



Neutral Citation Number: [2024] EWHC 2273 (KB)

Case Nos: KB-2022-BHM-000188
KB-2022-BHM-000221

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Birmingham Civil Justice Centre
33 Bull Street
Birmingham
B4 6DS

Date: 03/09/2024

Before :

MR JUSTICE JULIAN KNOWLES

Between :

- (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**

Defendants

- (2) 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) WITH THE**

INTENTION OR EXPECTATION THAT SOME OF THOSE PRESENT WILL ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING

(3) PERSONS UNKNOWN PROMOTING ORGANISING PUBLICISING (BY ANY MEANS WHATSOEVER) ANY GATHERING BETWEEN THE HOURS OF 3:00PM AND 7:00AM OF 2 OR MORE PERSONS WITH THE INTENTION OR EXPECTATION THAT SOME OF THOSE PRESENT WILL ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING WITHIN THE BLACK COUNTRY AREA SHOWN ON PLAN A (ATTACHED TO THE INJUNCTION)

(4) PERSONS UNKNOWN BEING DRIVERS, RIDERS OR PASSENGERS IN OR ON MOTOR VEHICLE(S) 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 SUCH DEFENDANTS ENGAGE IN MOTOR RACING OR MOTOR STUNTS OR OTHER DANGEROUS OR OBSTRUCTIVE DRIVING

(5) ANTHONY PAUL GALE

(6) WIKTORIA SCZCUBLINSKA

(7) ISA IQBAL

(8) MASON PHELPS

(9) REBECCA RICHOLD

And between:

**Case: KB-
2022-BHM-
000221**

BIRMINGHAM CITY COUNCIL

Claimant

and

(1) AHZI NAGMADIN

(4) RASHANI REID

(5) THOMAS WHITTAKER

(6) ARTHUR ROGERS

(7) ABC

(8) PERSONS UNKNOWN WHO PARTICIPATE OR INTEND TO PARTICIPATE IN STREET-CRUISES IN BIRMINGHAM, AS CAR DRIVERS, MOTORCYCLE RIDERS, PASSENGERS AND/OR SPECTATORS

(9) PERSONS UNKNOWN WHO, OR WHO INTEND TO, ORGANISE, PROMOTE OR PUBLICISE STREET CRUISES IN BIRMINGHAM

(10) PERSONS UNKNOWN WHO PARTICIPATE OR INTEND TO PARTICIPATE IN STREET CRUISES IN BIRMINGHAM AS CAR DRIVERS, MOTORCYCLE RIDERS OR PASSENGERS IN MOTOR CARS OR ON MOTORCYCLES

(11) MR MOHAMMED WAJAHAS SHABBIR

(12) ZOE LLOYD

(13) CALLUM BLUNDERFIELD

(14) GURBINDER SINGH SAHOTA

(15) CONNOR HILL

(16) ASIM RAHMAN

(17) AMAN KAYANI

(18) ADHNAN MOHAMMED

(19) MOHAMMED DAANYAAL

(20) BRADLEY HAYES

The Defendants did not appear and were not represented

**Jonathan Manning and Charlotte Crocombe (instructed by Birmingham City Council) for
Birmingham City Council
D2 appeared in order to give an undertaking to the Court**

Hearing date: 27 February 2024

Approved Judgment

This judgment was handed down remotely at 10:30 on 3 September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. On 27 February 2024 I granted injunctions on the application of the Claimants (Cs) in the two cases captioned above, made pursuant to s 222, Local Government Act 1972, and s 130, Highways Act 1980 (amongst other provisions), and I made other ancillary orders, including powers of arrest under s 27(3), Police and Justice Act 2006, and an order joining the Ninth Defendant in KB-2022-BHM-000188 (the *Wolverhampton* et al case).
2. Save in one respect, none of the Defendants (Ds) appeared, and neither the Court, nor Cs, had received any notification that any other person wished to be joined as a party or to be heard. The one exception was D2, in KB-2022-BHM-000221 (the *Birmingham* case), who attended in order to give an appropriate undertaking, which I accepted.
3. I granted the injunctions to restrain what is euphemistically known as ‘car cruising’. I will say more about what this is in a moment.
4. These proceedings began in December 2022 under CPR Part 8. Hill J granted interim injunctions and powers of arrest on an urgent basis in orders sealed on 22 December 2022. Her judgment is reported at [2023] EWHC 56 (KB).
5. Freedman J continued the injunctions following a review hearing on 13 February 2023: see [2023] EWHC 722 (KB).
6. Since then, there have been further review hearings at which the injunctions have been continued and amended, as well as other hearings. There have also been committal proceedings for breaches of the injunction.
7. A substantial quantity of evidence was filed for the hearing. However, in the circumstances, it is not necessary to set out the detail of this. I read the necessary material in advance of the hearing and I heard from several of Cs’ witnesses at the hearing, who largely adopted their statements. The evidence was not disputed.
8. In short, I was wholly satisfied at the end of the hearing that it was appropriate to make the orders sought by Cs. These are my reasons.

The conduct to be restrained

9. ‘Car cruising’, or ‘street cruising’, was described by Bean LJ in *Sharif v Birmingham City Council* [2020] EWCA Civ 1488, [1], as referring to a ‘... form of anti-social behaviour which has apparently become a widespread problem in the West Midlands in particular.’ That said, other areas of the country have also been affected by similar behaviour. In [3] he said:

“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 2 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 para.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 para.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.

‘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 paras. 1-2

above apply, and the term "participating in a street-cruise" shall be interpreted accordingly.'

10. In her judgment in the present case at [5], Hill J described the behaviour in question thus:

"5. ... it involves ... gatherings of two or more people where some of those present engage in motor racing, motor stunts or other dangerous or obstructive driving. Street cruises also attract participants who, whether or not they are taking part in the driving or riding, support or encourage others to do so, play loud music, rev their engines, show off their own cars, and engage in other similar antisocial activities. These activities are highly dangerous, having caused serious injury and, in some cases, fatalities. The activities taking place at these cruises are frequently unlawful."

11. Paragraphs 2(2) and 2(4) of Cs' Particulars of Claim (PoC) in the *Wolverhampton* et al case (Version 5, dated 29 January 2024) define 'car cruising' and 'stunts' as follows:

"(2) 'Car Cruising' organised or impromptu events at which drivers of cars race, perform driving stunts, drive dangerously and drive in convoy. Such activities may be noisy, dangerous and illegal, obstructing highways and the premises bordering them, damaging property and putting the safety of spectators and other persons at risk.

...

(4) 'Stunts' Driving manoeuvres often undertaken as part of car cruising including:

(a) 'Burnouts' Causing a vehicle to destroy its tyres by applying power to the drive wheels while braking so as to remain in place while the wheels revolve at speed.

(b) 'Donuts/Donutting' Causing a vehicle to rotate around a fixed point (normally the front axle) while not moving-off causing noise, smoke and tyre marks to be created.

(c) 'Drifting' Turning by placing the vehicle in a skid so that most sideways motion is due to the skid not any significant steering input.

(d) 'Undertaking' passing a vehicle on its nearside so as to overtake in circumstances not permitted by the Highway Code."

12. As I remarked at the hearing, so-called car cruising is often, in reality, organised dangerous driving. Although sometimes the gatherings in question occur impromptu, they are often organised in advance via social media and in other ways.
13. The present applications have been brought by local authorities whose areas, and whose residents, have been particularly affected by this sort of behaviour. The evidence graphically illustrates the real misery it causes in terms of noise, pollution and danger.
14. In preparing this judgment (and in preparing for the hearing) I (have) carefully considered the judgments of Hill J and Freedman J in particular. Parts of this judgment have been gratefully adapted from parts of their analysis and this judgment should therefore be read alongside these earlier judgments. As I shall explain, since the date of their judgments the law has moved on. I have therefore considered matters in light of the relevant up-to-date principles.

History and background to the present applications

15. This is fully set out in the judgment of Hill J in particular.
16. Injunctions to prevent car cruising were originally granted on Cs' application in 2014 and 2016. These ran until the early 2020s.
17. Towards the end of that period and subsequently, the law relating to injunctions against groups of unknown persons who engage in unlawful conduct began to develop. These cases sometimes, but not always, involved groups of people involved in protests.
18. The first relevant decision for present purposes was that of Nicklin J in *London Borough of Barking and Dagenham v Persons Unknown* [2021] EWHC 1201 (QB) (handed down on 12 May 2021). His decision was appealed to the Court of Appeal, which gave judgment on 13 January 2022: [2023] QB 295. The matter went to the Supreme Court, which handed down its judgment on 29 November 2023: *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2024] 2 WLR 45.
19. In light of these developments, Cs rightly took the view that the legal landscape had altered considerably, and that fresh applications for injunctions would be more appropriate than attempting to amend and extend the original injunctions.
20. Cs' case as now presented is that those injunctions caused or contributed to a substantial reduction in car cruising in their areas and that the committal proceedings brought for breach of them served as a deterrent to persons contemplating engaging in car cruising. The problem however has not gone away. They therefore argue that fresh injunctions should be granted in order to maintain that broad success and that the grant of an injunction is appropriate and justified under the principles enunciated by the Supreme Court in *Wolverhampton City Council* and applied in similar comparable cases since. I will consider these principles later.

Cs' cause of action

21. Cs bring their claims for an injunction in order to enforce their statutory duties in relation to use of the highway and to prevent crime. They say that the injunction is necessary to protect the rights of the public to the lawful use and enjoyment of highways within their respective areas. The principal cause of action is public nuisance, with the constituent parts of the infringing conduct also being, in large measure, criminal in nature.

22. Paragraphs 17-20 of the PoC in the *Wolverhampton et al* case aver:

“17. By section 130, Highways Act 1980, the Claimants are under a duty to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority. The injunctive relief sought in these proceedings is necessary to protect the rights of the public to the use and enjoyment of highways within the Claimants' districts.

18. By section 6 of the Crime and Disorder Act 1998, local authorities must formulate and implement, inter alia, a strategy for the reduction of crime and disorder in their areas (including anti-social and other behaviour adversely affecting the local environment), which strategy the authorities must keep under review for the purposes of monitoring its effectiveness and making any necessary or expedient changes.

19. Section 17(1) Crime and Disorder Act 1998 provides that:

“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, crime and disorder in its area.”

20. The Claimants contend that taking measures to combat car cruising falls within and forms part of their statutory function (set out above) to reduce crime and disorder in their areas.”

23. Paragraphs 21-25C and 30 plead as follows:

“21. The Claimants will rely upon the witness statements filed with this Claim Form and those filed in support of the adjourned application to extend the Original Injunction.

22. In summary the Claimants aver that:

(1) Persons participating in car cruising meet on highways and areas adjacent to highways. Such areas include industrial estates and car parks.

(2) The locations for such meetings vary but are to be found throughout the Black Country.

(3) Such meetings may be publicised in advance via social media or word of mouth or may be impromptu.

(4) At such meetings some or all of the conduct set out above takes place.

(5) Such conduct affects the safety, comfort, well-being and livelihoods of inhabitants of the Black Country.

(6) Such conduct diverts the resources of the Police, Ambulance Service and hospitals away from other legitimate matters.

23. The Original Injunction was effective in reducing and inhibiting car cruising.

24. Since 2 February 2021 car cruising has again increased with more events and larger numbers of spectators at such events. The Police are receiving an increased volume of calls relating to such activities.

25. Such increased activity has continued following the relaxation of restrictions on social gatherings imposed during the covid-19 pandemic. There appears to be a growing perception among those who engage in car cruising that the Claimants and the Police are impotent to restrict the activity.

25A The conduct described above frequently involves the commission of criminal offences which is deliberate and which cannot adequately be prevented or restrained by the use of criminal law sanctions.

25B Such offences may include but are not limited to:

(1) Dangerous driving;

(2) Speeding;

(3) Racing;

(4) Driving without insurance

25C The said conduct is also tortious and, in particular, constitutes a public nuisance.

...

30. The Claimants aver that car cruising causes and is capable of causing nuisance or annoyance to persons in the Black Country and that [the] car cruising creates a significant risk of harm to such persons.”

The position as it was before Hill J

24. I make clear, for the avoidance of doubt, that I have considered matters afresh. That said, I do not intend to repeat unnecessarily matters covered by Hill J and Freedman J.
25. The matter came before Hill J in December 2022 by way of an application for urgent relief. She summarised the position as follows.
26. The urgency was based in part upon a fatal accident on 20 November 2022, where two people who had been spectators at a car cruising event were killed when a car went out of control and into a crowd of spectators. The evidence showed that as at that date the police were anticipating an upsurge in car cruising events over the Christmas 2022 period. The previous year had seen a similar upsurge involving hundreds of vehicles, as well as other criminal behaviour such as criminal damage. The judge accepted that the evidence showed that there was ‘a very real and substantial risk of death or serious injury in the coming days due to car cruising’ (at [46]).
27. Hill J said that the evidence showed that the original injunctions had caused or contributed to a substantial reduction in car cruising in Cs’ areas, and that the committal proceedings brought for breaches had served as a deterrent to persons contemplating engaging in it.
28. She also found that the evidence showed that there had been a marked increase in car cruising since the lapse of those injunctions.

The up to date evidence before me

29. The material filed for the hearing runs to many volumes. I heard live evidence from: Pardip Nagra, Anti-Social Behaviour Team Leader of Wolverhampton Homes; Paul Brown, communications Manager in the communications at Wolverhampton City Council; and PC Mark Campbell, the subject lead for Operation Hercules, which is the West Midlands Police tactical approach to car cruising. They all adopted their witness statements as being true.
30. I am satisfied from the evidence I read and heard that the injunctions sought are necessary to restrain illegal and dangerous driving, with all its attendant consequences, both potential and real.
31. The evidence shows that whilst the situation has improved since the new injunctions were granted in December 2022, car cruising is still occurring, despite the injunctions. No-one argued to the contrary. For the reasons set out

in the evidence, and those below, I am satisfied that possible alternative remedies are likely to be impractical or ineffective.

Legal principles

The Court's general injunctive power

32. Under the Senior Courts Act 1981, s 37:

“(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.”

The test for precautionary relief, and the 'B&Q' and 'Bovis' criteria

33. These applications are - at least in part - for precautionary relief, or in the Latin, *quia timet* (although Latin is no longer to be used: *London Borough of Barking and Dagenham v Persons Unknown* [2023] QB 295, [8]), to prevent future car cruising. Cs submit that the evidence clearly shows that this will increasingly happen if not restrained.

34. The test for precautionary relief is whether there is an imminent and real risk of harm: *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, [34(1)] (Court of Appeal) and the first instance decision of Morgan J: [2017] EWHC 2945 (Ch), [88]. See also *High Speed Two (HS2) Limited v Four Categories of Persons Unknown* [2022] EWHC 2360 (QB), [99]-[101]. ‘Imminent’ in this context simply means ‘not premature’: *Hooper v Rogers* [1975] Ch 43, 49. I am satisfied that these applications are not premature.

35. As I have said, the claims are principally put on the basis that car cruising is a public nuisance, namely, a nuisance which materially affects the reasonable comfort and convenience of life of a class of His Majesty's subjects: *Attorney General v PYA Quarries Ltd* [1952] QB 169, 184.

36. Cs have various powers enabling them to bring proceedings to restrain such a nuisance. One of these powers is the Local Governments Act 1972, s 222. This provides that a local authority may bring civil proceedings in its own name where it considers it, ‘...expedient for the promotion or the protection of the interests of the inhabitants of its area.’

37. As to this power, in *Stoke-On-Trent City Council v B&Q (Retail) Ltd* [1984] 1 Ch 1, 23B, Lawton LJ observed that 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.”

38. As I have said, much of what Cs seek to restrain amounts to criminal offences. In *City of London Corporation v Bovis Construction Ltd (No 2)* [1992] 3 All ER 697, the Court of Appeal considered an injunction granted under s 222 to tackle

nuisance caused by noise, which on the facts was also a criminal offence. Bingham LJ (as he then was) said this at p714:

“It is made plain by the highest authority that the jurisdiction to grant an injunction in support of the criminal law is exceptional and one of great delicacy to be exercised with caution (*Gouriet v Union of Post Office Workers* [1977] 3 All ER 70 at 83, 91, 99, 117, [1978] AC 435 at 481, 491, 500, 521). Where, as in the present case, Parliament has shown a clear intention that the criminal law shall be the means of enforcing compliance with a statute, the reasons for such caution are plain and were fully explained by their Lordships in *Gouriet*. The criminal law should ordinarily be pursued as the primary means of enforcement. The case law shows that the archetypal case in which this jurisdiction is exercised is one in which a criminal penalty has in practice proved hopelessly inadequate to enforce compliance ...

...

The guiding principles must I think be:

(1) that the jurisdiction is to be invoked and exercised exceptionally and with great caution ...;

(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 City Council v B & Q (Retail) Ltd* [1984] AC 754 at 767B, 776C], and *Wychavon District Council v Midland Enterprises (Special Events) Ltd* (1986) 86 LGR 83, 87; and

(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 ...”

39. Cs also have a duty under the Highways Act 1982, s 130, to assert and protect the rights of the public to the use and enjoyment of the highway, which is reinforced in s 130(5) by the power to institute proceedings. In addition, they have a power under the Localism Act 2011, s 1, to do anything that individuals with full capacity generally may do in any way whatever and unlimited by the existence of any other power of the authority which to any extent overlaps with that general power.

40. Based on the evidence provided by Cs, I am satisfied not only that those who engage in car cruising are deliberately, intentionally and flagrantly flouting the law, but that they will continue to do so unless and until effectively restrained by an injunction, and that nothing short of an injunction will be effective to restrain them. I take fully on board Bingham LJ's principles. However, I am satisfied that they are met in this case.
41. This conclusion is supported by the observation of Bean LJ in *Sharif* at [42] about the 2016 *Birmingham* car cruising injunction to the effect that:
- “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 is a classic case for the granting of an injunction.”
42. It is a feature of these applications that they seek borough-wide injunctions. This was a point considered by Hill J. Suffice to say I adopt the analysis in [56]-[57] of her judgment.
43. So far as the injunctions infringe or may infringe Ds' Convention right of freedom of assembly under Article 11(1), I am satisfied that this is a necessary and proportionate restriction on that right whose purpose is (*per* Article 11(2)): maintenance of public safety; the prevention of disorder and crime; and the protection of the rights and freedoms of others.

The 'persons unknown' aspects of Cs' applications

44. I now come to the aspect of Cs' application which has been most affected by the developments in the law since 2021 that I referred to earlier.
45. It is necessary for me to consider whether it is appropriate to grant an injunction in the terms sought against groups of unknown persons including those whose identities were not known or knowable. This requires consideration of the principles set out by the Supreme Court in the *Wolverhampton Travellers* case. These have been applied in a number of subsequent 'persons unknown' or 'newcomer' injunction cases including *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 1786 (Ch); *Exolum Pipeline System Ltd and others v Persons Unknown* [2024] EWHC 1015 (KB); *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB); and *Multiplex Construction Europe Ltd v Persons Unknown* [2024] EWHC 239 (KB).

Principles

46. In *Wolverhampton Travellers*, under the heading 'The problem', Lord Reed, Lord Briggs and Lord Kitchin (with whom Lord Hodge and Lord Lloyd-Jones agreed) described the context of the case as follows:

“1. This appeal concerns a number of conjoined cases in which injunctions were sought by local authorities to

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

2. In these circumstances, the appeal raises the question whether (and if so, on what basis, and subject to what safeguards) the court has the power to grant an injunction which binds persons who are not identifiable at the time when the order is granted, and who have not at that time infringed or threatened to infringe any right or duty which the claimant seeks to enforce, but may do so at a later date: ‘newcomers’, as they have been described in these proceedings.

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

47. I have taken the following summary of the effect of the *Wolverhampton Travellers* case from the judgment of Sir Anthony Mann (sitting as a judge of

the High Court) in the *Jockey Club* case which, at the time of writing, is the most recent application of *Wolverhampton* I have been able to find. Although this judgment was given after the hearing before me, it does not state any new principles but contains a helpful up to date summary of the relevant pre-existing jurisprudence as it was at the date of that hearing.

48. The Supreme Court analysed the jurisdiction to grant injunctions against newcomers, and found that injunctions which in other contexts would be regarded as ‘final’ (as opposed to interim) were not in fact properly so regarded but were of a distinct kind. After an extensive review of authority the Court held:

“139 ... 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 (ie in the old jargon *ex parte*) injunction, that is an injunction which, at the time when it is ordered, operates against a person who has not been served in due time with the application so as to be able to oppose it, who may have had no notice (even informal) of the intended application to court for the grant of it, and who may not at that stage even be a defendant served with the proceedings in which the injunction is sought. This is so regardless of whether the injunction is in form interim or final.”

49. This has consequences as to the requirements:

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

50. The case before the Supreme Court involved Travellers, but while that context informed some of the requirements that the Court indicated should be fulfilled before a newcomer injunction is granted, most of its requirements are equally applicable to other types of cases including protest cases (of which there are now a number), and the case before me:

“167. These considerations lead us to the conclusion that, although the attempts thus far to justify them are in many respects unsatisfactory, there is no immovable obstacle in the way of granting injunctions against newcomer Travellers, on an essentially without notice basis, regardless of whether in form interim or final, either in terms of jurisdiction or principle. But this by no means leads straight to the conclusion that they ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power if:

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

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

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

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

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

51. Later in its judgment, the Court returned to procedural safeguards to give effect to those matters of principle, and set out the following procedural and other matters. I omit some points that are relevant to Traveller cases and which have no counterpart in this case, and adjust others by making appropriate edits:
- a. Any applicant for an injunction against newcomers must satisfy the court by detailed evidence that there is a compelling justification for the order sought. There must be a strong possibility that a tort is to be committed and that that will cause real harm. The threat must be real and imminent: see [188] and [218]. As I said earlier, ‘imminent’ in this context simply means ‘not premature’.
 - b. The applicant must show that all reasonable alternatives to an injunction have been exhausted, including negotiation: [189].
 - c. It must be demonstrated that the claimant has taken all other appropriate steps to control the wrong complained of: [189].
 - d. If byelaws are available to control the behaviour complained of then consideration must be given to them as a relevant means of control in place of an injunction. However, the Court seemed to consider that in an appropriate case it should be recognised that byelaws may not be an adequate means of control: see [216]-[217].
 - e. There is a vital duty of full disclosure on the applicant, extending to ‘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’: [219]. Although this is couched in terms of the local authority’s obligations, that is because that was the party seeking the injunction in that case. As Sir Anthony Mann said, the same duty plainly applies to any claimant seeking a newcomer injunction. It is a duty derived from normal without notice applications, of which a claim against newcomers is, by definition, one.

- f. The Court made it clear that the evidence must therefore err on the side of caution, and the court, not the applicant should be the judge of relevance: [220].
- g. ‘The actual or intended respondents to the application must be identified as precisely as possible’: [221].
- h. The injunction must spell out clearly, and in everyday terms, the full extent of the acts it prohibits, and should extend no further than the minimum necessary to achieve its proper purpose: [222].
- i. There must be strict temporal and territorial limits: [225].
- j. Injunctions of this kind should be reviewed periodically: [225]:

“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.”

- k. Where possible, the claimant must take reasonable steps to draw the application to the attention of those likely to be affected: [226]
 - l. Effective notice of the order must be given, and the claimant must disclose to the court all steps intended to achieve that: [230] et seq.
 - m. The order must contain a generous liberty to apply: [232].
 - n. The court will need to consider whether a cross-undertaking in damages is appropriate, even though the application is not technically one for an interim injunction where such undertakings are generally required: [234].
52. In *Multiplex* at [11] et seq, Ritchie J summarised the *Wolverhampton Travellers* requirements under the following thirteen headings. This was the current case at the time of the hearing before me, and so in the following paragraphs I will set out the reasons why I granted the injunctions by reference to Ritchie J’s headings.
53. *Substantive requirements (there must be a civil cause of action)*: I explained earlier that the cause of action in these cases is public nuisance.
54. *Sufficient evidence to prove the claim*: I am satisfied that there is sufficient evidence to prove the claims as set out above. No defences to the claims have been filed. There have been proven contempts of the earlier injunction.
55. *Whether there is a realistic defence*: I do not consider that there is or can be a realistic defence to the claims (and, as I have said, none has been filed). The

behaviour which the injunction seeks to restrain is tortious and, in large measure, criminal.

56. *The balance of convenience and compelling justification*: in *Multiplex*, [15], Ritchie J said:

“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.”

57. In the case before me, not only is there a risk of grave injury and death, such has actually occurred, as I said earlier.
58. *Whether damages are an adequate remedy*: this criterion is plainly not applicable in the present case, where Cs seek to restrain conduct which has caused and is capable of causing considerable non-pecuniary harm to residents in the areas affected.
59. *Procedural requirements relating to the conduct*: these are, principally, that: (a) the persons unknown must be clearly identified by reference to the tortious conduct to be prohibited; and (b) there must be clearly defined geographical boundaries.
60. I am satisfied that these requirements have been fulfilled. While the geographical area concerned is substantial, that is no impediment to an injunction being granted of itself and, indeed, far more extensive injunctions have been granted. Like Hill J, I am satisfied that such an extensive area is necessary given that by its very nature street racing is a mobile activity that has occurred at multiple locations and can relocate easily. The geographical area is clearly outlined in the maps annexed to the injunction.
61. *The terms of the injunction must be clear*: the prohibited conduct must not be framed in technical or legal language. In other words, what is being prohibited must be clear to the reader. I am satisfied this requirement is made out. The prohibitions have been set out in clear words. The additional prohibitions that go beyond the interim order (namely those that apply to spectators and organisers) are clear, and the need for such prohibitions is considered below.
62. *The prohibitions must match the pleaded claim(s)*: I am satisfied that this requirement has been fulfilled.

63. *The geographical boundaries must be clear*: there are plans clearly indicating the area covered by the injunction. This condition is therefore satisfied.
64. *Temporal limits/duration*: the injunctions are time limited and provision is made for reviews. Furthermore, there is always the right of any person affected to come to court at any time to seek a variation or discharge of the injunction.
65. *Service of the order*: this is an especially important condition. I am satisfied that the service provisions contained in the orders (among other things) have been in the past, and will continue to be effective in the future, to bring the injunction to the attention of the public.
66. *The right to set aside or vary*: this is explicitly provided for in the injunction.
67. *Review*: as I have said, this is explicitly provided for.

Other matters requiring consideration

68. There are other matters requiring consideration, as follows.
69. *Traveller Cases*: the Supreme Court in the *Wolverhampton Travellers* case recognised that Travellers are a vulnerable group to whom particular duties are owed (see [190]-[203]). This issue does not arise in the present case.
70. *Convention rights*: this can arise in some cases involving, for example, protest and freedom of expression, but they do not arise in the present cases, save in the limited respect I have already dealt with.
71. *Adequacy of existing remedies*: this is a more substantial matter requiring consideration. Possible existing or alternative remedies are: (a) criminal law penalties; (b) Public Spaces Protection Orders; (c) local authority byelaws. I will consider each in turn.
72. *Criminal law*: Much of the conduct that the injunction seeks to restrain is criminal, for example, dangerous driving. However, the criminal law is reactive and not primarily preventative. The evidence from PC Campbell in Volume 1 in particular conclusively demonstrates that simply relying upon criminal sanctions would not be an adequate response to the problem of car cruising in Cs' areas.
73. *Public Spaces Protection Orders (PSPO)*: these are orders made under s 59 of the Anti-social Behaviour, Crime and Policing Act 2014. They were considered in *Sharif* and rejected as being ineffective. Bean LJ said at [39] that:

“39. ... the evidence in the present case was enough to indicate 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.”

74. I also accept the evidence of Mr Nagra in his seventh witness statement at [36] et seq, that PSPOs have been considered in the present cases, but the conclusion reached that they were not ‘viable, feasible or practicable’ to combat car cruising.
75. *Byelaws*: in light of concerns expressed by the Supreme Court in the *Wolverhampton Travellers* case (see [209]-[216]), the Cs examined the availability and utility of byelaws in car cruising cases. Again, I accept Mr Nagra’s evidence that they are not a realistic alternative to an injunction for the reasons he gives (seventh witness statement, [32]-[35]).
76. *Spectators etc*: the injunctions cover those who gather in order to watch or spectate at car cruising ‘events’. I am satisfied that extending the injunctions to cover these people is appropriate.
77. PC Campbell’s evidence in his fifth witness statement of 9 February 2024, and his video exhibits in particular, show the effects of large crowds on the driving of the active participants, and the danger they put themselves in. He said at [5]:

“5. Given the fact that street-cruising involves a large number of vehicles and spectators, it poses a very serious risk to public’s safety not only to the individuals who are often standing both on and off the carriageway watching in very close proximity and encouraging these activities, but also to other road users going about their business. In my experience there is never any kind of stewarding or marshalling of the spectators and again this significantly raises the threat, harm and risk factors relevant to those individuals. The dangers posed have been evidenced on numerous occasions in recent times, whereby 5 individuals have lost their lives due to dangerous driving stemming from illegal street cruising. These fatalities included spectators and drivers who were actively taking part in street cruising.”

78. At [22], [25]-[26] he said:

“22. This new Section 222 High Court Street cruising injunction application is requesting spectators to be included within the injunction. I would like to broach this issue with the court to highlight the dangers caused by the attending spectators.

...

25. I often call street cruising or street racing a spectator sport, in certain areas of the Black Country I have personally witnessed hundreds of spectators standing in very dangerous locations, they can be seen recording the footage on their phones, which later gets posted on the various social media sites. In my experience the more spectators line the streets, roundabouts or junctions the more dangerous I see the driving become. It is clear that the drivers will be encouraged to perform more stunts such as drifting around islands at greater speeds than would have been done without the crowds.

26. I cannot overstate how dangerous these meets are to spectators. Unfortunately, my concerns became a reality on 20th November 2022. On that evening a street cruising meet was gathered on Oldbury Road, Sandwell, when a street cruiser lost control of his vehicle, crashing into 5 spectators. This collision led to the loss of two young lives, individuals both of whom I personally knew from my involvement in tackling street racing. These two individuals had stood at the side of the road to spectate the racing on that stretch of road. The three other spectators received life changing injuries. Just one moment of madness led to change the lives of so many.”

79. I do not consider there is any risk that innocent bystanders would be unwittingly caught by the injunction, not least because Cs would need to prove ‘participation’, rather than mere presence, to the criminal standard in order to show a breach of the injunctions. Hence, I do not consider that a dog-walker crossing a car-park, or a pedestrian waiting to cross the road, would be at risk of breaching them. PC Campbell sets out the safeguards which the police will operate in order to ensure that only those properly *prima facie* in breach of the injunctions will be made subject to committal proceedings by the relevant local authority.
80. *Power of Arrest*: I am satisfied that a power of arrest in both cases is appropriate under s 27, Police and Justice Act 2006. I note that spectators are excluded from these.
81. *The Ninth Defendant in the Wolverhampton et al case*: for the reasons set out in C’s Skeleton Argument at [54] *et seq*, I am satisfied that it is appropriate to add her as a Defendant. On 9 January 2024 she was found to have breached the then existing injunction.

Conclusion

82. It is for these reasons that I granted the injunction and made the other orders I have mentioned.