilla* [2020] 4 WLR 29 the Court of Appeal considered committals for breach of a final injunction preventing persons unknown, including newcomers, from trespassing on land in connection with fracking.

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The issues are mostly not relevant to this case, save that Leggatt LJ (with whom Underhill and David Richards LJJ substantively agreed) summarised the effect of *Ineos* (in which Leggatt LJ had, of course, been a member of the court) as being that there was no conceptual or legal prohibition on (a) suing persons unknown who were not currently in existence but would come into existence if and when they committed a threatened tort, or (b) granting precautionary injunctions to restrain such persons from committing a tort which has not yet been committed (para 48). After further citation of authority, the Court of Appeal departed from one aspect of the guidance given in *Ineos*, but not one that is relevant to this case. Leggatt LJ noted at para 50 that the appeal in *Canada Goose* was shortly to consider injunctions against persons unknown.

Canada Goose: judgment 5 March 2020

52 The first paragraph of the judgment of the court in *Canada Goose* [2020] 1 WLR 2802 (Sir Terence Etherton MR, David Richards and Coulson LJJ) recorded that the appeal concerned the way in which, and the extent to which, civil proceedings for injunctive relief against persons unknown could be used to restrict public protests. On the claimants' application for summary judgment, Nicklin J had refused to grant a final injunction, discharged the interim injunction, and held that the claim form had not been validly served on any defendant in the proceedings and that it was not appropriate to make an order dispensing with service under CPR r 6.16(1). The first defendants were named as persons unknown who were protestors against the manufacture and sale at the first claimant's store of clothing made of or containing animal products. An interim injunction had been granted until further order in respect of various tortious activities including assault, trespass and nuisances, with a further hearing also ordered.

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

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

55 At paras 62–88 in *Canada Goose*, the court discussed in entirely orthodox terms the decisions in *Cameron*, *Gammell*, *Ineos*, and *Cuadrilla*, in which Leggatt LJ had referred to *Hubbard v Pitt* [1976] QB 142 and *Burris v Azadani* [1995] 1 WLR 1372. At para 82, the court built on the *Cameron* and *Ineos* requirements to set out refined procedural guidelines applicable to proceedings for interim relief against persons unknown in

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protester cases like the one before that court. The court at paras 83–88 applied those guidelines to the appeal to conclude that the judge had been right to dismiss the claim for summary judgment and to discharge the interim injunction.

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

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

"(2) The 'persons unknown' must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

"(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify [precautionary] relief.

"(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."

57 The claim form was held to be defective in *Canada Goose* under those guidelines and the injunctions were impermissible. The description of the persons unknown was also impermissibly wide, because it was capable of applying to persons who had never been at the store and had no intention

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of ever going there. It would have included a "peaceful protester in Penzance". Moreover, the specified prohibited acts were not confined to unlawful acts, and the original interim order was not time limited. Nicklin J had been bound to dismiss the application for summary judgment and to discharge the interim injunction: "both because of non-service of the proceedings and for the further reasons . . . set out below".

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

> "89. A final injunction cannot be granted in a protester case against 'persons unknown' who are not parties at the date of the final order, that is to say newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the 'persons unknown' and who have not been served with the claim form. There are some very limited circumstances, such as in *Venables v News Group Newspapers Ltd* [2001] Fam 430, in which a final injunction may be granted against the whole world. Protester actions, like the present proceedings, do not fall within that exceptional category. The usual principle, which applies in the present case, is that a final injunction operates only between the parties to the proceedings: *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191, 224. That is consistent with the fundamental principle in *Cameron* (at para 17) that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard."
>
> "91. That does not mean to say that there is no scope for making 'persons unknown' subject to a final injunction. That is perfectly legitimate provided the persons unknown are confined to those within Lord Sumption's category 1 in *Cameron*, namely those anonymous defendants who are identifiable (for example, from CCTV or body cameras or otherwise) as having committed the relevant unlawful acts prior to the date of the final order and have been served (probably pursuant to an order for alternative service) prior to the date. The proposed final injunction which Canada Goose sought by way of summary judgment was not so limited. Nicklin J was correct (at para 159) to dismiss the summary judgment on that further ground (in addition to non-service of the proceedings). Similarly, Warby J was correct to take the same line in *Birmingham City Council v Afsar* [2019] EWHC 3217 (QB) at [132].
>
> "92. In written submissions following the conclusion of the oral hearing of the appeal Mr Bhose submitted that, if there is no power to make a final order against 'persons unknown', it must follow that, contrary to *Ineos*, there is no power to make an interim order either. We do not agree. An interim injunction is temporary relief intended to hold the position until trial. In a case like the present, the time between the interim relief and trial will enable the claimant to identify wrongdoers, either by name or as anonymous persons within Lord Sumption's category 1. Subject to any appeal, the trial determines the outcome of the litigation between the parties. Those parties include not only persons who have been joined as named parties but also 'persons unknown' who have breached the interim injunction and are identifiable albeit anonymous. The trial is between the parties to the proceedings. Once the

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A trial has taken place and the rights of the parties have been determined, the litigation is at an end. There is nothing anomalous about that."

The reasons given by the judge

59 The judge began his judgment at paras 2–5 by setting out the background to unauthorised encampment injunctions derived mainly from B Coulson LJ's judgment in *Bromley* [2020] PTSR 1043. At para 6, the judge said that the central issue to be determined was whether a final injunction granted against persons unknown was subject to the principle that final injunctions bind only the parties to the proceedings. He said that *Canada Goose* [2020] 1 WLR 2802 held that it was, but the local authorities contended that it should not be. It may be noted at once that this is a one-sided view of the question that assumes the answer. The question was not whether C an assumed general principle derived from *Attorney General v Times Newspapers Ltd (No 3)* ("*Spycatcher*") [1992] 1 AC 191 or *Cameron* [2019] 1 WLR 1471 applied to final injunctions against persons unknown (which if it were a general principle, it obviously would), but rather what were the general principles to be derived from *Spycatcher*, *Cameron* and *Canada Goose*.

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

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

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

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

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

65 The judge stated first, in answer to his second issue, that the court undoubtedly had the power to grant an injunction that bound non-parties to proceedings under section 37. That power extended, exceptionally, to making injunction orders against the world (see *Venables v News Group Newspapers Ltd* [2001] Fam 430 ("*Venables*")). The correct starting point was to recognise the fundamental difference between interim and final injunctions. It was well-established that the court could grant an interim injunction against persons unknown which would bind all those falling within the description employed, even if they only became such persons as a result of doing some act after the grant of the interim injunction. He said that the key decision underpinning that principle was *Gammell* [2006] 1 WLR 658, which had decided that a newcomer became a party to the underlying proceedings when they did an act which brought them within the definition of the defendants to the claim. The judge thought that there was no conceptual difficulty about that at the interim stage, and that *Gammell* was a case of a breach of an interim injunction. At para 173, the judge stated that *Gammell* was not authority for the proposition that persons could become defendants to proceedings, after a final injunction was granted, by doing acts which brought them within the definition of persons unknown. He did not say why not. But the point is, at least, not free from doubt, bearing in mind that it is not clear whether Ms Maughan's case, decided at the same time as *Gammell*, concerned an interim or final order.

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

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

68 The judge then rejected at para 186 the idea that he had mentioned in *Enfield* that application of the *Canada Goose* principles would lead to a

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

69 The judge said that a final injunction should be seen as a remedy flowing from the final determination of rights between the claimant and the defendants at trial. That made it important to identify those defendants C before that trial. The legitimate role for interim injunctions against persons unknown was conditional and to protect the existing state of affairs pending determination of the parties' rights at a trial. A final judgment could not be granted consistently with *Cameron* against category 2 defendants: i e those who were anonymous and could not be identified.

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

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

Introduction to the main issue

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

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

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

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

75 Secondly, the judge said at para 174 that it was "fundamental to our process of civil litigation that the court cannot grant a final order against someone who is not party to the claim". Again, as I have already pointed out, no such fundamental principle is stated in any of the cases, and such a principle would be inconsistent with many authorities (not least, *Venables*, *Gammell* and *Ineos*). The highest that *Canada Goose* put the point was to refer to the "usual principle" derived from *Spycatcher* to the effect that a final injunction operated only between the parties to the proceedings. The principle was said to be applicable in *Canada Goose*. Admittedly, *Canada Goose* also described that principle as consistent with the fundamental principle in *Cameron* (at para 17) that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard, but that was said without disapproving the mechanism explained by Sir Anthony Clarke MR in *Gammell* by which a newcomer might become a party to proceedings by knowingly breaching a persons unknown injunction.

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

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

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

Para 89 of Canada Goose

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

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A local authorities' submission that *Canada Goose* can be distinguished as applying only to protester cases.

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

81 *Canada Goose* then said at para 89, as I have already mentioned, that the usual principle, which applied in that case, was that a final injunction operated only between the parties to the proceedings, citing *Spycatcher* as being consistent with *Cameron* at para 17. That passage was, in my judgment, a misunderstanding of para 17 of *Cameron*. As explained above, para 17 of
C *Cameron* did not affect the validity of the orders against newcomers made in *Gammell* (whether interim or final) because before any steps could be taken against such newcomers, they would, by definition, have become aware of the proceedings and of the orders made, and made themselves parties to the proceedings by violating them (see para 32 in *Gammell*). Moreover at para 63 in *Canada Goose*, the court had already acknowledged that (i) Lord Sumption had not addressed a third category of anonymous defendants, namely people
D who will or are highly likely in the future to commit an unlawful civil wrong (i e newcomers), and (ii) Lord Sumption had referred at para 15 with approval to *Gammell* where it was held that "persons who entered onto land and occupied it in breach of, and subsequent to the grant of, an interim injunction became persons to whom the injunction was addressed and defendants to the proceedings". There was no valid distinction between such an order made as a
E final order and one made on an interim basis.

82 There was no reason for the Court of Appeal in *Canada Goose* to rely on the usual principle derived from *Spycatcher* that a final injunction operates only between the parties to the proceedings. In *Gammell* and *Ineos* (cases binding on the Court of Appeal) it was held that a person violating a "persons unknown" injunction became a party to the proceedings. *Cameron* referred to that approach without disapproval. There is and was no reason
F why the court cannot devise procedures, when making longer term persons unknown injunctions, to deal with the situation in which persons violate the injunction and makes themselves new parties, and then apply to set aside the injunction originally violated, as happened in *Gammell* itself. Lord Sumption in *Cameron* was making the point that parties must always have the opportunity to contest orders against them. But the persons unknown in
G *Gammell* had just such an opportunity, even though they were held to be in contempt. *Spycatcher* was a very different case, and only described the principle as the usual one, not a universal one. Moreover, it is a principle that sits uneasily with parts of the CPR, as I shall shortly explain.

Para 90 of Canada Goose

H **83** In my judgment both the judge at para 90 and the Court of Appeal in *Canada Goose* at para 90 were wrong to suggest that Marcus Smith J's decision in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 ("*Vastint*") was wrong. There, a final injunction was granted against persons unknown enjoining them from entering or remaining at the site of the former Tetley Brewery (for the purpose of organising or attending illegal

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raves). At paras 19–25, Marcus Smith J explained his reasoning relying on *Bloomsbury*, *Hampshire Waste*, *Gammell* and *Ineos* (at first instance: [2017] EWHC 2945 (Ch)). At para 24, he said that the making of orders against persons unknown was settled practice provided the order was clearly enough drawn, and that it worked well within the framework of the CPR: "until an act infringing the order is committed, no-one is party to the proceedings. It is the act of infringing the order that makes the infringer a party." Any person affected by the order could apply to set it aside under CPR r 40.9. None of *Cameron*, *Ineos*, or *Spycatcher* showed *Vastint* to be wrong as the court suggested.

Para 91 of Canada Goose

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

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

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

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

> "158. Rather optimistically, Mr Buckpitt suggested that all these concerns could be adequately addressed by the inclusion of a provision in the final order permitting any newcomers to apply to vary or discharge the final order.
>
> "159. Put bluntly, this is just absurd. It turns civil litigation on its head and bypasses almost all of the fundamental principles of civil litigation: see paras 55–60 above. Unknown individuals, without notice of the proceedings, would have judgment and a final injunction granted against them. If subsequently, they stepped forward to object to this state of affairs, I assume Mr Buckpitt envisages that it is only at this point that the question would be addressed whether they had actually done (or threatened to do) anything that would justify an order being made against them. Resolution of any factual dispute taking place, one assumes, at a trial, if necessary. Given the width of the class of protestor, and the anticipated rolling programme of serving the 'final order' at future

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protests, the court could be faced with an unknown number of applications by individuals seeking to 'vary' this 'final order' and possible multiple trials. This is the antithesis of finality to litigation."

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

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

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

Para 92 of Canada Goose

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

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normally to have a fixed end point for review as the injunctions granted to these local authorities actually had in some cases.

92 It was illogical for the court at para 92 in *Canada Goose* to suggest, in the face of *Gammell*, that the parties to the action could only include persons unknown "who have breached the interim injunction and are identifiable albeit anonymous". There is, as I have said, almost never a trial in a persons unknown case, whether one involving protesters or unauthorised encampments. It was wrong to suggest in this context that "once the trial has taken place and the rights of the parties have been determined, the litigation is at an end". In these cases, the case is not at end until the injunction has been discharged.

The judge's reasoning in this case

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

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

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

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

The doctrine of precedent

97 We received helpful submissions during the hearing as to the propriety of our reaching the conclusions already stated. In particular, we were concerned that *Cameron* had been misunderstood in the ways I have now explained in detail. The question, however, was, even if *Cameron* did

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A not mandate the conclusions reached by the judge and paras 89–92 of *Canada Goose*, whether this court would be justified in refusing to follow those paragraphs. That question turns on precisely what *Gammell*, *Ineos* and *Canada Goose* decided.

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

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

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

Conclusion on the main issue

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

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

H **102** We did not hear detailed argument either about the guidance given in relation to interim injunctions against persons unknown at para 82 of *Canada Goose* (see para 56 above), or in relation to how local authorities should approach persons unknown injunctions in unauthorised encampment cases at paras 99–109 in *Bromley* [2020] PTSR 1043 (see para 49 above). It

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would, therefore, be inappropriate for me to revisit in detail what was said there. I would, however, make the following comments.

103 First, the court's approach to the grant of an interim injunction would obviously be different if it were sought in a case in which a final injunction could not, either as a matter of law or settled practice, be granted. In those circumstances, these passages must, in view of our decision in this case, be viewed with that qualification in mind.

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

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

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

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court will also take into account any other relevant legal considerations, such as the duties imposed by the Equality Act 2010.

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

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

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

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

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

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

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provisions, the orders in question would, as I have already explained, be reviewable at the instance of newcomers, who had made themselves parties to the claims by knowingly breaching the injunctions against unauthorised encampment.

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

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

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

114 Section 187B provides that:

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

"(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."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

123 I have concluded, as I indicated at para 7 above, that the judge was wrong to hold that the court cannot grant final injunctions against unauthorised encampment that prevent newcomers from occupying and trespassing on land. Whilst the procedure adopted by the judge was unorthodox and unusual in that he called in final orders for revision, no harm

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has been done in that the parties did not object at the time and it has been possible to undertake a comprehensive review of the law applicable in an important field. Most of the orders anyway provided for review or gave permission to apply. The procedural limitations applicable to injunctions against person unknown are as much applicable under section 37 as they are to those made under section 187B. The court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under section 37 against the world.

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

Notes

1. There were 38 local authorities before the judge.

2. This was a reference to the two categories set out by Lord Sumption at para 13 in *Cameron*, as to which see para 35.

3. As I have noted above, default judgment is not available in Part 8 cases.

4. Lord Rodger noted also the discussion of such injunctions in Jillaine Seymour, "Injunctions Enjoining Non-Parties: Distinction without Difference" (2007) 66 CLJ 605.

5. See *Jacobson v Frachon* (1927) 138 LT 386, 392 per Atkin LJ ("*Jacobson*").

LEWISON LJ

125 I agree.

ELISABETH LAING LJ

126 I also agree.

Appeals allowed.
Judge's order set aside.
Injunctions obtained by Havering, Nuneaton and Bedworth, Rochdale, Test Valley and Wolverhampton restored subject to review hearing.
Interim injunctions obtained by Hillingdon and Richmond-upon-Thames restored subject to applications for review on terms.
Permission to appeal refused.

SUSAN DENNY, Barrister

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A

Supreme Court

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

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

B

[2023] UKSC 47

2023 Feb 8, 9; Nov 29

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

C

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adair v New River Co (1805) 11 Ves 429

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

British Airways Board v Laker Airways Ltd [1985] AC 58; [1984] 3 WLR 413; G [1984] 3 All ER 39, HL(E)

Broadmoor Special Hospital Authority v Robinson [2000] QB 775; [2000] 1 WLR 1590; [2000] 2 All ER 727, CA

Bromley London Borough Council v Persons Unknown [2020] EWCA Civ 12; [2020] PTSR 1043; [2020] 4 All ER 114, CA

Burris v Azadani [1995] 1 WLR 1372; [1995] 4 All ER 802, CA

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

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

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

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

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Carr v News Group Newspapers Ltd [2005] EWHC 971 (QB)
Cartier International AG v British Sky Broadcasting Ltd [2014] EWHC 3354 (Ch); [2015] Bus LR 298; [2015] 1 All ER 949; [2016] EWCA Civ 658; [2017] Bus LR 1; [2017] 1 All ER 700, CA; [2018] UKSC 28; [2018] 1 WLR 3259; [2018] Bus LR 1417; [2018] 4 All ER 373, SC(E)
Castanho v Brown & Root (UK) Ltd [1981] AC 557; [1980] 3 WLR 991; [1981] 1 All ER 143; [1981] 1 Lloyd's Rep 113, HL(E)
Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd [1993] AC 334; [1993] 2 WLR 262; [1993] 1 All ER 664; [1993] 1 Lloyd's Rep 291, HL(E)
Chapman v United Kingdom (Application No 27238/95) (2001) 33 EHRR 18, ECtHR (GC)
Commerce Commission v Unknown Defendants [2019] NZHC 2609
Convoy Collateral Ltd v Broad Idea International Ltd [2021] UKPC 24; [2023] AC 389; [2022] 2 WLR 703; [2022] 1 All ER 289; [2022] 1 All ER (Comm) 633, PC
Cuadrilla Bowland Ltd v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29, CA
D v Persons Unknown [2021] EWHC 157 (QB)
Dresser UK Ltd v Falcongate Freight Management Ltd [1992] QB 502; [1992] 2 WLR 319; [1992] 2 All ER 450, CA
EMI Records Ltd v Kudhail [1985] FSR 36, CA
ESPN Software India Private Ltd v Tudu Enterprise (unreported) 18 February 2011, High Ct of Delhi
Earthquake Commission v Unknown Defendants [2013] NZHC 708
Ernst & Young Ltd v Department of Immigration 2015 (1) CILR 151
F (orse A) (A Minor) (Publication of Information), In re [1977] Fam 58; [1976] 3 WLR 813; [1977] 1 All ER 114, CA
Financial Services Authority v Sinaloa Gold plc [2013] UKSC 11; [2013] 2 AC 28; [2013] 2 WLR 678; [2013] Bus LR 302; [2013] 2 All ER 339, SC(E)
Fourie v Le Roux [2007] UKHL 1; [2007] 1 WLR 320; [2007] Bus LR 925; [2007] 1 All ER 1087, HL(E)
Friern Barnet Urban District Council v Adams [1927] 2 Ch 25, CA
Guaranty Trust Co of New York v Hannay & Co [1915] 2 KB 536, CA
Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator Site [2003] EWHC 1738 (Ch); [2004] Env LR 9
Harlow District Council v Stokes [2015] EWHC 953 (QB)
Heathrow Airport Ltd v Garman [2007] EWHC 1957 (QB)
Hubbard v Pitt [1976] QB 142; [1975] 3 WLR 201; [1975] ICR 308; [1975] 3 All ER 1, CA
Ineos Upstream Ltd v Persons Unknown [2019] EWCA Civ 515; [2019] 4 WLR 100; [2019] 4 All ER 699, CA
Iveson v Harris (1802) 7 Ves 251
Joel v Various John Does (1980) 499 F Supp 791
Kingston upon Thames Royal London Borough Council v Persons Unknown [2019] EWHC 1903 (QB)
M and N (Minors) (Wardship: Publication of Information), In re [1990] Fam 211; [1989] 3 WLR 1136; [1990] 1 All ER 205, CA
MacMillan Bloedel Ltd v Simpson [1996] 2 SCR 1048
McPhail v Persons, Names Unknown [1973] Ch 447; [1973] 3 WLR 71; [1973] 3 All ER 393, CA
Manchester Corpn v Connolly [1970] Ch 420; [1970] 2 WLR 746; [1970] 1 All ER 961, CA
Marengo v Daily Sketch and Sunday Graphic Ltd [1948] 1 All ER 406, HL(E)
Mareva Cia Naviera SA v International Bulkcarriers SA [1975] 2 Lloyd's Rep 509, CA
Maritime Union of Australia v Patrick Stevedores Operations Pty Ltd [1998] 4 VR 143

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Mercedes Benz AG v Leiduck [1996] AC 284; [1995] 3 WLR 718; [1995] 3 All ER 929; [1995] 2 Lloyd's Rep 417, PC
Meux v Maltby (1818) 2 Swans 277
Michaels (M) (Furriers) Ltd v Askew (1983) 127 SJ 597, CA
Murphy v Murphy [1999] 1 WLR 282; [1998] 3 All ER 1
News Group Newspapers Ltd v Society of Graphical and Allied Trades '82 (No 2) [1987] ICR 181
North London Railway Co v Great Northern Railway Co (1883) 11 QBD 30, CA
Norwich Pharmacal Co v Customs and Excise Comrs [1974] AC 133; [1973] 3 WLR 164; [1973] 2 All ER 943, HL(E)
OPQ v BJM [2011] EWHC 1059 (QB); [2011] EMLR 23
Parkin v Thorold (1852) 16 Beav 59
Persons formerly known as Winch, In re [2021] EWHC 1328 (QB); [2021] EMLR 20, DC; [2021] EWHC 3284 (QB); [2022] ACD 22, DC
R v Lincolnshire County Council, Ex p Atkinson (1995) 8 Admin LR 529, DC
R (Wardship: Restrictions on Publication), In re [1994] Fam 254; [1994] 3 WLR 36; [1994] 3 All ER 658, CA
RWE Npower plc v Carrol [2007] EWHC 947 (QB)
RXG v Ministry of Justice [2019] EWHC 2026 (QB); [2020] QB 703; [2020] 2 WLR 635, DC
Revenue and Customs Comrs v Egleton [2006] EWHC 2313 (Ch); [2007] Bus LR 44; [2007] 1 All ER 606
Secretary of State for the Environment, Food and Rural Affairs v Meier [2009] UKSC 11; [2009] 1 WLR 2780; [2010] PTSR 321; [2010] 1 All ER 855, SC(E)
Siskina (Owners of cargo lately laden on board) v Distos Cia Naviera SA [1979] AC 210; [1977] 3 WLR 818; [1977] 3 All ER 803; [1978] 1 Lloyd's Rep 1, HL(E)
Smith v Secretary of State for Housing, Communities and Local Government [2022] EWCA Civ 1391; [2023] PTSR 312, CA
South Bucks District Council v Porter [2003] UKHL 26; [2003] 2 AC 558; [2003] 2 WLR 1547; [2003] 3 All ER 1, HL(E)
South Cambridgeshire District Council v Gammell [2005] EWCA Civ 1429; [2006] 1 WLR 658, CA
South Cambridgeshire District Council v Persons Unknown [2004] EWCA Civ 1280; [2004] 4 PLR 88, CA
South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV [1987] AC 24; [1986] 3 WLR 398; [1986] 3 All ER 487; [1986] 2 Lloyd's Rep 317, HL(E)
Stoke-on-Trent City Council v B & Q (Retail) Ltd [1984] AC 754; [1984] 2 WLR 929; [1984] 2 All ER 332, HL(E)
TSB Private Bank International SA v Chabra [1992] 1 WLR 231; [1992] 2 All ER 245
UK Oil and Gas Investments plc v Persons Unknown [2018] EWHC 2252 (Ch); [2019] JPL 161
United Kingdom Nirex Ltd v Barton The Times, 14 October 1986
Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908
Wykeham Terrace, Brighton, Sussex, In re, Ex p Territorial Auxiliary and Volunteer Reserve Association for the South East [1971] Ch 204; [1970] 3 WLR 649
X (A Minor) (Wardship: Injunction), In re [1984] 1 WLR 1422; [1985] 1 All ER 53
X (formerly Bell) v O'Brien [2003] EWHC 1101 (QB); [2003] EMLR 37
Z Ltd v A-Z and AA-LL [1982] QB 558; [1982] 2 WLR 288; [1982] 1 All ER 556; [1982] 1 Lloyd's Rep 240, CA

The following additional cases were cited in argument:

A v British Broadcasting Corpn [2014] UKSC 25; [2015] AC 588; [2014] 2 WLR 1243; [2014] 2 All ER 1037, SC(Sc)

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Abortion Services (Safe Access Zones) (Northern Ireland) Bill, In re [2022] UKSC 32; [2023] AC 505; [2023] 2 WLR 33; [2023] 2 All ER 209, SC(NI)
Astellas Pharma Ltd v Stop Huntingdon Animal Cruelty [2011] EWCA Civ 752, CA
Birmingham City Council v Nagmadin [2023] EWHC 56 (KB)
Birmingham City Council v Sharif [2020] EWCA Civ 1488; [2021] 1 WLR 685; [2021] 3 All ER 176; [2021] RTR 15, CA
Cambridge City Council v Traditional Cambridge Tours Ltd [2018] EWHC 1304 (QB); [2018] LLR 458
Crédit Agricole Corporate and Investment Bank v Persons Having Interest in Goods Held by the Claimant [2021] EWHC 1679 (Ch); [2021] 1 WLR 3834; [2022] 1 All ER 83; [2022] 1 All ER (Comm) 239
High Speed Two (HS2) Ltd v Persons Unknown [2022] EWHC 2360 (KB)
Hillingdon London Borough Council v Persons Unknown [2020] EWHC 2153 (QB); [2020] PTSR 2179
Kudrevičius v Lithuania (Application No 37553/05) (2015) 62 EHRR 34, ECtHR (GC)
MBR Acres Ltd v McGivern [2022] EWHC 2072 (QB)
Mid-Bedfordshire District Council v Brown [2004] EWCA Civ 1709; [2005] 1 WLR 1460, CA
Porter v Freudenberg [1915] 1 KB 857, CA
Redbridge London Borough Council v Stokes [2018] EWHC 4076 (QB)
Secretary of State for Transport v Cuciurean [2021] EWCA Civ 357, CA
Winterstein v France (Application No 27013/07) (unreported) 17 October 2013, ECtHR

APPEAL from the Court of Appeal

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

By appellant's notices filed on or about 7 June 2021 and with permission of the judge, the following local authorities appealed: Barking and Dagenham London Borough Council; Havering London Borough Council; Redbridge London Borough Council; Basingstoke and Deane Borough Council and Hampshire County Council; Nuneaton and Bedworth Borough Council and Warwickshire County Council; Rochdale Metropolitan Borough Council; Test Valley Borough Council; Thurrock Council; Hillingdon London Borough Council; Richmond upon Thames London Borough Council; Walsall Metropolitan Borough Council and Wolverhampton City Council. The following bodies were granted permission to intervene in the appeal: London Gypsies and Travellers; Friends, Families and Travellers; Derbyshire Gypsy Liaison Group; High Speed Two (HS2) Ltd and Basildon Borough Council. On 13 January 2022 the Court of Appeal (Sir Geoffrey Vos MR,

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A 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
B 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
C 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.

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

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

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

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

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

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

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

The court took time for consideration.

G 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

H **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

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identifiable at the time when the injunctions were sought and granted. Instead, the defendants were described in the claim forms as "persons unknown", and the injunctions similarly enjoined "persons unknown". In some cases, there was no further description of the defendants in the claim form, and the court's order contained no further information about the persons enjoined. In other cases, the defendants were described in the claim form by reference to the conduct which the claimants sought to have prohibited, and the injunctions were addressed to persons who behaved in the manner from which they were ordered to refrain.

2 In these circumstances, the appeal raises the question whether (and if so, on what basis, and subject to what safeguards) the court has the power to grant an injunction which binds persons who are not identifiable at the time when the order is granted, and who have not at that time infringed or threatened to infringe any right or duty which the claimant seeks to enforce, but may do so at a later date: "newcomers", as they have been described in these proceedings.

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

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

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

(2) The factual and procedural background

6 Between 2015 and 2020, 38 different local authorities or groups of local authorities sought injunctions against unidentified and unknown persons, which in broad terms prohibited unauthorised encampments within their administrative areas or on specified areas of land within those areas. The claims were brought under the procedure laid down in Part 8 of the Civil

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A 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
B 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
C 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
D 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
E 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.

F 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.

G 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
H 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.

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

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

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

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

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

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

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

2. *The legal background*

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

(1) Are newcomers parties to the proceedings at the time when the injunction is granted? If not, is it possible to obtain an injunction against a

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A non-party? If they are not parties at that point, when (if ever) and how do they become parties?

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

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

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

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

(1) The jurisdiction to grant injunctions

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

17 The injunction is equitable in origin, and remains so despite its statutory confirmation. The power of courts with equitable jurisdiction to grant injunctions is, subject to any relevant statutory restrictions, unlimited: Spry, *Equitable Remedies*, 9th ed (2014) ("*Spry*"), p 333, cited with approval in, among other authorities, *Broadmoor Special Hospital Authority v Robinson* [2000] QB 775, paras 20–21 and *Cartier* H *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

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order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so." As Lord Scott explained in *Fourie v Le Roux* (ibid), that provision, like its statutory predecessors, merely confirms and restates the power of the courts to grant injunctions which existed before the Supreme Court of Judicature Act 1873 (36 & 37 Vict c 66) ("the 1873 Act") and still exists. That power was transferred to the High Court by section 16 of the 1873 Act and has been preserved by section 18(2) of the Supreme Court of Judicature (Consolidation) Act 1925 and section 19(2)(b) of the 1981 Act.

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

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

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

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

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

21 It has often been recognised that the width and flexibility of the equitable jurisdiction to issue injunctions are not to be cut down by categorisations based on previous practice. In *Castanho v Brown & Root*

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(UK) Ltd [1981] AC 557, for example, Lord Scarman stated at p 573, in a speech with which the other Law Lords agreed, that "the width and flexibility of equity are not to be undermined by categorisation". To similar effect, in *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV* [1987] AC 24, Lord Goff of Chieveley, with whom Lord Mackay of Clashfern agreed, stated at p 44:

> "I am reluctant to accept the proposition that the power of the court to grant injunctions is restricted to certain exclusive categories. That power is unfettered by statute; and it is impossible for us now to foresee every circumstance in which it may be thought right to make the remedy available."

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

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

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

(2) Injunctions against non-parties

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

24 Where the defendants are described in a claim form, or an injunction describes the persons enjoined, simply as persons unknown, the entire world falls within the description. But the entire human race cannot be regarded as being parties to the proceedings: they are not before the court, so that they are subject to its powers. It is only when individuals are served with the claim form that they ordinarily become parties in that sense, although is also possible for persons to apply to become parties in the absence of service. As

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will appear, service can be problematical where the identities of the intended defendants are unknown. Furthermore, as a general rule, for any injunction to be enforceable, the persons whom it enjoins, if unnamed, must be described with sufficient clarity to identify those included and those excluded.

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

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

(i) Representative proceedings

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

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28 However, it has long been established that in appropriate circumstances relief can be sought against representative defendants, with other unnamed persons being described in the order in general terms. Although formerly recognised by RSC Ord 15, r 12, and currently the subject of rule 19.8 of the CPR, this form of procedure has existed for several centuries and was developed by the Court of Chancery. Its rationale was explained by Sir Thomas Plumer MR in *Meux v Maltby* (1818) 2 Swans 277, 281–282:

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

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

29 A representative action may in some circumstances be a suitable means of restraining wrongdoing by individuals who cannot be identified. It can therefore, in such circumstances, provide an alternative remedy to an injunction against "persons unknown": see, for example, *M Michaels (Furriers) Ltd v Askew* (1983) 127 SJ 597, concerned with picketing; *EMI Records Ltd v Kudhail* [1985] FSR 36, concerned with copyright infringement; and *Heathrow Airport Ltd v Garman* [2007] EWHC 1957 (QB), concerned with environmental protesters.

30 However, there are a number of principles which restrict the circumstances in which relief can be obtained by means of a representative action. In the first place, the claimant has to be able to identify at least one individual against whom a claim can be brought as a representative of all others likely to interfere with his or her rights. Secondly, the named defendant and those represented must have the same interest. In practice, compliance with that requirement has proved to be difficult where those sought to be represented are not a homogeneous group: see, for example, *News Group Newspapers Ltd v Society of Graphical and Allied Trades '82 (No 2)* [1987] ICR 181, concerned with industrial action, and *United Kingdom Nirex Ltd v Barton* The Times, 14 October 1986, concerned with protests. In addition, since those represented are not party to the proceedings, an injunction cannot be enforced against them without the permission of the court (CPR r 19.8(4)(b)): something which, it has been held, cannot be granted before the individuals in question have been identified and have had an opportunity to make representations: see, for example, *RWE Npower plc v Carrol* [2007] EWHC 947 (QB).

(ii) Wardship proceedings

31 Another situation where orders have been made against non-parties is where the court has been exercising its wardship jurisdiction. In *In re X (A Minor) (Wardship: Injunction)* [1984] 1 WLR 1422 the court protected the welfare of a ward of court (the daughter of an individual who had been

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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

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A 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
B 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.

C (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
D 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
E 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
F 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*;
G *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*
H *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

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put forward any arguments which he may have, Lord Oliver responded at p 224 that he was at liberty to apply to the court:

> " 'The Sunday Times' in the instant case was perfectly at liberty, before publishing, either to inform the respondent and so give him the opportunity to object or to approach the court and to argue that it should be free to publish where the defendants were not, just as a person affected by notice of, for example, a *Mareva* injunction is able to, and frequently does, apply to the court for directions as to the disposition of assets in his hands which may or may not be subject to the terms of the order."

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

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

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

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

43 An injunction against newcomers purports to restrain the conduct of persons against whom there is no existing cause of action at the time when the order is granted: it is addressed to persons who may not at that time have formed any intention to act in the manner prohibited, let alone threatened to take or taken any steps towards doing so. That might be thought to conflict with the principle that an injunction must be founded on an existing cause of action against the person enjoined, as stated, for example, by Lord Diplock in *Siskina (Owners of cargo lately laden on board) v Distos Cia Naviera SA* [1979] AC 210 ("*The Siskina*"), at p 256. There has been a gradual but

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A growing reaction against that reasoning (which Lord Diplock himself recognised was too narrowly stated: *British Airways Board v Laker Airways Ltd* [1985] AC 58, 81) over the past 40 years, culminating in the recent decision in *Broad Idea* [2023] AC 389, cited in para 17 above, where the Judicial Committee of the Privy Council rejected such a rigid doctrine and asserted the court's governance of its own practice. It is now well established that the grant of injunctive relief is not always conditional on the existence of a cause of action. Again, it is relevant to consider some established categories of injunction against "no cause of action defendants" (as they are sometimes described) in order to see whether newcomer injunctions fall into an existing legitimate class, or, if not, whether they display analogous features.

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

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order for costs). Even where the claimant has a cause of action against one defendant, a freezing injunction can in certain limited circumstances be granted against another defendant, such as a bank, against which the claimant does not assert a cause of action (*TSB Private Bank International SA v Chabra* [1992] 1 WLR 231; *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380 and *Revenue and Customs Comrs v Egleton* [2007] Bus LR 44).

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

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

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

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

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

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

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

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

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

55 Service of the claim form is a matter of greater significance. Although the court may exceptionally dispense with service, as explained below, and may if necessary grant interlocutory relief, such as interim injunctions, before service, as a general rule service of originating process is the act by which the defendant is subjected to the court's jurisdiction, in the

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

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

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

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

(1) Bloomsbury

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

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

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

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

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

(2) Hampshire Waste Services

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

61 Whereas in *Bloomsbury* the injunction was directed against a small number of individuals who were at least theoretically capable of being identified, the injunction granted in *Hampshire Waste Services* was effectively made against the world: anyone might potentially have entered or H remained on any of the sites in question on or around the specified date. This is a common if not invariable feature of newcomer injunctions. Although the number of persons likely to engage in the prohibited conduct will plainly depend on the circumstances, and will usually be relatively small, such orders bear upon, and enjoin, anyone in the world who does so.

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(3) Gammell

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

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

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

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

66 The Court of Appeal dismissed her appeal. In his judgment, Sir Anthony Clarke MR, with whom Rix and Moore-Bick LJJ agreed, stated that each of the appellants became a party to the proceedings when she did an act which brought her within the definition of defendant in the particular case.

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A 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
B 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

C **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
D 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
E 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
F 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
G 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
H able to identify, and then would seek additional relief against "persons unknown", these being persons who were alleged to be unlawfully occupying the land but who could not at that stage be identified by name, although often they could be identified by some form of description. But before long, many local authorities began to take a bolder line and claims were brought simply against "persons unknown".

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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

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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."

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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.

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

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

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

83 Lord Sumption proceeded to explain that permissible modes of service had been broadened considerably over time but that the object of all of these modes of service was the same, namely to enable the court to be F satisfied that one or other of the methods used had either put the defendant in a position to ascertain the contents of the claim or was reasonably likely to enable him to do so within an appropriate period of time. The purpose of service (and substituted service) was to inform the defendant of the contents of the claim and the nature of the claimant's case against him; to give him notice that the court, being a court of competent jurisdiction, would in due G course proceed to decide the merits of that claim; and to give him an opportunity to be heard and to present his case before the court. It followed that it was not possible to issue or amend a claim form so as to sue an unnamed defendant if it was conceptually impossible to bring the claim to his attention.

84 In the *Cameron* case there was no basis for inferring that the offending driver was aware of the proceedings. Service on the insurer did H not and would not without more constitute service on that offending driver (nor was the insurer directly liable); alternative service on the insurer could not be expected to reach the driver; and it could not be said that the driver was trying to evade service for it had not been shown that he even knew that proceedings had been or were likely to be brought against him. Further, it

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had not been established that this was an appropriate case in which to dispense with service altogether for any other reason. It followed that the driver could not be sued under the description relied upon by the claimant.

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

(7) Ineos

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

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

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

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

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A persons potentially affected to know what they must not do; and (6) the injunction should have clear geographical and temporal limits.

(8) Bromley

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

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

92 The particular questions giving rise to the appeal were relatively F narrow (namely whether the judge had fallen into error in finding the order sought was disproportionate, in setting too high a threshold for assessment of the harm caused by trespass and in concluding that the local authority had failed to discharge its public sector equality duty); but the Court of Appeal was also invited and proceeded to give guidance on the broader question of how local authorities ought properly to address the issues raised by applications for such injunctions in the future. The decision is also G important because it was the first case involving an injunction in which the Gypsy and Traveller communities were represented before the High Court, and as a result of their success in securing the discharge of the injunction, it was the first case of this kind properly to be argued out at appellate level on the issues of procedural fairness and proportionality. It must also be borne in mind that the decision of the Supreme Court in *Cameron* was not cited H to the Court of Appeal; nor did the Court of Appeal consider the appropriateness as a matter of principle of granting such injunctions. Conversely, there is nothing in *Bromley* to suggest that final injunctions against unidentified newcomers cannot or should never be granted.

93 As it was, the Court of Appeal dismissed the appeal. Coulson LJ, with whom Ryder and Haddon-Cave LJJ agreed, endorsed what he described as

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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

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against suing persons unknown who were not currently in existence but would come into existence if and when they committed a threatened tort. Nonetheless, it continued, a court should be inherently cautious about granting such an injunction against unknown persons since the reach of such an injunction was necessarily difficult to assess in advance.

(10) Canada Goose

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

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

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

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

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

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

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

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

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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 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. 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 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.

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4. A new type of injunction?

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

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

110 *Venables* has been followed in a number of later cases at first instance, where there was convincing evidence that an injunction contra mundum was necessary to protect a person from serious injury or death: see *X (formerly Bell) v O'Brien* [2003] EMLR 37; *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB); *A (A Protected Party) v Persons Unknown* [2017] EMLR 11; *RXG v Ministry of Justice* [2020] QB 703; *In re Persons formerly known as Winch* [2021] EMLR 20 and [2022] ACD 22); and *D v Persons Unknown* [2021] EWHC 157 (QB). An injunction contra mundum has also been granted where there was a danger of a serious violation of another Convention right, the right to respect for private life: see *OPQ v BJM* [2011] EMLR 23. The approach adopted in these cases has generally been based on the Human Rights Act rather than on principles of wider application. They take the issue raised in the present case little further on the question of principle. The facts of the cases were extreme in imposing real compulsion on the court to do something effective. Above all, the court was driven in each case to make the order by a perception that the risk to the claimants' Convention rights placed it under a positive duty to act. There is no real parallel between the facts in those cases and the facts of a typical Traveller case. The local authority has no Convention rights to protect, and such Convention rights of the public in its locality as a newcomer injunction might protect are of an altogether lower order.

111 The next in time is the *Bloomsbury* case [2003] 1 WLR 1633, the facts and reasoning in which were summarised in paras 58–59 above. The case was analysed by Lord Sumption in *Cameron* [2019] 1 WLR 1471 by reference to the distinction which he drew at para 13, as explained earlier,

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between cases concerned with anonymous defendants who were identifiable but whose names were unknown, such as squatters occupying a property, and cases concerned with defendants, such as most hit and run drivers, who were not only anonymous but could not be identified. The distinction was of critical importance, in Lord Sumption's view, because a defendant in the first category of case could be served with the claim form or other originating process, whereas a defendant in the second category could not, and consequently could not be given such notice of the proceedings as would enable him to be heard, as justice required.

112 Lord Sumption added at para 15 that where an interim injunction was granted and could be specifically enforced against some property or by notice to third parties who would necessarily be involved in any contempt, the process of enforcing it would sometimes be enough to bring the proceedings to the defendant's attention. He cited *Bloomsbury* as an example, stating:

> "the unnamed defendants would have had to identify themselves as the persons in physical possession of copies of the book if they had sought to do the prohibited act, namely disclose it to people (such as newspapers) who had been notified of the injunction."

113 Lord Sumption categorised *Cameron* itself as a case in the second category, stating at para 16:

> One does not, however, identify an unknown person simply by referring to something that he has done in the past. 'The person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013', does not identify anyone. It does not enable one to know whether any particular person is the one referred to."

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

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

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

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D 116 We also have reservations about the theory that it is necessary, in order for service to be effective, that the defendant should be identifiable. For example, Lord Sumption cited with approval the case of *Brett Wilson LLP v Persons Unknown* [2016] 4 WLR 69, as illustrating circumstances in which alternative service was legitimate because "it is possible to locate or communicate with the defendant and to identify him as the person described in the claim form" (para 15). That was a case concerned with online defamation. The defendants were described as persons unknown, responsible for the operation of the website on which the defamatory statements were published. Alternative service was effected by sending the claim form to email addresses used by the website owners, who were providers of a proxy registration service (i e they were registered as the owners of the domain name and licensed its operation by third parties, so that those third parties could not be identified from the publicly accessible database of domain owners). Yet the identities of the defendants were just as unknown as that of the driver in *Cameron,* and remained so after service had been effected: it remained impossible to identify any individuals as the persons described in the claim form. The alternative service was acceptable not because the defendants could be identified, but because, as the judge stated (para 16), it was reasonable to infer that emails sent to the addresses in question had come to their attention.

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117 We also have difficulty in fitting the unnamed defendants in *Bloomsbury* within Lord Sumption's class of identifiable persons who in due course could be served. It is true that they would have had to identify themselves as the persons referred to if they had sought to do the prohibited act. But if they learned of the injunction and decided to obey it, they would be no more likely to be identified for service than the hit and run driver in *Cameron*. The *Bloomsbury* case also illustrates the somewhat unstable nature of Lord Sumption's distinction between anonymous and unidentifiable defendants. Since the unnamed defendants in *Bloomsbury* were unidentifiable at the time when the claim was commenced and the injunction was granted, one would have thought that the case fell into Lord

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A Sumption's second category. But the fact that the unnamed defendants would have had to identify themselves as the persons in possession of the book if (but only if) they disobeyed the injunction seems to have moved the case into the first category. This implies that it is too absolutist to say that a claimant can never sue persons unknown unless they are identifiable at the time the claim form is issued. For these reasons also, it seems to us that the
B classification of cases as falling into one or other of Lord Sumption's categories (or into a third category, as suggested by the Court of Appeal in *Canada Goose,* para 63, and in the present case, para 35) may be a distraction from the fundamental question of whether service on the defendant can in practice be effected so as to bring the proceedings to his or her notice.

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

119 More importantly, we are not comfortable with an analysis of *Bloomsbury* which treats its legitimacy as depending upon its being categorised as falling within a class of case where unnamed defendants may
E be assumed to become identifiable, and therefore capable of being served in due course, as we shall explain in more detail in relation to the supposed *Gammell* solution, notably included by Lord Sumption in the same class alongside *Bloomsbury*, at para 15 in *Cameron*.

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

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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

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A does stand as a precedent for the grant of relief otherwise than on an emergency basis against defendants who, although joined, have yet to be served.

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

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

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

The Master of the Rolls' analysis was not directed to a submission that injunctions could not or should not be granted at all against newcomers, as is now advanced on this appeal. No such submission was made. Furthermore, he was concerned only with the circumstances of a person who had both been served with and (by oral explanation) notified of the terms of the
E injunction and who had then continued to disobey it. He was not concerned with the position of a newcomer, wishing to camp on a prohibited site who, after learning of the injunction, simply decided to obey it and move on to another site. Such a person would not, on his analysis, become a defendant at all, even though constrained by the injunction as to their conduct. Service of the proceedings (as opposed to the injunction) was not raised as an issue
F in that case as the necessary basis for in personam jurisdiction, other than merely for holding the ring. Neither *Cameron* nor *Fourie v Le Roux* had been decided. The real point, unsuccessfully argued, was that the injunction should not have the effect against any particular newcomer of placing them in contempt until a personalised proportionality exercise had been undertaken. The need for a personalised proportionality exercise is also
G pursued on this appeal as a reason why newcomer injunctions should never be granted against Travellers, and we address it later in this judgment.

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

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

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

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

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

132 As it seems to us, the difficulty which has been experienced in the English cases, and to which *Gammell* has hitherto been regarded as providing

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A a solution, arises from treating newcomer injunctions as a particular type of conventional injunction inter partes, subject to the usual requirements as to service. The logic of that approach has led to the conclusion that persons affected by the injunction only become parties, and are only enjoined, in the event that they breach the injunction. An alternative approach would begin by accepting that newcomer injunctions are analogous to injunctions and other orders which operate contra mundum, as noted in para 109 above and B explained further at paras 155–159 below. Although the persons enjoined by a newcomer injunction should be described as precisely as may be possible in the circumstances, they potentially embrace the whole of humanity. Viewed in that way, if newcomer injunctions operate in the same way as the orders and injunctions to which they are analogous, then anyone who knowingly breaches the injunction is liable to be held in contempt, whether or not they C have been served with the proceedings. Anyone affected by the injunction can apply to have it varied or discharged, and can apply to be made a defendant, whether they have obeyed it or disobeyed it, as explained in para 40 above. Although not strictly necessary, those safeguards might also be reflected in provisions of the order: for example, in relation to liberty to apply. We shall return below to the question whether this alternative D 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 E *Canada Goose*, we are not persuaded by the reasoning at paras 89–93, which we summarised at para 103 above. In addition to the criticisms made by the Court of Appeal which we have summarised at para 107 above, and with which we respectfully agree, we would make the following points.

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

136 The court buttressed its adoption of the "usual principle" with the observation that it was "consistent with the fundamental principle in *Cameron* . . . that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be H 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

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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,

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A at the time when it is ordered, operates against a person who has not been served in due time with the application so as to be able to oppose it, who may have had no notice (even informal) of the intended application to court for the grant of it, and who may not at that stage even be a defendant served with the proceedings in which the injunction is sought. This is so regardless of whether the injunction is in form interim or final.

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

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

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

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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

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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

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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

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

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

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

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

> "Courts of Equity make a distinction in all cases between that which is
D matter of substance and that which is matter of form; and if it find that by insisting on the form, the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form, and thereby defeat the substance."

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

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

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

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

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

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A **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).

B

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.

C

158 It may be said, correctly, that orders of this kind are usually made so as to protect the integrity of the court's process from abuse. Nonetheless they have the effect of attaching to a species of intangible property a legal regime giving rise to a liability, if infringed, which sounds in contempt, regardless of the identity of the infringer. In conceptual terms, and shorn of the purpose of preventing abuse, they work in rem or contra mundum in much the same way as an anti-trespass injunction directed at newcomers pinned to a post on the relevant land. The only difference is that the property protected by the former is intangible, whereas in the latter it is land. In relation to any such newcomer (such as the journalist) the embargo is made without notice.

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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.

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160 Protection of the court's process from abuse, or preservation of the utility of its future orders, may fairly be said to be the bedrock of many of equity's forays into new forms of injunction. Thus freezing injunctions are designed to make more effective the enforcement of any ultimate money judgment: see *Broad Idea* [2023] AC 389 at paras 11–21. This is what Lord Leggatt JSC there called the enforcement principle. Search orders are designed to prevent dishonest defendants from destroying relevant documents in advance of the formal process of disclosure. *Norwich Pharmacal* orders are a form of advance third party disclosure designed to enable a claimant to identify and then sue the wrongdoer. Anti-suit injunctions preserve the integrity of the appropriate forum from forum shopping by parties preferring without justification to litigate elsewhere.

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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

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

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

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

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

165 We have considered but rejected summary possession orders against squatters as an informative precedent. This summary procedure (avoiding any interim order followed by final order after trial) was originally provided for by RSC Ord 113, and is now to be found in CPR Pt 55. It is commonly obtained against persons unknown, and has effect against newcomers in the sense that in executing the order the bailiff will remove not

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merely squatters present when the order was made, but also squatters who arrived on the relevant land thereafter, unless they apply to be joined as defendants to assert a right of their own to remain.

166 Tempting though the superficial similarities may be as between possession orders against squatters and injunctions against newcomers, they afford no relevant precedent for the following reasons. First, they are the creature of the common law rather than equity, being a modern form of the old action in ejectment which is at its heart an action in rem rather than in personam: see *Manchester Corpn v Connolly* [1970] Ch 420, 428–9 per Lord Diplock, *McPhail v Persons, Names Unknown* [1973] Ch 447, 457 per Lord Denning MR and more recently *Meier* [2009] 1 WLR 2780, paras 33–36 per Baroness Hale JSC. Secondly, possession orders of this kind are not truly injunctions. They authorise a court official to remove persons from land, but disobedience to the bailiff does not sound in contempt. Thirdly, the possession order works once and for all by a form of execution which puts the owner of the land back in possession, but it has no ongoing effect in prohibiting entry by newcomers wishing to camp upon it after the order has been executed. Its shortcomings in the Traveller context are one of the reasons prayed in aid by local authorities seeking injunctions against newcomers as the only practicable solution to their difficulties.

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

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

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

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

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

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

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

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

169 We have already mentioned the objection that an injunction of this type looks more like a species of local law than an in personam remedy between civil litigants. It is said that the courts have neither the skills, the capacity for consultation nor the democratic credentials for making what is in substance legislation binding everyone. In other words, the courts are acting outside their proper constitutional role and are making what are, in effect, local laws. The more appropriate response, it is argued, is for local authorities to use their powers to make byelaws or to exercise their other statutory powers to intervene.

170 We do not accept that the granting of injunctions of this kind is constitutionally improper. In so far as the local authorities are seeking to prevent the commission of civil wrongs such as trespass, they are entitled to apply to the civil courts for any relief allowed by law. In particular, they are entitled to invoke the equitable jurisdiction of the court so as to obtain an injunction against potential trespassers. For the reasons we have explained, courts have jurisdiction to make such orders against persons who are not parties to the action, i e newcomers. In so far as the local authorities are seeking to prevent breaches of public law, including planning law and the law relating to highways, they are empowered to seek injunctions by statutory provisions such as those mentioned in para 45 above. They can accordingly invoke the equitable jurisdiction of the court, which extends, as we have explained, to the granting of newcomer injunctions. The possibility of an alternative non-judicial remedy does not deprive the courts of jurisdiction.

171 Although we reject the constitutional objection, we accept that the availability of non-judicial remedies, such as the making of byelaws and the exercise of other statutory powers, may bear on questions (i) and (v) in para 167 above: that is to say, whether there is a compelling need for an injunction, and whether it is, on the facts, just and convenient to grant one. This was a matter which received only cursory examination during the hearing of this appeal. Mr Anderson KC for Wolverhampton submitted (on

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A 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 B 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 C be granted against Travellers. Rather, the question whether byelaws or other such measures or powers represent a workable alternative is one which should be addressed on a case by case basis. We say more about that in the next section of this judgment.

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

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

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

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

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

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

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

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

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A risky legal argument about whether they should have been allowed to camp there in the first place.

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

181 There are of course exceptions to this pattern of temporary camping as trespassers, as when Travellers buy a site for camping on, and are then proceeded against for breach of planning control rather than for trespass: see eg the *Gammell* case and the appeal in *Bromley London Borough Council v Maughan* heard at the same time. In such a case the potential procedural injustice of a without notice injunction might well be sufficient to require the local authority to proceed against the owners of the site on notice, in the usual way, not least because there would be known targets capable of being served with the proceedings, and any interim application made on notice. But the issue on this appeal is not whether newcomer injunctions against Travellers are always justified, but rather whether the objections are such that they never are.

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

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

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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 text-book writers and academics and then, at a late stage in the developmental process, reduced to rules and practice directions. This is as it should be. Rules and practice statements are appropriate once experience has taught judges and practitioners what are the risks of injustice that need to be taken care of by standard procedures, but their reduction to settled (and often hard to amend) standard form too early in the process of what is in essence judge-made law would be likely to inhibit rather than promote sound development. In the meantime, the courts have been actively reviewing what these procedural protections should be, as for example in the *Ineos* and *Bromley* cases (paras 86–95 above). We elaborate important aspects of the appropriate protections in the next section of this judgment.

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,

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A the relevant principles and safeguards will inevitably evolve in these and other cases in the light of experience. Nevertheless, they do have a bearing on the issues of principle we have to decide, in that we must be satisfied that the points raised by the appellants do not, individually or collectively, preclude the grant of what are in some ways final (but regularly reviewable) injunctions that prevent persons who are unknown and unidentifiable at the date of the order from trespassing on and occupying local authority land.
B We have also been invited to give guidance on these matters so far as we feel able to do so having regard to our conclusions as to the nature of newcomer injunctions and the principles applicable to their grant.

(1) Compelling justification for the remedy

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

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

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

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

191 The starting point is section 23 of the Caravan Sites and Control of
G Development Act 1960 ("CSCDA 1960") which gave local authorities the power to close common land to Gypsies and Travellers. As Sedley J observed in *R v Lincolnshire County Council, Ex p Atkinson* (1996) 8 Admin LR 529, local authorities used this power with great energy. But they made little or no corresponding use of the related powers conferred on them by section 24 of the CSCDA 1960 to provide sites where caravans
H might be brought, whether for temporary purposes or for use as permanent residences, and in that way compensate for the closure of the commons. As a result, it became increasingly difficult for Travellers and Gypsies to pursue their nomadic way of life.

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

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

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

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

(ii) General "needs" assessments

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

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

(iii) Planning policy

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

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

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A to secure permission for Gypsy and Traveller sites were refused and so the capacity of the relatively few sites authorised for occupation by these nomadic communities continued to fall well short of that needed, as Lord Bingham explained in *South Bucks District Council v Porter* [2003] 2 AC 558, at para 13.

199 The system for local development planning in England is now established by the Planning and Compulsory Purchase Act 2004 ("PCPA B 2004") and the regulations made under it. Part 2 of the PCPA 2004 deals with local development and stipulates that the LPA is to prepare a development scheme and plan; that this must set out the authority's policies; that in preparing the local development plan, the authority must have regard to national policy; that each plan must be sent to the Secretary of State for independent examination and that the purpose of this examination is, C among other things, to assess its soundness and that will itself involve an assessment whether it is consistent with national policy.

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

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

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

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

(iv) Consultation and co-operation

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

(v) Public spaces protection orders

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

(vi) Criminal Justice and Public Order Act 1994

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

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

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

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

(vii) Byelaws

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

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

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

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

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

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

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

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

(viii) A need for review

217 Various aspects of this discussion merit emphasis at this stage. Local authorities have a range of measures and powers available to them to

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deal with unlawful encampments. Some but not all involve the enactment and enforcement of byelaws. Many of the offences are punishable with fixed or limited penalties, and some are the subject of specified defences. It may be said that these form part of a comprehensive suite of measures and powers and associated penalties and safeguards which the legislature has considered appropriate to deal with the threat of unauthorised encampments by Gypsies and Travellers. We rather doubt that is so, particularly when dealing with communities of unidentified trespassers including newcomers. But these are undoubtedly matters that must be explored upon the review of these orders.

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

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

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

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

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

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

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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;

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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

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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.

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

(12) Conclusion

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

6. Outcome

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appeal dismissed.

Colin Beresford, Barrister

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

Claim no: QB-2022-000904

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

Date: 26th January 2024

Before:
MR JUSTICE RITCHIE

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BETWEEN

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

Claimants

-and-

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

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

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

(3) MRS ALICE BRENCHER AND 16 OTHERS

Defendants

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

Hearing date: 17th January 2024

- -

Approved Judgment

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

Mr Justice Ritchie:

The Parties

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

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

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

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

The 8 Sites

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

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

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

Bundles

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

Summary

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

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

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

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

The Issues

10. The issues before me were as follows:

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

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

10.3 What should the terms of any such injunction be?

The ancillary applications

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

Pleadings and chronology of the action

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

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

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

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

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

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

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

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

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

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

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

The lay witness evidence

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

Service evidence

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

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

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

Substantive evidence

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

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

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

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

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

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

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

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

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

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

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

Tuesday 5th April 2022

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

Thursday 7th April 2022

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

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

Saturday 9th April 2022

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

Sunday 10th April 2022

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

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

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

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

Friday 15th April 2022

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

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

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

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

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

Tuesday 26th April 2022

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

Wednesday 27th April 2022

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

Thursday 28th April 2022

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

Wednesday 4th May 2022

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

Thursday 12th May 2022

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

Monday 22nd August 2022

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

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

Tuesday 23rd August 2022

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

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

Wednesday 14th September 2022

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Previous decision on the relevant facts

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

Assessment of lay witnesses

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

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

The Law

Summary Judgment

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

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

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

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

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

Final Injunctions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) There is procedural protection for the rights (including Convention rights) of the affected newcomers, sufficient to overcome the strong prima facie objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it (see paras 226—231 below); and the most generous provision for liberty (ie permission) to apply to have the injunction

varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.
(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.
(iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.
(v) It is, on the particular facts, just and convenient that such an injunction be granted. …"
…
"5. The process of application for, grant and monitoring of newcomer injunctions and protection for newcomers' rights
187. We turn now to consider the practical application of the principles affecting an application for a newcomer injunction against Gypsies and Travellers, and the safeguards that should accompany the making of such an order. As we have mentioned, these are matters to which judges hearing such applications have given a good deal of attention, as has the Court of Appeal in considering appeals against the orders they have made. Further, the relevant principles and safeguards will inevitably evolve in these and other cases in the light of experience. Nevertheless, they do have a bearing on the issues of principle we have to decide, in that we must be satisfied that the points raised by the appellants do not, individually or collectively, preclude the grant of what are in some ways final (but regularly reviewable) injunctions that prevent persons who are unknown and unidentifiable at the date of the order from trespassing on and occupying local authority land. We have also been invited to give guidance on these matters so far as we feel able to do so having regard to our conclusions as to the nature of newcomer injunctions and the principles applicable to their grant.
Compelling justification for the remedy
188. Any applicant for the grant of an injunction against newcomers in a Gypsy and Traveller case must satisfy the court by detailed evidence that there is a compelling justification for the order sought. This is an overarching principle that must guide the court at all stages of its consideration (see para 167(i))."
…
"(viii) *A need for review*
(2) Evidence of threat of abusive trespass or planning breach
218. We now turn to more general matters and safeguards. As we have foreshadowed, any local authority applying for an injunction against

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

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

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

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

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

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

(4) The prohibited acts

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

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

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

(5) *Geographical and temporal limits*

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

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

(6) Advertising the application in advance

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

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

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

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

(7) *Effective notice of the order*

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

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

(11) *Protest cases*

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

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

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

58. **(A) Substantive Requirements**

Cause of action

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

Full and frank disclosure by the Claimant

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

Sufficient evidence to prove the claim

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

No realistic defence

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

Balance of convenience – compelling justification

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

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

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

Damages not an adequate remedy

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

(B) Procedural Requirements

Identifying PUs

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

The terms of injunction

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

The prohibitions must match the claim

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

Geographic boundaries

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

Temporal limits - duration

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

Service

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

The right to set aside or vary

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

Review

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

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

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

Applying the law to the facts

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

(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: [2024] EWHC 140 (KB)

Case No: KB-2023-004331

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 January 2024

Before :
Dexter Dias KC
(sitting as a Deputy High Court Judge)

- -

Between :

Buckinghamshire Council	**Claimant**
- and -	
(1) Jimmy Barrett	
(3) Persons Unknown (any person carrying out and/or encouraging and/or facilitating development on, or with an intent to undertake development on or to occupy, the land to the west of the Crowne Plaza Hotel, London Road, Beaconsfield, Buckinghamshire HP9 2XE (land registry title number BM414494) as shown edged in black on the map attached to the order without lawful planning consent)	**Defendants**

- -
- -

Mark O'Brien O'Reilly (instructed by **Sharpe Pritchard**) for the **Claimant**
Michael Rhimes (instructed by **Aston Bond**) for the **First Defendant**

Hearing dates: 4 December 2023
Decision circulated to parties 19 December 2023

- -

JUDGMENT

Dexter Dias KC :

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court following electronic communication to the parties on 19 December 2023 of the court's decisions in respect of applications for various forms of injunctive relief.

2. To assist parties and the public follow the court's line of reasoning, the text is divided into 12 sections, as set out in the table below.

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B123: hearing bundle page number;

CS/DS §45 claimant/defendant skeleton paragraph number.

§I. INTRODUCTION

3. This is the final hearing in a claim for a series of injunctions, both mandatory and prohibitory, that was issued on 25 May 2023.

4. The claimant is Buckinghamshire Council, the relevant Local Planning Authority ("LPA") for the site in question. The claimant is represented by Mr O'Brien O'Reilly of counsel.

5. The first defendant is Jimmy Barrett. Mr Barrett is represented by Mr Rhimes of counsel. The court is grateful to both counsel for their focused and insightful written and oral submissions.

6. The second defendant was previously Mr Thomas Barrett, a person unrelated to Jimmy Barrett, a director of the former owner of the site in question ("the Land"). He will be known by his full name and "Mr Barrett" reserved for the first defendant Jimmy Barrett.

7. The claimant seeks prohibitory orders under s.187B of the Town and Country Planning Act 1990 ("the Act") to restrain breaches of planning control and a mandatory order to undo past breaches following what it claims is a series of unauthorised developments. The site at the centre of the claim lies to the west of the Crowne Plaza Hotel, London Road, Beaconsfield and near to the busy Oxford Road. The Land is located close to a gypsy and traveller site, Wapseys Wood, which has been unlawfully extended. The Land lies within the Green Belt and near to an area of ancient woodland.

8. I should also add that in addition to seeking mandatory and prohibitory orders against Mr Barrett, the claimant seeks a prohibitory order against "Persons Unknown" or "newcomers".

9. Therefore, the applications before the court are as follows:

    1. Mandatory order against Jimmy Barrett;

    2. Prohibitory order against Jimmy Barrett;

    3. Prohibitory order against Persons Unknown.

10. The final injunctions sought against Jimmy Barrett are opposed by him. On his behalf, and as amicus to the court, Mr Rhimes further submits that the legal basis for the exceptional remedy of an injunction against Persons Unknown, as set down by the Supreme Court very recently in the *Wolverhampton* case, is not established (*Wolverhampton BC v London Gypsies and Travellers* [2023] UKSC 47). As Mr Rhimes points out, the Supreme Court's judgment was handed down the day before the skeleton arguments were due to be filed and served. The court is particularly grateful to both counsel for making such informed submissions on this important authority at short notice.

§II. BACKGROUND FACTS

11. Ms Stephanie Penney is Planning Enforcement Team Leader in the Enforcement Department at Buckinghamshire Council, and is based in High Wycombe. She is very experienced and has been employed in the planning department for seven years, and has worked in the planning enforcement field for over 20 years, previously with other authorities.

12. On 17 March 2023, at 9.59am, Ms Penney received an email informing her that a complaint had been received that there was a digger on the Land and that hardcore was being laid there. She attended the site with a colleague Mr Johal, a Senior Enforcement Officer, and took photographs that have been exhibited.

13. Upon arriving at an access to the Land, they were approached by a male who said that he was clearing and cleaning the Land. A digger was visibly clearing the area. Whilst at the Land, a lorry with a yellow skip laden with bricks/hardcore stopped on the main road. It was followed by an A1 Grab Hire lorry also laden with hardcore. It appeared that both vehicles intended to enter the Land, but the vehicles drove off. Upon entering the Land, Ms Penney could see that hardstanding had been laid, a track (approximately 4 meters wide) had been formed along the southern boundary and a bund (in excess of 1.5 meters in height) formed on the northern boundary. Hardcore was also visible on the ground. The digger on site had its engine running. The same man who had approached Ms Penney and Mr Johal had been operating the vehicle. He was asked who had instructed him, and replied that it was all "word of mouth". He said that he did not know who owned the Land. Upon being advised to turn off the digger and leave the Land, he told Ms Penney and Mr Johal that the digger was leaving the Land that day.

14. Following that visit to the Land, the claimant decided to serve a Temporary Stop Notice ("TSN"). This was because there had been an actual breach of planning control at the Land: operational development without planning permission, and because the claimant was concerned that "Having regard to the extent of the works undertaken, it is clear that there is capacity for further harmful unauthorised development on the Land." As the Land is within the Green Belt, where development is strictly controlled, the claimant considered that a TSN was expedient. The TSN was served on the afternoon of 17 March 2023. Whilst serving the TSN on the Land, Ms Penney could see that the works had ceased.

15. It is important to observe that the TSN was complied with and was not breached. This was confirmed by visits to the Land on 20, 21 and 23 March 2023. The TSN expired on 14 April 2023.

16. Ms Penney spoke with Mr Thomas Barrett (to repeat: unrelated to Jimmy Barrett) on 24 March 2023, a director of the then registered owner, who said that he had not been to the Land for over two months and that he was unaware of the recent developments on the Land. He told Ms Penney that he had blocked two of the three access points to the Land with concrete blocks but that these blocks had subsequently been removed. He had also served a Horse Removal Abatement Notice on the Land. Mr Thomas Barrett told Ms Penney that he had spoken by telephone with Jimmy Barrett who had asked for the blocks to be removed as he required access to the Land in connection with horses. During that phone conversation, Mr Thomas Barrett could hear someone in the background who was abusive and threatening. The First Defendant had unsuccessfully tried to purchase the Land at the same time as Mr Thomas Barrett. Jimmy Barrett was known to the claimant as someone associated with the nearby Waspeys Wood site. A further visit to the Land took place on 27 March 2023, where it was clear that two horse carriages and additional items had been brought onto the Land since the claimant's last visit.

17. The Council, at that point, decided against seeking injunctive relief from this court. No further developments took place at the Land during April 2023 and Mr Thomas Barrett told the claimant that he had installed more concrete blocks

at two access points to prevent unauthorised access and that he had again displayed notices at the Land relating to the abandoned horses on the Land.

18. On 22 May 2023, Thomas Barrett telephoned Ms Penney at approximately 11.15am to tell her that the concrete blocks had been removed and that a static caravan had now been placed on the Land and was being occupied. There were also three horses on the Land and makeshift stables had been placed on the site. The concrete blocks had been placed to the rear of the hardstanding on the Land. Thomas Barrett told Ms Penney that he intended to attempt to secure the Land again. He had also secured the gates with chains and locks. Possession proceedings were instigated against Jimmy Barrett and a hearing was listed for Slough County Court on 1 June 2023.

19. Adam Pegley, the claimant's Senior Planning Enforcement Officer, visited the Land on 22 May 2023. Photos from that visit are available at Exhibit SP12. Those photos show "the static caravan in situ and the makeshift stables. It is also evident that additional hardstanding has been laid underneath the static" and that services, such as electricity, "have been connected and cables can be seen going into the caravan".

20. The claimant made an urgent application, without notice, for an interim injunction on 24 May 2023. That application was heard by Mr Justice Saini on 25 May 2023. The judge granted an interim injunction. The claimant considered that there had been a material change of use (from agricultural use to residential use) and operational development on the Land without planning permission. This was in breach of section 55(1) of the Act. The Claimant received communication on 1 June 2023 from a solicitor acting on behalf of Thomas Barrett informing the claimant that the possession hearing against Jimmy Barrett "had been adjourned" and that Jimmy Barrett was alleging that he had an adverse possession claim over the Land.

21. The claimant received correspondence from a Planning Agent acting for Jimmy Barrett on 5 June 2023. This was Joseph Jones. Mr Jones stated, inter alia, that "The static caravan could be removed, or left, there is no intention for there to be residential occupation of the static caravan" and that "there is already a static caravan on the land, and the idea was to replace the damaged caravan (which was used for keeping feed, other horse related stuff, and as a shelter in bad weather) with another caravan". Mr Jones informed the claimant that "We are looking to submit an application for stables, in the area where the disputed hardstanding lies, which also requires an element of hardstanding" and that "Persons unknown, have been damaging the fencing with the highway and the fencing with the landfill site".

22. The return date hearing took place on 9 June 2023 at which Mr Anthony Metzer (sitting as a Deputy Judge of the High Court) continued the order of Saini J. A Response to the Claim was provided by Mr Jones on 23 June 2023.

23. Jimmy Barrett submitted a planning application on 30 June 2023 seeking permission to, inter alia, "erect a stable, lay or retain hardstanding for parking and turning, exchange the existing static caravan, retain bunding along the hedge row with Oxford Road, lay additional bunding along the boundary with

Oxford Road, install water and electricity on site, and improve the highway access. Also we would like confirmation that temporary stables (if required) on wheels or skids, will not be regarded as a breach of planning control". The Application Ref was PL/23/2140/FA.

24. The application was validated on 17 July 2023. Planning permission was granted by the claimant for the "Erection of a stable, lay or retain hardstanding for parking and turning, retain bunding along the hedge row with Oxford Road, install water, electricity and slurry tank on site, and improve the highway access" on 19 October 2023 ("the Planning Permission"). A number of conditions were imposed on the Planning Permission.

25. Condition 1 states:

> "The existing equestrian use shall cease within 60 days of the date of failure to meet the requirement below: i) Within six months of the date of this decision, all existing unlawful structures within the red line area of the application site, which include a mobile home and 2 x makeshift stables, which do not form part of the development hereby approved, shall be removed from the site in their entirety. Reason: To protect and preserve the openness of the Green Belt and its purposes".

26. This condition had been agreed by Mr Jones on behalf of Jimmy Barrett during the determination of the application. The Officer's Report observed, inter alia, that "It is noted that the site is already being used for the stabling of horses, with two unlawful makeshift stable structures being present on the site, as well as a mobile home".

27. A hearing of the substantive claim was listed before Mr David Pittaway KC (sitting as a Deputy Judge of the High Court) on 27 July 2023, but was adjourned to this hearing, in doing so continuing the order of Mr Metzer KC.

§III. EVIDENCE

28. The court received an electronic bundle extending to 523 pages; a bundle of authorities running to 328 pages and which included 40 items; skeleton arguments from counsel; oral evidence from Ms Penney on behalf of the claimant and the first defendant Jimmy Barrett. I should add that Ms Penney provided four witness statements, dated 24 May, 7 June, 6 July and 27 November 2023. Jimmy Barrett provided a witness statement dated 17 November 2023. It should be noted that Mr Barrett is not functionally literate. Following oral testimony, the court received oral submissions from counsel.

§IV. LAW

29. The applicable legal principles in a case of this nature are settled and uncontroversial in their main outline.

30. Section 37(1) of the Senior Courts Act 1981 provides that:

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

31. Section 187B of the Act provides that:

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

32. The leading authority on s.187B is the decision of the House of Lords in *South Buckinghamshire DC v Porter (No 2)* [2003] 2 AC 558 ("*South Buckinghamshire*" or "*Porter*"). I was referred for different reasons by both parties to the decision in this court by Holgate J in *Ipswich Borough Council v Fairview Hotels (Ipswich) Ltd* [2022] EWHC 2868 (KB) ("*Ipswich*"). In *Ipswich* at [93], the court set down a series of principles derived from *South Buckinghamshire* about the grant of permanent injunctions:

> "(i) The need to enforce planning control in the general interest is a relevant consideration … [that] the degree of flagrancy of the breach of the planning may be critical;
>
> (ii) …there may be urgency in a situation sufficient to justify the avoidance of an anticipated breach of planning control;
>
> (iii) An anticipatory interim injunction may sometimes be preferable to a delayed permanent injunction …
>
> (iv) [and that] … the court should come to a broad view as to the degree of environmental damage resulting from the breach and the urgency or otherwise of bringing it to an end;
>
> (v) The achievement of the legitimate aim of preserving the environment does not always outweigh the countervailing rights (or factors). Injunctive relief is unlikely to be granted unless it is a 'commensurate' remedy in the circumstances of the case;
>
> (vi) It is the court's task to strike the balance between competing interests, weighing one against the other."

33. In *London Borough of Barking & Dagenham v Persons Unknown & Ors* [2022] EWCA Civ 13 ("*Barking & Dagenham*"), the Court of Appeal reviewed the case law on the availability of injunctions against persons unknown. At [117]

the court said that where the application is for an injunction under s.187B of the Act:

> "the applicant must describe any persons unknown in the claim form by reference to photographs, things belonging to them or any other evidence, and that description must be sufficiently clear to enable persons unknown to be served with the proceedings, whilst acknowledging that the court retains the power in appropriate cases to dispense with service or to permit service by an alternative method or at an alternative place. These safeguards and those referred to with approval earlier in this judgment are as much applicable to an injunction sought in an unauthorised encampment cases under section 187B as they are to one sought in such a case to restrain apprehended trespass or nuisance".

34. The Supreme Court dismissed an appeal against that judgment on 29 November 2023 (*Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47). The Supreme Court held at [170]:

> "In so far as the local authorities are seeking to prevent breaches of public law, including planning law…they are empowered to seek injunctions by statutory provisions…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".

35. And further at [218]:

> "that 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…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".

36. Finally at [238], the court said that when considering whether to grant an injunction against Persons Unknown "in the context of…breach of planning control by Travellers" will likely require the applicant to "demonstrate a compelling need for the…enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant".

§V. ISSUES

37. The six prime issues for the court to decide were identified as follows:

1. Are there breaches of planning control?
2. If so, are they flagrant?
3. Is Jimmy Barrett responsible for any breaches of planning control?

4. Should a mandatory order be granted against Jimmy Barrett?

5. Should a prohibitory order be granted against Jimmy Barrett?

6. Should a prohibitory order be granted against Persons Unknown?

§VI.

Issue 1: Breaches of planning control

38. It is not disputed between the parties that all the operational development on the Land, including the bund, hardstanding and makeshift stables constitute breaches of planning control.

39. The parties also agree that the caravan being placed on the site, as opposed to the laying of its hardstanding, does not amount to a breach of planning control. It would require the caravan being put to residential use for a breach of control to occur. There is no satisfactory evidence of that. The electric cable seen in some photographs coming out of the window is useless without an electric generator. There is no reliable evidence of such equipment.

§VII.

Issue 2: Flagrancy

40. Mr Rhimes queries how the makeshift stables could amount to flagrant breach when the officer who wrote the report for Planning Permission found that there is limited visual impact due to screening, the development being located in a relatively confined area with tall tree and hedgerows. However, there is no single and invariable test that yields the answer whether an injunction should be granted. I judge that the proper context is to examine the course of conduct in breach of planning control as a whole. As said in *Porter*, the court must come to a view of the overall planning harm. Seriousness must take into account the nature of the breach and what lies behind it, their true context.

41. The March items were installed in breach of planning control. There was then a TSN. During the currency of the TSN there was no further breach. However, once the operational period was over, there was further breach by way of the hardstanding for the caravan. This has the imprint of a carefully timed and strategic breach. It was, I judge, flagrant.

§VIII.

Issue 3: Responsibility for breaches of planning control

42. A vital issue between parties is whether Mr Barrett is in any knowing or deliberate way responsible for any breaches of planning control. The witness statement evidence focused on this question as did the oral testimony in court and the submissions of counsel. It was a decisive question. The positions of the parties remain irreconcilable. The claimant submits that although there is no 'direct' evidence of his active involvement in breaches of planning control, there is a compelling inferential case against him fixing him with responsibility. The claimant's case is that it is clear on the evidence that Jimmy Barrett knew about the installations on the site and associated developments and wanted them to take place as they benefitted him.

43. Jimmy Barrett resists this argument by pointing out that there is a dearth of direct evidence that he was responsible. When cross-examined, Ms Penney on behalf of the claimant accepted that there was no direct evidence that he was involved. In this dispute, there are factors pointing in both directions. It is the task of the court to evaluate them and conclude, to the extent that it is possible on the available evidence, where the truth lies.

44. The factors against responsibility include:

- No direct evidence that Jimmy Barrett responsible;
- Ms Penney accepted in cross-examination that there was no evidence that he was responsible;
- Mr Barrett provided a statement with a statement of truth and oral evidence on oath that the breaches of control had nothing to do with him.

45. The factors in favour of responsibility include:

- Each of the breaches of control – the makeshift stables, the bund, the initial hardstanding, the further hardstanding for the caravan – were of benefit to Jimmy Barrett and of use to him;
- Although not a breach of planning control itself, the caravan placed on site went with the additional hardstanding and was of benefit to Jimmy Barrett and his horses;
- Mr Barrett's planning agent Joseph Jones did not state in his statements to the claimant on behalf of Jimmy Barrett that his client was not responsible for the breaches of control;
- Comments made during Ms Penney's site visit raise an inference of Jimmy Barrett's involvement.

46. For the purposes of this issue, I take "responsible" to mean the person who caused something to happen (Oxford English Dictionary definition). It is not necessary to be the sole cause, but must be sufficiently causally connected such that the acts or events can be meaningfully attributed to that person in a way that is beyond the negligible, marginal or trivial.

47. The starting-point must be, and as Ms Penney fairly conceded in cross-examination, that there is no direct evidence that Jimmy Barrett is responsible for any of the breaches of control. That is a powerful point in his favour. Ms Penney stated that notwithstanding the lack of direct evidence, the claimant was concerned, as Ms Penney put it, about "the ambiguity of the evidence" pointing towards Mr Barrett's responsibility for the breaches. However, it is not for Ms Penney to pronounce definitively on the overall effect of the evidence. That is a matter for the court. The court's function is to stand back and view the totality of the evidence and make any inferences that flow rationally and reasonably from all the evidence. In assessing the evidence, it is also in Mr Barrett's favour that in both his filed statement and his sworn oral testimony, he stated that he had no involvement in or prior knowledge of the breaches.

48. When Mr Barrett was asked whether he had asked anyone about who was responsible for the installation in May of the caravan and additional hardstanding under it, he said that he asked no one. This is a puzzling answer. This is in keeping with his response about the March breaches. About those he said that he had heard rumours so he did not feel it necessary to ask who was responsible. None of this stands up to scrutiny.

49. He wished to purchase the Land. He had used it for his horses since about 2005. He had used it so much that he made an adverse possession claim to the Land, with a hearing at the Slough County Court on 1 June 2023 that had to be adjourned for that reason. This demonstrates the strength of Mr Barrett's interest in the Land. He says that he agreed a sale with the owner of the land Thomas Barrett on 5 April, and purchased it on 19 June, with the title absolute being registered to him on 11 July. Thus, it is very surprising that he did not make any enquiries at all about who was so significantly interfering with the property he was on the verge of buying. When this point was put to him, he said that he was busy with other things such travelling and attending his sons' boxing careers. That is an unconvincing explanation. He was very determined to purchase the site at some significant cost to him, £292,500. There was very significant development of it in breach of planning control. It is obvious that if he knew nothing about who was responsible for these breaches, he would have tried to find out using his contacts in the local community. A further hardstanding is laid with a static caravan on top of it and he asks nothing of anyone. This points towards his not having to ask as he already knew who was responsible.

50. On its own I would not have found such curious omission as determinative. However, there are other matters to consider. Joseph Jones is Jimmy Barrett's planning agent. He is also Mr Barrett's good friend and someone he has known for 20 years. Mr Jones represented Jimmy Barrett throughout these proceedings and in the exchanges with the Council. Joseph Jones refers to Jimmy Barrett as "my client" (B204). The significance of the closeness of the relationship between Mr Jones and Mr Barrett will shortly become apparent.

51. It is introduced by noting that the nature of the breaches of control is also highly relevant. Jimmy Barrett, I am perfectly able to accept, wishes to use the land as he historically has for his horses; they are his great interest, and as he said poignantly in oral evidence, are an integral part of his culture and identity. All

the breaches complained of by the claimant authority are beneficial and useful to Mr Barrett for the tending and maintenance of his horses, as he accepted in evidence. The makeshift stables could be used for the animals. The bund was of use to protect the horses from escaping the site and straying onto the busy Oxford Road. Mr Barrett spoke graphically of how in the past horses had been killed by leaving the land and entering the carriageway. Therefore, the bund was a great benefit to protect his horses. While it is true, as is pointed out by Mr Rhimes, that the bund could protect other horses, they certainly did protect Mr Barrett's, and he had used this site for his horses for two decades. The second area of hardstanding laid in May was of use for the installation of the caravan. The caravan could be used, as was suggested by Mr Jones in correspondence, for the storage of hay and feed. In evidence, Mr Barrett added that the caravan could also be used to store tackle for the horses. Thus, all the unauthorised developments, and the caravan, had direct utility for Jimmy Barrett.

52. On 5 June, Joseph Jones wrote an email on behalf of "Jimmy" and Mr Jones also wrote a statement dated 23 June. When the conditions for the planning permission were being agreed with Richard Regan, the Principal Planning Officer, it was Mr Jones who agreed the conditions on behalf of Jimmy Barrett (B496). In evidence, Mr Barrett stated that Joseph Jones would read out the statements prepared on his behalf over the telephone and he would reply, "That sounds right, Joseph." Plainly, Mr Jones was not acting in his own personal interests, but on behalf of his "client" Jimmy Barrett. The email of 5 June 2023 written by Mr Jones on behalf of his client to the claimant's solicitor must now be considered (B190-91). Mr Jones wrote in his email:

> "The static caravan could be removed, or left, there is no intention for there to be residential occupation of the static caravan. There is already a static caravan on the land, and the idea was to replace the damaged caravan (which was used for keeping feed, other horse related stuff, and as a shelter in bad weather) with another caravan. As that static caravan was not residential it did not require planning consent."

53. This was an email written a little over two weeks after the installation of the caravan. It is revealing that Mr Jones writes that "the idea was to replace the damaged caravan". This indicates the clear purpose of the installation. It suggests that this was plainly something of benefit to Jimmy Barrett and that he intended to better tend to his horses since the previous static was in a state of great disrepair. As Mr Jones put it in his statement:

> "Images of the existing a caravan can be seen on Google Earth from 2011 onwards, and Mr Barrett used to store feed in that caravan until it fell into severe disrepair."

54. This shows why the new caravan was so necessary for Jimmy Barrett. The previous arrangement would no longer do. The replacement caravan would fill the void. In the 5 June email, Mr Jones wrote to William Rose, the claimant's solicitor (B190) that "persons unknown" had been damaging the fencing. But he does not say that persons unknown had installed the caravan or laid the hardstanding. While I accept Mr Rhimes's point that Mr Jones has no planning

qualifications and his documents were not statements of case, here was the natural and obvious opportunity to lay out Jimmy Barrett's position about what the truth was. It does not take a lawyer or a planning expert to do that. This is about the facts. If Mr Barrett's case at the time was that he was not responsible for any of the breaches of control, here was the time to set that out. Instead, having spelled out how the caravan would be of assistance to his client in tending to his horses, Mr Jones states:

> "We would like to agree an undertaking to calm the situation down, and save on the costs for all concerned."

55. On 22 June 2023 around midday, there was a site meeting between Ms Penney and her colleague Mr Johal for the authority on one side, and Mr Jones and Jimmy Barrett on the other. Ms Penney's statement written on 6 July about the meeting (B217) stated:

> "19. The cable was no longer going into the caravan. (shown in photo 3 of SP34). Joseph Jones advised there was no purpose for the cabling and it arrived on site with the cabling going through the window. **The purpose of the static** was to replace an existing static. Mr Joseph Jones advised that the static is not being used for any purpose.
>
> 20. I was then shown the previous static (shown in photo 5 of SP34). However, this static was dismantled, abandoned, not fit for purpose and bared no resemblance to a static. The old static was used for storing feed and hay. I was told that this ceased to be used, for storage purposes, just as COVID started. It was at this point the makeshift stables were used."

(emphasis provided)

56. Thus the (approximately) contemporaneous statement of Ms Penney echoes the written account of Mr Jones. This is why Ms Penney concluded that although there was no direct admission that Jimmy Barrett was responsible for the installation, the "implication" of the conversation was that he was. Certainly at no point was it denied. If Ms Penney is being told that "the purpose was to replace an existing static", the implication is clear: this previous static that had been used by Mr Barrett was no longer being used due its disrepair and the new one could replace it. Here was historic use linked with intention producing a result to the advantage of Mr Barrett.

57. When one looks at the scale of the bund in the photographs exhibited by Ms Penney, it is striking how significant an act of development this was (B75-77).

The bund development lies to the left, bordering the main road.

(Photographs reproduced with permission.)

58. Earth and soil had been packed into a sloping rampart along a significant length of the site bordering the Oxford Road. This is an act of very substantial development. When Ms Penney visited the site on 17 March, there was an industrial digger or earth mover on site. There were other vehicles arriving. Here undoubtedly was a highly planned and coordinated project. It was of direct and clear benefit to Jimmy Barrett and his horses. Given his extensive use of the Land, his wish to pursue a legal claim for adverse possession of it, his

intention to purchase it and his ultimate success in buying it from Thomas Barrett, there is a strong and reasonable inference pointing to his responsibility in the sense I have defined for this significant activity. The suggestion that some other unknown and unconnected person was responsible and did all this for a reason that no one has sensibly explained lacks credibility. It does not mean that Mr Barrett was the only person involved or responsible. It does not pinpoint precisely what his involvement was in the arrangements. But the court has no doubt – and is certainly satisfied to the civil standard - that he was the prime beneficiary of this substantial work as the person with the expressed and evidenced profound interest in acquiring and using the site. Indeed, in the application for retrospective permission, Jimmy Barrett sought permission to retain the stables and hardstanding, a further demonstration of their utility to him. Ultimately, the decision was that the stables would have to be removed and replaced to those more in keeping with Green Belt policy and visual aesthetics, but he wanted to keep them.

59. My conclusion is that the factors pointing towards Jimmy Barrett being responsible (in the sense I have defined above) for the breaches of control significantly outweigh those against. I am quite satisfied that Mr Barrett was responsible for breaches of control. He did not have to be in the United Kingdom to have arranged or been involved in the significant operation in March. It was of great benefit to him and his horses. The clear implication that Ms Penney took from the June site meeting was the correct one: that the point of the caravan's installation was so Jimmy Barrett could use it as a replacement site for storing feed and hay (and tackle) given the decrepitude of the previous static he had been using. The sense Ms Penney took from that meeting is in harmony with the communications made by Mr Jones on his client Jimmy Barrett's behalf. It reflects the truth.

60. It is not for Ms Penney to definitively state what the totality of the evidence reveals. That is the task of the court. Mr Rhimes submits that the "farthest anyone goes is that his responsibility is implied". However, implication can be powerful. The lack of direct evidence is countered here and overborne by the strong weight of circumstantial evidence that enables the clear and reasonable inference to be drawn that Jimmy Barrett was responsible for these breaches of control that materially, significantly and intentionally benefitted him and his horses on the Land he was intent on purchasing and succeeded in purchasing. I reject the submission made on his behalf that there is no evidence that he is "a truculent owner" who would "flout the law". The court finds that Mr Barrett has been responsible for flagrant breaches of planning control.

61. This finding has significance for the other issues the court must now decide.

§IX.

Issue 4: Mandatory order against Jimmy Barrett

62. I next consider whether there should be a mandatory order against Mr Barrett requiring him to remove the static caravan, the makeshift stables and any

associated paraphernalia. Jimmy Barrett does not object to removing these items. However, he resists being coercively compelled to remove them under threat of breach of injunction and committal proceedings. It is submitted that this is unnecessary, unjust and disproportionate given his willingness to remove these items from the Land that is now his. Further, counsel submits on his behalf that Mr Barrett is incentivised as a condition of the grant of retrospective planning permission is that removal is effected.

63. In considering the rival arguments, I start from the previous finding of the court: Jimmy Barrett was responsible for the breaches of control. He must make them good. The difficulty with the incentivisation argument is that a breach of the condition has a very specific character. The breach would not be the failure to remove the "unlawful structures". The breach would be any equestrian use after 60 days from the deadline for removal. What has been granted is conditional permission. A breach of the condition notice cannot require removal. The adverse consequence would be the loss of equestrian use after a further 60 days following passing of the six-month deadline. There could also be a financial penalty up to Level 4 of the existing scale, but not removal of the structures.

64. Given that breach of the condition attached to the retrospective permission cannot require removal, I accept the claimant's submission that other enforcement powers are necessary. Further, I take judicial notice, there being no dispute between parties about this point, that an enforcement notice can take a significant amount of time to bring a breach to an end. Consequently, I judge that something more is required: a mandatory order for removal, backed by the attendant sanctions for breach.

65. As to the question of harm, the justification of the condition was to protect and preserve the openness of the Green Belt. The makeshift stables run contrary to the visual requirements operating in the Green Belt and are inconsistent with its protected character. I judge that an additional factor in favour of grant is the public interest in maintaining the integrity of the planning control system and public confidence in it by enforcing planning control and requiring the remedying of breaches.

66. I must carefully consider any hardship to this defendant. Mr Barrett has expressed his willingness to remove all the structures. He states that he fully intends to achieve precisely what the mandatory order would mandate him to do. By removing the structures, Jimmy Barrett will not lose his accommodation, so an injunction does not adversely affect any right to occupy, and is not an interference with such rights under Article 8 of the European Convention on Human Rights. Further, as he testified, he has use of a dog transporter to store feed and hay for his horses and he was not using the caravan in any event.

67. Mr Rhimes submits that as a preliminary question the court should ask whether "there is a real risk that the first defendant will not do what he has voluntarily agreed to do". Mr Rhimes asks what is "the risk of non-compliance?" However, I have found that Mr Barrett has a history of non-compliance with planning control. He has been careful and strategic about it. It is clear on the evidence that he has "played the system", as Lord Bingham phrased it in *Porter* at [29]. After Jimmy Barrett's initial March breaches of control, he was careful to do

nothing during the TSN's operational period. But once it expired, he again breached control by having further hardstanding laid so he could install the caravan for the feed and other uses in service of his horses. With this track record of non-compliance, I judge it necessary to compel him to remove the structures to protect and preserve the openness of the Green Belt and its purposes. I note again that bringing the caravan onto the site was not per se a breach, but there was an associated breach by the laying of the hardstanding.

68. The order sought is for removal of the offending structures by the deadline for the condition of the retrospective permission. That seems to me to be a proportionate order, allowing ample (if not generous) time for their removal. As was said in *Porter*, where "existing remedies have proved, or are thought likely to be, inadequate", an injunction serves "above all to permit abuses to be curbed and urgent solutions provided where these are called for" [30].

69. A mandatory order must be, as Holgate J put it in *Great Yarmouth*, "commensurate" with the harm (*Great Yarmouth Borough Council v Al-Abdin* [2022] EWHC 3476 KB. I find that a mandatory order against Mr Barrett would be commensurate. In reaching this conclusion, I take into account principles of equality and note that the council has considered its Public Sector Equality Duty. Judging the matter as at the date of the hearing, I conclude that grant of a mandatory order is just and convenient, and proportionate to the identified harm, especially given the degree and flagrancy of the evidenced breaches for which Mr Barrett is responsible. I am not satisfied that lesser enforcement measures are likely to be effective. As Ms Penney correctly put it, an injunction is "a stronger mechanism than a breach of a condition notice." Therefore, examining all these factors, it is just for the court's discretion to be exercised in favour of grant.

§X.

Issue 5: Prohibitory order against Jimmy Barrett

70. A Prohibitory order looks forward. The court must judge whether, given its findings about Mr Barrett's responsibility for flagrant breaches of planning control, such future prohibition is justified. I approach this question by recognising that a prohibitory order is a significant interference with the liberty of the individual. It is no answer to say that if someone does not intend to break the law or planning control, then there is nothing to fear. The very existence of the grant of a prohibitory order, let alone the consequences of its breach, is a very serious matter. It is, as Mr Rhimes accurately submits, a "draconian regime".

71. Against this, the court finds that due to the degree of the breaches that Mr Barrett has been responsible for and their flagrancy, the Land must be protected from further and future unauthorised development by him. It must be noted that retrospective planning permission has been granted for the hardstanding, the bund and the new stables. But future unauthorised development of the site would be extremely harmful to the Green Belt, including to its "openness" and its "purposes". I am not satisfied that lesser enforcement measures would be

effective in restraining future breaches of planning control by Mr Barrett given his history of involvement in serious and significant breaches, made with significant planning and preparation. The Land must be properly and effectively protected against landscape and environmental harm. The deterrent of a prohibitory order is necessary. In my judgment, nothing less will do. Once more, the court's discretion must be exercised in favour of grant to prevent serious harm and from future flagrant breach. As Lord Bingham said in *Porter*, where there is evidence, as here of the wilful playing of the system, that "will point strongly towards the granting of an injunction" [29].

§XI.

Issue 6: Prohibitory order against Persons Unknown

72. Mr Rhimes presented the defendant's position with some vividness when he submitted that it would be "no skin off Mr Barrett's nose" if the court were to grant an injunction against Persons Unknown. Nevertheless, he sought and was granted permission to make submissions for the assistance of the court.

73. The grant of an injunction against newcomers is an exceptional remedy, as the Supreme Court very recently emphasised in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47. It is designed to bind persons who are not identifiable as parties to the proceedings at the time when the injunction is granted. Such injunctions are "a wholly new" type of injunction and "are in substance always a type of without notice injunction" (*Wolverhampton*, [144], [142]).

74. The Supreme Court confirmed that there must be evidence of compelling need for the enforcement of planning control ([167], [186]). Yet in cross-examination, Ms Penney stated that there is no such evidence. She stated that "we have no evidence of risk to the site, but the reason for proceeding [with the newcomers' application] is the vulnerability of the site". She did not think there was any "imminent threat". There was no evidence of any person "who wished to use the site for residential use". The highpoint of the claimant's case is that there is "a possibility" of future breaches by Persons Unknown as the Land is "an attractive site". This is far from a "strong probability" required by *Wolverhampton*.

75. Ms Penney also accepted that the claimant had not considered lesser measures such as byelaws. The intention by the claimant to make this application has not been advertised as it should have been or sufficiently raised with the local traveller and gypsy community. The claimant had not spoken to the gypsy liaison officer who acts as go-between between the Council and local gypsy and traveller community.

76. Ms Penney accepted that there was a risk that due to that failure the court may not have before it people who might have wanted to live at the site and so would have something to say about the grant of the injunction. This is in the context of Ms Penney further agreeing that there had been serious failure by the local

authority in the provision of sites for gypsies. Mr Rhimes also submitted that the lack of time limit on the injunction offends against the thrust of the Supreme Court judgment, where "considerable doubt" was expressed that such an injunction could ever be granted for "significantly more than a year" [225].

77. In response, Mr O'Brien O'Reilly drew the court's attention to the planning policy. He submitted that unmet need is not a carte blanche. Such need is unlikely to amount to "very special circumstances" that would defeat the high policy objective of protecting the Green Belt.

78. While I accept counsel's submission that it is possible to give effective notice by alternative service provisions, I return to the conditions set down by the Supreme Court for grant in these cases. I am not satisfied there is "full and detailed evidence" of "compelling need". The claimant has not demonstrated that there is 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". I have been provided with no evidence that the threat is "real and imminent" [218].

79. In its skeleton argument, the claimant relies on the assertions by Mr Barrett that "travellers" may have "decided to take advantage of the site" while he was away. The finding of the court is that the Mr Barrett was part and parcel of the breaches of planning control. These were actioned for his prime benefit. While it is not possible to identify the people who were involved in those breaches with him by laying the hardstanding, for example, I do not consider this to be a cohort of strangers unknown or unconnected to Jimmy Barrett. It is submitted that because Mr Barrett does not spend a great deal of time at the Land, there is a "possibility" that people could place their caravans there. However, he is now the owner of the Land. Following his acquisition, there have been no further breaches. This is entirely unsurprising. This fact casts the level of need for future protection of the Land into a clearer light. The compelling future need (or risk) does not flow from exploitation of the site by Persons Unknown, but the breaches have been closely tied to Mr Barrett's interests.

80. When the claimant speaks in mere "possibilities" and not higher degrees of likelihood, the court cannot grant an injunction against Persons Unknown. The risk is too indistinct, uncertain and conjectural. The claimant has not considered lesser measures such as byelaws. There has been far from sufficient local consultation with interested communities and thus the rudimentary steps to promote "procedural fairness", as the Supreme Court called them [226], were not taken. These types of injunctions are particularly sensitive and the needs and interests of gypsy and traveller communities, who often experience hardship, scorn and prejudice, must be properly protected. Overall, given the evidential defects in the claimant's case and the indeterminate length of prohibition sought, the court concludes that it is not just and convenient to grant this further injunction. The fact that the claimant changed the nature of its application during the course of the hearing and submitted that after all a time limit could be "just imposed" by the court, is another indicator that the making of this application was not properly founded.

§XII. DISPOSAL

81. As a result of the above, the decisions of the court in the applications are as follows:

    1. Mandatory order against Jimmy Barrett: **granted**.

    2. Prohibitory order against Jimmy Barrett: **granted**.

    3. Prohibitory order against Persons Unknown: **dismissed**.

82. The consequence is that I make both the mandatory and prohibitory orders sought by the claimant against the first defendant Mr Barrett. However, I remain unpersuaded that the court should grant an injunction against Persons Unknown in this case. That application is dismissed.

83. The court will next hear argument about costs and any further consequential and case management matters.

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

No. QB-2020-002702

[2024] EWHC 239 (KB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 19 January 2024

Before:

MR JUSTICE RITCHIE

B E T W E E N :

(1) MULTIPLEX CONSTRUCTION EUROPE LIMITED
(2) LUDGATE HOUSE LIMITED
(A company incorporated in Jersey)
(3) SAMPSON HOUSE LIMITED
(A company incorporated in Jersey) Claimants

- and -

PERSONS UNKNOWN ENTERING IN OR REMAINING AT
THE CLAIMANTS' CONSTRUCTION SITE AT BANKSIDE YARDS
WITHOUT THE CLAIMANTS' PERMISSION Defendants

MR T MORSHEAD (instructed by Eversheds Sutherland (International LLP) appeared on behalf of the Claimants.

THE DEFENDANTS did not attend and were unrepresented.

J U D G M E N T

MR JUSTICE RITCHIE:

1 In this case, by an application dated 21 December 2023, the three Claimants apply for a final prohibitory injunction against persons unknown to last for approximately three years, until February 2027. The evidence in support is provided by Mr Wortley in a witness statement dated 21 December 2023 and a later witness statement dated 18 January 2024. The procedure set out in the Notice of Application asked for an on-paper consideration of a temporary further interim injunction pending a hearing. This is the hearing relating to the application for the final injunction.

2 Going to the chronology of these proceedings, the relevant property is Bankside Yards, Blackfriars Road, London, SE1 9UY ("the Site"). The owners are the second and third Claimants and the main contractors on site are the first Claimant, who are entitled to possession.

3 An application for an interim injunction was made on 27 July 2020 and an interim *ex parte* injunction was made by Soole J on 30 July 2020 until 21 January 2021. Judgment was given by Soole J, which I have read and incorporate into this judgment.

4 The *ex parte* interim injunction was probably extended by Bourne J in January, but I have not seen the order and this judgment is subject to that order being confirmed as in existence by the Claimants' leading counsel, which I understand will take place this afternoon. The order that was actually put in the bundle was from another case. However, it is clear that there was a return date for the *ex parte* injunction because a witness statement was filed by Martin Wilshire on 25 January 2021, who is Director of Health and Safety at the first Claimant, that set out two recent incidents, despite the interim injunction. The first was dated before the interim injunction and involved something not particularly relevant. Four males were pointing at a crane on the Site and when the security services on Site made themselves apparent, the four males went away. They never entered the Site. The second is more worrying, because it occurred on 5 January 2021 and an unnamed person climbed a scaffold gantry on the Site but left when security was deployed. This was a direct action which was relevant to and potentially in breach of the injunction ordered by Soole J.

5 Hearsay evidence was given by Mr Wortley about urban exploring and videos of this taking place in London on cranes at various unknown locations, but also in White City. There was in Warsaw, which may not be the most relevant piece of evidence that I have ever read, but it at least showed that urban exploring by climbing buildings and cranes has prevalent in London and Europe.

6 Moving on from the order which was probably made by Bourne J, a further order was made by Stewart J on 4 March 2021, which recited the orders of Soole J (and Bourne J of 26 January 2021), which gives me some succour about the order of Bourne J and was based on the witness statement of Martin Wilshire which I have just recited. This extended the order of Bourne J to 19 May 2021. On 6 May 2021, Eady J extend the order of Stewart J to 26 July 2021. On 20 July 2021, Davis J extended the order of Eady J to January 2022. Master Dagnall, on 26 October 2021, joined the third Claimant to the claim.

7 In a witness statement dated 23 February 2022 in support of extending the interlocutory injunction further, Stuart Wortley informed the Court that a third crane was soon to be erected, updated the Court on urban explorers spotted in Blackfriars (no-one had entered the Site) and referred to evidence from Mr Wilshire and Mr Clydesdale, who believed that, despite the prevalence of urban explorers in London, the Site had not been chosen because

of the injunction being plastered all over the Site in accordance with the orders. Mr Wortley sought a final injunction in that witness statement. Exhibited to the witness statement was the judgment of Eyre J in *Mace v Persons Unknown* [2022] EWHC 329, which I have read, which gives a useful summary of the general risk in London of urban exploring and climbing on sites and of some attempts to enter the Site itself.

8 By an order of HHJ Shanks, sitting as a Deputy High Court Judge, on 3 March 2022, the interim injunction was extended until 31 December 2023. Pursuant to the expiry of that order, Mr Wortley filed his witness statement for this hearing on 21 December 2023; it updated the facts relating to trespasses on Site. There had only been one trespass. Therefore, Mr Wortley suggested the injunctions were having the desired effect. The trespass occurred on 20 December 2023, when two individuals entered the Site. They were intercepted by security and left. The reasons why the Claimants were seeking the injunction were the same as before and, in summary, they were urban exploring (which means climbing on building sites), which is inherently dangerous and puts the perpetrators, security and the public at risk and, of course, it puts the builders on Site at risk. The suggestion was made that the Site is an obvious target because it has cranes and other high structures. It is suggested that the injunctions were being effective as deterrents to urban explorers and it suggested that the balance of convenience, which I describe as the "balance of justice," favoured further restraint. This witness pointed out that the interlocutory injunctions did not restrain lawful activity because they were restricted wholly to the Site and asserted that damages would not be an adequate remedy, only an injunction would. The witness referred also to an injunction granted by Sweeting J at Elephant and Castle on a building site there and I have read the judgment of Sweeting J in that case. The solicitor for the Claimants, Mr Wortley, requested that the injunction be granted until 15 February 2027.

9 By an order made by Jefford J on 21 December 2023, a short, temporary extension of the injunction was granted to the date of this hearing. A further witness statement was filed on 18 January 2024 by Mr Wortley relating to the service of notice of the order made by Jefford J and also updated the Court that there had been no further incidents. I have taken into account the skeleton argument provided by Mr Morshead KC, for which I am very grateful, and in discussion during the hearing the conclusion that I reached was that the proper procedure for granting a final injunction in the light of the recent case law had not been properly followed.

10 It seems to me, following the decision made in *Wolverhampton Council & Ors v London Gypsies and Travellers* [2023] UKSC 47 and [2024] 2 WLR 45, that final injunctions can be granted but that power does not override the necessary notifications to persons unknown to bring a final hearing before the Court. It is not for me to advise on the appropriate methods, but one method that is available is through the summary judgment procedure. Another, of course, is to list the final hearing and to call witnesses or to have permission to rely on written witness statements, if that is granted. Neither of those procedures has been followed and so it seems to me that it would be improper for me to treat this as a final hearing, it being *ex parte* and no notification having been given through alternative service to any unknown persons. As for the appropriate method for alternative service for bringing a final hearing or for an application for summary judgment, that is a matter for the Claimants to consider and, if necessary, obtain the relevant order upon. Therefore, I refuse to consider a final order, but I do consider it correct to consider a further interim order.

11 The grounds for granting an interim order, since the *Wolverhampton* case, it seems to me involve not less than 13 factors, which I will run through very briefly.

1 – Substantive requirements

12 There must be a civil cause of action identified in the claim form and particulars of claim. The usual feared or *quia timet* torts relied upon are trespass, damage to property, private or public nuisance, tortious interference with trade contracts, conspiracy, and consequential damage. In this case it is trespass, but not pure trespass. It is trespass allied specifically in the particulars of claim to urban exploration by way of climbing high on buildings causing a substantial risk as outlined above.

2 – Sufficient evidence to prove the claim

13 There must be sufficient evidence before the Court to justify the Court finding that the claim has a reasonable prospect of success. For the reasons set out in the previous judgment of Soole J and the reasons accepted by the other judges which I have set out above, I do consider that there is sufficient evidence to justify a finding that there is not only a real issue to be tried, but that the Claimant has a realistic prospect of success.

3 – Whether there is a realistic defence

14 Whilst this is not a summary judgment application it is an *ex parte* application. As the Supreme Court made clear in *Wolverhampton,* it is incumbent upon the Claimants to put before the Court the potential defences of the persons unknown and for those to be considered. That has been briefly touched upon in the skeleton argument of Mr Morshead, particularly in relation to Human Rights. This is not a case which involves a breach of the Human Rights of the persons unknown by way of freedom of speech or freedom of assembly. Rather, the case only concerns matters which take place on the Claimants' land. For the reasons that are explained in the skeleton argument in paras. 40 through to 47 there is no reason to suppose that anyone's Convention rights are engaged by the relief sought in this claim. I do not consider that s.12(3) of *the Human Rights Act* is breached by the continuation of the interim injunctions.

4 – The balance of convenience and compelling justification

15 It is necessary for the Court to find, in relation to a final injunction, something higher than the balance of convenience, but because I am not dealing with the final injunction, I am dealing with an interlocutory injunction against PUs, the normal test applies. Even if a higher test applied at this interlocutory stage, I would have found that there is compelling justification for granting the *ex parte* interlocutory injunction, because of the substantial risk of grave injury or death caused not only to the perpetrators of high climbing on cranes and other high buildings on the Site, but also to the workers, security staff and emergency services who have to deal with people who do that and to the public if explorers fall off the high buildings or cranes.

5 – Whether damages are an adequate remedy

16 It is quite clear to me that damages could not be an adequate remedy for severe personal injury either caused to building site workers, security service staff, emergency workers or members of the public. Compensation may follow but insurance will probably not be in place and in any event money does not cure serious injuries.

6 – The procedural requirements

17 The PUs must be clearly identified 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.

In this case, I have departed from the practice used by the other High Court judges and deputy High Court judges in this case by requiring the Claimants to add the words "climb or climbing" in the definition of PUs. I was concerned that the scope of the interlocutory injunctions granted to date and sought in future would cover homeless people who sought to enter the Site and sleep under a tarpaulin, or youths who sought to drink alcopops on Site but had no intention of climbing anywhere. If those were the perpetrators which were to be restrained by this injunction, I would not have granted it. in my judgment it is not the purpose of this jurisdiction in the High Court to make PU injunctions against mere vagrants or trespassers, there must be something more and the full requirements must be satisfied. In this case, for those who climb high structures and create real risks of substantial harm to those I have listed above, the factors are satisfied. In the interim order I will make the definition of PUs has been altered to include climbing. I am satisfied that it better mirrors the substance of the claim form and the witness statements in support.

7 – The terms of the injunction

18 The prohibitions must be set out in clear words and should not be framed in legal technical terms (like the word "tortious", for instance). I am afraid I use that word a lot, but it is not to be used in the terms of the injunction. Further, if and insofar 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. In this case, the behaviour is clearly and plainly stated in the terms of the injunction as "trespass plus climbing" or "staying on the site plus climbing" and I am satisfied that that is sufficiently tight. There is no risk of this breaching the rights of persons unknown on public highways or in public areas because it only relates geographically to the Site.

8 – Prohibitions must match the pleaded claim

19 In this case they do, now that the words "climbing" are added.

9 – The geographical boundaries

20 The boundaries are set out in clear plans which were attached to the previous injunctions and will be attached to the injunction which I grant.

10 – Temporal limits - duration

21 The duration of any final injunction should only be such as is proven to be reasonably necessary to protect the Claimants' legal rights in the light of the evidence of past tortious activity and the future feared or *quia timet* tortious activity. In this case, I am not granting a final injunction, I am granting a further interim injunction and I consider that a year or approximately a year is an appropriate duration for that to keep costs down and because there is no evidence currently before me that the general public wishes to stop urban exploration or abseiling on building sites.

11 – Service

22 Understanding that PUs are, by their nature, not identified, the proceedings, the evidence, the summary judgment application (if one is made) and any draft order and notice of a hearing must be served by alternative means which have been considered and sanctioned by the Court. In this case, the application is *ex parte* and I consider that is appropriate in the circumstances. However, if it was a final hearing, then appropriate and authorised alternative service would need to be proven.

12 – The right to set aside or vary

23 PUs must be given the right to apply to set aside or vary the injunction on shortish notice, as set out in the judgment in *Wolverhampton*. They are given that right in the order that I have made and they were given that right in the previous interlocutory orders. I note that nobody took that right up.

13 – Review

24 At least in relation final orders, they are not final in PU cases, they are *quasi* final. Final orders in PU cases are clearly not final, they are *quasi* final in that they need to be reviewed in accordance with the judgment of the Supreme Court in *Wolverhampton*. Provision needs to be made for reviewing the injunction in future and the regularity of reviews depends on the circumstances. In this case, I do not need to consider review because it is a further interlocutory injunction that I am granting.

Conclusion

25 Having run through the 13 factors I do consider, on the balance of convenience, that it is appropriate to grant a further interim injunction and I do so. I will consider the terms of the injunction as discussed with leading counsel when they are sent through to my clerk. I understand that no costs are required and, hence, the order will say "no costs on the application".

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.