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

CLAIM NO: KB-2022-BHM-000188

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- 4) PERSONS UNKNOWN AS DESCRIBED (IN THE INJUNCTION)
(5) Mr ANTHONY PAUL GALE
(6) Miss WIKTORIA SCZCUBLINSKA
(7) Mr ISA IQBAL
(8) Mr MASON PHELPS
(9) Miss REBECCA RICHOLD
(10) Mr OLIVER CLARKE
(11) Mr SIKANDER HUSSAIN
(12) Mr OMAR TAGON
(13) Mr TY HARRIS
(14) Mr VIVKASH BALI
Defendants

AUTHORITIES BUNDLE FOR USE AT THE REVIEW HEARING LISTED ON 26 FEBRUARY 2025

A. Statutory Material

B. Case Law

C. Other

A. Statutory Material

Public Order Act 2023

2023 CHAPTER 15

An Act to make provision for new offences relating to public order; to make provision about stop and search powers; to make provision about the exercise of police functions relating to public order; to make provision about proceedings by the Secretary of State relating to protest-related activities; to make provision about serious disruption prevention orders; and for connected purposes.

[2nd May 2023]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent

Preamble: England, Wales (an amendment made by this Act has the same extent as the provision amended)

PART 1

PUBLIC ORDER

Offences relating to locking on

Law In Force

1 Offence of locking on

(1) A person commits an offence if—

(a) they—

(i) attach themselves to another person, to an object or to land,

(ii) attach a person to another person, to an object or to land, or

(iii) attach an object to another object or to land,

(b) that act causes, or is capable of causing, serious disruption to—

(i) two or more individuals, or
(ii) an organisation,
in a place other than a dwelling, and
(c) they intend that act to have a consequence mentioned in paragraph (b) or are reckless as to whether it will have such a consequence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for the act mentioned in paragraph (a) of that subsection.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both.

(4) In subsection (3), "the maximum term for summary offences" means—
(a) if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, six months;
(b) if the offence is committed after that time, 51 weeks.

(5) In this section "dwelling" means—
(a) a building or structure which is used as a dwelling, or
(b) a part of a building or structure, if the part is used as a dwelling,
and includes any yard, garden, grounds, garage or outhouse belonging to and used with a dwelling.

Commencement

Pt 1 s. 1(1)-(5)(b): May 3, 2023 (2023 c. 15 Pt 3 s. 35(5); SI 2023/502 reg. 2(a))

Extent

Pt 1 s. 1(1)-(5)(b): England, Wales (an amendment made by this Act has the same extent as the provision amended)

Law In Force

2 Offence of being equipped for locking on

(1) A person commits an offence if they have an object with them in a place other than a dwelling with the intention that it may be used in the course of or in connection with the commission by any person of an offence under section 1(1) (offence of locking on).

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.

(3) In this section "dwelling" has the same meaning as in section 1.

Commencement

Pt 1 s. 2(1)-(3): May 3, 2023 (2023 c. 15 Pt 3 s. 35(5); SI 2023/502 reg. 2(b))

Extent

Pt 1 s. 2(1)-(3): England, Wales (an amendment made by this Act has the same extent as the provision amended)

Offences relating to tunnelling

Law In Force

3 Offence of causing serious disruption by tunnelling

(1) A person commits an offence if—

(a) they create, or participate in the creation of, a tunnel,

(b) the creation or existence of the tunnel causes, or is capable of causing, serious disruption to—

(i) two or more individuals, or

(ii) an organisation,

in a place other than a dwelling, and

(c) they intend the creation or existence of the tunnel to have a consequence mentioned in paragraph (b) or are reckless as to whether its creation or existence will have such a consequence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for creating, or participating in the creation of, the tunnel.

(3) Without prejudice to the generality of subsection (2), a person is to be treated as having a reasonable excuse for the purposes of that subsection if the creation of the tunnel was authorised by a person with an interest in land which entitled them to authorise its creation.

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

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

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years, to a fine or to both.

(5) For the purposes of this section—

(a) "tunnel" means an excavation that extends beneath land, whether or not—

(i) it is big enough to permit the entry or passage of an individual, or

(ii) it leads to a particular destination;

(b) an excavation which is created with the intention that it will become or connect with a tunnel is to be treated as a tunnel, whether or not—

(i) any tunnel with which it is intended to connect has already been created, or

(ii) it is big enough to permit the entry or passage of an individual.

(6) References in this section to the creation of an excavation include—

(a) the extension or enlargement of an excavation, and

(b) the alteration of a natural or artificial underground feature.

(7) This section does not apply in relation to a tunnel if or to the extent that it is in or under a dwelling.

(8) In this section "dwelling" has the same meaning as in section 1 (offence of locking on).

Commencement

Pt 1 s. 3(1)-(8): July 2, 2023 (2023 c. 15 Pt 3 s. 35(5); SI 2023/733 reg. 2(a))

Extent

Pt 1 s. 3(1)-(8): England, Wales (an amendment made by this Act has the same extent as the provision amended)

Law In Force

4 Offence of causing serious disruption by being present in a tunnel

(1) A person commits an offence if—

(a) they are present in a relevant tunnel having entered it after the coming into force of this section,

(b) their presence in the tunnel causes, or is capable of causing, serious disruption to—

(i) two or more individuals, or

(ii) an organisation,

in a place other than a dwelling, and

(c) they intend their presence in the tunnel to have a consequence mentioned in paragraph (b) or are reckless as to whether their presence there will have such a consequence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for their presence in the tunnel.

(3) Without prejudice to the generality of subsection (2), a person ("P") is to be treated as having a reasonable excuse for the purposes of that subsection if P's presence in the tunnel was authorised by a person with an interest in land which entitled them to authorise P's presence there.

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

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

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years, to a fine or to both.

(5) For the purposes of this section—

(a) "tunnel" means an excavation that extends beneath land, whether or not it leads to a particular destination;

(b) an excavation which is created with the intention that it will become or connect with a tunnel is to be treated as a tunnel, whether or not any tunnel with which it is intended to connect has already been created.

(6) In this section "relevant tunnel" means a tunnel that was created for the purposes of, or in connection with, a protest (and it does not matter whether an offence has been committed under section 3 in relation to the creation of the tunnel).

(7) References in this section to the creation of an excavation include—

(a) the extension or enlargement of an excavation, and

(b) the alteration of a natural or artificial underground feature.

(8) This section does not apply in relation to a tunnel if or to the extent that it is in or under a dwelling.

(9) In this section "dwelling" has the same meaning as in section 1 (offence of locking on).

Commencement

Pt 1 s. 4(1)-(9): July 2, 2023 (2023 c. 15 Pt 3 s. 35(5); SI 2023/733 reg. 2(b))

Extent

Pt 1 s. 4(1)-(9): England, Wales (an amendment made by this Act has the same extent as the provision amended)

Law In Force

5 Offence of being equipped for tunnelling etc

(1) A person commits an offence if they have an object with them in a place other than a dwelling with the intention that it may be used in the course of or in connection with the commission by any person of an offence under section 3(1) or 4(1) (offences relating to tunnelling).

(2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both.

(3) In subsection (2), "the maximum term for summary offences" means—

(a) if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, six months;

(b) if the offence is committed after that time, 51 weeks.

(4) In this section "dwelling" has the same meaning as in section 1 (offence of locking on).

Commencement

Pt 1 s. 5(1)-(4): July 2, 2023 (2023 c. 15 Pt 3 s. 35(5); SI 2023/733 reg. 2(c))

Extent

Pt 1 s. 5(1)-(4): England, Wales (an amendment made by this Act has the same extent as the provision amended)

Offences involving works and infrastructure

Law In Force

6 Obstruction etc of major transport works

(1) A person commits an offence if the person—

(a) obstructs the undertaker or a person acting under the authority of the undertaker—

(i) in setting out the lines of any major transport works,

(ii) in constructing or maintaining any major transport works, or

(iii) in taking any steps that are reasonably necessary for the purposes of facilitating, or in connection with, the construction or maintenance of any major transport works, or

(b) interferes with, moves or removes any apparatus which—

(i) relates to the construction or maintenance of any major transport works, and

(ii) belongs to a person within subsection (5).

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

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

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

(3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both.

(4) In subsection (3) "the maximum term for summary offences" means—

(a) if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, six months;

(b) if the offence is committed after that time, 51 weeks.

(5) The following persons are within this subsection—

(a) the undertaker;

(b) a person acting under the authority of the undertaker;

(c) a statutory undertaker;

(d) a person acting under the authority of a statutory undertaker.

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

(a) works in England and Wales—

(i) relating to transport infrastructure, and

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

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

(7) Development is within this subsection if—

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

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

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

(8) In this section "undertaker" —

(a) in relation to major transport works within subsection (6)(a), means a person who is authorised by or under the Act (whether as a result of being appointed the nominated undertaker for the purposes of the Act or otherwise) to construct or maintain any of the works;

(b) in relation to major transport works within subsection (6)(b), means a person who is constructing or maintaining any of the works (whether as a result of being the undertaker for the purposes of the order granting development consent or otherwise).

(9) In this section—

"associated development" has the same meaning as in the Planning Act 2008 (see section 115 of that Act);

"development" has the same meaning as in the Planning Act 2008 (see section 32 of that Act);

"development consent" has the same meaning as in the Planning Act 2008 (see section 31 of that Act);

"England" includes the English inshore region within the meaning of the Marine and Coastal Access Act 2009 (see section 322 of that Act);

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace, and "maintenance" is to be construed accordingly;

"nationally significant infrastructure project" has the same meaning as in the Planning Act 2008 (see section 14(1) of that Act);

"statutory undertaker" means a person who is, or who is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990;

"trade dispute" has the same meaning as in Part 4 of the Trade Union and Labour Relations (Consolidation) Act 1992, except that section 218 of that Act is to be read as if—

(a) it made provision corresponding to section 244(4) of that Act, and

(b) in subsection (5), the definition of worker included any person falling within paragraph (b) of the definition of worker in section 244(5) of that Act;

"Wales" includes the Welsh inshore region within the meaning of the Marine and Coastal Access Act 2009 (see section 322 of that Act).

(10) In section 14 of the Planning Act 2008 (nationally significant infrastructure projects), after subsection (3) insert—

"(3A) An order under subsection (3)(a) may also amend section 6(7)(a) of the Public Order Act 2023 (obstruction etc of major transport works)."

Commencement

Pt 1 s. 6(1)-(10): July 2, 2023 (2023 c. 15 Pt 3 s. 35(5); SI 2023/733 reg. 2(d))

Extent

Pt 1 s. 6(1)-(10): England, Wales (an amendment made by this Act has the same extent as the provision amended)

Law In Force

7 Interference with use or operation of key national infrastructure

(1) A person commits an offence if—

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

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

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

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

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

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

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

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

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

(5) The cases in which infrastructure is prevented from being used or operated for any of its intended purposes include where its use or operation for any of those purposes is significantly delayed.

(6) In this section "key national infrastructure" means—

(a) road transport infrastructure,
(b) rail infrastructure,
(c) air transport infrastructure,
(d) harbour infrastructure,
(e) downstream oil infrastructure,
(f) downstream gas infrastructure,
(g) onshore oil and gas exploration and production infrastructure,
(h) onshore electricity generation infrastructure, or
(i) newspaper printing infrastructure.

Section 8 makes further provision about these kinds of infrastructure.

(7) The Secretary of State may by regulations made by statutory instrument—

(a) amend subsection (6) to add a kind of infrastructure or to vary or remove a kind of infrastructure;

(b) amend section 8 to add, amend or remove provision about a kind of infrastructure which is in, or is to be added to, subsection (6) or is to be removed from that subsection.

(8) Regulations under subsection (7)—

(a) may make different provision for different purposes;

(b) may make consequential, supplementary, incidental, transitional, transitory or saving provision.

(9) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(10) In this section—

"England" includes the English inshore region within the meaning of the Marine and Coastal Access Act 2009 (see section 322 of that Act);

"trade dispute" has the same meaning as in Part 4 of the Trade Union and Labour Relations (Consolidation) Act 1992, except that section 218 of that Act is to be read as if—

(a) it made provision corresponding to section 244(4) of that Act, and

(b) in subsection (5), the definition of worker included any person falling within paragraph (b) of the definition of worker in section 244(5) of that Act;

"Wales" includes the Welsh inshore region within the meaning of the Marine and Coastal Access Act 2009 (see section 322 of that Act).

Commencement

Pt 1 s. 7(1)-(10) definition of "Wales": May 2, 2023 for the purposes of making regulations; May 3, 2023 otherwise (2023 c. 15 Pt 3 s. 35(3)(a); SI 2023/502 reg. 2(c))

Extent

Pt 1 s. 7(1)-(10) definition of "Wales": England, Wales (an amendment made by this Act has the same extent as the provision amended)

Law In Force

8 Key national infrastructure

(1) This section has effect for the purposes of section 7.

(2) "Road transport infrastructure" means—

(a) a special road within the meaning of the Highways Act 1980 (see section 329(1) of that Act), or

(b) a road which, under the system for assigning identification numbers to roads administered by the Secretary of State or the Welsh Ministers, has for the time being been assigned a number prefixed by A or B.

(3) "Rail infrastructure" means infrastructure used for the purposes of railway services within the meaning of Part 1 of the Railways Act 1993 (see section 82 of that Act).

(4) In the application of section 82 of the Railways Act 1993 for the purposes of subsection (3) "railway" has the wider meaning given in section 81(2) of that Act.

(5) "Air transport infrastructure" means—

(a) an airport within the meaning of the Airports Act 1986 (see section 82(1) of that Act), or

(b) any infrastructure which—

(i) does not form part of an airport within the meaning of that Act, and

(ii) is used for the provision of air traffic services within the meaning of Part 1 of the Transport Act 2000 (see section 98 of that Act).

(6) "Harbour infrastructure" means a harbour within the meaning of the Harbours Act 1964 (see section 57(1) of that Act) which provides facilities for or in connection with—

(a) the embarking or disembarking of passengers who are carried in the course of a business, or

(b) the loading or unloading of cargo which is carried in the course of a business.

(7) "Downstream oil infrastructure" means infrastructure used for or in connection with any of the following activities—

(a) the refinement or other processing of crude oil or oil feedstocks;

(b) the storage of crude oil or crude oil-based fuel for onward distribution, other than storage by a person who supplies crude oil-based fuel to the public where the storage is for the purposes of such supply;

(c) the loading or unloading of crude oil or crude oil-based fuel for onward distribution, other than unloading to a person who supplies crude oil-based fuel to the public where the unloading is for the purposes of such supply;

(d) the carriage, by road, rail, sea or inland waterway, of crude oil or crude oil-based fuel for the purposes of onward distribution;

(e) the conveyance of crude oil or crude oil-based fuel by means of a pipe-line within the meaning of the Pipe-lines Act 1962 (see section 65 of that Act).

(8) "Downstream gas infrastructure" means infrastructure used for or in connection with any of the following activities—

(a) the processing of gas;

(b) the storage of gas for onward conveyance, other than storage by a person who supplies gas to the public otherwise than by means of a pipe-line where the storage is for the purposes of such supply;

(c) the import or export of liquid gas;

(d) the carriage, by road or rail, of gas for the purposes of onward distribution;

(e) the conveyance of gas by means of a pipe-line.

(9) In subsection (8)—

"gas" has the same meaning as in section 12 of the Gas Act 1995;

"pipe-line" has the same meaning as in the Pipe-lines Act 1962 (see section 65 of that Act).

(10) "Onshore oil and gas exploration and production infrastructure" means onshore infrastructure used for or in connection with—

(a) searching or boring for petroleum, or

(b) getting petroleum.

(11) In subsection (10)—

"onshore infrastructure" means infrastructure situated on land (excluding land covered by the sea or any tidal waters);

"petroleum" has the same meaning as in Part 1 of the Petroleum Act 1998 (see section 1 of that Act).

(12) "Onshore electricity generation infrastructure" means onshore infrastructure—

(a) used for or in connection with the generation of electricity for the purpose of giving a supply to any premises or enabling a supply to be so given, and

(b) which has a total installed capacity equal to or greater than 100 megawatts.

(13) In subsection (12)—

"onshore infrastructure" means infrastructure situated on land (excluding land covered by the sea or any tidal waters);

"supply", in relation to electricity, has the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(4) of that Act).

(14) "Newspaper printing infrastructure" means infrastructure the primary purpose of which is the printing of one or more national or local newspapers.

(15) In subsection (14)—

"local newspaper" means a newspaper which is published at least fortnightly and is in circulation in a part of England and Wales;

"national newspaper" means a newspaper which is published at least fortnightly and is in circulation in England, in Wales or in both;

"newspaper" includes a periodical or magazine.

Commencement

Pt 1 s. 8(1)-(15) definition of "newspaper": May 3, 2023 (2023 c. 15 Pt 3 s. 35(5); SI 2023/502 reg. 2(d))

Extent

Pt 1 s. 8(1)-(15) definition of "newspaper": England, Wales (an amendment made by this Act has the same extent as the provision amended)

Interference with access to or provision of abortion services

Law In Force

9 Offence of interference with access to or provision of abortion services

(1) It is an offence for a person who is within a safe access zone to do an act with the intent of, or reckless as to whether it has the effect of—

(a) influencing any person's decision to access, provide or facilitate the provision of abortion services at an abortion clinic,

(b) obstructing or impeding any person accessing, providing, or facilitating the provision of abortion services at an abortion clinic, or

(c) causing harassment, alarm or distress to any person in connection with a decision to access, provide, or facilitate the provision of abortion services at an abortion clinic,

where the person mentioned in paragraph (a), (b) or (c) is within the safe access zone for the abortion clinic.

(2) A "safe access zone" means an area which is within a boundary which is 150 metres from any part of an abortion clinic or any access point to any building or site that contains an abortion clinic and is—

(a) on or adjacent to a public highway or public right of way,

(b) in an open space to which the public has access,

(c) within the curtilage of an abortion clinic, or building or site which contains an abortion clinic, or

(d) in any location that is visible from a public highway, public right of way, open space to which the public have access, or the curtilage of an abortion clinic.

(3) No offence is committed under subsection (1) by—

B. Case Law

Neutral Citation Number: [2021] EWCA Civ 357

Appeal No: A3/2020/1909/CHANF

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST
BIRMINGHAM DICTRICT REGISTRY
Mr Justice Marcus Smith
PT-2020-BHM-00001

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 16 March 2021

Before:

THE RT. HON. LORD JUSTICE LEWISON
THE RT. HON. LORD JUSTICE EDIS
and
THE RT. HON. LORD JUSTICE WARBY

- -

Between:

Elliott Cuciurean	**Appellant/ Defendant**
- and –	
(1) The Secretary of State for Transport **(2) High Speed Two (HS2) Limited**	**Respondents/ Claimants**

- -

Heather Williams QC and Adam Wagner (instructed by **Robert Lizar Solicitors**) for the **Appellant**
Richard Kimblin QC and Michael Fry (instructed by **DLA Piper UK LLP**) **for the Respondents**

Hearing dates: 16-17 February 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00am, 15/03/2021.

Lord Justice Warby:

Introduction

1. This is an appeal against findings of contempt of court by breach of an injunction prohibiting trespass on land, and against the sanctions imposed.

2. The land is woodland near Kenilworth, Warwickshire, which has been defined for the purposes of these proceedings as "the Crackley Land". It is held by the claimants in these proceedings for the purposes of the well-known high-speed rail transport infrastructure project known for short as HS2.

3. The first claimant, and first respondent to the appeal, is the Secretary of State for Transport ("the SST"). The second claimant/respondent is the company responsible for the HS2 project ("HS2 Ltd"). The appellant is Elliott Cuciurean, an objector to the environmental impact of the HS2 project.

4. The injunction ("the March Order") was granted on 17 March 2020 by Andrews J, DBE, as she then was, on the application of the SST and HS2 Ltd. It was, in its material part, an injunction against Persons Unknown. Andrews J gave her reasons in a reserved judgment dated 20 March 2020 ("the Andrews Judgment", [2020] EWHC 671 (Ch)).

5. The appellant was not a named defendant to the claim. On 9 June 2020, however, the SST and HS2 issued a contempt application against him ("the Application"), alleging that he was one of the Persons Unknown against whom the claim was brought, and that he had wilfully broken the injunction on at least 17 occasions by entering and remaining on the Crackley Land.

6. The Application was heard by Marcus Smith J over three days, on 30 and 31 July and 17 September 2020. In his reserved judgment dated 13 October 2020 ("the Liability Judgment", [2020] EWHC 2614 (Ch)), the Judge found the appellant in breach in 12 respects. On 16 October 2020, there was a hearing on sanction. In respect of each breach the Judge made an order for committal to prison for six months, suspended for 12 months, all such orders to run concurrently. His reasoning was explained in a further judgment, dated 16 October 2020 ("the Sanctions Judgment", [2020] EWHC 2723 (Ch)).

7. The appellant's case before this Court is that the findings of contempt were wrong in law. He has four grounds of appeal. I shall come to the detail, but in summary the appellant's case is that the evidence before the Judge was incapable of establishing (1) that he encroached on the Crackley Land on any of the 12 occasions, or (2) that he had sufficient notice of the March Order to justify a finding that any such encroachment amounted to contempt. He further submits that the Judge erred in law in two respects: by requiring the appellant to establish that the position on notice was such that it would be unjust to find him in contempt, thereby reversing the burden of proof; and by leaving out of account the claimants' failure to comply with one of the service provisions of the March Order. In the alternative, the appellant contends that the penalties imposed were wrong in principle and/or excessive and disproportionate.

8. We heard argument on the appeal on 16 and 17 February 2021, following which we reserved judgment. I wish to pay tribute to the high quality of the submissions on both sides. Having reflected on the arguments, and for the reasons that follow, my conclusion is that the liability appeal should be dismissed. I would also reject the appellant's contention that his conduct did not justify any custodial sanction. But in my judgement, we should allow the sanctions appeal to the extent of reducing the sanction to one of committal for three months, suspended for the same period and on the same conditions as were set by the Judge.

The legal framework

Context

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. Like Marcus Smith J, I would adopt paragraph [35] of the Andrews Judgment, where she said:

> "…the simple fact remains that, other than when exercising the legal rights that attach to public or private rights of way, no member of the public has any right at all to come onto these two parcels of land, even if their motives are simply to engage in peaceful protest or monitor the activities of the contractors to ensure that they behave properly…"

(3) It is established that proceedings may be brought, and an interim injunction granted against Persons Unknown in certain circumstances: *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303 [2020] 1 WLR 280 [57], and cases there cited. This is a tool that can properly be used in support of the legitimate aim of protecting property rights The Court must keep a watchful eye on the use of this jurisdiction, and it may not be used where the defendants' identities are known: *GYH v Persons Unknown* [2017] EWHC 3360 (QB) [10],

Canada Goose [82(1), (5)]. But this is a common and, in principle, an unobjectionable mechanism for bringing proceedings against unidentified persons who will or are likely in the future to trespass on land (or commit another civil wrong), against whom a *quia timet* injunction is sought: *South Cambridgeshire District Council v Gammell* [2005] EWCA Civ 1429 [32], *Canada Goose* [63].

(4) Where the Court, having conducted the necessary balancing process, has granted an injunction, that order must be obeyed unless and until it has been set aside. The issue was examined, and this principle was re-affirmed, by the Divisional Court in *Re Yaxley-Lennon (No 2)* [2019] EWHC 1791 (QB) [2020] 3 All ER 477 [49]. It follows that a person accused of contempt by disobedience to an order may not seek to revisit the merits of the original injunction as a means of securing an acquittal, although these matters may in some cases be relevant to sanction.

(5) So, at the liability stage of a contempt application such as this, the underlying importance or merits of the HS2 project, the policy and the merits of the opposition to it are all irrelevant, as is the fact that the case involves speech or protest or assembly. As Marcus Smith J observed in the Liability Judgment at [10]:-

> "This Application is concerned only with (i) whether the Order has been breached and (ii) whether the circumstances of those breaches – if they occurred – are such as to trigger the contempt jurisdiction. These are extremely important questions to do with the consequences of an alleged breach of a court order. Their resolution does not depend on the merits or otherwise of the HS2 Scheme or the extent of a person's right of protest to that Scheme.
>
> … why the order is breached is irrelevant to the contempt jurisdiction, although it may be relevant to the question of sanction."

The nature and purposes of the civil contempt jurisdiction

10. As the passage just cited emphasises, the essence of the wrong is disobedience to an order. Disobedience to an order made in civil proceedings is known as "civil contempt". The contempt proceedings are brought in the civil not the criminal courts. The procedure is regulated by common law and Part 81 of the Civil Procedure Rules. The proceedings are not brought by the state, through the Attorney General or otherwise, in the public interest. They are normally brought by the beneficiary of the order that is said to have been disobeyed, whose main if not sole purpose will be to uphold and ensure compliance with the order. In summary, this is "contempt which is not itself a crime": *R v O'Brien* [2014] UKSC 23 [2014] AC 1246 [42] (Lord Toulson). Hence the use of language such as "liability" and "sanction" rather than "conviction" and "sentence".

11. Sometimes, it may be possible to secure compliance by procedural means, such as striking out a case; but that will not always be possible. And the court also has an

interest in deterring disobedience to its orders and upholding the rule of law. To advance these purposes the court has power in an appropriate case to impose a fine, or

a custodial order. Custody in cases of contempt is known as committal. It is not the same as a prison sentence – there are several ways in which those committed for contempt are treated differently from convicted criminals sentenced to a term of imprisonment. But it is probably for this reason that civil contempt is sometimes called *sui generis*. In no other context can proceedings classified as "civil" lead to a custodial sanction or even a fine (punitive damages are not the same thing). It is certainly for this reason that the law has imported some elements of criminal procedure.

Burden and standard of proof

12. The long-established rule is that the essential ingredients of civil contempt must be proved by the applicant to the criminal standard: *Re Bramblevale Ltd* [1970] Ch 128 (CA). The burden also lies on the applicant to satisfy the court to the criminal standard that the applicable procedural requirements have been met.

The ingredients of civil contempt

13. The ingredients of civil contempt are not laid down by statute but established by common law authorities. In this case, both parties have relied on the following summary by Proudman J, DBE in *FW Farnsworth Ltd v Lacy* [2013] EWHC 3487 (Ch) [20], approved by this Court in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9, [2020] 4 WLR 29 [25]:

> "A person is guilty of contempt by breach of an order only if all the following factors are proved to the relevant standard: (a) having received notice of the order the contemnor did an act prohibited by the order or failed to do an act required by the order within the time set by the order; (b) he intended to do the act or failed to do the act as the case may be; (c) he had knowledge of all the facts which would make the carrying out of the prohibited act or the omission to do the required act a breach of the order. The act constituting the breach must be deliberate rather than merely inadvertent, but an intention to commit a breach is not necessary, although intention or lack of intention to flout the court's order is relevant to penalty."

It is accepted that the appellant had the intention required by element (b) which is, as Marcus Smith J held, an "attenuated" requirement; as indicated by the last sentence of this citation, it is enough that the alleged contemnor intended to perform the act, rather than doing it by accident. It is not in dispute that element (c) was satisfied here. It is element (a) that has been the focus of the argument before us.

Service

14. Rule 81.5 as it stood at the material time provided that a judgment or order could not be enforced by contempt proceedings unless "a copy of it has been served on the

person required to … not do the act in question" or "the court dispenses with service under rule 81.8". The primary rule required personal service of the order, as defined in CPR 6.5(3). In the case of an individual, this is "(a) … leaving it with that individual". The exceptions were provided for in Rule 81.8 as follows:-

> "(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 81.5 to 81.7 if it is satisfied that the person has had notice of it—
>
> (a) by being present when the judgment or order was given or made; or
>
> (b) by being notified of its terms by telephone, email or otherwise.
>
> (2) In the case of any judgment or order the court may—
>
> (a) dispense with service under rules 81.5 to 81.7 if the court thinks it just to do so; or
>
> (b) make an order in respect of service by an alternative method or at an alternative place."

15. In this case there was no question of dispensing with service. We are concerned with r 81.8(2)(b): service by an alternative method. Personal service on someone whose identity is unknown can pose difficulties. As the Court pointed out in *Canada Goose* at [82(1)], persons unknown defendants "are, by definition, people who have not been identified at the time of the commencement of the proceedings". But they must be

> "people who … 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."

The Court went on to state at [82(5)] that where alternative service is ordered, "the method … must be set out in the order." Methods of alternative service vary considerably but typically, in trespass cases, alternative service will involve the display of notices on the land, coupled with other measures such as online and other advertising.

Sanctions

16. The law as to sanctions for contempt is also *sui generis*: a mixture of common law and statute. By statute, the maximum sanction that may be imposed on any one occasion is committal to prison for a fixed term not exceeding 2 years: Contempt of Court Act 1981, s 14(1). The court retains its common law power to order that the execution of a committal order be suspended for such period or on such terms or conditions as it may specify. The only alternative sanctions of relevance are financial: a fine, or sequestration of assets. The Court may also order the contemnor to pay costs, and to do so on an indemnity basis, but this is compensation not a sanction.

17. In line with general principles, any sanction must be just and proportionate and not excessive. The purposes of sanction in cases of civil contempt are, however, different

from those of criminal sentencing. They include punishment and rehabilitation, but an important aspect of the harm is the breach of the Court's order. An important objective of the sanction is to ensure future compliance with that order: *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ 699 [20] (Pitchford LJ). This would explain why the laws and guidelines that govern criminal sentencing do

not apply directly, but only by analogy, and then with appropriate caution: see for instance *Venables v News Group Newspapers Ltd* [2019] EWHC 241 (QB). It would also explain why the custody threshold test is not the same (see, for instance, *McKendrick v Financial Conduct Authority* [2019] EWCA Civ 524 [40]), and why suspended committal orders feature prominently in the case law.

18. The approach to sanctions in protest cases has been considered in two cases about "fracking": the criminal appeal of *R v Roberts (Richard)* [2018] EWCA Crim 2739 [2019] 1 WLR 2577 and the contempt case of *Cuadrilla.*

(1) In *Roberts* (at [34]) Lord Burnett CJ said this:

> "… the conscientious motives of protestors will be taken into account when they are sentenced for their offences but that there is in essence a bargain or mutual understanding operating in such cases. A sense of proportion on the part of the offenders in avoiding excessive damage or inconvenience is matched by a relatively benign approach to sentencing."

(2) In *Cuadrilla* this Court gave guidance addressing (at [91-95]) the relevance of a contemnor's motives to the application of the custody threshold, and (at [97]) reasons for showing clemency in cases of "civil disobedience", which it defined (quoting the legal philosopher John Rawls) as

> "a public, non-violent, conscientious act contrary to law, done with the aim of bringing about a change in the law or policies of the government (or possibly, though this is controversial, of private organisations)."

At [98], Lord Justice Leggatt referred to the "moral difference" between "ordinary law-breakers" and protestors, which would ordinarily mean that "less severe punishment is necessary to deter such a person from further law breaking". He also identified the need for judicial restraint, to help achieve one purpose of sanctions in such cases, namely

> "to engage in a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's activities are contrary to the protestor's own moral convictions." <u>The standard of review on appeal</u>

19. An appeal of this kind is not a re-hearing, but a review of the decision of the lower court: CPR 52.21(1). This Court will interfere only if it is satisfied that the decision under appeal is "(a) wrong, or (b) unjust because of a serious procedural or other

irregularity" in the proceedings below: r 52.21(3). If the lower court is found to have erred in law, the Court will be ready to intervene, if the error is material. The Court will not interfere with a finding of fact unless it determines that the "finding of fact is unsupported by the evidence or where the decision is one which no reasonable judge could have reached": *Haringey LBC v Ahmed* [2017] EWCA Civ 1861 [31]. The approach to be taken is discussed in *Dupont de Nemours (EI) & Co v ST Dupont (Note)* [2003] EWCA Civ 1368 [2006] 1 WLR 2793 [94]. It will always be relevant to consider the extent to which the trial judge had an advantage by virtue of seeing and hearing witnesses give evidence. That is particularly so, where credibility was in issue.

20. A decision on sanction involves an exercise of judgment which is best made by the judge who deals with the case at first instance. An appeal court will be slow to interfere, and will generally only do so if the judge (i) made an error of principle; (ii) took into account immaterial factors or failed to take into account material factors; or (iii) reached a decision which was outside the range of decisions reasonably open to the judge: *Cuadrilla* [85].

The proceedings below

The March Order and the Andrews Judgment

21. The claim was brought, and the March Order was made, against four defendants. The third and fourth defendants were named individuals, each of whom was represented by Counsel at the hearing before Andrews J on 17 March 2020. The first and second defendants to the claim were groups of persons unknown, and unrepresented. Mr Wagner of Counsel appeared for the third defendant. He also assisted the court by drawing attention to points that might have been made on behalf of the absent persons unknown.

22. The land in respect of which the claimants sought relief was identified on two plans attached to the claim documents. Andrews J held that the claimants were "undoubtedly entitled to possession of the land" identified on these plans, and made a declaration accordingly stating, among other things, that "where the Defendants or any of them enter the said land the Claimants shall be entitled to possession of the same." That having been done, the application against the named defendants was refused, on the grounds that there was "no evidence that either … was likely to trespass on the land in future if they were required by the Court to give possession back to the claimants".

23. The Judge considered *Cuadrilla* and *Canada Goose,* and directed herself as to the tests that had to be met in order to grant relief against the other defendants. She was satisfied that the defendants' identities were not known, that they were not identifiable, that there was enough evidence to demonstrate a real risk of further trespasses by persons opposed to the HS2 project, and that the claimants were likely to obtain final relief. Accordingly, she granted the injunctions sought against the second defendants, who were defined as follows:

> "Persons Unknown entering or remaining without the consent of the Claimants on Land at Crackley Wood, Birches Wood and Broadwells Wood, Kenilworth,

> Warwickshire shown coloured green, blue and pink and edged red on Plan B annexed to the Particulars of Claim"

These are the parcels of land that were compendiously referred to for the purposes of the March Order as "the Crackley Land". As this wording indicates, a person could become a second defendant simply by entering on the Crackley Land without the consent of the claimants. This is standard methodology, and no point is or could be taken upon it. Whether such a person would be in contempt is of course a separate matter.

24. The substantive elements of the March Order were contained in paragraphs 3 to 7. By paragraph 3, the second defendants were obliged forthwith to give the claimants vacant possession of all the Crackley Land. Paragraph 4 forbade the second defendants from entering or remaining upon the Crackley Land with effect from 4pm on 24 March 2020. To identify that land, a copy of Plan B was attached to the March Order. Paragraph 5 contained a limited "carve-out" to that prohibition, to protect those exercising private or public rights of way. Paragraph 6 provided that the prohibition should last until trial or further order, with a long-stop date of 17 December 2020, that is 9 months from the date of the Order. Paragraph 7.2 contained the declaration.

25. The Judge referred to the *Canada Goose* guidelines on service, and had regard to CPR 81.8. The March Order made provision for service by an alternative method, including as follows:-

> "8. Pursuant to CPR 6.27 and 81.8, service of this Order on the…Second Defendants shall be dealt with as follows:
>
> 8.1 The Claimants shall affix sealed copies of this Order in transparent envelopes to posts, gates, fences and hedges at conspicuous locations around…the Crackley Land.
>
> 8.2 The Claimants shall position signs, no smaller than A3 in size, advertising the existence of this Order and providing the Claimants' solicitors contact details in case of requests for a copy of the Order or further information in relation to it.
>
> 8.3 …
>
> 8.4 …
>
> 9. The taking of the steps set out in paragraph 8 shall be good and sufficient service of this Order on the…Second Defendants and each of them. This Order shall be deemed served on those Defendants the date that the last of the above steps is taken, and shall be verified by a certificate of service.
>
> 10. The Claimants shall from time-to-time (and no less frequently than every 28 days) confirm that copies of the orders and signs referred to at paragraphs [8.1] and [8.2] remain in

> place and legible, and, if not, shall replace them as soon as practicable."

(Paragraphs 8.3 and 8.4 provided for notice to be given by email to a specified address and by advertisement on an HS2 website and a government website. There is no suggestion that those provisions, though doubtless worthwhile, are relevant in this case.)

26. As required by the *Canada Goose* guidelines, paragraph 15 of the March Order made provision for the defendants or any person affected by it to apply to the Court at any time to vary or discharge it.

The Application

27. Part 81, as it stood at the time, required the applicant to file a Statement of Case. This alleged that the appellant had "on … 17 separate occasions between 4 April 2020 and 26 April 2020 acted in contempt of the [March] Order by wilfully breaching paragraph 4.2 … by entering onto and remaining on the Crackley Land." A Schedule attached to the Statement of Case set out details of each of the 17 alleged acts of contempt. A Plan ("Plan E") and a photograph ("the Incident Location Photo") identified the location of each act alleged against the appellant.

The liability hearing

28. Mr Fry appeared for the respondents, Mr Wagner for the appellant. Over what he described in the Liability Judgment as two "very full days" at the end of July 2020 the Judge read, heard, and saw evidence. This included not only written and oral evidence from witnesses but also photographs, diagrams, plans, photographs, and video footage. A limited amount of further written evidence was submitted after the July hearing. Written submissions were filed, then elaborated on orally at the further 1day hearing on 17 September 2020.

29. Two witnesses were called by the respondents, and cross-examined: Mr Bovan, a High Court Enforcement Officer, and Mr Sah, a project engineer retained by the claimants in connection with the HS2 project. Each had made one or more affidavits which stood as his evidence in chief. Among the exhibits to Mr Bovan's first affidavit was a witness statement from a process server, Mr Beim. He confirmed that service had been effected in accordance with paragraph 8 of the March Order, and his statement was not challenged. The appellant made two witness statements, which he confirmed on oath, and was then cross-examined. Evidence was adduced from a further seven witnesses in support of his case, each of whom had made a witness statement. All but one was cross-examined by Mr Fry.

The Liability Judgment

30. This contained a scrupulously careful review and assessment of the issues, evidence, and relevant law, and a clear statement of the Judge's conclusions. It is publicly available at www.bailii.org and on the judiciary website, and it is unnecessary to rehearse it in detail for present purposes. It is enough to record the following.

31. The Judge concluded that he could place "no weight" on the evidence of Mr Sah who "did not recognise the affidavit he had sworn", parts of which "appeared to have been written for him", and who "did not recognise" a plan and video exhibited to his affidavit, both provided to him by a Mr Maurice Stokes.

32. As to the other witnesses, the Judge's assessment was that with two exceptions all sought to give their evidence honestly and with the intention of doing their best to assist the court, as best they could. Mr Bovan was assessed as "a stolid witness, clearly telling what he considered to be the truth and doing his best to assist the court."

33. The relevant exception to this overall view was the evidence of Mr Cuciurean. The Judge described him as "a charming, funny but ultimately evasive witness". He was obviously very much committed to his opposition to the HS2 scheme and would go to "very considerable lengths in order to give his objections … as much force as they possibly could have". He would regard inconvenience to, or slowing down of, the scheme as positive not negative consequences of his conduct. The Judge's overall assessment was that

> "… (having watched Mr Cucuirean carefully in the witness box) that in furtherance of this objective he was prepared to be evasive, but not to outright lie to the court. [He] was a committed opponent of the HS2 Scheme, and I must treat his evidence with considerable caution. However, I do not reject that evidence as that of a liar."

34. In relation to all the witnesses, the Judge took account of the polarisation of views on the HS2 scheme, which he considered had led each side to read the worst not the best into the conduct of the other. He bore in mind that this would have affected all the evidence before him and treated the evidence with appropriate caution.

35. On the issues before him, Marcus Smith J reached the following relevant conclusions:-

(1) The procedural requirements of CPR 81 were satisfied by proof of service in accordance with the alternative method specified in paragraph 8 the March Order.

(2) (As was undisputed) the requirements of paragraph 8 of the March Order were complied with.

(3) It was not necessary, as Mr Wagner had submitted, for the claimants to prove "something more" than compliance with the service requirements of the order.

(4) It was in principle open to the appellant to assert that, despite compliance with the formal service requirements, he had not in fact had such notice of the Order as would make it just to find him liable for contempt, and to seek the setting aside of service accordingly.

(5) But the circumstances of the case did not warrant the setting aside of service or make it unjust to proceed with the committal. In this context, the Judge rejected

Mr Wagner's submission that although the appellant knew there was an order in existence, he "was unaware of its terms, and that this was enough to render it unjust to proceed with the committal." The Judge found that the appellant "not only knew of the existence of the Order, but of its material terms… [which] were not to enter upon the Crackley Land." (Liability Judgment [63(11)(b)]).

(6) It was not necessary for the claimants to establish that there had been "continuing compliance" with the requirements of paragraph 10 of the March Order, nor was it relevant that compliance with those requirements had not been established to the criminal standard.

(7) The claimants had failed to prove any of the incursions that were alleged to have been made into an unfenced part of the Crackley Land, which the Judge referred to as "Area B" of "Crackley Land (East)".

(8) But the evidence established so that the Judge was sure that on 4, 5, 7 and 14 April 2020 the appellant had acted in breach of the injunction by making a total of 12 incursions into a fenced part of the Crackley Land which the Judge referred to as "Area A" of "Crackley Land (East)".

(9) The appellant had performed those acts consciously and deliberately. The law requires no more.

(10) In case that was wrong in law, the Judge made findings of fact, including findings that the appellant entered on the Crackley Land in knowledge of the order, which he "fully understood" to be that he was not to enter upon the Crackley Land.

The Sanctions Judgment

36. The Judge conducted a thorough and careful review of the authorities on the approach to sanction, of which no criticism has been advanced. He concluded that the custody threshold, as defined in the authorities, had "clearly" been crossed. He rejected Mr Wagner's submissions, that the appellant may have known he was trespassing, but did not know he was entering on land protected by the order, as having "an air of unreality". The appellant's conduct was described as a "persistent and sustained attempt to breach, and successfully to breach, the perimeter of the Land", which had forced HS2 and its staff to operate on a "high level of alert" on a 24-hour basis, leading to a considerable risk of injury and/or disturbance. This, said the Judge, was conduct which flouted the rule of law and required firm deterrence. He described the appellant's evidence as "very frank about his approach and about his motives, although less frank in other respects".

37. Having considered the harm, culpability and the aggravating and mitigating features of the case, the Judge concluded that "if this were an ordinary case" he would be minded to impose a sanction of 18 months custody. But he took account of the fact that the case was one of protest. He considered the approach of the Court of Appeal in *Roberts* and *Cuadrilla.* He characterised the case as "undoubtedly one of civil disobedience", but one that was only "just about" non-violent. Having asked himself whether the civil disobedience was "aiming to bring about a change in law or policy"

his answer was "Perhaps, but only marginally or only by making the project so expensive that the political will to continue it evaporates or diminishes". In the light of this evaluation, he reduced the sanction to one of six months.

38. The Judge then considered whether this sanction should be suspended. He was satisfied that the appellant would comply with a condition, if one was imposed. He considered suspension to be an important part of the "dialogue" referred to by Lord

Burnett in *Roberts*. The committal was accordingly suspended for 12 months on condition that the appellant complied with "any order of a court in England and Wales endorsed with a penal notice and enjoining, however phrased, entry upon any land by persons including, whether named as a defendant or as a person unknown".

The appeal on liability

Grounds of appeal

39. The four grounds of appeal raise four distinct issues for review. I shall address them in the order they appear in the appeal documentation.

Ground 1: did the 12 incidents occur on the Crackley Land?

40. It is submitted on behalf of the appellant that the Judge was wrong in law to find that the 12 incidents took place on the Crackley Land as defined in the March Order. The written grounds of appeal assert that this conclusion "entailed a misapplication of the requisite standard of proof". In oral argument, Ms Williams QC clarified the appellant's position: his case is that there was no evidence capable of supporting the Judge's conclusion. It follows that we could only uphold this ground of appeal if we concluded that the Judge's findings of fact were unsustainable and perverse.

41. There are two main strands to the argument in support of this ground of appeal. First, it is said that the evidence of Mr Sah was the only evidence adduced by the claimants to establish the precise boundaries of the Crackley Land. The rejection of that evidence is said to have left the Judge with no basis for any finding to the criminal standard that Area A was within the boundaries of the Crackley Land. Secondly Ms Williams argues, on the basis of an elaborate dissection of the Liability Judgment, that the Judge failed to set out any cogent or sufficient reasons for concluding that the acts complained of were carried out on the Crackley Land. The reasons he did provide are said to be speculative and unfounded, and insufficient to satisfy the criminal standard of proof.

42. I am not persuaded by the first limb of the argument. It is true that Mr Sah was called to prove the boundaries of the Crackley Land. The demolition of his evidence was no doubt a forensic success for Mr Wagner. But it is not correct to say that his was the only evidence on the issue. Indeed, it does not seem to me that this is quite the way Mr Wagner himself approached the matter below. He did not submit, at the end of the claimants' case, that the appellant had no case to answer. In closing argument his submission was that there was no "authoritative" evidence to support this aspect of the claimants' case, or at least no sufficient evidence. This appropriately reflected the

existence of evidence from Mr Bovan, and the plans, photographs, and video evidence exhibited by him, which addressed the issue quite extensively and in some detail.

43. As for the second limb of the appellant's argument, I see two difficulties with Ms Williams' approach. The first is that I find her semantic analysis artificial and ultimately unconvincing. The second is that this ground of appeal is not an attack on the sufficiency of the Judge's reasons for finding that the incidents took place on the Crackley Land. If that were the complaint, the right course would have been to ask the Judge for further reasons and/or to appeal on that ground: *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605 [2002] 1 WLR 2409. That has not been done.

The challenge before us is a different one: that the finding was perverse, in the sense that it lacked any sufficient evidential basis; and in my judgement that is not a sustainable contention.

44. To put these points in context it is necessary to give some further explanation of the position as it stood before the Judge, and his findings.

(1) All of the incidents alleged by the respondents occurred within a section of the Crackley Land which the Judge called "Crackley Land (East)".

(2) The evidence that was before the court below, and is before us now, addressed the physical demarcation of that land. The evidence shows that – as the Judge held – Crackley Land (East) was divided by an internal boundary of Heras fencing, a form of temporary movable metal fencing. The significance of this was that to the West of the internal boundary, the land had no visible physical perimeter; there was no fence or other visible demarcation of its outer boundary. The Judge designated this Western area as Area B. The respondents' case that the appellant had breached the March Order by incursion into this area was dismissed by the Judge.

(3) To the East of the internal boundary, however, was a part of Crackley Land (East) which the Judge called Area A. This area had fencing to all sides. The fencing was of three kinds: Heras panels, 3-metre-high hoarding ("the Hoarding Fence"), and post-and-wire. The Hoarding Fence ran across the Southern boundary of Area A, close to the location of Camp 2. The case for the respondents was that this physical fencing reflected and corresponded with the boundaries edged in red on Plan B, as attached to the March Order. Thus, it was said, proof of an incursion by the appellant into areas that were fenced in on the ground was *prima facie* an incursion into the Crackley Land as defined in the March Order.

(4) There was a wrinkle, because of the "carve-out" in paragraph 5 of the Order, permitting the exercise of "rights over any public right of way over the Land". As the Judge explained in paragraphs [93-94], the respondents had provided for a temporary public right of way ("the TPROW") across Area A. This tracked the line of the Hoarding Fence. The intention had been to make it accessible from the South only, and Heras fencing was erected on either side of the TPROW to prevent users straying from it onto the prohibited part of the Crackley Land. So, if that intention had been put into effect at the material time it would have been possible to be present on the TPROW, within Area A, without breaching the

March Order. But the Judge found that access to this area was not as a matter of fact available via the Southern entrance to the TPROW; the respondents had not made the TPROW available for use as a right of way. The Judge further rejected the appellant's case that, as a matter of law, he was nonetheless entitled to be on the TPROW. He found that the carve out was "not engaged". There is no appeal against these conclusions. Accordingly, the fact that several of the incidents relied on involved incursions onto or near the TPROW does not of itself assist the appellant.

(5) There is no challenge to the Judge's finding that he was "satisfied, so that I am sure", that the respondents had proved that each of these incidents, except for Incident 4, took place on "what the [respondents] contended was the Crackley Land." But that left the question of whether the respondents were correct to maintain that the fencing accurately designated the boundaries. The appellant was still entitled to say, however, that the incursions complained of all took place in the vicinity of the boundary fencing.

45. Mr Bovan was responsible for the security of aspects of the HS2 project. He was on site at the Crackley Land at all material times, in charge of a team. In his first affidavit, he stated that "day to day, 'on the ground' at the Crackley Land the perimeter of the land is generally marked by the three forms of fencing I have described, which he defined as "the Perimeter Fence". He went on to say that "… the Perimeter Fence marks the boundary of the Crackley Land …" and that the incidents relied on were occasions on which "the respondent crossed the Perimeter Fence without permission and was therefore entering upon the Crackley Land in breach of paragraph 4.2 of the [March] Order." It is clear from his affidavit that the land he was referring to as "the Crackley Land" is the land edged in red on the relevant plan. In his second affidavit Mr Bovan produced an incident location plan and an incident location photo, showing "the approximate location" of each incident and "an idea of where each incident occurred", in relation to the land and each other. Mr Cuciurean's case was, however, that the boundaries were wrongly demarcated and did not correspond to the land edged red on Plan B. He was unable to advance any positive evidential case on the issue, but he was entitled to put the respondents to proof.

46. So, at [103] and following the Judge went on to consider whether the respondents had proved their case, and disproved that of the appellant, to the criminal standard. Having held at [109(1)-(5)] that they had failed to do so when it came to the unfenced part of Crackley Land East (Area B), the Judge went on (at [109(6)]) to distinguish the incidents that took place in Area A. He held that that "these can be pinned down to a precise geographic location, as I have described. It is thus possible to state – as I have stated – that the perimeter of Area A was breached in a very specific way." At [109(7)] he considered and dismissed "the possibility of a mismatch between the physical perimeter of Area A … and the demarcation of the Crackley Land as set out in the order". His conclusion was that "… on the evidence before me, I consider the possibility of such a mismatch to be within the realms of the theoretical".

47. The Judge provided this explanation of his overall conclusion:

> "It seems to me that Mr Cuciurean's case involves an assertion that the Claimants have been exercising possessory rights over someone else's land in a most aggressive way and in circumstances where one would expect – if that were the case – clear challenge to the exercise of those rights by those whose interests were being usurped. More specifically: (a) The physical boundaries that I have described were up
>
> at
>
> the time of Andrews J's Judgment and Order. If there was a serious argument that the Claimants were operating on land to which they had no claim, then that argument would have been articulated before Andrews J. As she noted in her Judgment, one of the purposes of the defendants before her was to monitor the conduct of the Claimants, so as to ensure they did not act unlawfully.
>
> (b) Equally, it is unlikely in the extreme that neighbouring landowners would permit the erection, on their land, of barriers like the Hoarding Fence without objection, particularly given the controversial nature of the HS2 Scheme.
>
> (c) Nor do I consider that the Claimants would dare to pursue the aggressive vindication of their rights (erecting barriers and notices; ejecting persons; arresting them; diverting and closing footpaths) without being very sure that they were acting clearly within their rights."

48. Ms Williams fastened on the language of likelihood in paragraph [109(7)(b)]. But the suggestion that the Judge did not apply the appropriate standard of proof cannot be accepted. At paragraph [20], early in the Liability Judgment, he directed himself as to the standard of proof. No criticism is or could be made of the terms in which he did so. The Judge later expressed himself as satisfied "so that I am sure" that the incidents took place in Area A. He expressly accepted the appellant's case that the respondents still bore the burden of proving to the criminal standard that they took place within the land edged red on Plan B. In this passage he was giving reasons for concluding that they had done so. The occasional use of language redolent of a lower standard is not enough to persuade me that the Judge did not faithfully apply the standard he had set himself, when reaching his conclusions on actual knowledge.

49. The point is reminiscent of an argument rejected by this Court in *JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1411 [2013] 1 WLR 1441 at [51-53] (in passages cited to the Judge by Mr Wagner). This Court observed that the issue for the Judge was whether the evidence, taken overall, established the ingredients of contempt to the necessary standard. The mere use of phrases which in form refer to some standard lower than certainty is not enough to cast doubt on his approach. A court may be sure of a circumstantial case, built on strands of evidence not all of which are made out to

that standard. In this case, moreover, it must not be overlooked that the Judge used the words "very sure" in paragraph [109(7)(c)], and his ultimate conclusion was not that the appellant's case was improbable, but that it fell "within the realms of the theoretical".

50. In the light of Mr Bovan's affidavits, as described above, it is not possible to maintain that there was no evidence to support the Judge's conclusion. Whether Mr Bovan's evidence should be accepted and whether, if accepted, it was sufficient to prove the case, were issues for the Judge to resolve in the light of the other evidence in the case and any inferences that could safely be drawn. It cannot be said, in my judgement, that no reasonable Judge could have accepted that the respondents' case was made out. The issue for Marcus Smith J was whether he could be sure that the respondents had accurately marked the boundaries of their land, or whether they might, in a relevant respect, have made an error in doing so. It was plainly relevant to consider the inherent probabilities, so long as he kept in mind the standard of proof and did not stray from inference into the prohibited territory of speculation. In my judgement, he observed those limits. The factors he addressed in paragraph [109(7)] were pertinent, and he was entitled to reach the conclusions he did.

51. The evidence on both sides made it perfectly clear that HS2 was a controversial project which had encountered considerable opposition, which caused disruption and expense. It was a legitimate conclusion that those responsible for the project would be scrupulous in their approach to the use of land, and take the utmost care in the enforcement of their legal rights. It was equally legitimate to suppose that opponents of the project would be quick to complain of any perceived abuse of position. There was no such contention at the hearing before Andrews J, and Marcus Smith J's observation that the boundary fences were in place at that time appears unimpeachable. The Judge was also fully entitled to infer that the owners of the land on which Camp 2 had been established were sympathetic to the protestors' cause, and for that reason would have been astute to complain if the Hoarding Fence had been erected on their land.

52. It was part of the appellant's case, as the Judge recorded, that the respondents had been asserting possessory rights over someone else's land. But trespass is an interference with possession, not with title. If, therefore, the respondents were in possession of the land, then even if they were exercising possession on someone else's land, they were still entitled to maintain an action for trespass. Ms Williams correctly submitted that the "Crackley Land" had no independent existence apart from its designation in the March Order. The extent of the land encompassed in the order is therefore a question of construction of the plan attached to that order.

53. As Lewison LJ pointed out in the course of argument, where the precise location of a boundary is disputed in a conveyancing context, the court will invariably look at the topographical features on the ground at the time of the conveyance; existing boundary features such as fences, hedges, or ditches would always be of weight: see, by way of example, *Alan Wibberley Building Limited v Insley* [1999] 1 WLR 894 (HL) at 987C (Lord Hoffmann, with whom the other Members of the Appellate Committee agreed), *Pennock v Hodgson* [2010] EWCA Civ 873 at [9(3)] (Mummery LJ). The standard of proof may differ, but there does not seem to be any reason why the fact that the point

arises in the context of a contempt application should change that basic approach. On the Judge's findings, the boundary fences in place at the time of the incidents were also in place at the time of the March Order. It was therefore a legitimate interpretation of the plan attached to that order that the boundary fences were intended to demarcate the land included in the scope of the order.

Ground 2: was it incumbent on the claimants to prove "something more" than service in accordance with the March Order?

54. The Judge found that the service requirements of the March Order reflected an unimpeachable application by Andrews J of the *Canada Goose* guidance, and that those requirements were complied with. The Judge noted that neither Counsel had been able to identify any authority supporting the existence of any requirement of "knowledge" of the order, independent of the requirement that the order be served. He found it hard to see "how there is space" for the existence of any such requirement. He held that it was for the judge making the order to determine whether any and if so what order for service by an alternative means was appropriate. But he did not consider that the question of service could be "altogether disregarded" on an application for committal. He concluded that, despite the absence of any rule or authority to this effect, the right approach in principle was that "provided the person alleged to be in contempt can show that the service provisions have operated unjustly … the service against that person must be set aside."

55. The complaint is that this involves an impermissible reversal of the burden of proof, requiring the appellant to prove a case for setting aside service on the grounds of injustice. The Grounds of Appeal assert that "The correct test is whether there was good service or not, which is for the claimant to prove beyond reasonable doubt, including negativing any suggestion of injustice raised by the defendant."

56. This is a problematic formulation. It assumes that in order to establish "good service" a claimant must prove not only that what was done complied with the rules or the relevant Court order but also something more, including (if the issue is raised by the defendant) that proceeding on that basis is not unjust. As the Judge observed, there is no authority to support any such proposition. More than that, the proposition appears to be contrary to authority. The effect of the authorities was summarised by Lord Oliver in *Attorney General v Times Newspapers Ltd* [1992] 1 AC 181, 217-218:

> "One particular form of contempt by a party to proceedings is that constituted by an intentional act which is in breach of the order of a competent court. Where this occurs as a result of the act of a party who is bound by the order … it constitutes a civil contempt by him which is punishable by the court at the instance of the party for whose benefit the order was made and which can be waived by him. The intention with which the act was done will, of course, be of the highest relevance in the determination of the penalty (if any) to be imposed by the court, but the liability here is a strict one in the sense that all that requires to be proved is service of the order and the

> subsequent doing by the party bound of that which is prohibited."

57. The proceedings in *Cuadrilla* were conducted on that basis. It was common ground that the ingredients of civil contempt were those identified in *Farnsworth* (above) but it was understood that proof that these were met would not necessarily establish knowing disobedience to the order. HHJ Pelling QC addressed the possibility that "the respondents did not, in fact, know of the terms of the order even though technically the order had been served as directed". He identified this as an issue "relevant to penalty if that stage is reached", observing that in such a case "it is highly likely that a court would consider it inappropriate to impose any penalty for the breach…": [2019] E30MA3131 [14]. On appeal, this Court endorsed this as a "sensible approach": *Cuadrilla* (above) [25].

58. These authorities indicate that (1) in this context "notice" is equivalent to "service" and *vice versa*; (2) the Court's civil contempt jurisdiction is engaged if the claimant proves to the criminal standard that the order in question was served, and that the defendant performed at least one deliberate act that, as a matter of fact, was noncompliant with the order; (3) there is no further requirement of *mens rea*, though the respondent's state of knowledge may be important in deciding what if any action to take in respect of the contempt. I agree also with the Judge's description of the appellant's argument below: "it replaces the very clear rules on service with an altogether incoherent additional criterion for the service of the order." But nor am I comfortable with the notion that service in accordance with an order properly made can be set aside if the respondent shows that it would be "unjust in the circumstances" to proceed. This is not how the Court saw the matter in *Cuadrilla,* nor is it a basis on which good service can generally be set aside. It also seems to me too nebulous a test.

59. Ms Williams may have harboured similar misgivings, as the argument she advanced at the hearing was not the same as the written ground of appeal. She accepted that the requirements of *knowledge* and *intention* in this context are limited in the ways I have indicated; but she invited us to find that the requirement of *notice* calls for more than proof that the order which it is sought to enforce was duly served. Her submission was that, the aim of service being to bring the nature and contents of the order to the attention of the respondent, it must be incumbent on the applicant to establish in addition (and to the criminal standard) that the steps taken were in fact effective for that purpose, or could reasonably be expected to be so. In support of this argument, Ms Williams referred us to *Cuadrilla* [57]ff. She cited the words of Lord Sumption in *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6 [2019] 1 WLR 1471 [21], those of Longmore LJ in *Ineos Upstream Ltd v Persons Unknown* [2019] EWCA Civ 515 [2019] 4 WLR 100 [34(3)], and paragraphs [46], [82(1) and (4)] of *Canada Goose*.

60. I do not find these arguments persuasive. The cases cited were concerned with the form an order should take, and the criteria to be adopted when considering what, if any, provision to make for alternative forms of service in proceedings against persons unknown. The cases make it clear that any provision for alternative service should be such as can reasonably be expected to bring the proceedings to the attention of the defendant. But that is a standard to be applied prospectively. I can see that, in

principle, a defendant joined as a person unknown might later seek to set aside or vary an order for service by alternative means, on the grounds that the Court was misinformed or otherwise erred in its assessment of what would be reasonable. But that is not this case. It is accepted that the relevant criteria were correctly identified and faithfully applied by Andrews J. None of the cases cited supports the further proposition advanced by Ms Williams, that on a committal application such as this the applicant and the Court must revisit the position retrospectively. Nor does it seem to me that we should adopt such a criterion even if (which I doubt) we were free to do so. It seems most unsatisfactory. Indeed, the concept of a hindsight assessment of what could reasonably be expected to happen is hard to grasp. It seems to me that in substance and reality the submission is that the applicant must prove actual notice, which is not what the authorities say.

61. Nor do I find persuasive Ms Williams' reliance on *Perkier Foods Ltd v Halo Foods Ltd* [2019] EWHC 3462 (QB). In that case, Chamberlain J held that where the respondent to a contempt application raises the defence that compliance with the order was impossible the applicant bears the onus of proving the contrary, to the criminal standard. The present case is not one of alleged impossibility. Ms Williams has failed to identify anything on the facts here that is akin to a defence and might be regarded as analogous.

62. One can perhaps understand the unease referred to by the Judge at the notion that a person may be held in contempt of court even though he is not shown to have had

actual knowledge of the relevant order, or its relevant aspects. For my part, I doubt this is a dilemma to which a solution is required. The situation does not seem likely to occur often. And if it does then, as this Court indicated in *Cuadrilla,* no penalty would be imposed. I do not see that as problematic in principle, especially as this is a civil not a criminal jurisdiction. If there is a problem, my view is that it cannot properly be resolved by the adoption of Ms Williams' approach. Various other procedural mechanisms were canvassed as possibilities during argument in this case. They included an application to set aside the original order, with its deeming provision, and an application to stay or dismiss the contempt application as an abuse of process – both matters on which the onus would fall upon the respondent to the application. This all seems to me to be needlessly complex. But I do not think it necessary to reach a conclusion. On the evidence before the Judge, and in the light of his findings of fact, the appeal would fail even if we accepted Ms Williams' submissions on the requirement of notice.

Ground 3: did the appellant have sufficient knowledge or notice of the March Order?

63. In case he was wrong on the law, the Judge dealt with the issue of knowledge in paragraph [124] of the Liability Judgment, as follows:-

> "(1) Mr Cuciurean obviously entered the Crackley Land wilfully, intending to enter upon land where he knew he should not be … I consider his conduct in crossing the Area A perimeter in the way he did … to demonstrate a subjective understanding that he was trespassing on another's land, and

> that he was doing so in the face of a clear determination on the part of the claimants that he should not do so…
>
> (2) I consider that Mr Cuciurean entered upon the Crackley Land with the subjective intention to further the HS2 protest, and to inhibit or thwart the HS2 Scheme to the best of his ability.
>
> (3) I find that he did so in knowledge of the Order. I cannot say that he knew the full terms of the Order. Mr Cuciurean may very well have taken the course of adopting wilful blindness of its terms. But in light of the events described in this judgment I conclude that Mr Cuciurean fully understood the terms of paragraph 4.2 of the Order, namely that he was not to enter upon the Crackley Land."

64. The Grounds of Appeal assert that these findings involved errors of law. It is said that the appellant could not have had sufficient knowledge to justify a finding of contempt unless he knew (1) the fact that he could not enter the Crackley Land; (2) the map of the Crackley Land; and (3) the penal notice. It is alleged that there was no basis for finding that he had knowledge of all such matters. The Grounds of Appeal also assert that the Judge "misapplied" the standard of proof insofar as he concluded that the appellant knew that the March Order prohibited entry on the Crackley Land.

65. Elaborating these grounds in oral submissions, Ms Williams advanced a detailed critique of paragraph [124] of the Liability Judgment. She submitted that paragraph (1) went only to trespass, paragraph (2) to intention, and only paragraph (3) dealt with knowledge. She argued that the Judge's conclusion as to the appellant's knowledge was ambiguous and insufficient. To the extent it was a finding of actual knowledge, it could not be supported. It was not possible to identify any findings about "events described in this judgment" that could support the conclusion. She drew attention to the words "may well have", in paragraph [124(3)] pointing out that this is not the language of the criminal standard of proof. She also referred us to passages in the Sanctions Judgment, of which the same observation could be made. Her overall submission was that on a proper analysis the Judge had not made any or any clear or sufficient findings to the appropriate standard.

66. In my judgement, the appellant's points are largely semantic ones and lack substantive cogency.

67. As for the standard of proof, it is sufficient to repeat what I have already said about the use of language. As for what had to be established, it is of course true that the Judge used the term "the Crackley Land" and that this is a defined term for the purposes of the March Order. But one should not be beguiled by these linguistic points. It by no means follows that, to avoid a knowing breach of the Order, a defendant needs to read the definitions or to study Plan B. It would be enough for such a person (a) to know that there was a Court order in existence, prohibiting him from entering certain land; and (b) to enter on land in the knowledge that it fell within the scope of the prohibition. Reading paragraph [124] in the context of the Liability Judgment as a whole, I consider that it expresses with sufficient clarity the Judge's

conclusions that both these requirements were satisfied in the case of this appellant, on every occasion when the appellant encroached on what as a matter of fact and law was "the Crackley Land" for the purposes of the March Order.

68. That leads to the issue of whether those findings were open to the Judge. As with Ground 1, this is not a question of whether his reasoning is open to criticism as insufficiently detailed. Again, as Ms Williams candidly accepted before us, the true issue is whether the Judge's findings were perverse; put another way, whether there was any evidence on the basis of which he *could have* made the necessary findings to the applicable standard. I have no doubt that there was sufficient evidence.

69. Some key features of the factual scenario were not in dispute. The appellant, concerned that the HS2 project was causing environmental damage, had joined activists at a camp at Harvil Road in the Midlands. Having learned more about the project, he arrived at Crackley Wood on the evening of 4 April 2020. By this time the original protest camp (Camp 1) had been removed. The appellant went to a protest camp (Camp 2) that was in a field on privately owned land, and remained, in his words, "the activist camp". His reason for being there was to make his views known, and he was one of a number of individuals who were there for that purpose. Adjacent to Camp 2, when he arrived, was the 3-metre- high Hoarding Fence. This could not be mistaken for anything but an outward and visible sign that those in possession of the land beyond it were asserting their rights to maintain that possession.

70. On the Judge's findings, the appellant entered the Crackley Land on 12 occasions, by climbing over the Hoarding Fence, or by getting round it by using a gap between the Hoarding Fence and the adjacent Heras fencing which had been created by persons unknown.

71. The evidence before the Judge included the following:-

(1) There was uncontested evidence from Mr Beim (via Mr Bovan) that the service provisions contained in paragraph 8 of the March Order were complied with in the following ways:

(a) By 1.36pm on 25 March 2020, 17 bundles comprising copies of the March Order, Warning Notice, and A3 size colour maps were in place affixed to stakes, fences and entrance points on the perimeter of the Crackley Land. Mr Beim produced a map of the locations of these notices and gave unchallenged evidence that the documents "were displayed at all appropriate points via which any persons would usually seek to gain access" to the land. The plan was supplemented by photographs of these documents in place.

(b) At 12:40pm on the same day Mr Beim attended at the "encampment" and, in the presence of three adult males, placed one copy of a further bundle comprising the order and colour plans and Warning Notice in a prominent position on a piece of timber.

(c) Mr Beim took similar steps to serve the Order at the Cubbington Land as defined in the March Order.

(2) There was evidence of a random spot check of the Crackley Land signage on 14 June 2020, revealing that a substantial number of the notices remained in the relevant area, as the Judge found "perhaps fewer than originally placed but not materially so". Mr Bovan's evidence, which the Judge accepted, was that copies of the Order and A3 Injunction Warning notice remained in place, at that date: [72(5)].

(3) Mr Bovan's evidence was that in addition to fixing copies of the Order and the Warning Notices in accordance with the service requirements of the March Order, the respondents had positioned trespass notices around the Crackley Land at regular intervals. Photographs were exhibited. Mr Bovan's second affidavit stated that there were 56 Trespass signs on the perimeter of or throughout the Crackley Land.

(4) Mr Bovan's first affidavit asserted that he did not think it would have been possible to enter Camp 2 without seeing notices relating to the Order. His second affidavit explained that one of the photos exhibited was taken from a video of 26 March 2020, showing signs at the entrance to the camp, and that these remained up until at least 9 April 2020.

(5) Mr Bovan gave evidence that the Order was explained orally to the appellant on the evening of 4 April 2020 by the night shift team, and that on each of the further occasions on which the appellant made incursions onto the Crackley Land he was again reminded of the Order. In his second affidavit Mr Bovan asserted that he had personally and repeatedly informed the appellant of the injuncted land and his colleagues had done the same. He referred to one instance in which he had been recorded doing so. By reference to other video footage (from 21 April 2020) Mr Bovan gave a detailed account of how he provided a detailed explanation of the injuncted land to others "within earshot of" the appellant, who was seated on the ground immediately next to him as he did so.

(6) Mr Bovan's evidence was that despite repeated warnings that he was breaching the injunction, the appellant had never approached Mr Bovan or his colleagues to ask for further detail, and had ignored them when they offered to explain things to him.

(7) Mr Bovan's second affidavit also contained evidence from video footage of the incident on 15 April 2020, to the effect that the appellant could be seen climbing over the post and wire fence on the perimeter of the Crackley Land, then walking past a red Trespass sign to which was attached an A3 Injunction Warning Notice, so positioned that the appellant would have seen it just before climbing over the fence. Mr Bovan asserted that there was "no reasonable basis upon which [the appellant] could have considered that he was not on the Crackley Land".

72. The appellant's written evidence included the proposition that Mr Bovan and his team used the phrase "writ land" to describe the HS2 land. He referred to the evidence of posts with "high court injunction in force" on them and a "small map". He denied that he had seen any of these "*around the camp*" and said "I think there may have been one on the other side of the site, but I did not see it *up close*" (my emphasis). He said he did not recall the injunction being explained to him by anybody on 4 April. He said

he had asked for but been refused maps and plans. He had asked one individual whether he could tell him where the site boundaries were, and had been told that the person had a map at home which he would give the appellant next time. This never happened.

73. On behalf of the appellant, Counsel stressed that the respondents accepted that they could not prove that the appellant saw or read the order. Ms Williams accepted that the order itself was clear and unambiguous. She submitted however that the evidence did not go further than showing that the appellant had received a "brief garbled" account of its content from "someone who is not a lawyer". Ms Williams also highlighted a number of points and items of evidence that, she suggested, tended to undermine the respondents' case and support that of the appellant. She submitted that Mr Beim's plan showed there were gaps between the notices, such that a person could have walked past them without noticing. Mr Bovan accepted in cross-examination that some of the notices were taken down by protestors (though later replaced), and that it would be possible to walk into the site via the South boundary without seeing an injunction notice. The appellant's evidence was that "it is not right to suggest that there are copies of the order clearly put up", or any that could be seen by anyone entering the field.

74. In the final analysis none of these, or the other points raised on the evidence, can be enough to show that the Judge's findings were perverse. The fact that the Judge did not find the appellant's evidence to be dishonest does not mean he was bound to accept the appellant's account of events. He clearly rejected that account in certain respects, preferring the evidence of Mr Bovan on matters in dispute. That is entirely consistent with the Judge's careful evaluation of the reliability of these and other witnesses. Mr Bovan's concession in evidence that something *could* have happened

did not compel the Judge to find that it did happen, or even that it could have. There was, in my judgement, not only sufficient but ample evidence to support the Judge's factual conclusions on actual knowledge.

75. I remind myself that even if all of the above were wrong, the Grounds of Appeal that I have been addressing reflect the appellant's original case, that the law requires proof of actual knowledge. On the appellant's present legal case the test is one of "notice" and it would be enough if, with hindsight, the steps taken pursuant to paragraph 8 of the March Order could reasonably be expected to bring to the appellant's attention the existence of the order and the substance of its terms. At one point in her submissions Ms Williams complained that the Judge had made no finding on that issue. As I think she recognised, however, that was unfair. This was not an issue raised before the Judge. In any event, in my judgement, there could only be one answer to the question. Andrews J had made the assessment prior to service. There was nothing in the evidence before the Judge to cast doubt on the reliability of her forecast. On the contrary, there was ample material to support it. It was undisputed that the respondent actually did what paragraph 8 of the March Order required, and it is plain to my mind that it remained reasonable at all relevant times to suppose that this would be sufficient to draw the appellant's attention to the fact of the order and to the nature, substance and effect of the relevant provisions.

76. Finally, on this ground of appeal, the Judge did not find that the appellant was aware of the penal notice. However, the contention in the Grounds of Appeal that this is a necessary finding was not, as I understood it, part of Ms Williams' eventual case as to the law. It is unsupported by authority, and I see no merit in it. This would go beyond the CPR which require proof that the order bore a penal notice, and that the order was served, and not more. The Judge's findings that both those requirements were satisfied are not contested, and clearly correct.

Ground 4: was it necessary or relevant to find that paragraph 10 of the March Order had been complied with?

77. I can deal with this more shortly. The written ground of appeal is that compliance with the checking requirements of paragraph 10 of the March Order was "a necessary condition of service". The Judge having found that he could not be sure there had been compliance, it followed that there was "no longer proper service". This is unsustainable. As Ms Williams accepted, the structure of the March Order is clear. Service had to be effected in the manner specified in paragraph 8. Paragraph 9 provided that if that was done, service was deemed to be good. Paragraph 10 is not a condition of good service, but a stand-alone requirement. It is not possible to construe the Order in any other way.

78. I believe this had been recognised in advance of the hearing before us, as the appellant's Skeleton Argument advanced a different contention. This was that
"implicit in the grant of an alternative form of service to personal service is the understanding that it will only be effective if strictly complied with in all respects."
This does not seem to me to be consistent with the appellant's revised version of Ground 3. No authority has been cited to support it. In any event, I cannot agree with it. Framed in terms of an implicit understanding, it is much too vague to be an acceptable principle of the law of service. At the same time, it places form above substance. As Ms Williams was driven to concede, on this approach a technical and inconsequential default in the checking process would enable a contemnor who contravened an injunction with full knowledge of its precise terms to escape liability.

79. This does not mean that paragraph 10 is an unimportant provision. It was plainly inserted as a procedural mechanism to assist in ensuring that the Persons Unknown got to know of the order, and had the means of informing themselves of its content. Any shortfall in compliance was available to be relied on as evidence that the defendants did not gain actual knowledge, which at least goes to culpability and sanction. It may be that other consequences might in principle follow a serious case of non-compliance with such a procedural requirement. That could, for instance, make it an abuse to pursue a contempt application based on alternative service, or place the respondents themselves in contempt. But on the facts of this case, nothing of the kind can be suggested.

The appeal on sanction

80. There are two grounds of appeal. **Ground five** is that the sanction was disproportionate: there should not have been a custodial sanction, or alternatively the period of 6 months was in all the circumstances excessive. **Ground six** is that the

Judge erred in principle, by drawing a distinction between the appellant's conduct, and the kind of civil disobedience referred to by Leggatt LJ in *Cuadrilla*.

81. I see no grounds for disagreement with the Judge's conclusion that the custody threshold was crossed in this case. Contrary to the submissions of Ms Williams, there is no precise read-across from the statutory custody threshold in criminal sentencing and the standard that applies in contempt: see [18] above. The Judge cited binding authority on the right approach in the present context, and applied it conscientiously. It is, with respect, untenable to suggest that this case could and should have been dealt with by some lesser sanction. The submission that a mere finding of contempt would have been sufficient pays no heed to the need for deterrence, and the importance of upholding the rule of law. I am not impressed with the submission that in arriving at the period of six months the Judge took too literal an approach to the number of contempts, given that there were several incidents close in time. Again, this is to examine the reasoning under a microscope, when what matters is the overall outcome.

82. I have however concluded that the Judge's approach was flawed in two respects. First, when assessing the overall seriousness of the contempts, before applying what might be called the "*Cuadrilla* discount", he took too high a starting point. Granted, there were multiple instances of deliberate defiance of the March Order. The Judge was entitled to regard this as a serious case of serial disobedience. But his conclusion that in an "ordinary" case the sanction would have been one of committal for 18 months strikes me as markedly too severe, in the context of a maximum penalty of two years. Secondly, I would accept that the Judge was rather too ready to draw distinctions between the present case and the paradigm identified by Leggatt LJ in *Cuadrilla*. I cannot agree that this appellant's aims or methods place him outside or at the very margins of the class of persons "aiming to bring about a change in law or policy". His behaviour was intended to obstruct the HS2 project. It was not engaged in for its own sake. I find it hard to agree that his conduct was likely or intended to make it financially or politically impossible to persevere with the HS2 project, or that this would take it outside the *Cuadrilla* category, if I can call it that. The appellant used a

degree of force to achieve his aims, but it would be a misuse of language to term it "violence".

83. The result of these two flaws is, in my judgement, a period of committal that is greater than necessary or proportionate for the purposes in view. I would reduce the starting point and afford a slightly greater discount, with the result that the sanction is one of 3 months' committal, suspended on the terms and for the period identified by the Judge.

Lord Justice Edis:

84. I agree.

Lord Justice Lewison:

85. I also agree.

Neutral Citation Number: [2024] EWHC 3142 (KB)

Case No: KB-2024-003851

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/12/2024

Before:

MRS JUSTICE HILL

- -

Between:

LONDON BOROUGH OF ENFIELD	**Claimant**
- 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 London Borough of Enfield, Map Exhibit MR1/1 (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 London Borough of Enfield, Map Exhibit MR1/1 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 and/or 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 London Borough of Enfield, Map Exhibit MR1/1.	

- -
- -

Francis Hoar (instructed by **London Borough of Enfield**) for the **Claimant**
The Defendants did not appear and were not represented

Hearing date: 4 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 6th December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MRS JUSTICE HILL

Mrs Justice Hill:

1. This is an application for an interim injunction in Part 8 proceedings, by which the Claimant, the London Borough of Enfield, seeks to prevent "car cruising" within the borough.

2. The application was made by way of an application notice dated 19 November 2024 supported by a witness statement Martin Rattigan, Head of Regulatory Services within the Claimant, dated 13 November 2024. I was provided with a helpful skeleton argument by Francis Hoar of counsel, amplified by his oral submissions at a hearing on 4 December 2024.

3. I indicated at the end of the hearing that I would grant the injunction sought, subject to certain modifications to the draft which had been discussed in the hearing. These are my reasons for doing so.

The factual background

4. Car cruises are described in the underlying paperwork for the application as "organised or impromptu events at which drivers of motor vehicles race, perform driving stunts, drive dangerously and/or drive in convoy". It is said that 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". Car cruising or 'street cruising' was described in similar terms in *Sharif v Birmingham City Council* [2020] EWCA Civ 1488 at [1] and *Wolverhampton City Council and others v Persons Unknown and others* [2024] EWHC 2273 (KB) ("*Wolverhampton (Car Cruising)*"at [5]-[9].

5. The particular problem of car cruising in the Claimant borough was described in detail in Mr Rattigan's statement. In summary, there have been many instances of car cruising taking place within the borough, particularly on the A406 (a part of the London North Circular), the A10 and retail car parks. Mr Rattigan's evidence emphasised the serious risks caused by car cruising in the borough. He referred, for example, to an incident in December 2013, involving a high-speed "cat and mouse" game between several cars on the North Circular Road, in which three people were killed.

6. Mr Rattigan appended video footage from 2022 showing vehicles racing, performing stunts and "donutting", namely 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: see *Wolverhampton (Car Cruising)* at [11].

7. His statement incorporated witness statements from Inspector Richard Lee, dated 1 March 2024, PS Mark Wells dated 2 February 2024, PC Luke Heming dated 22 December 2023, PC Paige dated 17 April 2024 and two anonymous witness statements from members of the public, providing further detail of the serious problems caused by car cruising.

8. He summarised a series of complaints made by members of the public to the police and the Claimant between 3 January 2021 and 28 October 2024. The complaints described regular gatherings of youths with cars and of others gathering to watch

them in which the former race cars, do stunts and other dangerous driving; that these activities take place at night and last until the early hours of the morning; that they often take place in residential areas; and that they are accompanied by anti-social behaviour including rowdiness, fighting, drug taking and sexual activity in cars.

9. In February 2021 the Claimant imposed a Public Spaces Protection Order ("PSPO") to prohibit the activity, but this has not reduced the incidence of car cruising. The PSPO expired on 3 February 2024. While the Claimant is engaging in a consultation before deciding whether to make a further PSPO, no such PSPO is currently in force.

10. Mr Rattigan explained that despite the existence of the PSPO, between August 2022 and September 2023 there were 30 car "meets" at the former B&Q car park, Great Cambridge Road (A10), known as the Coliseum Retail Park, EN1 1TH. As a result, an agreement was reached for the Park's agents to implement physical barrier measures, to prevent racing and stunts. The area was initially restricted by a barrier at the entrance which was subsequently vandalised. Concrete blocks have now been placed strategically to prevent the vehicles from being able to race and perform stunts. However, this does not prevent car meets and cruising arising on the surrounding roads in this area

11. Mr Rattigan explained that the Claimant seeks an injunction because (i) there is a pressing need to be able to take enforcement action to prevent the dangerous behaviour inherent in car cruising pending the necessary consultation process before re-introducing the PSPO; and (b) the PSPO did not, at least alone, appear to have a sufficient deterrent effect on the participants, which is evidenced by the considerable number of complaints about dangerous driving, racing and cruising within the duration of the PSPO. The Claimant considers that it would be reasonable to impose an injunction that would have the consequence that any person found to be in breach of the injunction would face imprisonment.

The structure of the injunction sought

12. The focus of the draft injunction is car cruises involving gatherings of two or more persons between the hours of 3 pm and 7 am within the borough.

13. It seeks to restrict the activities of three groups of Persons Unknown involved in car cruising: first, those who participate in car cruises where some of those some of those present actually engage in motor racing or motor stunts or other dangerous or obstructive driving; second, those who participate in car cruises by attending with the intention or expectation that some of those present will engage in those activities; and third, those who promote, organise or publicise (by any means whatsoever) car cruises again, with the intention or expectation that some of those present will engage in those activities.

14. It does so, in summary, by forbidding the participation in "Prohibited Activities" defined in Schedule 2, and the promotion, organising or publicising of events with the intention or expectation that some of those present will engage in a "Prohibited Activity".

15. It seeks a power of arrest under the Police and Justice Act 2006, s.27.

Notice and service issues

16. The Claimant sought an order dispensing with the requirement to serve the claim and application before it was considered, on the grounds that the Persons Unknown cannot be reliably identified.

17. However, the Claimant made clear that before the hearing, it would publish the Claim Form, Particulars, draft order, witness statement of Mr Rattigan and counsel's skeleton argument on its website, together with the notification of the hearing. A statement from Balbinder Kaur, Assistant Principal Lawyer within the Claimant, dated 3 November 2024, confirmed that this documentation had been published on the Claimant's website at around 11.30 am the day before the hearing.

18. Given the currently unknown nature of the Defendants, the efforts to publicise the application thereby giving informal notice of it and the right within the draft order for anyone affected by it to apply to the court for it to be varied or discharged, on 48 hours' notice, I considered that it was appropriate to determine the application.

19. For the same reasons as are set out at [16] above, the Claimant sought permission under CPR 6.15, 6.27 and 81.4(2)(d) to serve the claim form, application notice and supporting documents by the alternative means set out in Schedule 3 of the draft order. The Claimant also sought dispensation from the requirement of personal service under CPR 81.4(2)(d); and permission to serve the injunction and power of arrest by the alternative methods specified in Schedule 3.

20. The alternative methods of service set out in Schedule 3 are: (i) signs informing people of the order and the area in which it has effect in prominent locations through the borough, particularly at its boundaries on major roads and in areas where the Claimant knows car cruising has been particularly prevalent; (ii) publication in the local newspaper; (iii) publication on the Claimant's social media channels and those of the local police; (iv) publication in other relevant social media sites; and/or in any other like manner as appears to the Claimant to be likely to bring the proceedings and the order to the attention of persons likely to be affected by it.

21. The sites in (iv) above included "motorheadz.uk"; "Cruise-Herts" Facebook and Instagram pages; "Herts Car Society" Facebook page; "Herts BMW Owner Club" Facebook page; "Royal Herts Statics" Facebook page; "Static Takeover" Facebook page.

22. I am satisfied that alternative service in these forms is appropriate, given the nature of the Defendants and of the claim: this amounts to a "good reason to authorise service by a method or at a place not otherwise permitted by this Part" for the purposes of CPR 6.15. The methods of service are similar to those used in other Persons Unknown cases, including *Wolverhampton (Car Cruising)*.

23. By CPR 6.27, my order under CPR 6.15 applies to any document in the proceedings as it applies to a claim form and reference to the defendant in that rule is modified accordingly.

24. For the same reasons it is appropriate to dispense with personal service of the injunction and power of arrest. I extend time for serving the claim form, application notice and supporting documents, pursuant to CPR 7.6, until such time as the sealed injunction can be served.

The legal framework

25. The court's power to grant an injunction derives from the Senior Courts Act 1981, s.37(1). The High Court may grant an interlocutory or final injunction "in all cases in which it appears to the court to be just and convenient to do so".

26. In making the application the Claimant is exercising a series of statutory powers, principally the Local Government Act 1972, ss. 111 and 222, the Highways Act 1980, s.130, the Localism Act 2011, s.1, the Crime and Disorder Act 1998 and ss.6 and 17.

27. Injunctions against Persons Unknown described in almost identical terms to the Defendants in this claim were granted by Julian Knowles J in *Wolverhampton (Car Cruising)*. I made the original interim injunction in that case: see [4] of his judgment.

28. These applications are - at least in part - for precautionary relief, to prevent future car cruising. I gratefully adopt Julian Knowles J's summary of the principles pertinent to such relief, and for the use of the s.222 power, set out in *Wolverhampton (Car Cruising)* at [33]-[43].

29. In *Wolverhampton City Council and others London Gypsies and Travellers and others* [2023] UKSC 47; [2024] 2 WLR ("*Wolverhampton (Travellers)*") the Supreme Court considered the basis on which it can be appropriate to grant an injunction in the terms sought against groups of unknown persons including those whose identities were not known or knowable. Again, I adopt Julian Knowles J's summary of the relevant principles in *Wolverhampton (Car Cruising)* at [46]-[51].

30. I have also taken into account the judgment of Ritchie J in *High Speed Two (HS2) Ltd and another v Persons Unknown and others* [2024] EWHC 1277 (KB).

31. Some earlier cases relating to injunctions prohibiting car cruising are relevant. In *Sharif v Birmingham City Council* ([2020] EWCA Civ 1488; [2021] 1WLR 685) the Court of Appeal dismissed an appeal against an injunction prohibiting this activity. The Court rejected the submission that *Birmingham City Council v Shafi* [2009] 1 WLR 1961 suggested that the Court should not impose injunctions when there was an alternative statutory means under statute, such as a PSPO, by which the activity prohibited by an injunction. Rather, the Court held, *Shafi* was authority for the proposition that where a statutory remedy (in that case an Anti-Social Behaviour Order) was available, that would grant identical or almost identical terms and means of punishment of those in breach, that means should be adopted. However, as the Court held in *Sharif*, that was not the case with a PSPO. Such an order can only be put in place by a local authority after a lengthy consultation process; breach of it is a non-arrestable offence carrying only a financial sanction; and it is therefore likely to be ineffective in this context: *Sharif* at [37] and [39]. Julian Knowles J applied *Sharif* in *Wolverhampton (Car Cruising)* at [73].

32. The principles applicable to the granting an interim injunction are well known, and derived from *American Cyanamid Co v Ethicom Ltd* [1975] AC 396.

The merits of the injunction application

33. Having considered the evidence and submissions from the Claimant, I am satisfied that they are all met.

34. *First,* Mr Rattigan's evidence shows that there is plainly a serious issue to be tried (at the very least) to the effect that the Defendant groups of Persons Unknown have repeatedly raced other cars at high speeds and dangerously; used car parks and other areas to do dangerous stunts; engaged in that behaviour in residential areas; caused gatherings of people; done these activities at night and created a high volume of noise, including until the early hours of the morning; engaged in sexual activity in cars; fought with each other; and caused a considerable nuisance to local residents, including vulnerable and elderly people and families with young children. In so doing, they have been responsible for anti-social behaviour; and caused a public nuisance.

35. *Sharif* and *Wolverhampton (Car Cruising)* at [73] indicated that the fact that there has been a PSPO in place prohibiting these activities, and that there may be a future PSPO imposed, is not a reason against the grant of an injunction. As Mr Hoar highlighted, aside from the general point made in *Sharif* that a PSPO is unlikely to create sufficient deterrence to reduce car cruising because of the non-custodial penalties for breaches it imposes, there is specific evidence here, from Mr Rattigan, that occurrences of car cruising in this borough have increased since the PSPO was first imposed in 2021.

36. *Second,* the balance of convenience justifies an injunction against car cruising, including injuncting newcomers.

37. The various criteria set out by the Supreme Court in *Wolverhampton (Travellers)* are pertinent here. I address these in turn, by reference to Mr Hoar's helpful distillation of them.

Is there a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other available remedies?

38. In my judgment, there is: the Claimant has a lawful right to control the public highway, protect its residents from anti-social behaviour and from the risk of personal injury and death that car cruising poses.

Are there procedural protection for the rights of persons unknown who might be affected by the injunction, including rights under the European Convention for the Human Rights, built into the application and the injunction?

39. In my view no Convention rights are engaged here. The Article 8 right to a private and family life does not extend to anti-social behaviour with others. The Article 11 right to association is not engaged either: this behaviour is not a part of association for the means of campaigning or protesting, as occurs in some other cases involving Persona Unknown.

40. The application and hearing date was publicised on the Claimant's website and the draft injunction makes provision for further publication of the relevant documents by a range of alternative methods of service. Those affected by the injunction can apply to the court for it to be varied or discharged, on 48 hours' notice. Their procedural rights are therefore protected to the extent necessary.

Has the Claimant complied in full with the disclosure duty which attached to the making of a without notice application?

41. Mr Rattigan explained the recent history of the attempts by the Claimant to prevent this behaviour by a PSPO.

42. I accept Mr Hoar's assurance that the Claimant is unaware of any other disclosure that may affect the merits of the application; and that it will, as is to be expected, keep the issue under review.

Has the Claimant showed that, on the particular facts, it is just and convenient in all the circumstances that the injunction sought should be made?

43. In my judgment, the Claimant has, given the factual context I have outlined. During the hearing some sensible modifications to the list of Prohibited Activities in the draft injunction were conceded by Mr Hoar, so as to make sure that it, and the power of arrest, is suitably focussed on the elements of car cruising that cause serious harm and nuisance to local residents.

Does the draft injunction 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?

44. This test is met: the wording of the injunction follows closely that of those prohibiting car cruising that have been upheld by the High Court and the Court of Appeal in other cases; and sets out in detail the activities that are prohibited, where and when. This is especially so given the modifications agreed by Mr Hoar during the hearing.

Does it extend no further than the minimum necessary to achieve the purpose for which it was granted?

45. This test is also met, again given the modifications made to the draft.

Is it subject to strict temporal and territorial limits?

46. The injunction will last for no more than a year before the curt will have an opportunity to review it, following the precedent of *HS2*.

47. It will be restricted to the Claimant's borough. Its territorial limits are made clear by the map exhibited to the injunction at MR1/1.

Will it be actively publicised by the applicant so as to draw it to the attention of all actual and potential respondents?

48. This will occur by way of the various alternative means of service I have set out above.

Does it 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?

49. The proposed order would allow an application to vary and discharge on 48 hours' notice, which is a reasonable period.

50. Returning to the remaining *American Cyanamid* criterion, I accept the Claimant's submission that it is able to satisfy any damages awarded to the Defendants in the future should the injunction later be set aside or not granted on a final basis. In any event, there is authority for the proposition that it is unnecessary for cross-undertakings in damages to be given where an interim injunction was imposed on the application of a claimant local authority: *Cambridge City Council v Traditional Cambridge Tours Ltd* [2018] EWHC 1304 (QB), per Whipple J (as she then was). There is also force in Mr Hoar's submission that it is, realistically, inconceivable (or at least highly unlikely) that damages could be given to a person for being unable to engage in the activities prohibited.

51. For all these reasons I was satisfied that it was appropriate to make the interim injunction sought.

The power of arrest

52. The Claimant also invoked the Police and Justice Act 2007, s.27. This provides in s.27(2) that if the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may attach a power of arrest to any provision of the injunction. The power is triggered if one of the conditions in s.27(3) is met, namely that the court is satisfied that the conduct in question "consists of or includes the use or threatened use of violence" or "there is a significant risk of harm" to a person mentioned in s.27(2).

53. In light of Mr Rattigan's evidence, I was satisfied that the second condition in s.27(3) is met. The harm in question is the risk of personal injury or death from Prohibited Activities in the injunction.

54. The power of arrest is appropriately limited, at least for present purposes, to those participating in a Prohibited Activity who are the driver of, or a passenger in, any Motor-Vehicle (as defined in the injunction).

Future directions

55. As to the future conduct of the claim, I am content to adopt the same course that has been taken in other injunctions of this kind, namely to list a return date in one year, with a direction that the Claimant file and serve (by publishing it on its website) updating evidence about the compliance and non-compliance with the injunction and details of enforcement. The usual provisions would apply, allowing any person affected to apply at short notice to vary or set it aside, as noted above.

Neutral Citation Number: [2025] EWHC 331 (KB)

Case No: QB-2021-003094

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 February 2025

Before:

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between:

(1) MBR ACRES LIMITED
(2) DEMETRIS MARKOU
(for and on behalf of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd pursuant to CPR 19.8)
(3) B & K UNIVERSAL LIMITED
(4) SUSAN PRESSICK
(for and on behalf of the officers and employees of B & K Universal Ltd, and the officers and employees of third party suppliers and service providers to B & K Universal Ltd pursuant to CPR 19.8)

Claimants

- and -

JOHN CURTIN **Defendant**

And in the matter of an application by the Claimants for a *contra mundum* injunction to restrain certain activities at the Wyton Site

- -
- -

Caroline Bolton and **Natalie Pratt** (instructed by **Mills & Reeve LLP)** for the **Claimants**
John Curtin appeared in person, save for the hearing on 23 June 2023 when he was represented by **Jake Taylor** (instructed by **Birds Solicitors**)
"Persons Unknown" did not attend and were not represented
Jude Bunting KC and **Yaaser Vanderman** filed written submissions on behalf of **Liberty**

Approved Judgment

The Honourable Mr Justice Nicklin :

1. This judgment is divided into the following sections:

A: Introduction

2. This is the final judgment in this civil claim brought by the Claimants against both known and unknown individuals. The common link between the Defendants is that, at one time or another, they have engaged in some form of protest against the activities of the First Defendant at its site at Wyton, Cambridgeshire.

3. Whilst the claim has been pending before the Courts, the law – as it applies to "Persons Unknown" – has been in a state of flux. The decision of the Supreme Court in ***Wolverhampton City Council & others -v- London Gypsies and Travellers & others*** **[2024] AC 983** (heard on 8-9 February 2023 with judgment handed down on 29 November 2023) clarified but also significantly changed the law as it concerns the grant of injunctions against "Persons Unknown" where that target class is protean and the injunction applies to what has been termed 'newcomers'.

4. Whilst the evidence relating to this claim was heard at a trial between 24 April 2023 to 23 May 2023, the trial was adjourned to await the Supreme Court decision in ***Wolverhampton***. Further hearings were fixed on 26 March 2024 and 7 May 2024 for the Court to consider whether, in light of the Supreme Court's decision, the Claimants should be given an opportunity to file any further evidence and to consider final submissions of law consequent upon the ***Wolverhampton*** decision.

5. At the hearing on 26 March 2024, I directed that the final hearing in the claim should be fixed for 7 May 2024. I directed that the Claimants must file their final submissions by 30 April 2024 and that, in addition to publicising the date of the final hearing on notices at the Wyton Site, and online, the written submissions must be served on Liberty and Friends of the Earth, who had intervened in the ***Wolverhampton*** case

("the Interested Parties"). I gave the Interested Parties an opportunity to file written submissions for the final hearing.

6. I received written submissions from Counsel instructed by Liberty, dated 3 May 2024.

7. I also received a letter, dated 30 April 2024 from Friends of the Earth ("FoE"). FoE expressed concern, due to their limited resources, of the risk that an adverse costs order might be made against them. In their letter, FoE stated that it had made an application for a Protective Costs Order in a civil claim brought in 2019 against "Persons Unknown" in a fracking protest case. The application was rejected, and FoE were ordered to pay £4,500 in costs. Because of these funding concerns, and also because FoE's campaigning objectives do not embrace the protest at the Wyton Site, FoE did not file written submissions. They did, however, send a copy of the written submissions, and a witness statement of David Timms, FoE's Head of Political Affairs, dated 25 November 2022, which had been filed with the Supreme Court in the ***Wolverhampton*** case. In their covering letter, FoE said:

> "In ***Wolverhampton***, the Supreme Court rejected our submissions as to the availability of persons unknown injunctions as a matter of principle, but our submissions may include relevant considerations for the Court in terms of criteria and the procedural safeguards for persons unknown injunctions in the protest context. In particular, the evidence of Mr Timms refers to our own experience of the serious chilling effect of these injunctions, in terms of their deterrence of lawful protest including lawful, peaceful, direct action protest. We would stress that the latter is a recognised and legitimate part of freedom of speech and assembly protected by the common law and Articles 10/11 ECHR."

8. I am very grateful to both Liberty and Friends of the Earth for their submissions, which I have considered in writing this judgment.

9. I consider the ***Wolverhampton*** decision in Section M of this judgment ([333]-[362] below). In brief summary, prior to ***Wolverhampton***, the previous method of attempting to restrain the activities of 'newcomers' depended upon the 'newcomer' becoming a party to existing litigation by doing some act that brought him/her within one or more categories of defendant who were party to the litigation and upon whom the Claim Form had been deemed to be served by some method of alternative service authorised by the Court. The Supreme Court swept this away and instead sanctioned the use of *contra mundum* injunctions in limited circumstances.

10. Following the ***Wolverhampton*** decision, at the hearing on 7 May 2024, the Claimants sought an injunction against various categories of "Persons Unknown" or, alternatively, a *contra mundum* injunction, to restrain certain acts. In some respects, the ***Wolverhampton*** decision allows the Court to adopt a more straightforward approach and an opportunity to make any injunction the Court grants much clearer and easier to comprehend (see [353]-[362] below).

11. Finally, this judgment also resolves a contempt application brought by the Claimants against the only remaining individual defendant, John Curtin, which was heard on 23 June 2023 (see Sections D(3), G and O(3); [52]-[53], [109]-[120], [247]-[253] and [400]-[407] below).

B: Background and parties

12. There have been several previous interim judgments in the claim:

    (1) [2021] EWHC 2996 (QB) (10 November 2021) ("the Interim Injunction Judgment");

    (2) [2022] EWHC 1677 (QB) (31 March 2022) ("the Conspiracy Amendment Judgment");

    (3) [2023] QB 186 (16 May 2022) ("the First Contempt Judgment");

    (4) [2022] EWHC 1715 (QB) (20 June 2022) ("the First Injunction Variation Judgment");

    (5) [2022] EWHC 2072 (QB) (2 August 2022) ("the Second Contempt Judgment"); and

    (6) [2022] EWHC 3338 (KB) (22 December 2022) ("the Second Injunction Variation Judgment").

    The background to this case – and the key procedural steps – are set out in these judgments, but as this is the final judgment in the claim, and for ease of reference, I will set out again some of the key facts.

(1) The Claimants

13. The First and Third Claimants are subsidiaries of the Marshall Farm Group Ltd, incorporated in the US and trading as Marshall Bioresources. The First and Third Claimants breed animals for medical and clinical research at sites in Cambridgeshire and Hull.

14. The First Claimant is licensed by the Secretary of State, under ss.2B-2C Animals (Scientific Procedures) Act 1986, to breed animals for supply to licensed entities authorised to conduct animal testing and research. It is presently a legal requirement, in the United Kingdom, that all potential new medicines intended for human use are tested on two species of mammal before they are tested on human volunteers in clinical trials.

15. The Second Claimant is an employee of the First Claimant acting in these proceedings to represent the officers and employees of the First Claimant, third-party suppliers, and service providers to the First Claimant pursuant to (what is now) CPR 19.8.

16. The Fourth Claimant is an employee of the Third Claimant and is its Site Manager & UK Administration & European Quality Manager. The Fourth Claimant represents the officers and employees of the Third Claimant, third-party suppliers, and service providers to the Third Claimant pursuant to CPR 19.8.

(2) The Wyton Site

17. The Wyton Site is in countryside, about 2 miles to the northeast of Huntingdon, very close to RAF Wyton. The only entrance to the Wyton Site is situated on a straight

section of the B1090. The road is a single carriageway with verges on either side. Vehicles arriving or leaving from the Wyton Site pass through outer and inner mechanical gates. This facilitates what has been termed an 'airlock' between the two gates enabling the First Claimant's security personnel to control access to the Wyton Site. The outer gate is set back about 1 metre from the boundary of the First Claimant's registered freehold title. This means that anyone standing immediately in front of the outer gate is on the First Claimant's land. The perimeter of the Wyton Site is protected by high outer and inner wire fences. As well as the First Claimant, another biotechnology company is situated within the Wyton Site.

18. A grass verge separates the gated entrance to the Wyton Site from the main carriageway of the Highway. A short tarmacked single lane road, of approximately 8.7 metres length, runs perpendicular to the B1090 over the grass verge and to the gated access at the Wyton Site to enable access to the Highway from the Wyton Site, and vice-versa. This road has been referred to as the "Access Road" in the proceedings. All movements into and out of the Wyton Site (whether vehicular or on foot) must pass along the Access Road. Some, but it transpired during the proceedings, not all, of the Access Road falls within the extent of the adopted Highway.

19. In or around March 2019, the First Claimant installed a new gate, because lorries kept on hitting a post that was part of the old gate was. The new gate was installed about a metre or so back into Wyton Site. Therefore, the area measuring approximately 1 metre in front of the Gate is within the boundary of the Wyton Site and the freehold ownership of the First Claimant. That area has been referred to as the "Driveway" in these proceedings.

20. The boundary of that area, and therefore the Wyton Site as defined, is marked on the ground by a metal strip that runs the full width of the Access Road. That metal strip was left behind when the old gate was removed, and the new Gate was installed.

21. The Claimants originally believed that the full extent of the Access Road had been adopted by the local Highways Authority. During the proceedings, it was discovered that the adopted highway did not extend to the full area.

22. On 4 August 2022, apparently without prior warning to, or consultation with, the First Claimant, a representative of the Local Highway Authority attended the Wyton Site and painted a yellow line halfway up the Access Road. The yellow line ran along the lip of the ditch closest to the Highway over which the Access Road ran. The distance between the yellow line and the metal strip that marks the edge of the Driveway is 2.85 metres. In a letter dated 16 November 2022, the Local Highway Authority confirmed to the First Claimant that the yellow line marked where it considered the extent of the adopted highway to end. The letter explained the basis on which the Local Highways Authority had reached this conclusion.

23. Having taken separate advice, the First Claimant's position is that it agrees with the decision of the Local Highways Authority as to the extent of the adopted highway. The effect of this, which has not been challenged in these proceedings, is that the land between the metal strip and the yellow line, that is not adopted highway, is land owned by the First Claimant. This has been referred to as the "Access Land".

(3) The Defendants

24. When originally issued, the Claimants brought claims against the first two Defendants as "*unincorporated associations*": "*Free the MBR Beagles*" and "*Camp Beagle*". The Third and Fifth Defendants were sued as representatives of these two "*unincorporated associations*". In the Interim Injunction Judgment ([52]-[67]), I refused to allow claims to be brought against the First and Second Defendants on a representative basis, and I stayed the claim against these two Defendants. The Claimants have made no application to lift that stay.

25. As the proceedings have progressed, the Claimants have sought, and generally been granted, permission to add further Defendants. A full list of the Defendants to the claim is set out in Annex 1 to this judgment. Apart from Mr Curtin, the claims against named individuals have all been settled. The one against the Twentieth Defendant, Lisa Jaffray, was settled early in the trial. In most instances, the relevant individual has given undertakings as to his/her future activities regarding the Claimants and the Wyton Site.

26. By the end of the trial, the claim was proceeding only against Mr Curtin, as a named Defendant, and various categories of Person(s) Unknown Defendants identified in Annex 1.

(4) The protest activities

27. It will be necessary to go into the detail of specific incidents later in the judgment, but the following summary will suffice by way of introduction.

28. This litigation concerns protest and its lawful limits. Since around June 2021, a fluctuating number of individuals have been protesting outside the Wyton Site. There is a small semi-permanent camp of protestors on the edge of the carriageway about 20-30 metres from the entrance to the Wyton Site. Mr Curtin, who has been protesting since the outset, is a semi-permanent resident of this camp. There have been isolated other incidents away from the Wyton Site, for example, in August 2021, there were some limited protests outside the B&K Site, but the main focus of the protest activity – and most of the Claimants' evidence – concerns protest activities at the Wyton Site.

29. The Claimants do not challenge that Mr Curtin, and the other protestors, have a sincerely and firmly held belief that animal testing is wrong. In terms of overall objective, the protestors probably share a common aim that animal testing should be prohibited. By extension, most protestors at the Wyton Site would like to see the First (and Third) Claimants put out of business. These objectives are not unlawful, and, subject to acting lawfully, Mr Curtin and others, may campaign and protest in their efforts to attempt to achieve a change in the law that would see their objective achieved.

30. The main complaints raised by the Claimants in this litigation are (1) incidents of trespass onto the Wyton Site, including the flying of a video-equipped drone around and above the Wyton Site, which is said to amount to trespass on the First Claimant's land; (2) repeated incidents of obstruction of the highway outside the Wyton Site, said to constitute a public nuisance, and specifically obstruction of people and vehicles entering and leaving the Wyton Site; and (3) specific incidents involving confrontation with individual employees when they arrive at or leave the Wyton Site, which are said to amount to harassment.

31. Although it is more complicated than this, the issue at the heart of the litigation is broadly whether the method of protest that the Defendants use (or threaten to use) is lawful. Ultimately this is an issue of striking the proper balance between the protestors' rights of freedom of expression and demonstration against the Claimants' rights to go about their lawful business. The law does not require a person exercising the right to demonstrate or to protest to demonstrate that s/he is "right" (whatever that would mean), and Mr Curtin is not required to persuade the Court that he is "right" to oppose animal testing.

C: The Interim Injunction

(1) The interim injunction granted on 10 November 2021

32. The Claimants were granted an urgent interim injunction on 20 August 2021 by Stacey J ("the Interim Injunction"). The return date was fixed for 4 October 2021. I handed down judgment on 10 November 2021. The Interim Injunction Judgment set out my reasons for modifying the terms of the injunction that had previously been granted. The protest activities that had led to the grant of the Interim Injunction are set out in [13]-[23]. In [18], I summarised the evidence as follows:

> "A clear picture emerges from the evidence, that the central complaint of the Claimants is the protestors' activities when people (particularly employees of the First Claimant) enter or leave the Wyton Site. At these times, protestors, including the named Defendants, have surrounded and/or obstructed the vehicles. Their ability to drive off is not only impaired by the physical obstruction of the protestors, but also because placards have been used, on occasions, to obstruct the view that the driver of the vehicle has of the road and whether it is safe to pull out. These incidents have frequently led to confrontation between the protestors and those inside the vehicles, allegedly leaving them feeling harassed and intimidated."

33. As a temporary solution, I prohibited trespass on the First Claimant's land and imposed an exclusion zone around the entrance to the Wyton Site ([116]-[119]) ("the Exclusion Zone"). I refused to grant an injunction to prohibit the flying of drones over the Wyton Site, which was alleged to be a trespass ([111]-[115]). The Interim Injunction did not restrain alleged harassment whether by named Defendants or "Persons Unknown" ([118]), and I refused to grant any orders to control the methods of protest adopted by the Defendants ([122]-[128]).

34. So far as concerns trespass and the Exclusion Zone, the material parts of the Interim Injunction, granted on 10 November 2021, were as follows. Paragraph 1 of the Injunction provided:

> "The Third to Ninth, Eleventh to Fourteenth, and Fifteenth to Seventeenth Defendants **MUST NOT**:
>
> (1) enter into or remain upon the following land:
>
> a. the First Claimant's premises known as MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 (the 'Wyton Site'); and

b. the Third Claimant's premises known as B&K Universal Limited, Field Station, Grimston, Aldborough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 (the 'Hull Site')

(2) enter into or remain upon the area marked with black hatching on the plans at Annex 1 … (the 'Exclusion Zone'), save where … accessing the highway whilst in a vehicle, for the purpose of passing along the highway only and without stopping in the Exclusion Zone, save for when stopped by traffic congestion, or any traffic management arranged by or on behalf of the Highways Authority, or to prevent a collision, or at the direction of a Police Officer.

(3) park any vehicle, or place or leave any other item (including, but not limited to, banners) anywhere in the Exclusion Zone;

(4) approach and/or obstruct the path of any vehicle directly entering or exiting the Exclusion Zone (save that for the avoidance of doubt it will not be a breach of this Injunction Order where any obstruction occurs as a result of an emergency)."

35. Definitions, set out in Schedule A to the Interim Injunction, provided:

> "The 'Exclusion Zone' is… for the purpose of the Wyton site, the area with black hatching at Annex 1 of this Order measuring 20 metres in length either side of the midpoint of the gate to the entrance of the Wyton site and extending out to the midpoint of the carriageway…"

36. Annex 1 to the Injunction was a plan of the Wyton Site marked with the Exclusion Zone around the entrance to the First Claimant's premises. Annex 1 included boxes containing annotations. One of those provided:

> "Exclusion Zone in black crosshatched area is 20 metres either side of the centre of the Gate to the Wyton Site marked by posts on the grass verge up to the centre of the carriageway."

(2) Modifications to the Interim Injunction

37. The terms of the Interim Injunction, and the persons it restrains, have been modified during the proceedings.

38. Orders of 18-19 January 2022 and 31 March 2022 added new Defendants to the claim, both named and further categories of "Persons Unknown". Those new Defendants became bound by the Interim Injunction, the material terms of which remained unchanged.

39. By Order of 2 August 2022, Paragraph (4) of the Interim Injunction (see [34] above) was replaced with the following restrictions:

> "(2) The Third to Ninth and Eleventh to the Twenty-Fourth Defendants **MUST NOT** within 1 mile in either direction of the First Claimant's Land, approach, slow down, or obstruct any vehicle which is believed to be travelling to or from the First Claimant's Land at the Wyton Site.

(3) The Seventeenth Defendant **MUST NOT** within 1 mile in either direction of the First Claimant's Land, approach, slow down, or obstruct any vehicle:

(a) for the purpose of protesting and/or campaigning against the activities of the First and/or Third Claimant; and

(b) where the vehicle is, or is believed to be, travelling to or from the First Claimant's Land at the Wyton Site.

(4) The Third, Twelfth, Fifteenth, Twentieth and Twenty-Second Defendants **MUST NOT** cut, push, shake, kick, lift, climb up or upon or over, damage or remove, or attempt to remove any part of the perimeter fence to the Wyton Site, as marked in red on the attached plan at Annex 1."

40. In the Second Injunction Variation Judgment, I explained why I had amended the Interim Injunction in these terms:

> [10] In respect of obstruction of vehicles (the subject of the new sub-paragraphs (2) and (3)), evidence of events following the grant of the injunction, particularly that which had been filed by the Claimants in relation to the contempt applications against the Twelfth and Thirteenth Defendants (see [2023] QB 186), showed that some protestors had adopted tactics of surrounding and/or obstructing vehicles that were travelling to or from the Wyton Site further along the carriageway of the B1090. It had also become apparent that the earlier formulation – prohibiting approaching/obstruction of any vehicle "directly" entering or exiting the exclusion zone – had the potential to catch behaviour that the injunction was not designed to prevent. A particular example was an occasion in which a police vehicle was about to exit the exclusion zone when it was obstructed by protestors who wanted to ascertain what was happening to a person who had been arrested. The exclusion zone has always been recognised to be an expedient, justified because it is the best way of avoiding the flashpoints that have occurred between the protestors and those coming and going to/from the Wyton Site. However, the Court will keep the terms of the any interim injunction under review – and in appropriate cases will make changes to the terms of the order – to ensure that they are not having an unintended effect. The revised restrictions now more directly focus on the obstruction of vehicles travelling to/from the Wyton Site where that obstruction is for the purpose of protesting.
>
> [11] Sub-paragraph (4) contained a new prohibition upon interfering with and/or damaging the perimeter fence of the Wyton Site. I was satisfied on the Claimants' evidence that the relevant Defendants had been damaging or interfering with the fence. Such actions are tortious, are not an exercise of a right to protest and the balance of convenience clearly favoured an interim prohibition. The Claimants had asked for a 1 metre exclusion zone to be imposed around the entire perimeter of the Wyton Site. I refused to make such an order. The correct way of targeting this particular wrongdoing is by making a direct order that prohibits that behaviour, not an indirect order that would also restrict lawful activities. The Claimants do not own the land over which they were seeking the imposition of this further exclusion zone, so I was not persuaded that there was an adequate legal basis upon which to impose the wider restriction that they had sought.

(The reference to obstruction of a police vehicle in [10] is to an incident on 12 May 2022, which featured as an allegation of breach of the Interim Injunction made in the Contempt Application against Mr Curtin – see [248]-[254] below.)

41. I refused to grant other amendments to the Interim Injunction sought by the Claimants: see Section E of the Second Injunction Variation Judgment ([58]-[80]). The Claimants had originally sought to revisit the question of whether the Interim Injunction should prohibit the flying of drones, but they abandoned that part of the application (see [16]).

D: Alleged breaches of the Interim Injunction

42. The Claimants have pursued several contempt applications, against both named Defendants and against a person alleged to fall within a category of "Persons Unknown", alleging breaches of the Interim Injunction.

(1) The First Contempt Applications

43. Contempt applications were issued against the Twelfth and Thirteenth Defendants ("The First Contempt Applications"). Both Defendants were alleged to have breached the Interim Injunction in the contempt application issued on 17 December 2021. A second contempt application, alleging further breaches of the Interim Injunction, was issued against the Thirteenth Defendant on 16 February 2022. They were heard on 6-7 April 2022. In the First Contempt Judgment, handed down on 16 May 2022, I dismissed the 17 December 2021 contempt application brought against the Thirteenth Defendant. Both Defendants were found guilty of contempt of court in respect of admitted breaches of the Interim Injunction.

44. On 17 June 2022, a further contempt application was made against the Twenty-Third Defendant.

45. On 2 August 2022, I imposed penalties for contempt of court on the Defendants. The Twelfth Defendant was given a sentence of imprisonment of 3 months and the Thirteenth Defendant was given a sentence of imprisonment of 28 days. Both periods of imprisonment were suspended for 18 months. The periods of suspension have now ended. I imposed no sanction on the Twenty-Third Defendant, who had admitted a breach of the Interim Injunction, although she was ordered to pay a sum in costs. None of these Defendants has been alleged to be guilty of a further breach of the Interim Injunction.

(2) The Second Contempt Application

46. On 4 July 2022, the Claimants issued a further contempt application against Gillian Frances McGivern, a solicitor ("the Second Contempt Application"). Ms McGivern was alleged to have breached the Interim Injunction, as a "Person Unknown", on 4 May 2022 by, variously, parking her car in the Exclusion Zone, entering the Exclusion Zone, trespassing on the First Claimant's land (by approaching the entry gate) and approaching and/or obstructing vehicles directly exiting and/or entering the Exclusion Zone.

47. The Second Contempt Application was heard on 21-22 July 2022. In the Second Contempt Judgment, handed down on 2 August 2022, I dismissed the contempt

application and declared it to be totally without merit. It is necessary, for the purposes of this judgment to recall some of the paragraphs of the Second Contempt Judgment.

> [94] I have found it very difficult to understand the motive(s) behind the Claimants' tenacious pursuit of Ms McGivern and the way that the contempt application has been pursued. First there is the delay in commencing the proceedings. Then there is the failure to send any form of letter before action to Ms McGivern giving her the opportunity to give her response. Next, the Claimants' response to the evidence of Ms McGivern, provided first in a position statement and then in a witness statement, both verified by a statement of truth. The contempt application was pursued in the face of this evidence. The Claimants did so on a somewhat speculative basis relying upon the evidence of PC Shailes (inaccurately trailed first in the email from Mills & Reeve to the Court on 15 July 2022 – see [39] above) and which was only obtained after serving a witness summons, on the eve of the Contempt Application. Finally, the Claimants persisted in a cross-examination of Ms McGivern in which allegations of the utmost seriousness were made suggesting, not only that had she, a solicitor, had deliberately breached a court injunction, but that she had brazenly and repeatedly lied for over a day in the witness box. The evidential support for this line of cross-examination was tissue thin.
>
> [95] In his skeleton argument, Mr Underwood QC submitted that the contempt application was an abuse of process. Certainly, allegations were made by some of the unrepresented Defendants that action had been taken against Ms McGivern because she was a lawyer helping some of the protestors. That would be the form of abuse of process by using proceedings for a collateral purpose. I can understand why they might suspect this, but Mr Underwood QC did not put any such suggestion to Ms Pressick when she gave evidence. I am unable to reach a conclusion as to the Claimants' motives for pursuing Ms McGivern. All I can say is I find them very difficult to understand.
>
> [96] In my judgment this contempt application has been wholly frivolous, and it borders on vexatious. The breaches alleged were trivial or wholly technical. Apart from a technical trespass, it is difficult to identify any civil wrong that was committed by Ms McGivern. At worst, obstructing the vehicles for a short period might be regarded as provocative, but there were no aggravating features. As the Claimants must have appreciated, this was not the sort of conduct that the Injunction was ever intended to catch. The Court does not grant injunctions to parties to litigation to be used as a weapon against those perceived to be opponents. At its commencement, this contempt application was based almost entirely upon deemed notice of the terms of the Injunction by operation of the alternative service order. Once Ms McGivern had provided evidence confirmed by a statement of truth that she had no knowledge of the Injunction, the Claimants should have taken stock as to the prospect of success of the contempt application and, particularly, whether there was a real prospect of the Court imposing any sanction for the alleged breaches. Instead of doing so, the Claimants embarked on what proved to be a hopeless attempt to impeach Ms McGivern's transparently honest evidence by witness summonsing a police officer. This was not a proportionate or even rational way to approach litigation of this seriousness.

> [97] Ms Bolton's final submission was that the Claimants were "*entitled*" to bring the contempt application against Ms McGivern; "*entitled*" to spend two days of Court time and resources pursuing an application that, on an objective assessment of the evidence, was only ever likely to end with the imposition of no penalty; and "*entitled*" to put a solicitor through the ordeal of a potentially career-ending contempt application and all the disruption that it has caused to Ms McGivern's work and the impact it has had on this litigation. There is no such "*entitlement*". The contempt application against Ms McGivern will be dismissed and will be certified as being totally without merit.

48. I was satisfied that, in the circumstances of this litigation, and particularly given the risk of abuse of "Persons Unknown" injunctions, it was necessary to impose a requirement that the Claimants must obtain the permission of the Court before instituting any contempt application against someone alleged to have breached the Interim Injunction as a "Person Unknown". I explained my reasons for doing so:

> [101] For the reasons I have explained in this judgment, depending upon its terms, a "Persons Unknown" injunction can have the potential to catch in its net people that were never intended by the Court to be caught. Ms McGivern is an example, but others were discussed at the hearing, including the passing motorist who stops temporarily in outside the gates of the Wyton Site and who inadvertently obstructs a vehicle that is leaving the premises. By dint of the operation of the definition of "Persons Unknown" and the deemed notice of the terms of the Injunction under the alternative service order, that motorist, like Ms McGivern, ends up potentially having to face a contempt application. In ordinary cases, the Court might usually expect that a litigant who had obtained such an injunction would consider carefully whether it was proportionate and/or a sensible use of the Court's and the parties' resources for contempt proceedings to be brought against someone who had inadvertently contravened the terms of the injunction. The Claimants have demonstrated that, even with the benefit of professional advice and representation, the Court cannot rely upon them to perform that task appropriately.
>
> [102] I am satisfied that the Court does have the power, ultimately as part of its case management powers to protect its processes from being abused and its resources being wasted, to impose a permission requirement. I reject the submission that the Court is powerless and must simply adjudicate upon such contempt applications that the Claimants seek to bring. "Persons Unknown" injunctions are recognised to be exceptional specifically because they have the potential to catch newcomers. I do not consider that it is an undue hardship that these Claimants should be required to satisfy the Court that a contempt application they wish to bring (a) is one that has a real prospect of success; (b) is not one that relies upon wholly technical or insubstantial breaches; and (c) is supported by evidence that the respondent had actual knowledge of the terms of the injunction before being alleged to have breached it.
>
> [103] Although the conditions for the making of a limited civil restraint order are not met, the imposition of a requirement that the Claimants must obtain the permission of the Court before bringing any further contempt applications

> against "Persons Unknown" is not a limited civil restraint order, it restricts only this specific form of application. The Claimants will remain free to issue and pursue applications in the underlying proceedings. I am satisfied that the imposition of a targeted restriction on the Claimants' ability to bring such contempt applications is a necessary and proportionate step to protect the Court (and the respondents to any future contempt applications) from proceedings that have no real prospect of success and/or serve no legitimate purpose.
>
> [104] I will therefore make an order requiring the Claimants to obtain the permission of the Court before they bring any further contempt application against anyone alleged to be in the category of "Persons Unknown" and to have breached the Injunction.

49. The order, on 2 August 2022, dismissing the Second Contempt Application therefore included the following provisions ("the Contempt Application Permission Requirement"):

> "3. Any further contempt application against any person, not being a named Defendant in the proceedings, may only be brought by the Claimants with the permission of the Court.
>
> 4. An application for permission under Paragraph 3 above, must be made by Application Notice attaching the proposed contempt application and evidence in support. The Court will normally expect the Claimants to have notified the proposed Respondent in writing of the allegation(s) that s/he has breached the injunction order. Any response by the Respondent should be provided to the Court with the application to bring a contempt application. Unless the Court otherwise directs, any such application will be dealt with by the Court on the papers."

50. I refused an application by the Claimants for permission to appeal against the imposition of the Contempt Application Permission Requirement. The Claimants did not renew their application for permission to appeal to the Court of Appeal.

51. I returned to the issue of potential abuse of "Persons Unknown" injunctions in the Second Injunction Variation Judgment, where I said this ([12]):

> "The operation of the interim injunction over the last 12 months has given cause for concern about whether the order is being used by the Claimants as a 'weapon' against the protestors or their supporters. The contempt application against Ms McGivern was dismissed. I found that the breaches alleged against Ms McGivern were trivial: see [the Second Contempt Judgment] [96]. The Claimants well know, and fully understand, the basis on which the exclusion zone has been imposed. It is not to be used by the Claimants as an opportunity to take action against protestors for trivial infringements that have none of the elements that led to the grant of the interim injunction and are not otherwise unlawful acts. Ultimately, if there were to be any repetition of contempt applications being brought for trivial infringements, then the Court might have to reconsider the terms of the interim injunction order that should remain in place pending trial".

(3) The Third Contempt Application

52. On 17 June 2022, the Claimants issued a contempt application against Mr Curtin ("the Third Contempt Application"). Some of the breaches of the Interim Injunction alleged against Mr Curtin were also relied upon as causes of action in the claim against him. As a result, the Claimants' evidence against Mr Curtin, both in relation to the claim against him and the Third Contempt Application was heard at a further hearing, on 23 June 2024, at which Mr Curtin was represented for the purposes of the Contempt Application.

53. I deal with the Third Contempt Application in Sections G and O(3) of this judgment (see [109]-[120], [247]-[253] and [400]-[407] below).

E: Alternative service orders in respect of "Persons Unknown"

54. Prior to the decision of the Supreme Court in ***Wolverhampton***, on 12 August 2021, the Court granted permission for alternative service of the Claim Form on the "Persons Unknown" Defendants. The order provided:

> "Pursuant to CPR Part 6.14, 6.15, 6.26 and 6.27 the Claimants have permission to serve the Tenth Defendant, Persons Unknown, by the following alternative forms of service:
>
> (1) Affixing copies (as opposed to originals) of the Claim Form, the Injunction Application Notice, draft Injunction Order and this Order permitting alternative service, in a transparent envelope on the gates of the First and Third Claimants' Land and in a prominent position on the grass verge at the front of the First and Third Claimant's Land.
>
> (2) The documents shall be accompanied by a cover letter in the form set out in Annexure 2 explaining to Persons Unknown that they can access copies of
>
> (a) the Response Pack;
>
> (b) evidence in support of the Alternative Service and Injunction Applications; and
>
> (c) the skeleton argument and note of the hearing of the Alternative Service Application
>
> at the dedicated share file website at: [Dropbox link provided]"
>
> (3) The deemed date of service for the documents referred to in (1) to (3) above shall be two working days after service is completed in accordance with paragraphs (1) to (3) above.

55. The Defendants (including those in the category of "Persons Unknown") were required to file an Acknowledgement of Service 14 days after the deemed date of service. No Acknowledgement of Service has been filed by any person in any of the categories of "Persons Unknown".

56. Similar orders have been made for service of the Claim Form by an alternative method on the additional categories of "Persons Unknown" Defendants as they have been added

to the claim. Following the imposition of the Exclusion Zone in the Interim Injunction granted 10 November 2021, the location at which the relevant documents were to be displayed was moved to a noticeboard opposite the entrance of the Wyton Site.

F: The claims advanced by the Claimants

57. As a result of some narrowing down of the Claimants' focus during the trial, the claims finally advanced by the Claimants against Mr Curtin and the "Persons Unknown" Defendants at the conclusion of the trial were: (1) trespass (including alleged trespass as a result of the flying of drones over the Wyton Site); (2) public nuisance on the highway; and (3) interference with the First Claimant's common law right of access to the highway from the Wyton Site. Although the Claimants had included a claim for harassment against both Mr Curtin and Persons Unknown, that claim was only pursued against Mr Curtin at the end of the trial. It was not pursued as a basis for the grant of relief against Persons Unknown. It is appropriate here to analyse the causes of action relied upon by the Claimants.

(1) Trespass

(a) Physical encroachment onto the Wyton Site

58. This claim is straightforward.

59. Trespass to land is the interference with possession or the right to possession of land. It includes instances in which a person intrudes upon the land of another without legal justification. The key features of trespass are:

    (1) it is a strict liability tort: a defendant need not know that s/he is committing a trespass to be liable;

    (2) the tort is actionable without proof of damage; and

    (3) the extent of the trespass is irrelevant to liability: ***Ellis -v- Loftus Iron Company* (1874-75) LR 10 CP 10, 12**: "… *if the defendant place a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it.*"

60. A person does not commit a trespass where s/he enters upon, or remains on the land, if s/he has permission (or licence). That permission (or licence) can be express or implied.

61. However, a person who enters land pursuant to a licence, but who proceeds to act in such a way that in exceeds the scope of that licence, or who remains on the land after the expiration of the licence, commits a trespass: ***Hillen -v- ICI (Alkali) Ltd* [1936] AC 65, 69**; ***Jockey Club Racecourse Limited -v- Persons Unknown* [2019] EWHC 1026 (Ch)** [15].

(b) Trespass to the airspace above the Wyton Site

62. This claim is not straightforward.

63. The First Claimant claims that the act of flying a drone directly over the Wyton Site is a trespass. In the early phase of this litigation, I refused to grant an interim injunction to restrain drone flying (see Interim Injunction Judgment [111]-[115]).

64. The only authority cited by the Claimants in support of the claim that flying a drone over land amounts to trespass is the first-instance decision of ***Bernstein -v- Skyviews & General Ltd*** **[1978] QB 479**. The case concerned an aircraft that the defendant flew over the claimant's land for the purpose of taking a photograph the claimant's country house which was then offered for sale to him. The claimant alleged that, by entering the airspace above his property to take aerial photographs, the defendant was guilty of trespass (alternatively that the defendant was guilty of an actionable invasion of his right to privacy by taking the photograph without his consent or authorisation). The claim failed. The Judge held that an owner's rights in the airspace above his/her land were restricted to such height as was necessary for the ordinary use and enjoyment of the land and structures upon it, and above that height s/he had no greater rights than any other member of the public. Accordingly, the defendant's aircraft did not infringe any rights in the claimant's airspace and thus did not commit any trespass by flying over land for the purpose of taking a photograph.

65. Griffiths J considered the authority of ***Kelsen -v- Imperial Tobacco Co.*** **[1957] 2 QB 334**, which concerned a sign that was overhanging the claimant's land by about 8 inches. He quoted part of the judgment of McNair J which held that the overhanging sign was a trespass to the claimant's airspace above his land, and held (at **486E-487A**):

> "I very much doubt if in that passage McNair J was intending to hold that the plaintiff's rights in the air space continued to an unlimited height or 'ad coelum' as [the plaintiff] submits. The point that the judge was considering was whether the sign was a trespass or a nuisance at the very low level at which it projected. This to my mind is clearly indicated by his reference to *Winfield on Tort*, 6th ed. (1954) in which the text reads, at p. 380: 'it is submitted that trespass will be committed by [aircraft] to the air space if they fly so low as to come within the area of ordinary user.' The author in that passage is careful to limit the trespass to the height at which it is contemplated an owner might be expected to make use of the air space as a natural incident of the user of his land. If, however, the judge was by his reference to the Civil Aviation Act 1949 and his disapproval of the views of Lord Ellenborough in ***Pickering -v- Rudd*** **(1815) 4 Camp 219**, indicating the opinion that the flight of an aircraft at whatever height constituted a trespass at common law, I must respectfully disagree.
>
> I do not wish to cast any doubts upon the correctness of the decision upon its own particular facts. It may be a sound and practical rule to regard any incursion into the air space at a height which may interfere with the ordinary user of the land as a trespass rather than a nuisance. Adjoining owners then know where they stand; they have no right to erect structures overhanging or passing over their neighbours' land and there is no room for argument whether they are thereby causing damage or annoyance to their neighbours about which there may be much room for argument and uncertainty. But wholly different considerations arise when considering the passage of aircraft at a height which in no way affects the user of the land."

66. Griffiths J then noted that, in both ***Pickering -v- Rudd*** and ***Saunders -v- Smith*** **(1838) 2 Jur 491**, the Court had rejected a submission that sailing a hot air balloon over

someone's land could amount to trespass. The Judge also quoted from Lord Wilberforce's speech in ***Commissioner for Railways -v- Valuer-General*** **[1974] AC 328, 351** in which he noted that: "*In none of these cases is there an authoritative pronouncement that 'land' means the whole of the space from the centre of the earth to the heavens: so sweeping, unscientific and unpractical doctrine is unlikely to appeal to the common law mind.*"

67. Griffiths J could find no support in the case law for the contention that a landowner's rights in the air space above his property extend to an unlimited height (**487G-H)**:

> "In ***Wandsworth Board of Works -v- United Telephone Co. Ltd.*** **(1884) 13 QBD 904** Bowen LJ described the maxim, *usque ad coelum*, as a fanciful phrase, to which I would add that if applied literally it is a fanciful notion leading to the absurdity of a trespass at common law being committed by a satellite every time it passes over a suburban garden. The academic writers speak with one voice in rejecting the uncritical and literal application of the maxim... I accept their collective approach as correct. The problem is to balance the rights of an owner to enjoy the use of his land against the rights of the general public to take advantage of all that science now offers in the use of air space. This balance is in my judgment best struck in our present society by restricting the rights of an owner in the air space above his land to such height as is necessary for the ordinary use and enjoyment of his land and the structures upon it, and declaring that above that height he has no greater rights in the air space than any other member of the public."

68. On the facts, there had been a "*fierce dispute*" between the parties as to the height at which the plane had flown to take the photograph, and the Judge found only that it had flown "*many hundreds of feet above the ground*" (**488C**). He added:

> "… it is not suggested that by its mere presence in the air space it caused any interference with any use to which the plaintiff put or might wish to put his land. The plaintiff's complaint is not that the aircraft interfered with the use of his land but that a photograph was taken from it. There is, however, no law against taking a photograph, and the mere taking of a photograph cannot turn an act which is not a trespass into the plaintiff's air space into one that is a trespass."

69. In a passage that perhaps echoes some of Ms Bolton's submissions in this case, Griffiths J noted, but rejected, the argument that photographs of the claimant's property obtained from the air could be used for nefarious purposes (**488E-F**):

> "… [Counsel for the plaintiff], however, conceded that he was unable to cite any principle of law or authority that would entitle Lord Bernstein to prevent someone taking a photograph of his property for an innocent purpose, provided they did not commit some other tort such as trespass or nuisance in doing so. It is therefore interesting to reflect what a sterile remedy Lord Bernstein would obtain if he was able to establish that mere infringement of the air space over his land was a trespass. He could prevent the defendants flying over his land to take another photograph, but he could not prevent the defendants taking the virtually identical photograph from the adjoining land provided they took care not to cross his boundary, and were taking it for an innocent as opposed to a criminal purpose."

70. For my part, I would respectfully disagree that proof that photographs of a property, captured from adjoining land, were taken for a "*criminal purpose*" would render photographer liable for trespass upon the land of the property-owner. If there is to be a remedy against taking such photographs, it is to some other area of the law that the aggrieved property-owner would have to turn.

71. Griffiths J therefore dismissed the claimant's claim for trespass, but he concluded his judgment with this observation (**489F-H**):

> "… I [would not] wish this judgment to be understood as deciding that in no circumstances could a successful action be brought against an aerial photographer to restrain his activities. The present action is not founded in nuisance for no court would regard the taking of a single photograph as an actionable nuisance. But if the circumstances were such that a plaintiff was subjected to the harassment of constant surveillance of his house from the air, accompanied by the photographing of his every activity, I am far from saying that the court would not regard such a monstrous invasion of his privacy as an actionable nuisance for which they would give relief. However, that question does not fall for decision in this case and will be decided if and when it arises."

72. The decision does not appear to deal expressly with the claim for breach of privacy. Perhaps that reflects the reality that, in 1977, there was no recognised right of privacy, so-called (a submission the defendant made – see p.481 in the report). Griffiths J's observations about whether repeated photographing of a person's property, amounting effectively to surveillance, might ground a cause of action were very much rooted in the notion that such behaviour might be found to be an actionable nuisance (cf. ***Fearn -v- Board of Trustees of the Tate Gallery*** **[2024] AC 1** [188]).

73. The law has developed significantly since 1977. A claimant who is subjected to the sort of surveillance that Griffiths J described might well now consider, in addition to a claim for nuisance, claims for misuse of private information, potential breaches of data protection legislation and harassment. For the purposes of this judgment, it is important to note that, as against "Persons Unknown", the Claimants have not advanced their claim for injunctive relief to restrain further drone usage on any of these bases; the claim is advanced solely as an alleged trespass. I can well see that pursuing claims for these additional torts might not be straightforward (and the omission to advance such claims may reflect an appreciation of those difficulties by the Claimants). For present purposes, it is sufficient to note that not only have the Claimants have not pursued such claims, but they have also not provided the evidence necessary to demonstrate that the historic drone usage (and apprehended future use) would amount to any of these further torts. For the purposes of the Claim against "Persons Unknown" I will therefore consider, only, whether the Claimants' evidence of drone usage amounts to trespass. For the claim against Mr Curtin, personally, I must additionally consider whether his use of a drone on 21 June 2022 was part of a course of conduct involving harassment of the First Claimant's employees (and others in the Second Claimant class) – see [255]-[274] below.

(2) Interference with the right of access to the highway

74. The common law right of access to the highway was described by Lord Atkin, in ***Marshall -v- Blackpool Corporation*** **[1935] AC 16, 22** as follows:

> "… The owner of land adjoining a highway has a right of access to the highway from any part of his premises. This is so whether he or his predecessors originally dedicated the highway or part of it and whether he is entitled to the whole or some interest in the ground subjacent to the highway or not. The rights of the public to pass along the highway are subject to this right of access: just as the right of access is subject to the rights of the public, and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway."

75. An interference with this right is actionable *per se*: ***Walsh -v- Ervin*** **[1952] VLR 361**. The right is separate from the land-owner's right, as a member of the public, to utilise the highway itself: ***Ineos Upstream Ltd -v- Persons Unknown*** **[2017] EWHC 2945 (Ch)** [42]. This private right ceases as soon as the highway is reached and any subsequent interference with access to the highway is actionable, if at all, only if it amounts to a public nuisance. In ***Chaplin -v- Westminster Corporation*** **[1901] 2 Ch 329, 333-334**, Buckley J explained:

> "The right which [the claimants] here seek to exercise is a right which they enjoy in common with all other members of the public to use this highway. They have an individual interest which enables them to sue without joining the Attorney-General, in that they are persons who by reason of the neighbourhood of their own premises use this portion of the highway more than others. They have a special and individual interest in the public right to this portion of the highway, and they are entitled to sue without joining the Attorney-General because they sue in respect of that individual interest; but the right which they seek to exercise is not a private right, but a public right. A person who owns premises abutting on a highway enjoys as a private right the right of stepping from his own premises on to the highway, and if any obstruction be placed in his doorway, or gateway, or, if it be a river, at the edge of his wharf, so as to prevent him from obtaining access from his own premises to the highway, that obstruction would be an interference with a private right. But immediately that he has stepped on to the highway, and is using the highway, what he is using is not a private right, but a public right."

76. The reference to the Attorney-General is to the important principle that an individual cannot, without the consent of the Attorney-General, seek to enforce the criminal law in civil proceedings: ***Gouriet -v- Union of Post Office Workers*** **[1978] AC 435, 477E-F**. Obstruction of the highway is a criminal offence. It does not create a civil cause of action unless the obstruction of the highway amounts to a public nuisance.

77. Ms Bolton submits that the First Claimant, as the owner of the Wyton Site, has an immediate right to access the highway from the Wyton Site to the B1090. Obstruction of this right of access gives rise to a private law claim.

78. I can readily accept that acts of the protestors which deliberately blockade the Wyton Site, preventing vehicles gaining access to or from the highway, would be an infringement of this private right.

79. However, Ms Bolton goes further. She argues that there is no protest right that can justify any interference with the access to the highway. She contends that there is no right to obstruct, slow down or hinder the passage of vehicles exiting the Wyton Site.

80. Put in those absolute terms, I reject this part of Ms Bolton's submission. As is clear from the passage I have quoted from ***Marshall*** (see [74] above), such private law right

of access to the highway that the First Claimant has is "*subject to the rights of the public*". At its most prosaic, the right of access to the highway cannot be absolute because people leaving the Wyton Site would have to give way to traffic on the B1090. In heavy traffic, or if there was significant congestion or a traffic jam, a person exiting the Wyton Site might have to wait for some time before s/he could access the highway. Another example, directly linked to the protest activities, would be if the protestors organised a march or procession along the B1090 (with due notification being given to the police under s.11 Public Order Act 1986). For the time it took for the procession to pass the entrance of the Wyton Site, it would interfere with the First Claimant's right of access to the highway. The First Claimant has no right to ask the Court to prohibit lawful use of the highway by the protestors on the grounds that it would interfere – for a short period – with the First Claimant's right of access to the highway. Under s.12 Public Order Act 1986, if certain requirements are met, the police can impose conditions on processions. In that way a proper balance can be struck between the protestors' right to demonstrate, and the First Claimant's right of access to the highway.

(3) Public nuisance

81. When these proceedings were commenced, it was an offence at common law to cause a public nuisance. From 28 June 2022, the offence of public nuisance has been put on a statutory footing in s.78 Police, Crime, Sentencing and Courts Act 2022, and the old common law offence has been abolished. The new s.78 provides:

> "(1) A person commits an offence if—
>
> (a) the person—
>
> (i) does an act, or
>
> (ii) omits to do an act that they are required to do by any enactment or rule of law,
>
> (b) the person's act or omission—
>
> (i) creates a risk of, or causes, serious harm to the public or a section of the public, or
>
> (ii) obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and
>
> (c) the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence.
>
> (2) In subsection (1)(b)(i) "serious harm" means—
>
> (a) death, personal injury or disease,
>
> (b) loss of, or damage to, property, or
>
> (c) serious distress, serious annoyance, serious inconvenience or serious loss of amenity.

> (3) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for the act or omission mentioned in paragraph (a) of that subsection.
>
> (4) A person guilty of an offence under subsection (1) is liable—
>
> (a) on summary conviction, to imprisonment for a term not exceeding he general limit in a magistrates' court, to a fine or to both;
>
> (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both.
>
> …
>
> (6) The common law offence of public nuisance is abolished.
>
> (7) Subsections (1) to (6) do not apply in relation to—
>
> (a) any act or omission which occurred before the coming into force of those subsections, or
>
> (b) any act or omission which began before the coming into force of those subsections and continues after their coming into force.
>
> (8) This section does not affect—
>
> (a) the liability of any person for an offence other than the common law offence of public nuisance,
>
> (b) the civil liability of any person for the tort of public nuisance, or
>
> (c) the ability to take any action under any enactment against a person for any act or omission within subsection (1).
>
> (9) In this section "enactment" includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978."

82. The Act retains civil liability for the tort of public nuisance: s.78(8)(b). That reflects the position that used to apply under the common law and the authors of *Clerk & Lindsell on Tort* (§19-179, 24th edition, Sweet & Maxwell, 2023) consequently suggest: "*it is clear that the previous common law decisions on liability for public nuisance continue to provide guidance on the scope of civil liability in highway cases*".

83. Consideration of the law relating public nuisance arising from an obstruction of the highway must start with the following basic propositions:

(1) simple obstruction of the highway is a criminal offence under s.137 Highways Act 1980;

(2) a threatened or actual offence under s.137 *cannot* ground a civil claim (without the consent of the Attorney-General): ***Gouriet*** – see [76] above);

(3) if the conditions of s.78 Police, Crime, Sentencing and Courts Act 2022 (or, prior to enactment, the common law offence of public nuisance) are met, obstruction of the highway *may* amount to public nuisance; and

(4) a threatened or actual public nuisance *can* ground a civil claim upon proof of special damage.

(a) Obstruction of the highway: s.137 Highways Act 1980

84. So far as material, s.137 Highways Act 1980 provides:

> "(1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to imprisonment for a term not exceeding 51 weeks or a fine or both…"

85. Any occupation of part of a highway which interferes with people having the use of the whole of the highway is an obstruction; and unless the obstruction is so small that it is *de minimis*, any stopping on the highway is *prima facie* an obstruction. However, the prosecution must also prove that the person responsible for the obstruction was acting unreasonably. Resolving that issue depends on all the circumstances, including the length of time of the obstruction, the place where it occurs, the purpose for which it is done, and whether it does in fact cause an actual obstruction as opposed to a potential obstruction: ***Nagy -v- Weston*** **[1965] 1 WLR 280**; ***Hirst -v- Chief Constable of West Yorkshire*** **(1987) 85 Cr App R 143, 151** .

86. These principles were approved by the Divisional Court in ***DPP -v- Ziegler*** **[2020] QB 253** (and not subject to adverse comment in the Supreme Court **[2022] AC 408**).

87. The law resolves the tension between the criminal offence of obstruction of the highway, under s.137, and the right to protest (protected by Articles 10 and 11 of the ECHR) by recognising that some protest activities, that create an obstruction on a highway, can be defended on the basis that the right to protest provides a lawful excuse for the obstruction. That was the effect of ***Ziegler*** and Lord Reed gave the following summary in ***Reference by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland) Bill*** **[2023] AC 505** ("***Northern Ireland Abortion Services***"):

> [22] Section 137 and the equivalent predecessor provisions have a long and specific history, and have been the subject of a great deal of judicial consideration. The approach adopted to section 137 and its predecessors for over a century prior to ***Ziegler*** was rooted in authorities which treated the question to be decided under the statute as similar to the question to be decided in civil nuisance cases of an analogous kind. On that basis, it was held that it was necessary for the court to consider whether the activity being carried on in the highway by the defendant was reasonable or not: see, for example, ***Lowdens -v- Keaveney*** **[1903] 2 IR 82, 87** and **89**. That question was treated as one of fact, depending on all the circumstances of the case: ***Nagy -v- Weston*** **[1965] 1 WLR 280, 284**; ***Cooper -v- Metropolitan Police Commissioner*** **(1985) 82 Cr App R 238, 242** and **244**. That approach accorded with the general treatment in the criminal law of assessments of reasonableness as questions of fact. In cases where the activity in question

> took the form of a protest or demonstration, common law rights of freedom of speech and freedom of assembly were treated as an important factor in the assessment of reasonable user: see, for example, ***Hirst -v- Chief Constable of West Yorkshire*** **(1986) 85 Cr App R 143**. That approach was approved, *obiter*, by members of the House of Lords in ***Director of Public Prosecutions -v- Jones*** **[1999] 2 AC 240, 258-259** and **290**. Lord Irvine of Lairg LC summarised the position at p 255: 'the public have the right to use the public highway for such reasonable and usual activities as are consistent with the general public's primary right to use the highway for purposes of passage and repassage'. The same approach continued to be followed after the Human Rights Act entered into force: see, for example, ***Buchanan -v- Crown Prosecution Service*** **[2018] EWHC 1773 (Admin)**; **[2018] LLR 668**.

88. Lord Reed did criticise some aspects of the approach adopted by the Divisional Court in ***Ziegler*** ([23]-[25]), but recognised that the Supreme Court's decision in ***Ziegler*** governed the proper approach to the interpretation of s.137 in protest cases:

> [26] … it was agreed between the parties, and this court accepted [in ***Ziegler***], that section 137 has to be read and given effect, in accordance with section 3 of the Human Rights Act, on the basis that the availability of the defence of lawful excuse, in a case raising issues under articles 10 or 11, depends on a proportionality assessment carried out in accordance with the approach set out by the Divisional Court: see [10]-[12] and [16]. As that question is not in issue in the present case, we make no comment upon it.
>
> [27] One of the issues in dispute in the appeal was whether there can be a lawful excuse for the purposes of section 137 in respect of deliberate physically obstructive conduct by protesters, where the obstruction prevented, or was capable of preventing, other highway users from passing along the highway. Lord Hamblen and Lord Stephens concluded that there could be (***Jones*** was neither cited nor referred to). Lady Arden and Lord Sales expressed agreement in general terms with what they said on this issue.
>
> [28] In the course of their discussion of this issue, Lord Hamblen and Lord Stephens stated at [59]:
>
> > "Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case".
>
> One might expect that to be the usual position at the trial of offences charged under section 137 in circumstances where articles 9, 10 or 11 are engaged, if the section is interpreted as it was in ***Ziegler***; and that was the only situation with which Lord Hamblen and Lord Stephens were concerned…

89. Lord Reed's quarrel with ***Ziegler*** was with the suggestion – in [59] – that the Supreme Court had been stating a principle of universal application relevant to all contexts in which protest rights were engaged. It was this submission that Lord Reed rejected: [29]ff.

(b) Public nuisance by obstructing the highway

90. Assuming that a claimant can demonstrate commission of a public nuisance by the defendant(s), then s/he can bring a civil claim if s/he can prove (1) that s/he has sustained particular damage beyond the general inconvenience and injury suffered by the public as a result of the public nuisance; (2) that the particular damage which he has sustained is direct, not consequential; and (3) that the damage is substantial, "*not fleeting or evanescent*": ***Jan De Nul (UK) Ltd -v- N.V. Royale Belge*** **[2000] 2 Lloyd's Rep 700** ("***N.V. Royale Belge***") [42] relying upon ***Benjamin -v- Storr*** **(1874) LR 9 CP 400**.

91. Relying upon ***East Hertfordshire DC -v- Isobel Hospice Trading Ltd*** **[2001] JPL 597**, Ms Bolton submitted that "*it is well-established law that it is a public nuisance to obstruct or hinder the free passage of the public along the highway*". That is not an accurate statement of the law and the decision upon which she relied is not authority for that proposition. The case was a judicial review of the dismissal (by a Magistrates' Court, and then on appeal) of a local authority's complaint under s.149 Highways Act 1980 after several large wheelie bins had been placed on a highway. The Council had served a notice on the defendant to remove the wheelie bin that it had placed on the highway. The defendant did not comply with the notice and proceedings were then brought in the Magistrates' Court. The Magistrates dismissed the complaint, and the Council appealed. The Crown Court dismissed the appeal. The Crown Court was satisfied that the wheelie bin was situated on the highway, but that it could not be said to be a nuisance or, if it was, "*it was a nuisance of such a piffling nature that it did not warrant the intervention of any court*".

92. The High Court quashed the decision of the Crown Court. The Judge found that the wheelie bin was an obstruction of the highway that was not temporary. It was not relevant that people could navigate around it. The Judge concluded that the Crown Court had been wrong to hold that the positioning of the wheelie bin on the highway did not in law amount to a nuisance under s.149 ([32]), and remitted the case for redetermination: [38]. The case is not authority for what obstructions of the highway amount to a public nuisance; it is not a case about public nuisance at all.

93. The leading case concerning the common law offence of public nuisance is ***R -v- Rimmington*** **[2006] 1 AC 459**. In it, Lord Bingham identified ***Attorney General -v- PYA Quarries Ltd*** **[1957] 2 QB 169** as the modern authority on what amounts to a public nuisance [18]:

> "This was a civil action brought by the Attorney General on the relation of the Glamorgan County Council and the Pontardawe Rural District Council to restrain a nuisance by quarrying activities which were said to project stones and splinters into the neighbourhood, and cause dust and vibrations. It was argued for the company on appeal that there might have been a private nuisance affecting some of the residents, but not a public nuisance affecting all Her Majesty's liege subjects living in the area. In his judgment Romer LJ reviewed the authorities in detail and concluded, at p.184:
>
> > 'I do not propose to attempt a more precise definition of a public nuisance than those which emerge from the textbooks and authorities to which I have referred. It is, however, clear, in my opinion, that any nuisance is "public" which materially affects the reasonable comfort and convenience of life of

> a class of Her Majesty's subjects. The sphere of the nuisance may be described generally as "the neighbourhood"; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected for an injunction to issue.'

Denning LJ agreed. He differentiated between public and private nuisance at p.190 on conventional grounds: '*The classic statement of the difference is that a public nuisance affects Her Majesty's subjects generally, whereas a private nuisance only affects particular individuals.*' He went on to say, at p.191:

> 'that a public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large.'"

94. Ms Bolton's submissions on behalf of the Claimants have very much proceeded on the assumption that *every* threatened or actual obstruction of the highway is amounts to an actionable public nuisance. That is not correct. Whether a public nuisance is caused by an obstruction of the highway is a question of fact and degree: see e.g. ***N.V. Royale Belge*** [40].

95. The criminal offence of obstruction of the highway can embrace behaviour ranging from the obstruction of a single vehicle on a minor 'B' road at 3 o'clock in the morning, to a massive blockage of the M25 motorway during rush hour. The former, even if it amounts to a criminal offence under s.137 Highways Act 1980, would not remotely constitute a public nuisance, whereas the latter probably would.

96. In her submissions, Ms Bolton referred to and relied upon ***DPP -v- Jones*** **[1999] 2 AC 240**, ***Ziegler*** and ***Northern Ireland Abortion Services***. Whilst these authorities do contain important statements of principle, they have limited direct application to the issues that I must resolve. Each of those cases was concerned with the way in which the criminal law accommodates protest rights. None of the cases concerned the torts relied upon by the Claimants. ***DPP -v- Jones*** was a case about trespassory assembly, contrary to s.14A Public Order Act 1986; ***Ziegler*** concerned the offence of obstructing the highway, contrary to s.137 Highways Act 1980; and ***Northern Ireland Abortion Services*** concerned the legislative competence of the Northern Ireland Assembly to enact provisions that would prohibit certain activities within "*safe access zones*" adjacent to the premises where abortion services were provided.

97. Several of Ms Bolton's submissions, based upon ***Northern Ireland Abortion Services***, I consider to be wrong. For example, she argued that the case was authority for the proposition that ***Ziegler*** is not to be applied universally to cases concerning obstruction of the highway, "*and the approach is that set out by Lord Irvine in* ***Jones****, namely 'the public have the right to use the public highway for such reasonable and usual activities as are consistent with the general public's primary right to use the highway for purposes of passage and repassage'*". I reject that submission. ***Northern Ireland Abortion Services*** could not, and did not, overrule the authority of ***Ziegler*** on the proper interpretation of s.137. Lord Reed did not doubt the correctness of the Supreme Court's decision in ***Ziegler*** as it applied to the offence of obstructing the highway, indeed he

noted that it represented the position that was both well-established by earlier authorities and necessary given the parameters of the offence (see [87] above). He rejected the submission that the principle from ***Ziegler*** applied to all cases involving protest rights. He held that the answer to whether determination of the proportionality of an interference with Convention-protected protest rights required a fact-specific evaluation of the circumstances in the individual case depended upon the nature and context of the particular statutory provision. Even in relation to other offences that provide for a defence of lawful or reasonable excuse, it did not necessarily mean that the Court is required to carry out an individual proportionality assessment, "*the position is more nuanced than that*": [53] (and see [58]).

98. It is not necessary to consider the other arguments that Ms Bolton advanced based on ***Northern Ireland Abortion Services*** because the case has only tangential relevance to the Claimants' case against the Defendants in this claim. This case is not about, for example, whether it would be lawful for Cambridgeshire County Council to impose a Public Spaces Protection Order to prohibit certain protest activities in a designated zone around the Wyton Site (c.f. ***Dulgheriu -v- London Borough of Ealing*** **[2020] 1 WLR 609**). Nor is this case concerned with alleged offences of obstructing the highway. Even if the Claimants could establish that such an offence had been committed on one or more occasions, that could not be used as the basis for a civil claim against these Defendants. At the stage of liability, the case is about whether the Claimants can demonstrate: (1) that Mr Curtin (and others) have (a) trespassed on the Wyton Site; (b) obstructed access between the Wyton Site and the public highway; and/or (c) obstructed the carriageway in such a way as to cause a public nuisance; (d) (against Mr Curtin alone) that he has pursued a course of conduct involving the harassment; and/or (2) threaten to do one or more of these acts unless restrained by injunction.

(4) Harassment

99. The Protection from Harassment Act ("the PfHA"), s.1 provides, so far as material:

> "(1) A person must not pursue a course of conduct —
>
> (a) which amounts to harassment of another, and
>
> (b) which he knows or ought to know amounts to harassment of the other.
>
> (1A) A person must not pursue a course of conduct —
>
> (a) which involves harassment of two or more persons, and
>
> (b) which he knows or ought to know involves harassment of those persons, and
>
> (c) by which he intends to persuade any person (whether or not one of those mentioned above)—
>
> (i) not to do something that he is entitled or required to do, or
>
> (ii) to do something that he is not under any obligation to do.

> (2) For the purposes of this section …, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
>
> (3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows -
>
> (a) that it was pursued for the purpose of preventing or detecting crime,
>
> (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
>
> (c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

100. A breach of ss.1(1) and/or (1A) is a criminal offence: s.2. Sections 3 and 3A PfHA provide that any actual or apprehended breach of ss.1(1) and (1A) may be the subject of a civil claim by anyone who is or may be the victim of the course of conduct.

101. A corporate entity is not a "person" capable of being harassed under s.1(1): s.7(5) and ***Daiichi UK Ltd -v- Stop Huntingdon Animal Cruelty*** **[2004] 1 WLR 1503**. However, a company may sue in a representative capacity on behalf of employees of the company if that is the most convenient and expeditious way of enabling the court to protect their interests: ***Emerson Developments Ltd -v- Avery*** **[2004] EWHC 194 (QB)** [2]. Alternatively, claims for an injunction under s.3A may be brought by a company in its own right: ***Harlan Laboratories UK Ltd -v- Stop Huntingdon Animal Cruelty*** **[2012] EWHC 3408 (QB)** [5]-[9]; ***Astrellas Pharma -v- Stop Huntingdon Animal Cruelty*** **[2011] EWCA Civ 752** [7].

102. Section 7 provides, so far as material:

> "(2) References to harassing a person include alarming the person or causing the person distress.
>
> (3) A 'course of conduct' must involve—
>
> (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
>
> (b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.
>
> (3A) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—
>
> (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and
>
> (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation

> to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.
>
> (4) 'Conduct' includes speech.
>
> (5) References to a person, in the context of the harassment of a person, are references to a person who is an individual."

103. A defendant has a defence if s/he shows: (i) that the course of conduct was pursued for the purpose of preventing or detecting crime; and/or (ii) that in the particular circumstances the pursuit of the course of conduct was reasonable (s.1(3)).

104. Assessing whether conduct amounts to or involves harassment, and whether any defendant has a defence under s.1(3), can be difficult and is always highly fact specific. In ***Hayden -v- Dickenson*** **[2020] EWHC 3291 (QB)** [44], I reviewed the relevant authorities and identified the following principles (with citations mostly omitted):

> "(i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; '*a persistent and deliberate course of targeted oppression*'…
>
> (ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2… A course of conduct must be grave before the offence or tort of harassment is proved…
>
> (iii) The provision, in s.7(2) PfHA, that '*references to harassing a person include alarming the person or causing the person distress*' is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it… It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment; that would be illogical and produce perverse results…
>
> (iv) s.1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective… '*The Court's assessment of the harmful tendency of the statements complained of must always be objective, and not swayed by the subjective feelings of the claimant*'…
>
> (v) Those who are '*targeted*' by the alleged harassment can include others '*who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it*'…

(vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court's duties under ss.2, 3, 6 and 12 of the Human Rights Act 1998. The PfHA must be interpreted and applied compatibly with the right to freedom of expression. It would be a serious interference with this right if those wishing to express their own views could be silenced by, or threatened with, proceedings for harassment based on subjective claims by individuals that they felt offended or insulted…

(vii) In most cases of alleged harassment by speech there is a fundamental tension. s.7(2) PfHA provides that harassment includes '*alarming the person or causing the person distress*'. However, Article 10 expressly protects speech that offends, shocks and disturbs. '*Freedom only to speak inoffensively is not worth having*'…

(viii) Consequently, where Article 10 is engaged, the Court's assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant's Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality… The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the '*ultimate balancing test*' identified in ***In re S*** [17] …

(ix) The context and manner in which the information is published are all-important… The harassing element of oppression is likely to come more from the manner in which the words are published than their content…

(x) The fact that the information is in the public domain does not mean that a person loses the right not to be harassed by the use of that information. There is no principle of law that publishing publicly available information about somebody is incapable of amount to harassment…

(xi) Neither is it determinative that the published information is, or is alleged to be, true… '*No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do*'… That is not to say that truth or falsity of the information is irrelevant… The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under s.1(3)), particularly when considering any application interim injunction… On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger… The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment.

(xii) Finally, where the alleged harassment is by publication of journalistic material, nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment. Such cases will be rare and exceptional…"

105. That summary of the law was approved by the Divisional Court in ***Scottow -v- CPS*** **[2021] 1 WLR 1828** [24], to which Warby J added [25(1)]:

> "A person alleging harassment must prove a 'course of conduct' of a harassing nature. Section 7(3)(a) of the PfHA provides that, in the case of conduct relating to a single person, this 'must involve … conduct on at least two occasions in relation to that person'. But this is not of itself enough: a person alleging that conduct on two occasions amounts to a 'course of conduct' must show 'a link between the two to reflect the meaning of the word "course"': ***Hipgrave -v- Jones*** **[2004] EWHC 2901 (QB)** [62] (Tugendhat J). Accordingly, two isolated incidents separated in time by a period of months cannot amount to harassment: ***R -v- Hills (Gavin Spencer)*** **[2001] 1 FLR 580** [25]. In the harassment by publication case of ***Sube -v- News Group Newspapers Ltd*** **[2020] EMLR 25** I adopted and applied this interpretative approach, to distinguish between sets of newspaper articles which were 'quite separate and distinct'. One set of articles followed the other 'weeks later, prompted, on their face, by new events and new information, and they had different content': [76(1)], [99] (and see also [113(1)])."

106. Factors (vi) to (ix) from ***Hayden*** are likely to have equivalent resonance in protest cases, which similarly engage Article 10 (and Article 11). It is relevant to consider the speech that is alleged to amount to or involve harassment. Any attempt to interfere with political speech requires the most convincing justification, and the most anxious scrutiny from the Court: ***Hourani -v- Thomson*** **[2017] EWHC 432 (QB)** [212]; ***Hibbert -v- Hall*** **[2024] EWHC 2677 (KB)]** [154]. The objective nature of the assessment of whether the conduct amounts to or involves harassment (***Hayden*** factor (vi)) is critical to ensuring proper respect for Article 10.

107. The course of conduct, viewed as a whole, must be assessed objectively. It is not necessary for each individual act that comprises the course of conduct to be oppressive and unacceptable. Individual acts which, viewed in isolation, appear fairly innocuous, may take on a different complexion when viewed as part of a bigger picture: ***Hibbert -v- Hall*** [152].

108. Finally, the claim of harassment pursued against Mr Curtin, at trial, does not allege that Mr Curtin has breached s.1(1) of the PfHA. It is not alleged that he has targeted any individual. The claim alleges a breach of s.1(1A). As such, the Claimants must also demonstrate, not only that Mr Curtin pursued a course of conduct, which involved harassment of two or more persons, which he knew or ought to have known involved harassment of those persons, but also, under s.1(1A)(c) that he intended, by that harassment, to persuade any person (which could include either those who were harassed or the First Claimant) not to do something that s/he/it was entitled or required to do, or to do something that s/he/it was under no obligation to do.

G: The Third Contempt Application

109. As already noted (see [52] above), the Third Contempt Application, against Mr Curtin, was issued by the Claimants on 17 June 2022. It was supported by the Sixth Affidavit of Ms Pressick and the Second Affidavit of Mr Manning. The evidence was heard

during the trial, with a further hearing, after the trial, on 23 June 2023. Mr Curtin was represented at this hearing, and he gave evidence.

(1) Allegations of breach of the Interim Injunction

110. The contempt application alleged that Mr Curtin had breached the Interim Injunction, in the terms imposed on 31 March 2022, as follows ("the Grounds"):

(1) On 26 April 2022, at 03.08, Mr Curtin entered the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.

(2) On 26 April 2022, at 03.55 and in the period immediately thereafter, Mr Curtin twice approached and/or obstructed the path of a white van that was directly exiting the Exclusion Zone, in breach of Paragraph 1(4) of the 31 March 2022 order.

(3) On 12 May 2022, at 10.57, Mr Curtin entered the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.

(4) On 12 May 2022, at 11.56, Mr Curtin instructed and/or encouraged an unknown and unidentifiable person to enter the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.

(5) On 12 May 2022, at 15.13, Mr Curtin entered the Exclusion Zone, in breach of Paragraph 1(2) of the 31 March 2022 order.

(6) On 12 May 2022, between 15.24 and 15.27, Mr Curtin approached and/or obstructed the path of a Police van, such that the van was unable to exit the Exclusion Zone, in breach of Paragraph 1(4) of the 31 March 2022 order.

(2) Evidence relied upon

111. Principally, the evidence upon which the Claimants relied to prove the alleged breaches is video footage. The affidavits of Ms Pressick and Mr Manning do little more than produce this video evidence and then comment upon what it shows.

112. Grounds 1 and 2 relate to an incident, on 26 April 2022, when a white van left the Wyton Site at just after 3am. Police were in attendance. The protestors clearly believed that dogs were being transported from the Wyton Site in the vehicle.

113. Grounds 3 to 6 concern various separate incidents on 12 May 2022.

(a) Ground 1

114. The video footage relied upon shows that a person, alleged to be Mr Curtin, stands and walks through an area which is alleged to be within the Exclusion Zone. The person is alleged to be in the Exclusion Zone for no more than 9 seconds.

(b) Ground 2

115. The video footage relied upon shows, from several different viewpoints, that a person, alleged to be Mr Curtin, approached and/or obstructed the path of a white van that was

directly exiting the Exclusion Zone. Specifically, it is alleged that Mr Curtin approached the white van when it was inside, attempting to exit, and immediately upon its exit from, the Exclusion Zone. Essentially, the white van left the Wyton Site by the main gate and attempted to turn right. As it did so, several protestors, including Mr Curtin, stood in front of and around the vehicle. Albeit temporarily, the vehicle was obstructed by Mr Curtin (and others) as it attempted to leave the Exclusion Zone.

(c) Ground 3

116. The video evidence shows that, at around 10.57 on 12 May 2022, a protestor throws a plastic box into the carriageway which is within the Exclusion Zone. Mr Curtin crosses the central line of the carriageway and kicks the plastic box away from the road. In doing so, Mr Curtin is within the Exclusion Zone for possibly 2 seconds.

(d) Ground 4

117. At 11.53 on 2 May 2022, an unidentified person, dressed as a dinosaur described by Mr Manning as a "*tyrannosaurus-rex costume*", enters the Exclusion Zone. The dinosaur ambles around the verge of the carriageway to the left of entrance to the Wyton Site. Another protestor appears to film the dinosaur without entering the Exclusion Zone. At 11.56, the dinosaur approaches Mr Curtin, who appears to have been filming him/her, and engages in conversation. Mr Curtin remains outside the Exclusion Zone. Mr Curtin then can be seen to take off and give his footwear to the dinosaur. Thereafter, Mr Manning says that the dinosaur "*seems to be doing little more than messing around on the driveway area… showing off for the CCTV cameras and the protestors who are cheering*". Mr Manning speculates that the dinosaur was looking for a lost drone. Mr Manning concludes: "*the CCTV of the t-rex incident clearly shows Mr Curtin assisting the t-rex's breach of the Exclusion Zone, as he lends his shoes to the person in the costume*". It is not alleged that, at any point, the itinerant dinosaur trespassed on the First Claimant's land or committed any other civil wrong.

(e) Ground 5

118. Later, on 12 May 2022, from around 15.08, the video evidence shows a convoy of vehicles leaves the Wyton Site, largely unobstructed. There is a significant police presence. On occasions, protestors can be seen to step over the mid-point of the carriageway into the exclusion zone. Police officers can be seen to gesture at the white lines, which I take to be a reminder of the Exclusion Zone. The protestors then step back.

119. At 15.13 a police van pulls up in front of the gates to the Wyton Site. It stops in the Exclusion Zone. A man, dressed in black, appears to have been arrested. Mr Curtin and another protestor approach the police vehicle, and in doing so enter the Exclusion Zone for a couple of seconds. Following a search, at 15.16, the detained man is placed into the van.

(f) Ground 6

120. This incident follows closely on from the Ground 5. A second police van can be seen to be stationary on the carriageway to the left of the Wyton Site. Police officers get into the van at around 15.18 and appear to be about to leave. However, their route is

obstructed by several protestors. At 15.24, Mr Curtin joins the protestors who are standing in front of the police van. A police officer gets out of the van and speaks to the protestors. The protestors disperse by 15.28 and the van drives off. Mr Manning states that the video evidence shows that Mr Curtin was in front of the van for a little over a minute. Arguably, the actions of the protestors were an obstruction of the highway, but the police did not take any action, perhaps in view of the very short-lived extent of the obstruction.

H: The parameters of the Claimants' claims

(1) The case against Mr Curtin

121. At an earlier stage of the proceedings, I made directions that the Claimant must plead, separately, the allegations that they made against each of the named Defendants in their Particulars of Claim. This was to ensure fairness. It was not fair to expect litigants in person to have to grapple with extensive Particulars of Claim – containing allegations directed at "Persons Unknown" – to attempt to identify what, if anything, was being alleged against them specifically. For the purposes of trial, Defendant-specific bundles were required to be provided by the Claimants. Each bundle contained only the allegations and evidence relevant to that Defendant.

122. By the time we reached the end of the trial, Mr Curtin was the only named Defendant who remained. The parameters of the case against him are set by what is pleaded in his Defendant-specific Particulars of Claim.

123. In their pleaded case, the Claimants allege that Mr Curtin, on various occasions, has been guilty of trespass, public nuisance on the highway, interference with the First Claimant's common law right of access to the highway from the Wyton Site and, finally a course of conduct involving harassment of the First Claimant's employees (and others in the Second Claimant class).

124. As I will come on to consider (see Section J(2) below), the Claimants advanced allegations against Mr Curtin, both in the witness evidence and at trial, that went beyond the case pleaded against him in the Particulars of Claim.

125. The Claimants' pleaded case against Mr Curtin relies upon the incidents I shall identify and address in the next section of the judgment when I deal with the evidence. I shall deal with each incident, chronologically, setting out the evidence and stating my conclusions, including, where necessary, resolving any disputed aspects of that evidence.

(2) The case against "Persons Unknown"

126. Although the pleaded case against the various categories of "Persons Unknown" included other claims, by the end of the evidence and in their closing submissions following the Supreme Court decision in ***Wolverhampton***, the Claimants had narrowed the claims advanced against "Persons Unknown" to a claim for an injunction against various categories of "Persons Unknown" or, alternatively, a *contra mundum* injunction, to restrain: (1) trespass (including prohibiting drone flying below 100 metres); (2) public nuisance caused by obstruction of the highway; and (3) interference with the First Claimant's right of access to the public highway. The Claimants did not

pursue a claim for harassment against "Persons Unknown" (or *contra mundum*) at the end of the trial.

I: The evidence at trial: generally

127. Before turning to the evidence relating to specific incidents, I should set out the evidence that was adduced at the trial and deal with some general issues. Some of the most important evidence at the trial were extracts of CCTV footage of various incidents. At the time the evidence for trial was prepared, the Wyton Site had 30 CCTV cameras in various locations. The security team are also equipped with body-worn cameras in certain situations.

128. The following witnesses were called by the Claimants at trial: (1) Susan Pressick; (2) Wendy Jarrett; (3) David Manning; (4) Demetrius Markou; (5) Employee A; (6) Employee AF; (6) Employee B; (7) Employee F; (8) Employee G; (9) Employee H; (10) Employee J; (11) Employee L; (12) Employee V; and (13) the Production Manager.

129. Anonymity orders were made for some of the witnesses. This was to protect the relevant witnesses from the risk of reprisal. The evidence has demonstrated that a small minority of individuals (not Mr Curtin) have sought to target those whom they identify as being employees of the First Claimant. At the trial, the anonymised witnesses gave their evidence via video link, in public, but with their identity protected. That was achieved by the Court, initially, sitting temporarily in private, during which the witness appeared on screen and was sworn. The screen was then deactivated, and the Court went back into open Court for the witness to be questioned on his/her evidence.

130. Some of the witnesses were not anonymised. For some, their names were well known to the protestors so anonymising them would have served no real purpose. Nevertheless, I have decided to adopt a cautious approach to naming them in this judgment. That is because, once handed down, this judgment, will become a public record.

131. The Claimants also relied upon witness statements of four witnesses, as hearsay, who were not called to give evidence: Employee C; Employee I; Employee P; and Jane Read.

132. Finally, Mr Curtin gave evidence at the trial. This largely consisted of his being cross-examined by Ms Bolton over three days.

133. The existence and availability of extensive CCTV recordings of the incidents means that there are no material disputes of fact that require me to decide between accounts given in the oral evidence. When I deal in the next Section of the judgment with the various incidents relied upon by the Claimants, I will refer to the evidence of the Claimants' witnesses. Before that, I should refer to the key witnesses for the Claimants who gave evidence relevant to the claim as a whole.

(1) Susan Pressick

134. Ms Pressick has provided many witness statements (and several Affidavits) during the litigation. She is employed by the Third Claimant as the Site Manager & UK Administration & European Quality Manager for the UK subsidiaries of Marshall Farm

Group Ltd. Ms Pressick has been closely involved in the litigation on behalf of the Claimants. Although she is based in Hull, Ms Pressick confirmed that she attends the Wyton Site most weeks. Her direct evidence of events is therefore limited, but she has played a significant role in the coordination of the evidence gathering process for the Claimants. Her witness evidence has been used as the primary vehicle for the introduction of the video evidence upon which the Claimants rely in relation to events at the Wyton Site.

135. Ms Pressick confirmed that, on occasions, she had been shouted at by protestors when she has visited the Wyton Site. In cross-examination she accepted that the protestors were not shouting at her, personally, but because she was perceived to be an employee of the First Claimant. One of the things that Ms Pressick recalled being shouted was "*puppy killer*". Questioned by Mr Curtin, Ms Pressick said that she did not understand why the protestors shouted that at people going to and from the Wyton Site. Mr Curtin put it to her that it was because dogs were euthanised at the site in a process that was termed "*terminal bleeding*". Ms Pressick accepted that on occasions that happened, but she maintained that being called a "*puppy killer*" was not a pleasant experience. Mr Curtin asked Ms Pressick about the impact of this upon her:

> Q: Do you take it personally, or do you take it 'They're calling me that because I work here?' …
>
> A: You take it personally, because we do everything we can do correctly…
>
> Q: Have you ever been specifically pointed out, 'That's the puppy killer'?
>
> A: No, as I described before, it's all of us, when we're moving around on and off site.
>
> Q: And in a form of legitimate protest, can you have any understanding… of why that would be a legitimate thing for a protestor to shout outside a very controversial beagle breeding establishment?
>
> A: I can understand the peaceful protest and the need for emotion to explain what the protestors are saying. It's still difficult to accept being shouted at.

136. In her witness evidence, Ms Pressick dealt with the, very limited, protest activity at the B&K Site in Hull.

137. Following the ***Wolverhampton*** decision, the Claimants were given the opportunity to file further evidence relevant to their claim for a *contra mundum* 'newcomer' injunction. Ms Pressick provided a further witness statement, dated 19 March 2024.

(2) Wendy Jarrett

138. The Claimants filed a witness statement for trial, dated 25 January 2023, from Wendy Jarrett, who attended to give evidence. Ms Jarrett is the Chief Executive of Understanding Animal Research ("UAR"). Ms Jarrett explained that UAR is a not-for-profit organisation that exists to explain to the public and policymakers why animals are used in medical and scientific research. UAR is funded by Marshall BioResources, the parent company of the First and Third Claimants; the Medical

Research Council and other bodies including the Wellcome Trust, the British Heart Foundation and Cancer Research.

139. Whilst Ms Jarrett's evidence was generally helpful in explaining the current UK legislation regarding animal research, I struggled to see the relevance that it had to the issues I must decide. Ms Bolton suggested that it was evidence that would explain the harm to medical research in this country were the First (and Third) Defendant to cease trading, thereby interrupting or curtailing the supply of beagles for clinical trials.

140. It was a feature at the trial that it was necessary, on several occasions, to remind Mr Curtin that he was not required (not was it relevant for him) to prove that the use of animals in medical research was "wrong". I appreciate why he feels the need to do so. That is a product of the adversarial process in which Mr Curtin feels the need to defend his actions. But the Claimants do not dispute that he, and the other protestors, have a sincerely held belief that animal testing – and the First and Third Claimant's role in supplying dogs for animal testing – is wrong (see [29] above). By the same token, it is equally irrelevant for the Claimants to attempt, in these proceedings, to show that animal testing is "*right*" or that Mr Curtin's beliefs are "*wrong*". Most of Ms Jarrett's evidence falls into this category, and is irrelevant to the issues that I must decide.

141. Even on the narrow issue identified by Ms Bolton – the consequences to medical research were the First (and Third) Defendants to be put out of business – I struggle to see its relevance. If the Defendants' protest activities are lawful – yet they lead to the First and Third Defendants going out of business – the harm that that might cause (which is highly speculative in any event) is not a basis on which the Court could curtail or limit otherwise lawful acts of protest. If the Defendants' protest activities are unlawful, then the Court will grant appropriate remedies to provide adequate redress whether or not harm might be caused to medical research in this country.

(3) David Manning

142. Mr Manning is employed by the First Claimant. He is a security guard at the Wyton Site. Although Mr Manning has only been employed by the First Claimant since June 2022, he has been a security guard at the site since 2014, having been previously employed by a contractor that used to provide security services at the Wyton Site. The contractor continues to provide other security guards at the site, but Mr Manning is now employed directly by the First Claimant to supervise the security team. As a result of that history, Mr Manning has had a direct involvement with the activities of the protestors from the start. If there is one employee of the First Claimant who has been in the 'front line', it is Mr Manning.

143. In his evidence, Mr Manning noted that because of the escalation of the protests, there is now a need for him to be supported by a security team of between four and ten guards. Mr Manning carries out a risk assessment on a day-to-day basis to determine how many of his team he will need. He also reviews CCTV footage and uses the cameras to monitor the protestors. In his witness statement, Mr Manning has identified the key incidents relied upon by the Claimants by reference to the CCTV footage that is available.

J: The evidence at trial against Mr Curtin

144. Before turning to the individual incidents alleged against Mr Curtin, it is necessary to set them in their context and the overall questioning of Mr Curtin.

145. The protest activities fall, broadly, into what can be called pre- and post-injunction periods. Before the Interim Injunction was granted, the hallmark of the main protest activities was the obstruction, and usually surrounding, of vehicles entering or leaving the Wyton Site. That was done largely to enable the protestors to confront those accessing the Wyton Site with the protest message they wanted to deliver. Mr Curtin described this as the 'ritual'. As part of the 'ritual', protestors would routinely delay entry or exit from the site. The extent of the delay varied. In the worst, pre-injunction incidents, the workers were prevented from accessing the Wyton Site for several hours, but typically the delay was only some minutes. In the Interim Injunction Judgment, I described this as the "*flashpoint*" in the protest activities.

146. After the Interim Injunction was granted, the phenomenon of protestors surrounding vehicles and delaying their access to/from the Wyton Site was largely brought to an end. This was achieved by the imposition of the Exclusion Zone as a temporary measure. After the Interim Injunction, although there are instances where it is alleged that Mr Curtin and others have obstructed vehicles entering or leaving the Wyton Site, it is nothing on the scale of what had been happening prior to the grant of the Interim Injunction.

(1) The pleaded allegations against Mr Curtin

13 July 2021

147. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles driven by the First Defendant's employees at the Wyton Site, whilst using a loudhailer to shout at those in the vehicles. Employee F was driving a white Mercedes A Class car, Employee Q was driving a black Volkswagen Polo, Jane Read was driving a green Vauxhall Mokka, and Employee AA was driving a white Seat Ibiza.

148. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway.

149. The obstruction of the vehicles and Mr Curtin's use of the loudhailer is alleged to be part of a course of conduct involving harassment of the employees involved, in particular it is alleged that Mr Curtin shouted at Ms Read: "*leave this place… are you seriously thinking that this time next year you want to be working at this hellhole… it's your choice*".

150. Although witness statements had been filed for Employees AA and Q, they did not give evidence at trial.

151. Employee F gave evidence at trial, and in doing so gave his name because he had been identified by some protestors. For the reasons I have explained, I have decided not to use Employee F's name in this judgment.

152. Employee F had worked at the Wyton Site since around 2015, including for the company that operated the site prior to the First Claimant. In his witness statement, Employee F gave some general evidence about the effect upon him/her of the demonstrations. One of the problems in this case is that the evidence – perhaps naturally – tends to focus upon the actions of "*the protestors*", as a general group, and without always being careful to identify the acts of specific individuals. An individual protestor does not lose the right to demonstrate because of unlawful acts committed by others in the course of the demonstration if the individual in question behaves lawfully: ***Canada Goose -v- Persons Unknown*** **[2020] 1 WLR 417** [99(8)].

153. In one particular paragraph, Employee F stated:

> "During the summer of 2021, the protests outside the Wyton Site became more intense, and it was not possible to enter or exit the Wyton Site safely. In particular, the staff cars trying to enter and exit the Wyton Site were frequently obstructed and surrounded by large groups of protestors. The abuse on particular days and threats and conduct of the Defendants towards me and others working at MBR is referred to in more detail below. It was, however, a terrifying experience entering and exiting the Wyton Site at this time, with protestors standing in front of and surrounding my vehicle on a daily basis, preventing me from freely accessing the Highway from the Wyton Site, or the Wyton Site from the Highway, whilst threatening me and abusing me in an angry and intense manner."

154. Although the wording used in this paragraph of Employee F's witness statement is very similar to that used by Mr Manning, and other witnesses who gave evidence – a point that Mr Curtin highlighted in cross-examination of some of the witnesses – I have no difficulty in accepting that it is an accurate description of what was happening at the Wyton Site in the summer of 2021, before the Interim Injunction was granted. During that period, there were occasions when the protestors were effectively dictating the terms on which people could access and leave the Wyton Site. I also accept that the experience of having their vehicles surrounded by protestors who were shouting at the occupants was frightening for Employee F and others. It is important, however, to isolate the allegedly harassing conduct for which Mr Curtin is responsible.

155. Employee F in his/her witness statement said this about the incident on 13 July 2021:

> "On 13 July 2021 at 15.56 onwards, [various protestors including John Curtin], stood on the Highway and obstructed my vehicle as I sought to travel along the Access Road to the main carriageway of the Highway, having exited the Wyton Site. [John Curtin and two other protestors] stood to the front and side of my car, which prevented me driving freely along the Access Road as there was no clear pathway for my car through the protestors… Two protestors stood on the Access Road directly in front of my car, so that I had to stop for around 45 seconds. While my car was on the Access Road… John Curtin continually shouted at me through a megaphone… [Another protestor] continually shouted at me, leaning into my passenger side window. [A further protestor] held a placard reading: 'STOP ANIMAL TESTING' and took a video recording of my vehicle and those travelling inside. [This protestor] then moved to the front passenger window and continued to take a video recording of those of us travelling inside my car. I have seen the video that [this protestor] was live streaming and, while speaking to those watching his Facebook live video, he can be heard to say 'Do you recognise these

> people? Look.' I understand this statement and recording to be an attempt to identify myself and those travelling with me in my car…"

156. Employee F then described an incident with another protestor in which the protestor represented that the law required Employee F to ask him/her to move out of the way. That was a misapprehension as to the law, but it was one that a police officer in attendance appeared to adopt. Employee F continued:

> "The protestors obstructing my vehicle, filming me and trying to film inside my vehicle and shouting at us made me feel intimidated and anxious and is a huge distraction from concentrating on the road while driving… I felt annoyed that the protestors were delaying me getting home, especially whilst making demands that I gesture to them to move and insisting to the police that they needed to ask me to do that. I also felt stressed prior to leaving the Wyton Site because I knew I would get delayed trying to get out of the Wyton Site, as I usually had to wait for the police to move the protestors out of the way. The protestors were scaring, threatening and intimidating me, and I believe their aim is to stop me coming back to the Wyton Site and to make me get a different job."

157. Employee F was cross examined by Mr Curtin. Employee F was a careful and impressive witness. S/he generally gave considered answers to the questions s/he was asked. I accept his/her evidence. Both in his/her witness statement, and confirmed in cross-examination, Employee F said that, in respect of the pre-injunction phase, s/he was frustrated by the lack of police action and thought that the police could have done more to help the employees entering and leaving the Wyton Site. Mr Curtin asked Employee F about his/her being terrified by the actions of the protestors. Employee F said: "*there's always the aspect of terror because, as far as I'm concerned, the behaviour of the protestors is uncertain*".

158. In cross-examination, Employee F confirmed that, at some point prior to the injunction being granted, anti-terrorism police came to the First Claimant and gave a presentation to the staff. The talk covered issues including car and letter bombs and was designed to support staff and raise awareness. Employee F confirmed that s/he found the information alarming and distressing.

159. In his/her witness statement, Employee F had identified thirteen protestors, including Mr Curtin, by name, whom he was able to identify as having been involved in the protests. S/he said that there were "*other protestors at the Wyton Site who [s/he] recognise by sight, but who are just making their views known, and not doing anything especially 'wrong' (for example, they have never surrounded or obstructed [his/her] car*". Mr Curtin asked Employee F what s/he thought that Mr Curtin had done wrong. Employee F said that there had been times when Mr Curtin had "*verbally abused [him/her] and other colleagues*" by "*name-calling*". Employee F gave as examples of "*monster*" and "*puppy killer*". Employee F believed that this was behaviour was "*wrong*". Mr Curtin asked Employee F whether s/he could appreciate that, in the context of a demonstration, such terms as "*puppy killer*" could be regarded as legitimate. Employee F agreed that "*everyone's entitled to their own opinion*". Nevertheless, Employee F maintained that s/he took the comment personally.

160. Mr Curtin established the following matters with Employee F. Employee F was aware that under the terminal bleeding procedures, some dogs did die at the Wyton Site.

Employee F accepted that Mr Curtin was not responsible for publishing Employee F's photograph online and that he was not responsible for sending abusive messages to Employee F.

161. In her witness statement, relied upon as hearsay evidence by the Claimants, Ms Read described the incident on 13 July 2021 as follows:

> "On 13 July 2021 at 15:56, protestors stood in the Access Road and obstructed the convoy of staff vehicles as we sought to leave the Wyton Site, as shown in Video 24. I was in my green Vauxhall, which was third in the convoy. [Two protestors] stood directly in front of my car as I sought to exit the Wyton Site, causing me to need to stop on the Driveway for around 50 seconds before I was able to slowly pass them; the incident prevented me having free passage along the Access Road and to the main carriageway of the Highway. [One of these protestors] was yelling 'shame on you'. I found [this protestor] very intimidating as he was so in my face and so close to my car. I was shaking by the time I got past him. I just did not know what to expect from him given his behaviour, and I feared for my safety. I also found [the other protestor] very intimidating, as he was so worked up, and seemed to be ranting, and kept making reference to whether I was 'proud' of my job. He did not appear to be acting rationally, so I was worried about what he would do. John Curtin was also standing to the side of my car, whilst using a loudhailer to shout at me. He can be heard yelling 'leave this place...are you seriously thinking that this time next year you want to be working at this hellhole...it's your choice'. I was just trying to ignore him and just drive safely.
>
> In another video of the same incident (Video 22), I can see [another female protestor] standing near the bell mouth of the Access Road and to the side of my car (once I have been able to reach that point) and holding posters to my windows and touching my car. I had to stop the car because of her presence. I was thinking of the traffic ahead, because I was trying to join the main carriageway of the Highway, and that this was a road traffic accident waiting to happen, and I was hoping that [she] would move. I then managed to get away. I remember not being able to see because of all the protestors crowding around my car, and the parked cars at the entrance to the Access Road.
>
> In Video 21, [another protestor] can be seen stepping back and forth in front of my car, looking like he was moving to the side and then stepping back in front of me; his movements made it very difficult to drive past him.
>
> There was also a woman in a baseball cap… standing to the front and side of my car, with a placard."

162. Although Mr Curtin was not able to cross-examine Ms Read, I readily accept the description she gives of the incident because it is corroborated by the video footage.

163. Mr Curtin was cross-examined about this incident by reference to the video footage. Police officers were present during the incident. Mr Curtin disputed that he was obstructing the vehicles leaving the Wyton Site, but I am quite satisfied that – together with the other protestors involved in the incident – he was. Indeed, an essential part of the 'ritual' was delaying and confronting those entering and exiting the Wyton Site with the protestors' message; that was the hallmark of the pre-injunction period. As Mr Curtin accepted in cross-examination, when the vehicles were slowed down or

stopped for a period when leaving or entering the Wyton Site the occupants became a "*captive audience*" to the protest message. He denied that he was intending to harass any of the employees of the First Claimant. He had not threatened any of them. Mr Curtin accepted that he was using a loudhailer. Ms Bolton put it to him that he was "*directing abuse directly at Employee F's car*". Mr Curtin disputed that it was abuse; he stated that he was communicating the protest slogans.

164. Mr Bolton put it to Mr Curtin that he was confronting the employees with his protest message, using a loudhailer, to try and get them to leave their jobs. Mr Curtin answered: "*If they were to leave their job, I'd be pleased for them, but there's no coercion, there's no intimidation, absolutely none*".

165. The video evidence shows that passage out of the Wyton Site was not free. As well as being delayed by those protestors who were standing in front of or near to the vehicles, in turn, each driver, would have had his/her view of the carriageway obstructed by people standing next to his/her vehicle. Mr Curtin accepted in cross-examination that, in this respect, he was inferring with each vehicle's access to the highway. He made clear that that had not been his intention at the time. This was Mr Curtin's reflection upon being asked this question in cross-examination. He said:

> "I'm there, and because I'm there, if I'm standing there as a protestor and I'm in some way impairing a perfect view it I wasn't there, then yes. But these thoughts were not in my mind, and they're more likely – they should have been in the mind of the police officer really… If it had been pointed out to me, I would have been more than happy – because my job that day was to protest and it wasn't to endanger anyone. I wouldn't have wanted that."

And a little later, in answer to Ms Bolton putting to him that he was standing in position which would have obstructed the driver's view to the right when entering the carriageway, Mr Curtin replied:

> "I accept – I don't want to be funny – I'm accepting I'm not transparent. The driver would have to – might have to move their neck out or their head… they should not move onto a highway if they can't see. And if that had been relayed to anyone at the time, it would have been part of the police liaison procedure… My aim here is to protest, and only protest, and do it safely and do it legally and do it well."

166. On closer analysis of the video footage of this incident, it appears that Ms Bolton's point on obstruction of Employee F's view along the carriageway is more theoretical than real. I asked her to identify the moment, on the CCTV, at which she alleged that Mr Curtin was blocking Employee F's view along the carriageway. At the point she identified, a police officer, who was attempting the guide Employee F's vehicle out of the Wyton Site was standing in front of the vehicle. The reality of this situation is that whilst Mr Curtin might have been obstructing, for a matter of moments, Employee F's view down the carriageway, the reality is that his/her attention would have been on the police officer in front of his vehicle. The point had not been explored in Employee F's evidence, so it is difficult to reach any firm conclusions beyond the fact that any obstruction of Employee F's view along the carriageway could only have been for a matter of moments.

167. Mr Curtin also made the point that it was never suggested by any of the police officers present that there was a problem with the way he was demonstrating. He also stated that he was not wilfully obstructing the drivers' view down the carriageway. He was demonstrating. He accepted that the performance of the 'ritual' meant that the cars were held up leaving the Wyton Site.

168. My findings in relation to the pleaded 13 July 2021 incident are:

(1) Mr Curtin trespassed, for a short period, on the Claimant's land.

(2) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being no longer than a few minutes. It will have caused only minor inconvenience. Insofar as it is relevant, I am not satisfied that Mr Curtin intended to obstruct vehicle access to the highway when he stood to the side of vehicles. He frankly accepted in cross-examination, that his standing in that position on the carriageway, close to the vehicles, may have meant that the driver of the vehicle's view of the carriageway was temporarily impaired, but I am unable to reach a firm conclusion about that. In any event, had this been the sole basis for the alleged interference with access to the highway, I would have rejected it. But this incident must be considered as a whole and, with others, Mr Curtin did directly obstruct the vehicles leaving the Wyton Site that day. It was the usual 'ritual'.

(3) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance, particularly having regard to the limited role played by Mr Curtin. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a few private individuals rather than the public generally. The only people affected by the obstruction were the employees of the First Claimant who were leaving the Wyton Site.

(4) The issue of whether Mr Curtin has engaged in a course of conduct involving harassment must be assessed by considering the full extent of the acts upon which the Claimants rely (and I do so below), but in this individual incident the protest message delivered by Mr Curtin was not, either in the words used or the manner in which it was delivered, inherently harassing. Ms Read simply tried to ignore him and did not say that she was caused distress or alarm either by what Mr Curtin shouted at her, or that his method of address was itself harassing. Employee F did not appreciate being called names – like "*monster*" and "*puppy killer*" – by Mr Curtin but he did not suggest that this name-calling had caused him/her distress or alarm. The alarming part of the protestors' behaviour, in Employee F's eyes, was the physical actions of surrounding the vehicles and their general unpredictability; in other words, more a fear of what they *might* do, rather than what that had actually done.

169. In cross-examination, Ms Bolton asked Mr Curtin questions about alleged obstruction of vehicles arriving at the Wyton Site in the morning of 13 July 2021. This was not included in the Claimants' pleaded allegations against Mr Curtin.

17 July 2021

170. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and again obstructed vehicles driven by the First Defendant's employees at the Wyton Site, whilst using a loudhailer to shout at those in the vehicles. A former employee was driving a yellow Ford Ka and Employee F was driving a white Mercedes A class.

171. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway. The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin.

172. Whilst there is CCTV footage of the events, Employee F is the only witness who gave evidence about the incidents on 17 July 2021. Mr Curtin did not challenge Employee F on the detail of his/her account. Employee F stated that Mr Curtin was one of several identified protestors who had obstructed Employee F's vehicle (the second of two vehicles) when he was attempting to leave the Wyton Site. The first vehicle was held up for around 2 minutes before it could pass along the Access Road and onto the highway. Once the leading vehicle had left, the protestors, including Mr Curtin, stood in the middle of the Access Road in front of Employee F's vehicle, causing him to have to stop. He was held there for about a minute after which he was able to edge his vehicle forward – surrounded by protestors – and out onto the highway. During the incident, another protestor identified by Employee F, shouted at him/her "*get another job, get another job… problem solved*". Employee F interpreted this as the protestor threatening him/her and suggesting that s/he should leave his/her job so that s/he would not have to deal with the protestors when coming in and out of work. Mr Curtin is not alleged to have said anything threatening or intimidating to Employee F (or the employee driving the other vehicle) during this incident.

173. Mr Curtin was cross-examined based on the CCTV evidence. This was another pre-injunction incident, and it has the same features of the 'ritual' in action. Mr Curtin accepted that he stood in the path of the vehicles, temporarily preventing them from leaving the Wyton Site. In doing so, he also accepted that he trespassed on the Claimant's land for a brief period. It was clear from Mr Curtin's answers in evidence that, at this stage, he did not believe that he was doing anything wrong in temporarily obstructing the exiting vehicles as part of the 'ritual'. It was clear from his evidence that Mr Curtin did believe, however, that although the 'ritual' did delay the departure of vehicles, it ultimately facilitated their leaving. The alternative, in the early days of the protest, would have been that other protestors would either have blockaded them into the Wyton Site, or totally prevented them from gaining access. To have taken that step, Mr Curtin clearly believed, would simply have invited action by the police, so, in his eyes, the 'ritual' represented a compromise between the protestors and those attempting to gain access to/from the Wyton Site.

174. My findings in relation to the pleaded 17 July 2021 incident are:

(1) Mr Curtin trespassed, for a short period, on the First Claimant's land.

(2) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First

Claimant's common law right of access to the highway by being part of a group of protestors who obstructed the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience.

(3) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance, particularly having regard to the limited role played by Mr Curtin. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a few private individuals rather than the public generally. The only people affected by the obstruction were the employees of the First Claimant who were leaving the Wyton Site.

(4) The issue of whether Mr Curtin has engaged in a course of conduct involving harassment must be assessed by considering the full extent of the acts upon which the Claimants rely (and I do so below – see [298]-[308]), but in this individual incident the Claimants rely only on the alleged obstruction as involving harassment, not any shouting at any of the employees by Mr Curtin.

20 July 2021

175. The Claimants allege that Mr Curtin trespassed on the Driveway and banged on the Gate and shouted, "*open the fucking gate to get the workers in*".

176. In cross-examination, Mr Curtin did not dispute that during this incident he did set foot on the First Claimant's land. As such, he has admitted an incident of trespass on the First Claimant's land.

25 July 2021

177. The Claimants allege that Mr Curtin caused a public nuisance on the highway by parking a Vauxhall Corsa on the Access Road, such that the Access Road was impassable for vehicles, including those driven by the First Claimant's staff. The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin and to have interfered with the First Claimant's common law right of access to the highway from the Wyton Site.

178. On this occasion, as is apparent from the CCTV footage, a large number of dog crates can be seen piled up in front of the gates to the Wyton Site causing an obstruction to those entering or leaving. It is right to note that police officers are in attendance, and they did not think that action needed to be taken in respect of the dog crates.

179. Mr Curtin was cross-examined about this incident by reference to the CCTV footage. Mr Curtin accepted that he was driving the Vauxhall Corsa, and that it was parked on the Access Road between 12.01pm and 4.45pm, and then again from 4.57pm to 5.52pm. Mr Curtin denied that his vehicle, and where it was parked, caused an obstruction of the highway. He made the point that, had he obstructed the highway, the police would have intervened. He said that if anyone had asked him to move the vehicle he would have done so.

180. My findings in relation to the pleaded 13 July 2021 incident are:

(1) By parking his car on the Access Road, Mr Curtin did obstruct the highway. However, this was wholly technical. There is no evidence that anyone was *actually* obstructed by the vehicle. The placing of the dog crates on the Access Road was arguably more of an obstruction in this incident, and I am surprised that the police allowed this to take place. Nevertheless, even the placing of the dog crates represented only a temporary obstruction. The Claimants do not hold Mr Curtin responsible for the alleged obstruction created by the placing of the dog crates on the Access Road.

(2) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), there is no evidence that anyone was actually obstructed still less that the obstruction affected the public generally.

(3) The incident did not involve any arguable harassment of the First Claimant's employees.

9 August 2021

181. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles leaving the Wyton Site. A white Nissan Duke, driven by a contractor, was obstructed.

182. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway. The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin.

183. Mr Curtin was not cross-examined about this incident. I make no findings about it.

12 August 2021

184. The Claimants allege that Mr Curtin (and others) stood on, and slow walked along, the Access Road and the main carriageway and obstructed vehicles driven by the First Claimant's staff; a white Vauxhall Astra, driven by Employee V; a black Volkswagen Polo, driven by Employee Q, a white Ford car, driven by Employee P; and a white Mercedes A Class, driven by Employee F.

185. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles, interfered with the First Claimant's common law right of access to the highway from the Wyton Site.

186. Employee F gave evidence about this incident. On this occasion, Mr Curtin had what was described as a tambourine-style drum. By reference to the CCTV footage, Employee F gave the following description:

> "Each of [the] protestors stood in the Access Road so as to block the convoy of cars in which I was driving the fourth and last car. The protestors then slow walked, and occasionally stopped, along the Access Road and the highway so that the convoy could only pass along the highway at a very slow speed… Once we had

> travelled about 30 meters along the highway, we were able to drive past the protestors and travel home). Police officers formed a line either side of the convoy of cars to stop protestors from approaching staff cars from the side and rear, and walked the cars out onto the highway. It felt surreal having a police escort; it was like being in a film. The police escort was out of the ordinary, and not something that would usually happen during the protests, so it made me feel uncomfortable as this clearly was not an ordinary event, but on the other hand, their presence also enhanced the sense that this was not a safe situation to be in. The feeling of danger from the protestors makes me feel anxious and stressed. I just wanted to get out of the situation and go home so I did not have to deal with it anymore."

187. Mr Curtin put to Employee F that the protestors had mimicked a slow-paced funeral march when the employees left the Wyton Site. Employee F agreed with the description. Mr Curtin asked Employee F whether his/her emotion on this occasion was between terror and frustration. Employee F answered: "*Again, terror is still there in the back of your minds. We were unaware of how they could behave at any point… frustration played a big part it in because we just wanted to go home*". Employee F said that the number of police present on this occasion did not reduce the level of terror; s/he said it made it more surreal. Mr Curtin asked whether, at the point Employee F was giving evidence, some 20-22 months further on, the level of terror had diminished. Employee F replied: "*Since the injunction has been in place, I would say that my level of terror has dropped, yes, but there is still the thought something could happen…*"

188. Employee F, in his/her evidence, spoke more generally of the impact of the injunction, granted on 10 November 2021, which imposed an exclusion zone around the entrance to the Wyton Site:

> "The change in the protestors' behaviour since the grant of the November 2021 Injunction has been, at times, limited. Although the introduction of an exclusion zone did reduce the quantity of protestors on the Access Road and around the Gate, it also meant that the obstructing of cars just happens outside of the exclusion zone. Often protestors wait on the boundary of the exclusion zone, or slightly further along the main carriageway of the Highway and intercept cars there instead. It feels like protestors believe that, once staff vehicles are out of the exclusion zone, they can do whatever they like. The exclusion zone is a safety zone and once me and the other MBR staff are out of it, we are fending for ourselves…"

189. Ms Bolton cross-examined Mr Curtin about this incident. Ms Bolton suggested to Mr Curtin that his actions, with the other protestors, had delayed the employees leaving the Wyton Site getting out onto the carriageway. Although Mr Curtin stated that this was part of the 'ritual' he did not disagree with Ms Bolton. He said: "*I make no apologies for the funeral march… and I think it's a good thing we did the funeral march. The protest happened and the workers got home safely*". Again, it became apparent in his cross-examination that Mr Curtin believed that the limited obstruction of the employees leaving the Wyton Site was an accommodation that enabled them, ultimately, to leave the site albeit with some minor delay. In answer to a question from Ms Bolton that he and the other protestors had interfered with the First Claimant's employees' free passage along the highway, Mr Curtin answered:

> "There is a protest by its nature that interferes with the surrounding area by being there, but it's – the idea of the funeral march was exactly to have as free passage

> as possible, without unruly demonstrators kicking cars or doing something off their own bat. There's a joint enterprise here between the police [and] the protestors… even though it's slower, it's better than driving through a mob".

190. Ms Bolton put to Mr Curtin that the staff could not simply pass by the protest, he (and others) had held them up and they had to endure the protest. Mr Curtin answered: "*For a temporary and relatively tiny amount of time*".

191. My findings in relation to the pleaded 12 August 2021 incident are:

(1) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience.

(2) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a limited number of private individuals rather than the public generally. The only people affected by the obstruction were the employees of the First Claimant who were delayed leaving the Wyton Site for a few minutes.

15 August 2021

192. The events that took place on 15 August 2021, although significant in relation to the claim against "Persons Unknown", were not relied upon by the Claimants to advance any specific claim against Mr Curtin. Mr Curtin had relied upon this incident as demonstrating his role in attempting to calm the demonstrators and to ensure that they kept their protest within lawful bounds. By the 15 August 2021, Mr Curtin accepted, it was generally known amongst the protestors that the Claimants were intending to apply for an interim injunction.

193. As usual, there is video evidence available to demonstrate what happened on 15 August 2021. It was an event of a different order and scale from the 'rituals', as Mr Curtin called them. A large demonstration had been arranged for 15 August 2021, organised by Free the MBR Beagles (see Interim Injunction Judgment [22(10)]. It lasted most of the day, finishing at between 4-5pm. At its height, it was estimated to have been attended by around 250 demonstrators. There was a suggestion that up to 5 people had been arrested by the police (see Interim Injunction Judgment [17(17)]).

194. The number of people in attendance at this protest meant that, at times, the carriageway outside the Wyton Site was blocked and became impassable; indeed, for some period it may have been closed by the police. The morning arrival of the staff in the usual convoy of vehicles was being managed by the police, who had held back the vehicles some distance from the Wyton Site. Mr Curtin's evidence was that his intention was to facilitate the arrival of the staff at the Wyton Site. In one section of the recordings, Mr Curtin can be heard asking other protestors to show discipline. Ms Bolton put it to him that he was doing so because of the impending injunction application. Mr Curtin disagreed that was the sole reason, but accepted that it was a factor:

> "What I am dealing with there is we've got loads of volatile people around. It's going to be a big demo day, let's get the workers in… [The injunction] is a factor. We've got a lot of people coming today, a lot of people who have maybe never been there. I wanted to show … each other that we're able to not act as everyone for themselves, an unruly mob. There's many factors why I said that and the injunction is only one of those factors…"

195. The vehicles of the staff were guided into the Wyton Site by the police. Mr Curtin can be seen to be using a loud hailer trying to clear the way.

196. Ms Bolton then played the footage of the vehicles leaving at the end of the day. In contrast to the arrival of the vehicles, the protestors engaged in a substantial obstruction, and it took significant police intervention and a long time to enable the vehicles to leave. Vehicles were struck and apparently damaged by protestors. Mr Curtin said that, by this stage of the day, he had withdrawn and gone back to his tent. He had become disillusioned with some of the protest activities, and he had also been unable to communicate with the police. He said that he had attempted to speak to two of the usual police liaison officers, but that they had told him that it was out of their hands, and was being handled by a senior officer. Mr Curtin said he was not supportive of what some protestors had done that afternoon.

197. It was not apparent to me, given the absence of any allegation made against Mr Curtin in the Claimants' case against him, the purpose of the cross-examination of Mr Curtin. I asked Ms Bolton whether she challenged Mr Curtin's evidence that he was not present in the afternoon when the protestors effectively blockaded the Wyton Site for perhaps up to 2 hours and then used physical violence towards the vehicles when they did exit. Ms Bolton said that she was suggesting that Mr Curtin had failed to take a role in facilitating the staff leaving the Wyton Site in a similar way that he had done for their arrival earlier in the day. I do not find that criticism has any force. Mr Curtin is not responsible for the actions of other protestors. It is unreal to suggest that, on this day, Mr Curtin could have prevented what the police were unable to prevent. He did not join with or encourage the violent actions of a very small minority of the protestors. I accept Mr Curtin's evidence that he did not support them and that he thought they were counterproductive. As the Claimants do not allege any wrongdoing on the part of Mr Curtin, there is nothing more that I need to add.

198. The relevance of the events on 15 August 2021 is to the claim made in relation to "Persons Unknown" (see [325] below). This was a rare instance where the evidence does show that the scale and duration of the obstruction of the carriageway outside the Wyton Site may arguably have amounted to a public nuisance.

4 September 2021

199. The Claimants allege that Mr Curtin trespassed on the Driveway and approached the open Gate where he is alleged to have shouted abuse at the First Claimant's security staff.

200. In cross-examination, Mr Curtin accepted that he set foot again on the First Claimant's land. He disputed that he knew he was trespassing at the time, but as trespass does not require any particular state of mind, no purpose is served by resolving this further issue.

201. My finding in relation to the pleaded 4 September 2021 incident is that Mr Curtin trespassed, for a few moments, on the First Claimant's land.

6 September 2021

202. The Claimants allege the Mr Curtin (and others) repeatedly trespassed on the Access Land and obstructed a white van attempting to enter the Wyton Site.

203. Further, it is alleged that Mr Curtin (and others) caused a public nuisance by obstructing the white van's passage along the carriageway. The obstruction of the vehicle is also alleged to be part of a course of conduct involving harassment of the driver by Mr Curtin.

204. Although this incident was witnessed by Mr Manning, the principal evidence relied upon by the Claimants is the video footage, captured by CCTV.

205. Mr Manning called the police to ask for assistance at 13.38. Mr Manning told the driver of the van that the police had been called. There is no evidence from the driver of the vehicle. There is no suggestion that he was subject to any abuse.

206. The video evidence shows the arrival of the white van at the gates of the Wyton Site. Mr Curtin quickly arrives on the scene. At some point, prior to the grant of the Interim Injunction, the protestors had taken to placing banners (with protest messages) around the entrance to the Wyton Site. On some occasions, and visible in the forage for this incident, a banner was placed across the front of the gates, which would have needed to be removed before any vehicle could gain access to the Wyton Site.

207. Ms Bolton cross-examined Mr Curtin about the incident. Mr Curtin stated that the protestors were always concerned when white vans turned up, as the vehicles used to transport the dogs were often white vans. Mr Curtin said that he would usually want to inquire with the van driver who s/he was and what s/he was doing. He accepted that protestors were standing in front of the van. Mr Curtin said that he would often offer a leaflet to the drivers of vehicles who were not employees of the First Claimant to attempt to spread the message about the protest. Mr Curtin accepted that the length of time that a vehicle might be held up at the gate might depend on the attitude of the driver. He also accepted that, on this occasion, the vehicle had been obstructed from entering the Wyton Site. On the evidence, that was for about 6 minutes. Mr Curtin was, however, frank that he could not prevent vehicles accessing the site. He thought that, if he did that, he would get arrested. He wanted to avoid arrest because that would put him at risk of being subject to bail conditions that might include a prohibition on his attending the Wyton Site, which would have curtailed his ability to protest. The best he said he could achieve was to delay the arrival, to attempt to find out the purpose of the person's visit and to hope to convey information about the protest, either by conversation or by handing over a leaflet. To Mr Curtin's mind, there was no question that the vehicle would end up going into the Wyton Site, but he would attempt to engage the driver in conversation.

208. In answer to some questions from me, Mr Curtin confirmed that the banners were a regular fixture at this stage of the protest, although on occasions the police might ask them to remove some banners if they were obstructing the view down the highway. He said that the banner, "*Gates of Hell*", which was placed across the main gate was

taken down each time a vehicle needed to gain access to/from the Wyton Site. I asked Mr Curtin whether the First Claimant had ever asked the protestors to remove the banner that was placed across the main gate. He answered that it had not. Ms Bolton challenged this. It is not a point I need to resolve.

209. My findings in relation to the pleaded 6 September 2021 incident are:

(1) Mr Curtin trespassed, for a short period, on the First Claimant's land.

(2) Mr Curtin (with others) obstructed the white van seeking to enter the Wyton Site. The obstruction was short-lived; lasting about 6 minutes. At worst, it could have caused only minor inconvenience to the driver of the vehicle, but there is no evidence that he was inconvenienced at all.

(3) To the extent that there was any obstruction of the highway in this incident, it did not amount to a public nuisance. The obstruction was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only one individual rather than the public generally.

(4) The incident is not even arguably capable of amounting to harassment, applying the legal test I have set out above.

8 September 2021

210. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles seeking to enter the Wyton Site. Mr Curtin is alleged to have obstructed a white Volvo XC60, driven by the First Claimant's Production Manager ("the Production Manager"); a white Vauxhall Astra, driven by Employee V; a silver Kia Sorento, driven by Employee B; a white Skoda Fabia, driven by Employee AA; a grey Vauxhall Corsa, driven by Employee J; a white Ford motor car, driven by Employee P; a blue Ford Kuga; and a grey Honda Civic, driven by Employee I ("the First Incident").

211. It is further alleged that Mr Curtin (and others), by their obstruction of the vehicles in the First Incident, interfered with the First Claimant's common law right of access to the highway from the Wyton Site and caused a public nuisance by obstructing the same vehicles on the public highway.

212. Later that same morning ("the Second Incident"), the Claimants allege that Mr Curtin (and others) caused a further public nuisance by obstructing a grey pickup truck towing a trailer, being driven by an employee of the First Claimant. The vehicle was delivering dog crates to the Wyton Site, and it is alleged that Mr Curtin obstructed the vehicle by approaching the front driver's side of the vehicle, causing it to stop. It is alleged that a further public nuisance was caused when Mr Curtin (and others) obstructed the same vehicle as it attempted to exit the Wyton Site a little time later. The obstruction of the vehicles, on both occasions, is also alleged to be part of a course of conduct involving harassment of the drivers of the relevant vehicles by Mr Curtin.

213. In the final incident that day, in the afternoon, the Claimants allege that Mr Curtin (and others) caused a further public nuisance by obstructing the highway for several vehicles driven by the Production Manager, Employee AA and Employee A which were

attempting to leave the Wyton Site ("the Third Incident"). The obstruction of the vehicles is also alleged to be part of a course of conduct involving harassment of the relevant employees by Mr Curtin and an interference with the First Claimant's common law right of access to the highway.

214. The Production Manager and Employees B, J and V gave evidence at trial. The Claimants relied upon the evidence of Employees I and P in relation to this incident as hearsay.

215. In respect of the First Incident:

(1) the Production Manager's witness statement does not contain any evidence relating to an alleged obstruction of his/her vehicle entering the Wyton Site on 8 September 2021;

(2) Employee AA's witness statement does allege that Mr Curtin was part of the group of protestors involved in the First Incident. The evidence is limited to the allegation that Mr Curtin held a placard inches from his/her vehicle and shouted abuse, the content of which is not specified. Employee AA's evidence does not state, in terms, that Mr Curtin obstructed his/her vehicle; and

(3) Employees B, I, J, P and V's witness statements also allege that Mr Curtin was part of the group of protestors involved in the First Incident. Employee B was driving the third vehicle in the convoy. S/he states that Mr Curtin stood on the Access Road with a placard "*to the front and side of my car*". Employee I states that s/he was obstructed by Mr Curtin and another protestor both of whom stood "*to the front and side of my vehicle as I drove along the Access Road*" towards the gate. Employee I felt intimidated by the protestors' actions. Employee P was the fifth car in the convoy. S/he said that Mr Curtin had held a placard in front of his/her window as s/he drove by. Employee V was driving the second vehicle in the convoy and said that s/he felt frightened during the incident.

216. Mr Curtin was cross-examined about most of these incidents. In respect of the First Incident, Mr Curtin accepted that he had trespassed on the First Claimant's land, but stated that he was not aware that he was trespassing at the time. Ms Bolton did not ask Mr Curtin any questions in cross-examination about the alleged obstruction of vehicles entering the Wyton Site during the First Incident.

217. In relation to the Second Incident, the CCTV evidence shows that the van is forced to stop on the highway. Mr Curtin stood next to the vehicle and other protestors were standing either in the main carriageway or in the Access Road. Mr Curtin can be seen talking to the driver of the vehicle. The driver has not given evidence. Mr Curtin thought that he would simply have been engaging the driver in the usual conversation about the purpose of his/her visit and whether s/he was aware of the business of the First Claimant.

218. About 10 minutes later, the same van then attempts to leave the Wyton Site. Mr Curtin accepted that he and a few other protestors had obstructed the exit of the vehicle from the Wyton Site. Mr Curtin made the point that he had disconnected the banner to allow the vehicle to leave. He said that he had personally stood in the front of the vehicle only because he was concerned about a risk to the dog that was present. Mr Curtin accepted

that he had again tried to engage the driver in conversation as s/he left when another protestor stood in front of the vehicle.

219. In relation to the Third Incident, Mr Curtin accepted that he had been part of the protestor group who had obstructed vehicles leaving the Wyton Site as part of the daily 'ritual'. The evidence shows that the effect of the obstruction was short-lived and – after a few minutes of delay – the vehicles made their way off along the highway. There is no evidence that anything harassing was shouted at the employees on this occasion.

220. My findings in relation to the three pleaded incidents on 8 September 2021 incident are:

(1) During the First Incident, Mr Curtin trespassed on the First Claimant's land and (with others) obstructed the vehicles of several employees who were attempting to enter the Wyton Site. The obstruction was short-lived; being measured only in minutes. At worst, it could have caused only minor inconvenience to each driver.

(2) The two occasions of obstruction of the grey truck entering and later leaving the Wyton Site that make up the Second Incident were also short-lived, measured only in minutes. Again, if it caused any inconvenience to the driver (as to which there is no evidence) it could only have been trivial. The obstruction on these occasions could not remotely be described as harassing conduct (whether on its own or in combination with any other of the acts alleged against Mr Curtin).

(3) During the Third Incident, Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience. I do not accept that the actions of Mr Curtin in obstructing the vehicles were inherently harassing in nature (or had any elements that would mark them out as harassing)

(4) To the extent that there was any obstruction of the highway in any of these incidents, on no occasion did the obstruction amount to a public nuisance. The obstruction on each occasion was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only the specific individuals involved rather than the public generally.

13 September 2021

221. The Claimants allege that Mr Curtin (and others) trespassed on the Access Land and obstructed vehicles attempting to leave the Wyton Site. Employee C was driving a black Kia Sportage and Employee B was driving a silver Kia vehicle.

222. About an hour later, it is alleged that Mr Curtin (and others) trespassed on the same land and obstructed further vehicles, attempting to leave the Wyton Site: a white Volvo XC60 driven by the Production Manager, a white Skoda car driven by Employee AA and a blue Volkswagen driven by Employee A.

223. Both incidents are alleged to be an interference with the First Claimant's common law right of access to the highway and part of a course of conduct involving harassment of the relevant employees.

224. In addition to the CCTV footage, the Production Manager and Employees A and B gave evidence at the trial. The Claimants relied upon the evidence of Employee C as hearsay.

225. The Production Manager was the driver of one of the vehicles whose exit from the Wyton Site was obstructed by the protestors on this day. The Production Manager identified Mr Curtin as one of the protestors and said that s/he felt that Mr Curtin's pointing at him/her was threatening: "*I was scared that he might know who I was, and he was attacking me personally (even though I was wearing a balaclava and sunglasses…)*". The Production Manager said that Mr Curtin's actions made him/her feel anxious about his/her safety.

226. Employee A stated that Mr Curtin stood to the front and side of his/her vehicle, pointed at Employee A and shouted through a loudhailer "*Shame on you! Where do you tell people you work?*". Mr Curtin's actions of pointing at Employee A made him/her feel worried for his/her safety. The sound of the loudhailer so close to the car's window was alarming.

227. Employee B stated that, as s/he was attempting to leave the Wyton Site, protestors blocked the road. Employee B recognised Mr Curtin, who had a loudhailer. Mr Curtin and another protestor stood in front of the car in front of Employee B's vehicle, causing both vehicles to stop. Employee B said that s/he felt "*very scared and shaky*" as s/he was worried about what the protestors were going to do to the vehicles. S/he found it stressful and intimidating, particularly because there were no police or security personnel present. Employee B recalled hearing Mr Curtin shout, using the loudhailer: "*here comes the shit shovellers… hold them back*". He was also yelling: "*shame on you!*".

228. Employee C was attempting to leave the Wyton Site on the same occasion. S/he was unable to do so for a time because his/her exit was blocked by the protestors, one of whom was Mr Curtin. Employee C considered that Mr Curtin was organising the protestors because, as the vehicles were waiting to leave the Wyton Site, Mr Curtin used his loudhailer to address the other protestors and he said: "*For those who haven't been here before, the workers are coming out now. The shit shovellers. And … because of an injunction and the police, the idea is to stand here, hold them back, keep moving and they'll get to the road, and they'll go off.*" Mr Curtin then removed the banners that were placed over the main gate and a line of protestors then stood in the path of the vehicles. Mr Curtin used his loudhailer to address the protestors: "*Move back!*" and then addressing the employees in the vehicles: "*Puppy killers… Shame on you. You're scandalous! Have you noticed, have you noticed what everyone thinks about you now the secret's out… Where do you tell people you work, puppy killer!*"

229. Employee C said that s/he felt intimidated during the incident: "*I was hostage to the protestors in front of my car*".

230. After the incident, Employee C made a report to the police complaining that Mr Curtin had struck her car. Mr Curtin was apparently prosecuted, and Employee C attended to

give evidence. Little further information is given about the charge, but Employee C confirmed in his/her witness statement that Mr Curtin was acquitted.

231. Ms Bolton cross-examined Mr Curtin about this incident. She suggested to him that, in his address to the other protestors, he had made plain that the purpose was to obstruct the workers leaving the Wyton Site. Mr Curtin accepted that, as part of the 'ritual' they were going to be held up "*to some degree*" but there was not going to be a blockade: "*We're going to have a demonstration. They're going to look at our banners, and they're going to go home*". He wanted the other protestors to observe the 'ritual', rather than lashing out at the employees' vehicles. Mr Curtin accepted that the video evidence showed him standing in front of a vehicle. Mr Curtin accepted that he hoped that the protest activities against the First Claimant would lead to it being closed down. He denied that his protest was targeting workers to get them to leave their jobs. He denied that the protest methods adopted by him and others at Camp Beagle had sought to target individual employees.

232. In cross-examination, Ms Bolton did not pursue the allegation that Mr Curtin was guilty of trespass in this incident.

233. My findings in relation to the incident on 13 September 2021 are:

(1) Mr Curtin (with others) obstructed the vehicles leaving the Wyton Site from gaining access to the highway. As such, Mr Curtin interfered with the First Claimant's common law right of access to the highway by being part of a group of protestors who stood around and at times in front of the vehicles as they attempted to leave the Wyton Site. The obstruction was short-lived; being measured in a few minutes. It will have caused only minor inconvenience.

(2) The obstruction of the highway in this incident did not amount to a public nuisance. The obstruction on each occasion was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only the specific individuals involved rather than the public generally.

(3) I state my conclusions below ([298]-[308]) on whether, taken with other incidents, the events on 13 September 2021 amount to a course of conduct by Mr Curtin that involves harassment of the employees of the First Defendant. However, looked at in isolation, I am not persuaded that Mr Curtin's behaviour in this incident crossed the line from unattractive, even unreasonable, to that which is oppressive and unacceptable.

22 September 2021

234. The Claimants allege that Mr Curtin (and others) caused a public nuisance by obstructing the highway for an Anglian Water vehicle that was attempting to leave the Wyton Site. Specifically, Mr Curtin is alleged to have stood in front of the vehicle and instructed other protestors to do similarly. The obstruction of this vehicle is also alleged to be part of a course of conduct involving harassment of the driver by Mr Curtin and an interference with the First Claimant's common law right of access to the highway.

235. Apart from the narrative in Ms Pressick's witness statement (which is simply a commentary on the CCTV footage) the evidence relating to this incident comes solely

from the CCTV footage. There is no evidence from the driver of the Anglian Water van.

236. Mr Curtin was cross-examined about this incident. Mr Curtin agreed that he had stood in front of the vehicle as it attempted to leave the Wyton Site. He explained that he had wanted to give the driver of the vehicle a leaflet about the protest. The video footage shows that once the vehicle had stopped, Mr Curtin approached the driver's window. As he did so, another protestor stood in front of the vehicle to prevent it from driving off. The driver refused to lower his window. Mr Curtin's recollection was that the driver was not interested in taking a leaflet. The incident then appears to escalate, with more protestors being drawn towards the vehicle. It appears from the footage that another protestor then places what may well be a leaflet under the windscreen wiper of the vehicle. Mr Curtin accepted that he could not force the driver to accept a leaflet, but he also recognised that the incident "*got out of hand*". It is apparent that the driver wants to leave, and the vehicle moves incrementally forward. Mr Curtin said that the driver was revving his engine, being obnoxious and "*winding people up*". This, Mr Curtin said, inflamed the situation. Mr Curtin can be heard saying "*take a leaflet, you buffoon*" at some point. Mr Curtin stood in front of the vehicle and used a phone to photograph or record the driver. He said, in evidence, "*I'm wound up by his behaviour. So, I'm allowed to be a human being too. I can get wound up with someone's obnoxious behaviour, what I consider obnoxious… I had no intention whatsoever of holding an Anglian Water man up for any longer than a second to take the leaflet.*"

237. The incident did not end there. Confronted by the protestors, who refused to move, the driver of the Anglian Water van then reversed back into the Wyton Site. Mr Curtin said that this was not his intention: "*My little plan to give the guy a leaflet ended up as a bit of a ten-minute debacle*". Mr Curtin said that the incident had escalated because another protestor had claimed that the driver had attempted to run her over, and word had spread amongst the protestors: "*Things like this can really quickly escalate*".

238. My findings in relation to the incident on 13 September 2021 are:

    (1) Mr Curtin (with others) obstructed the Anglian Water vehicle leaving the Wyton Site from gaining access to the highway. This was a more significant obstruction than had become typical in the 'ritual', and it forced the driver of the vehicle to retreat. It is perfectly apparent from the footage that the incident escalates. The protestors – including Mr Curtin – bear some responsibility for this escalation. Mr Curtin appeared to accept his responsibility this part when he gave evidence; he clearly regretted that things had got out of hand. Nevertheless, the driver of the Anglian Water vehicle also plays a part in the escalation, principally in the manner he edged his vehicle forward when there were protestors standing in front of the vehicle. That act significantly contributed to the escalation, with the protestors feeling aggrieved at what they perceived to be an aggressive act. Standing back, and judging the matter objectively, this incident is fairly trivial. In total, the driver of the Anglian Water vehicle was delayed for 10-15 minutes leaving the Wyton Site. There was some shouting. There is no evidence of any damage having been caused to the vehicle, and the Claimants have called no evidence from the driver as to whether he was caused distress or alarm in the incident. No-one apparently considered that the incident should be reported to the police.

(2) Such obstruction of the highway as there was in this incident did not amount to a public nuisance. Although the obstruction of the vehicle on this occasion was longer than had typically been the case in the 'rituals' it was temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only a single driver rather than the public generally.

(3) Although this incident has been pleaded against Mr Curtin as part of a course of conduct involving harassment, in my judgment it is incapable of supporting the harassment claim. There is no evidence from the driver of the vehicle that Mr Curtin's conduct caused him distress or alarm. I am not persuaded that Mr Curtin's behaviour in this incident crossed the line from unattractive, even unreasonable, to that which is oppressive and unacceptable. At worst, Mr Curtin's role in the episode can be described as regrettable, as I think he accepted when he gave evidence.

10 April 2022 and 7 May 2022

239. I shall take these two incidents together, because they amount, essentially, to a single complaint. The Claimants allege that, on 10 April 2022, Mr Curtin placed a CCTV camera (or similar device) on a mast erected outside the Wyton Site and, on 7 May 2022, Mr Curtin (and another unidentified male) placed a CCTV camera (or similar device) on a container within Camp Beagle. It is alleged that these cameras were positioned and used to monitor the activities of the First Claimant's staff. Mr Curtin's activities are alleged to be part of a course of conduct involving harassment of the First Claimant's staff.

240. The Claimants' evidence as to the positioning of the cameras in these incidents is CCTV footage, and Mr Curtin does not dispute that he was one of those who was involved in the siting of the relevant camera in each incident.

241. None of the Claimants' witnesses gave evidence regarding the siting of and use of the cameras in the two incidents complained of by the Claimant. There is therefore no evidence that any of them was caused distress or alarm at what Mr Curtin was alleged to have done. Instead, the Claimants relied upon the evidence of several witnesses as to their fears about being filmed/photographed. In her closing submissions, Ms Bolton identified the following:

(1) Mr Markou said:

> "Around this time (summer 2021) the protestors were very active on social media and would upload videos from their protests at the Wyton Site, as well as 'live stream' from outside the Wyton Site on Facebook. As I explain below, it was very invasive and caused me distress that images of my (albeit covered) face and vehicle were being uploaded to public social media sites where I could then potentially be identified and targeted. I knew (from reading articles online and speaking to other colleagues) that some of the protestors ([one] in particular [not Mr Curtin]) had criminal records in relation to activities that they had undertaken in the course of earlier protests, and this made me fear for my own safety even more as I didn't know what they were capable of. I have taken every single step I can to protect my identity, and I fear for my own safety if I am recognised by the protestors.

> Since the protests began, I have always been really worried about being identified by the protestors and then being targeted outside of work at my own home. Sadly, targeting at home has happened to a few of my colleagues who have been identified by the protestors, including Employee L (who had their house vandalised), Employee Q (who had their car vandalised outside of their parents' house), Employee K (who also had their car vandalised) and Dave Manning (who has been approached and abused in public, and had his house vandalised as well). I fear that the same will happen to me if I am identified by the protestors.
>
> As I set out below, I was also followed by protestors on 1 August 2021, a protestor took a photo of me through my car window whilst I was stationary at traffic lights. This image was then uploaded to the Camp Beagle Facebook group but thankfully the image quality was not very good, and the image could not reasonably be used to identify me. Nonetheless, this was a scary experience and has caused me a significant amount of anxiety about being recognised ever since."

(2) Ms Read said:

> "When driving to and from the Wyton Site, I would wear particular clothes and accessories to disguise my identity. I would wear dark glasses, a face mask, and have my hood up. I wore these clothes and accessories so that the protestors could not identify me. The Production Manager and I also advised staff to cover up as much as possible, to disguise their identity.
>
> I was anxious to disguise my identity because I did not want my face posted on social media. On 22 April 2021, the Production Manager and I identified that the protestors had published on social media footage of staff the Wyton Site whilst they working, which appeared to be taken from a camera hidden in the fence line at the Wyton Site. This behaviour continued, with the protestors then trying to film or photograph us as we entered and exited the Wyton Site every day, and posting images and videos on social media for anyone to identify us. The most prudent thing is to cover yourself from head to toe.
>
> Even though I have experienced many protests at the Wyton Site, I have never worn a disguise before, as I did not feel as at risk with previous protestors that protested at the Wyton Site. The historic protestors would usually notify police in advance of a big protest, so we could plan accordingly. Now the protests are 24/7 and can never be avoided. In the historic protests, the protestors were not interested in the staff as individuals, and they would not harass or target individual people like the current protestors do. Social media was not existent or not as prevalent as it currently is, so the protestors were not able to as easily share the identities of employees. Now the protestors seem to be protesting not only against MBR as a company, but also against the specific individuals that work for the company."

(3) Employee A said:

> "Initially, when arriving in convoy, we would drive in our own cars. However, on a date I cannot remember, we started to car share to reduce the

> number of cars entering and exiting the Wyton Site. Car sharing also meant that we could provide physical and emotional support to each other, and I felt more comfortable and slightly safer by having more people in the car with me, rather than being isolated on my own and in my car…
>
> Car sharing was helpful as when I was in my own car, and the protestors surrounded me (which happened often), it was incredibly scary, intimidating and harassing. I felt nervous and bullied. The intimidation and feeling of being personally targeted was heightened by the protestors holding the car captive by surrounding it, making a lot of noise, by playing drums and shouting threateningly, and filming me. I was scared that the protestors might smash the windows of the car, slash the tyres or damage the car in some way. It was helpful to have the emotional support of those with me in the car."

242. Whilst this evidence gives an insight into the fears of some of the employees, it provides little (if any) support for the particular claim advanced against Mr Curtin concerning his siting of the two cameras. First, the evidence of these three witnesses, particularly that of Ms Read, fails to distinguish between Mr Curtin's actions and the methods practised by different protestors. The evidence shows that *some* protestors have adopted a strategy of filming or photographing the employees. Others have not. Of those that have, some of them – a small minority – appear to have posted a small number of images on social media. Not all protestors adopt these methods. Only some protestors – again a small minority – have directed their protests at individual workers. Importantly, the Claimants do not suggest that Mr Curtin has adopted any of these tactics. Mr Curtin is not to be judged by the conduct of other protestors. If there is a complaint about such conduct, it is better dealt with on a direct basis by seeking to identify and take steps against the individuals concerned. I appreciate that many of the workers *feel* that they are being personally targeted by the protestors, but save for a few isolated incidents – which in all probability amount to criminal offences – the vast majority of protestors are not targeting any individual worker. Perhaps of most importance for the case against Mr Curtin, the Claimants do not allege that he has been targeting individual workers.

243. Mr Curtin was cross-examined about the allegations that his act of siting these two cameras was part of a campaign of harassment against the employees. In relation to the camera positioned outside the main gate of the Wyton Site, Mr Curtin said that it had been the idea of another protestor to place a camera. He had hoped that it might enable the footage to be "*beamed across the world*". The device was a "Ring" camera and this apparently meant that anyone with the relevant password could log in and view the livestream from the camera. Mr Curtin said that there were several cameras. One faced the gate and others pointed in the direction of the carriageway. The "Ring" camera provided a fixed view. Other cameras could be controlled to point in different directions. Ms Bolton suggested to Mr Curtin that "*if the target of the protest wasn't the staff, there would be no need to have a camera facing the gate, would there?*" Mr Curtin disagreed, and he rejected the suggestion that the camera was installed to intimidate the workers. Mr Curtin said that the cameras had been removed after there had been some falling out in the camp.

244. In relation to the later incident of siting a camera on a container within Camp Beagle, Mr Curtin again rejected Ms Bolton's suggestion that it had been placed there to "*capture … the staff arriving in the morning and leaving*". Mr Curtin said that camera

was not capable of doing that and that he had tried to use it as a way of alerting the camp to the movement of vehicles into and out of the Wyton Site, but it had not worked. The protestors, he said, had been concerned that there had been some night-time movement of vans which the "Ring" camera had not detected.

245. Ms Bolton suggested to Mr Curtin that the cameras were used to identify vehicle number plates and then put them on social media, as a means of targeting the employees. The Claimants had no evidential basis to make that assertion. Ms Bolton clarified that she was not suggesting that Mr Curtin had done this but that the footage could be used for this purpose. There followed this exchange:

> Q: It's reasonable, isn't it, that when [the employees] see cameras pointed at the gates, as they come and go, that that's going to cause them distress that yet again they are being recorded and that that could be for the purposes of identifying them, stopping them in the road, working out where they live. That's foreseeable, isn't it, that that's going to cause them distress?
>
> A: They live in Britain. They live in a place where they know damn well the controversial nature… they know how sensitive it is. They can now expect people to be watching their movements because they are so controversial. So a person of reasonable firmness – unless you want the protest to absolutely like I said, vaporise, once the secret is out – they were happy enough when nobody knew it was there and the local people didn't know it was there. Now it's out, a reasonable person kind of has to accept some sort of… well people watching them. They know it."
>
> …
>
> Q: It's right, isn't it, Mr Curtin, that whilst the employees have accepted there will be a degree of protest, it's quite a different thing, isn't it, for them to have to experience the distress of knowing that, if they don't put on a disguise to drive in and out of work everyday, that they could be picked up on cameras and that information may be shared and they may be identified? That's going to cause them distress, isn't it.
>
> A: Not all of the workers cover their faces… If there are fears – there have been some incidents – where people have been outed publicly. If these cameras went along with parallel, with say like the rogues' gallery, then yes there's like 'The cameras are going to mean we're going to be put on some site and they are going to generate hate for us'. That hasn't happened, that hasn't materialised, apart from some – there have been no incidents with individuals. The campaign has not gone down that road.

246. My conclusions in relation to these allegations are as follows:

(1) These two incidents cannot, and do not, support the Claimants' case that Mr Curtin is guilty of a course of conduct involving harassment.

(2) Mr Curtin accepts that he was involved in the siting of the two cameras. The Claimants have adduced no evidence as to the footage that was actually captured by either of these devices. They have not challenged Mr Curtin's evidence that, in relation to the camera sited in Camp Beagle (not opposite the

gate), that it did not work as intended (i.e. as an early warning device to alert the camp to vehicle movements).

(3) No witness has said that s/he was caused distress or alarm or otherwise felt harassed by the siting of the cameras. It may be that none of them noticed one or other of the cameras, or that they were more concerned by the hand-held recording of them by individual protestors, but this would be to speculate about evidence I do not have. The short – and simple – point is that the Claimants have adduced no evidence that the siting of these cameras caused any distress/alarm/upset to any employee. In the absence of that evidence, the cross-examination of Mr Curtin (see [245] above) was conducted on a hypothetical basis.

26 April 2022 and 12 May 2022: the Third Contempt Application

247. The Claimants allege that, on 26 April 2022, Mr Curtin (and others) caused a public nuisance by obstructing the highway for an Impex delivery vehicle after it had left the Wyton Site. Specifically, Mr Curtin is alleged to have stood in front of the vehicle.

248. The Claimants allege that, on 12 May 2022, Mr Curtin (and others) caused a public nuisance by obstructing the highway for a police van that sought to move off from a stationary position on the carriageway outside the Wyton Site. Specifically, Mr Curtin is alleged to have stood in front of the vehicle.

249. As these allegations were the subject of contempt proceedings against Mr Curtin (the Third Contempt Application), the evidence (and submissions) were dealt with at a separate hearing, following the trial, on 23 June 2023. Mr Curtin had been granted legal aid for the Third Contempt Application, and he was represented by Mr Taylor.

250. At an earlier directions hearing in November 2022, the Claimants indicated that they would not be pursuing Ground 3 (kicking the box) and Ground 4 (assisting someone in a dinosaur costume). At the commencement of the hearing on 23 June 2023, Ms Bolton indicated that the Claimants had agreed also not to proceed (as an allegation of contempt) with Grounds 1 and 5 (entry into the Exclusion Zone) and Ground 6 (obstruction of the police van leaving the Exclusion Zone). That left Ground 2 as the only allegation of breach of the Interim Injunction pursued by the Claimants. On behalf of Mr Curtin, Mr Taylor indicated that Mr Curtin accepted the breach of the Interim Injunction in Ground 2.

251. As noted already, Mr Curtin gave evidence at the hearing on 23 June 2023. He stated that he had been campaigning against vivisection for 40 years. He hoped that, by protesting, he would draw attention to the activities of the First Defendant and he wanted the law to be changed to prohibit testing on animals. Mr Curtin accepted that he was aware of the terms of the Interim Injunction. In light of that, Mr Curtin was asked by Mr Taylor about the events in the small hours of 26 April 2022, which gave rise to Ground 2 of the contempt application. Mr Curtin said this:

> "We had some information that night-time – shipments of dogs at night-time had already happened, a number. They'd sneak the vans in and out. We had an assurance from the police liaison officer that the police were not prepared to cover night-time actions. That was the understanding, and I couldn't believe this

> information we received. I was shocked. So we began to have a night-time shift and, hey presto, the van turned up without any police escort and now my intention –once I'm there, apart from the shock of, 'Oh my God, they're actually doing this', there hadn't been a daytime shipment… for 40 days. I tried to bring it up in court, why are there no more shipments anymore? It wasn't – I don't believe it was because of the protestors. They have the police to facilitate that. There was another reason. So I was in shock, it was at night-time, I feel the police had broken their word... They're sneaking in at night and that's all. There was no intention to ever stop a van. Other people were always having a go at me, 'We've got to stop the vans'; 'The police will stop you stopping the vans, the injunction will stop you stopping the vans'… When I spoke to Caroline Bolton after the last hearing, 'Are we going ahead with this contempt?', I said, 'Where's the obstruction?', and she said 'Approaching'. That word 'approaching', even I'd sat through the entire injunction, it hadn't and it still hasn't –– I don't think it's filtered into anyone's mind actually. What does 'approaching' mean? I didn't have on that night I'm not going to approach a van as in 'Shame on you' because that's breaking the injunction, isn't it, if we're going to use the English language? But not to block any van, not to – no."

252. Mr Curtin confirmed that, as can be seen in the video evidence, he was using his mobile phone to film the incident so that he could post it as evidence to a wider audience. He said saw the injunction as imposing a sort of "*force field*" and he would "*just work around it*". By that he meant that he was content to observe the terms of the injunction because it enabled Camp Beagle to maintain a presence at the site and he just needed to avoid the Exclusion Zone.

253. I am satisfied, based on the circumstances of the events that gave rise to Ground 2 and Mr Curtin's evidence, that Mr Curtin had not deliberately flouted the Interim Injunction. It is clear from the audio from the various recordings that emotions were running high early that morning because the nocturnal movement of the dog vans was an unexpected and unwelcome development, so far as the protestors were concerned. Mr Curtin got partly carried away by those emotions. As a result, he approached, and fleetingly obstructed, the van leaving the Wyton Site. That, as he accepts, was a breach of the injunction. I will deal with the penalty for this breach of the Interim Injunction below (see Section O(3): [400]-[407] below).

254. For the purposes of the civil claim against Mr Curtin, his obstruction of the van leaving the Wyton Site in the early hours of 26 April 2022 and his obstruction of the police van on 12 May 2022 were both temporary and, applying the test of what amounts to "public nuisance" (set out in [93] above), it affected only the specific individuals involved rather than the public generally. Insofar as there was any obstruction of the highway on these two occasions, neither amounted to a public nuisance. The police were present on both occasions, and they did not take any action against Mr Curtin, or others, involved in alleged obstruction of the highway. Almost certainly, that reflects the fact that any obstruction was very short-lived and required no police intervention.

21 June 2022

255. The Claimants allege that, on 21 June 2022, Mr Curtin flew a drone directly over the Wyton Site, at a height of less than 150m and/or 50m, without the permission of the

First Claimant. The footage obtained was posted to the Camp Beagle Facebook page the same day.

256. They flying of the drone is alleged by the Claimants to be (a) a trespass; and (b) part of a course of conduct involving harassment of the First Claimant's staff.

257. Although some of the Claimants' witnesses give general evidence of drone usage over the Wyton Site, the evidence relating to this specific incident – as it relates to Mr Curtin – is solely video, drawn largely from footage obtained from the drone that was posted on the Camp Beagle Facebook page. The drone is equipped with a camera, that clearly has the ability to zoom in and magnify the image of the terrain below it.

258. Ms Pressick, in her witness statement, gave a narrative commentary on drone usage based on the video evidence available to her. Ms Pressick purports to give evidence as to the height at which the drone was being flown on each occasion. However, much of the evidence she gives is (a) vague and imprecise (e.g. "*at a height I estimate was below 150 and/or 50 meters*" (which appears to embrace a range between 1 to 150m); and (b) expert evidence which she is not qualified to give. The only reliable evidence as to the height at which any drone was being flown, on any occasion, comes from instances where the height of the drone is shown as part of the footage (e.g. the footage posted to Camp Beagle's Facebook page on 16 June 2022 which records the height as being 50 metres). Finally, much of Ms Pressick's witness statement about generic drone usage is irrelevant to the claim in trespass. Her contention, for example, that, in one example, "*the drone is being used to monitor business activity*" is not relevant to the claim in trespass. Either the drone is trespassing on the relevant occasion, or it is not. Absent any suggestion of implied licence (of which there is none), the purpose of a drone's alleged trespass is not relevant.

259. Ms Pressick was questioned about Mr Curtin's use of a drone. She stated that, in around April/May 2022, staff had been forced to transport dogs around the site in a van rather than in crates because of the drone. Mr Curtin disputed that this was a regular practice. Ms Pressick accepted that the workers might still move the dogs in crates, even when the drone was around the site. Ms Pressick said that she had personally seen the drone whilst she had been on site. Asked at what height it was being flown, Ms Pressick said that it was "*above building height*". Ms Pressick stated that her main objection to the drone use was the fact that it was filming. It was that aspect, rather than any annoyance caused by the drone operations, that was the concern. Ms Pressick said that she understood why the protestors wanted to monitor the activities on site which was linked to their protest activities: "*It's what the feel they need to do*".

260. Potentially relevant evidence was provided by several witnesses who spoke of their direct experience of drones flying over the Wyton Site (emphasis added):

(1) Mr Manning stated:

> "In general, I do not have an issue with the use of drones if they are flown in the right manner and they are not being used to invade people's privacy. However, there are a number of occasions when I have experienced the protestors flying their drones in a dangerous manner. For example, sometimes they are very erratically flown downwards, and then from side to side quickly. Sometimes the drones are also flown really low, **to about the**

> **height of a one storey building**, which I would say happens about 20–40% of the time I see a drone flight over the Wyton Site. Very occasionally, they come down **very low, so it feels like I could reach up and grab the drone**. It is very concerning when the low and erratic flights happen, as they drop them suddenly from quite a height. I fear for my safety on these occasions as a drone dropped from such a height could potentially cause physical harm to me or one of my colleagues. I am often concerned for the safety of the staff when the protestors are flying the drones. Typically, the pilot will be sitting in the tent outside the Gate, and will not have a clear view of where the drone is flying. If they were to lose video signal on the drone, they would not be able to see what they were doing and someone could be injured.
>
> I have also noticed the protestors fly the drones directly overhead the Wyton Site, and over areas that cannot be observed from the fence line of the Site; I believe that the drones are flown there so they can see what the staff are doing every step of the way during the day. In this respect, there is no privacy.
>
> Due to the nature of my role, I spend a lot of time working outside on the Wyton Site, making sure the site is secure and checking the fence, so I have seen a lot of the drones being flown around the site. I do not like being outside when the drones are being flown, because I find them dangerous for the reasons outlined above. However, I have no choice to be outside, as part of my job is keeping an eye on what is going on around the Wyton Site. I am responsible for logging whenever there is a drone sighted on site. I log the date and time each time a drone goes up and is brought down by the protestors. I also try to locate who the pilot is by looking around outside the perimeter of the Wyton Site, and into their camp to see who goes to retrieve the drone when it lands. The security staff undertaking the nightshift follow the same process, and write it on a whiteboard for me to review when I return to work the next day. I then update a central spreadsheet, which I started keeping in September 2022… The CCTV sometimes captures the use of the drones, but they are very small and move around so quickly that they can be hard to spot on CCTV footage."

(2) Employee A stated:

> "Previously, when the protestors were flying a drone flying over area of the Wyton Site on which I was working, my colleagues used to stop carrying out tasks outside; we did not want to be identified by the protestors or have footage of us posted online (which the protestors do regularly). Stopping outdoor tasks whilst drones were flying meant that anything we needed to do was delayed. For example, part of my role is taking the electric meter reading in the generator room, which involves walking across the car park. On the occasions when I have heard from my colleagues that the protestors are flying the drone, I will delay undertaking the task until I have heard that the drone has come down.
>
> I often hear the drones flying, even from inside the office, however as I am not often outside I do not know how low they fly. If I ever do go outside, such as when moving between buildings or during my breaks, to prevent the drone camera capturing images of my face and being identified as a result, I put a mask on and make sure that my face is covered.

I am aware that the drones are flown by the protestors a few times a week as I can either hear them, or a member of staff will notify all other staff members about it on the internal radios. If a drone is up, I will try not to go outside. I feel like we are constantly under surveillance, and it is quite a suffocating environment to be in. It feels like an invasion of privacy.

On four or five occasions (but I cannot recall when) I have been outside at the Wyton Site when a drone was being flown, and have been scared of it and being identified by it that I turned and faced a wall until it was gone.

I will never get used to the sound of a drone for the rest of my life. If I hear one in my personal life, I am worried it is the protestors' and that they have found me. This happened recently when a neighbour flew a drone over my garden. I panicked and went and hid indoors."

(3) Employee B stated:

"The use of drones by the protestors over the Wyton Site has affected my day-to-day activities when at work. It feels like I am being watched 24/7. I wear a cap, balaclava, mask and sunglasses now when working outside at the Wyton Site, because I do not want the drones to video my face and for the protestors to then know my identity. Even though the protestors might know what my name is (for which, see below), they currently do not know what I look like. I do not want to be harassed by protestors who recognise my face. I go outside to empty the bins and I have to wear a disguise just to protect myself.

When drones are being flown, we have to adopt a different procedure on how we move around the site, and how we move the animals around the site. We minimise staff working outside to avoid exposing them to the drones, and transport the animals in van instead of in an open air trolley. These different procedures add time to our tasks and means we cannot perform our tasks efficiently.

When I hear the drones, it makes me feel uneasy.

The drones do fly very low on occasion. One has come within 10 feet of my head before. It does not feel very safe when a remotely controlled drone is flying that close to me."

(4) Employee G stated:

"In addition to the harassment as we arrive and leave the Wyton Site, the staff also have to deal with invasive filming by overhead drones. These are now a daily occurrence. I understand from my colleagues that most staff can hear the drones as they buzz overhead, but I have hearing difficulties and will only be aware they are there if I see them. I therefore look up before I leave the buildings to check for drones and make sure that I am covered up with my hat, snood and glasses. **The drones often fly really low, sometimes little higher than the single storey buildings on the Wyton Site**.

When there is a drone overhead and I am outside, I don't look up. Whilst I am covered up, I really don't want to be recognised for the reasons I detail

above. In order to ensure that I am not recognised I have to carry my hat, snood and glasses with me everywhere I go in case I have to go outside. I also wear these, just to get to the car park in case I am filmed walking to my vehicle. I have seen footage of myself taken by the drones online. The footage shows me moving the animals around site. I believe I saw the footage posted on the Facebook page of Camp Beagle. I recognised myself from the hat I was wearing in the footage and for the activity that I was involved in."

(5) Employee I stated, by way of hearsay evidence:

"I remember drones first started appearing over the Wyton Site sometime in 2021, around the time the protests started increasing in intensity in June.

Sometimes the drones come as low as the height of our buildings (which are only one storey high), and one time I remember a drone looking through our tea room window. If we are doing something outside, like moving dogs, the drones seem to come lower.

The presence of the drones makes me feel like I am constantly being watched, so that the protestors can find more ammunition against us. I can usually hear the drones when I am working outside. They make me feel on edge, and I second guess everything I am doing. The lower the drone is, the more I second guess myself, and whether anything I am doing could be captured by the drone and the footage used by the protestors in a negative light. When the drone is higher, I do not feel as stressed, as it does not feel like the drone is focusing on me as much.

Because of the drones, when I am working outside I wear a facemask, a jumper, and I tie my hair up in a bun, to avoid being identified. Photos taken of me by the drones moving animals have been shared on social media but, because of my disguise, I cannot be identified from those photographs."

(6) Employee P stated, by way of hearsay evidence:

"The protestors fly drones over the Wyton Site and film staff working or moving on site. When I was first filmed by a drone, I was moving dogs around the Wyton Site. Given the use of the drones, we had started moving the dogs by van to prevent footage of the dogs being captured but, on this occasion, the Production Manager asked me to carry a small number of dogs between buildings. I was carrying a dog across the field when the drone came overhead. I could hear the buzz of the drone. I was wearing a facemask and sunglasses to protect my identity while carrying the dog. After the incident I saw the footage of me on the Camp Beagle Facebook page, being followed by the drone.

Being filmed by the drone was really invasive. It made me feel scared and anxious. The drones have become more common and they are spotted almost every day. I do not normally leave the buildings unless I have to because of the drones. If I do leave the buildings, I always wear a face mask."

(7) Employee V stated:

> "**The lowest I have seen a drone flying at the Wyton Site is approximately 3ft above the ground to capture information from dog travel boxes.**
>
> I am constantly concerned for my safety when drones are flown by the protestors, as a drone could cause a bad injury if it were to crash into something or someone. I hear the drone nearly every day, and on **average the drone flies at a 2-storey building height**. The protestors used to fly the drone much lower than this, but a couple of months ago this changed and it started to fly higher (but, as I say, it is still about the height of a 2-storey building).
>
> To stop the drones filming through windows, I have installed protective measures in all windows of the Wyton Site, for example frosting the glass, installing one way glass laminate or installing curtains.
>
> When there is a drone over the Wyton Site, I used to stop carrying out tasks outside, which meant that anything I needed to do was delayed. Now, as it was not possible to carry out the outside tasks required in the time the drone was not up, I have to wear my concealment clothing when working outside at the Wyton Site, as well as driving in and out. I do this to prevent the drones from capturing footage identifying me to the protestors, for the reasons that I have set out above. Having to cover up like this when working is particularly uncomfortable in summer time due to the heat.
>
> The drone sound has had a real effect on my mental health. I was once on holiday sitting on the beach and heard a stranger's drone. I thought that the protestors had found me and as a result I was concerned for my safety. I believe the use of drones is another form of psychological intimidation tactics used by the protestors. I used to immediately report the drones to security, now I just try to ignore it. The drones have a psychological and physical impact on my health."

261. I note the following things about this evidence:

(1) None of the evidence concerns (or supports) the single allegation of drone trespass made against Mr Curtin. None of the witnesses links his/her evidence to the use of a drone on any particular occasion. In relation to the harassment claim made against Mr Curtin, therefore, none of the witnesses says that the incident of the drone use on 21 June 2022 caused him/her distress or upset, or why it did on this particular occasion.

(2) Insofar as the witnesses complain of low-flying drones (see sections marked in bold), this cannot relate to the incident alleged against Mr Curtin as the drone was being flown by him at 50m.

(3) As the Claimants are not pursuing a harassment claim against "Persons Unknown" in relation to drone flying, the evidence from these witnesses about the impact on them is not relevant to trespass claim. Equally, whilst understandable, the concerns expressed about privacy infringement are equally irrelevant in the absence of a pleaded cause of action to which this evidence might have been relevant.

262. In short, the evidence of these witnesses, is not relevant to the claim brought against Mr Curtin personally.

263. When he was cross-examined, Mr Curtin agreed that, on 21 June 2022, he had operated a drone above the Wyton Site, and he had used it to observe what some of the workers were doing on site. The drone, he said, weighed 249 grammes and was flown by him at a height of 50m. His evidence was that it was better to fly the drone at a height at which it was not noticed by anyone at the Wyton Site. He said he can tell the height of the drone from its controls. The weight, Mr Curtin said, was important because there are regulations which govern the flying drones that weigh more than that. Those regulations were not explored at the trial. Mr Curtin said that his primary interest in using the drone was to monitor what was going on at the Wyton Site and specifically the movement of the dogs. Mr Curtin also accepted that, in the past, there had been occasions when the drone had crashed on the site.

264. In response to questions asked by me, Mr Curtin confirmed that he knew of 4 or 5 other people who had regularly flown drones over or in the vicinity of the Wyton Site and there were possibly between 30-50 people who had flown drones occasionally the identity of whom he did not know. He said that he did not start flying a drone until about a year into the protest activities (i.e. around June 2022).

265. Rather than concentrating on this single alleged incident on 21 June 2022, Ms Bolton's cross-examination ranged widely and included putting to Mr Curtin evidence from the Claimants' witnesses about use of drones generally. That was not helpful, not least because Mr Curtin is not the only person who has flown drones over the Wyton Site. It confused general evidence – which is only potentially relevant to the claim made for relief against "Persons Unknown" – and the specific evidence relating to Mr Curtin's drone use. Ms Bolton indicated that the Claimants do not have any evidence – beyond that relating to the incident on 21 June 2022 – of Mr Curtin operating a drone on any other occasion.

266. I accept that, as a matter of principle, it is legitimate for Ms Bolton to explore not only the past incident of drone usage on 21 June 2022 alleged against Mr Curtin but also whether, absent an injunction, Mr Curtin threatens to fly drones in the future that would amount to a civil wrong. But even that exercise needed to focus clearly upon the acts of Mr Curtin which give rise to the credible risk that, without an injunction, he will commit a civil wrong. What is impermissible is to attempt to advance a case against Mr Curtin based on historic drone usage when the Claimants cannot establish that the relevant incident was one in which he was operating the drone. The Claimants cannot, for example, establish that Mr Curtin was the person responsible for the incidents of drone flying – reported in the general evidence given by some of the witnesses (see [260] above) – where the drone was alleged to have been flown as low as head height.

267. On the contrary, Mr Curtin's evidence, which I accept, is that he typically flies the drone at 50 metres, not least because he hopes that, at that height, it goes unnoticed. In the Claimants' general evidence, advanced against "Persons Unknown", Ms Pressick produced evidence relating to a further drone incident where an image obtained from the camera on the drone was posted on the Camp Beagle Facebook page. That image showed some information which included "H 50m", which she interpreted (I believe correctly) that the drone was being flown at a height of 50 metres.

268. In answer to the Claimants' claim that flying the drone – generally – amounted to harassment of the workers at the Wyton Site, in cross-examination, Mr Curtin made the point that at no stage has footage from the drone been used to attempt to identify workers or images placed on the Camp Beagle website in a sort of 'rogues gallery'. And, indeed, the Claimants have adduced no evidence of the drone footage being used for that purpose. Again, on this point, the concerns of the employees are directed at what might happen rather than what has happened. At a prosaic level, if the workers are concerned about the risks of being potentially photographed whilst they are going about their duties outdoors at the Wyton Site, then that threat is ever-present because they could be photographed by someone standing at the perimeter fence or by a drone not flying directly over the Wyton Site. For the purposes of the case against Mr Curtin, the short point is that there is simply no evidence that Mr Curtin has been flying drones, or taking photographs, as part of an exercise to identify employees at the Wyton Site. I accept Mr Curtin's evidence that he has not sought to do so.

269. Mr Curtin accepted that footage from drones has been posted on the Facebook page of Camp Beagle. Mr Bolton suggested to Mr Curtin in cross-examination that his posting of drone footage of the Wyton Site might provide an opportunity for someone to learn more about the layout of the site and that this knowledge might assist someone who wanted to break into the site. Mr Curtin's immediate response to this suggestion was "*that's stretching it*", but he accepted that it might assist such a person. This section of cross-examination was hypothetical and not helpful – or relevant – to the issues I must decide.

270. As the Claimants have submitted – correctly – in relation to the main claim for trespass, the tort is simple and one of strict liability. The decision to be made is whether the flying of the drone is a trespass or not. What Mr Curtin hopes to achieve by flying the done, and the risks that might arise from publication of footage obtained from the use of the drone, are simply irrelevant. It is either a trespass or it is not. I identified the potential limits of the law of trespass – as it concerns drone use – in the Interim Injunction Judgment ([111]-[115]). Despite having ample opportunity to seek to amend their claim to do so, the Claimants have chosen not to seek to advance any alternative causes of action that might more effectively have addressed the concerns they have over drone use.

271. The final part of Ms Bolton's cross-examination was taken up with Mr Curtin being asked questions about other drone footage for which the Claimants had not alleged he was responsible. With the benefit of hindsight, and particularly considering the exchanges that followed (which consisted of little more than Mr Curtin being asked to comment on extracts from the drone footage and what it showed), I should have stopped the cross-examination. It quickly became speculative and, insofar as it was attempting to ascertain whether Mr Curtin was responsible for further drone flights beyond the specific example alleged against him, potentially unfair to him. I had wanted to ensure, in fairness to the Claimants, that they had an opportunity to develop as best they could their case (a) as to the threat of Mr Curtin carrying out further acts of alleged trespass/harassment with the drone; and (b) against Persons Unknown.

272. The Claimants have sought to adduce no expert evidence relating to drone usage, for example, based on the photographs and footage captured by the drones that have been put in evidence (a) at what height was the drone flying; and (b) whether the drone was immediately above the Wyton Site. Ms Bolton attempted to make up for this lack

of expert evidence by asking Mr Curtin to offer his view as to the height at which the relevant drone was being flown. That will not do. Mr Curtin may be a drone user, but he is not an expert qualified to comment on other drone use. He cannot offer an expert opinion, from a photograph or footage, as to how high the drone was flying when it was taken. I raised the issue of the need for expert evidence on the critical issue of the height at which drones were being flown during at least one interim hearing. The Claimants have chosen not to seek to advance any expert evidence in support of this aspect of their claim. Again, that is their choice.

273. The state of the evidence, at the conclusion of the trial, is that, in relation to the claim for trespass by drone usage against "Persons Unknown", I have no reliable evidence as to the height at which the drones were being flown in the incidents complained of in the evidence. In respect of the claim against Mr Curtin for trespass and/or harassment arising from his use of a drone on 21 June 2022, the only evidence that is available as to the height at which the drone was being flown is that given by Mr Curtin; i.e. at or around 50 metres.

274. Returning to the central issue, the question is whether Mr Curtin's flying of the drone on 21 June 2022 was a trespass on the land or alternatively part of the course of conduct involving harassment. My conclusions on this are as follows:

(1) Mr Curtin's use of the drone on 21 June 2022 was not a trespass.

(2) Based on the authority of ***Bernstein*** (see [64]-[71] above), the question is whether the incursion by Mr Curtin's drone into the air space above the Wyton Site was at a height that could interfere with the ordinary user of the land. Mr Curtin's drone was flying at or around 50 metres. To put that in context, a building that is 50 meters tall is likely to have between 15-16 storeys. Did flying a drone the size of Mr Curtin's drone, for a short period, at the height of a 15-16 storey building interfere with the First Claimant's ordinary user of the land. In my judgment plainly it did not. It is not possible – on the evidence – to conclude whether Mr Curtin's drone, flying at 50m on 21 June 2022, could even have been seen by the naked eye from the ground. Mr Manning's evidence was that it was very difficult to see smaller drones higher in the sky.

(3) On analysis, and in reality, the Claimants' real complaint is not about trespass of the drone at all. If the drone had not been fitted with a camera, the Claimants would not be pursuing a claim for trespass (or harassment). The Claimants have attempted to use the law of trespass to obtain a remedy for something that is unrelated to that which the law of trespass protects. The real object has been to seek to prevent filming or photographing the Wyton Site. The law of trespass was never likely to deliver that remedy (even had the claim succeeded on the facts), not least because it is likely that substantially similar photographs/footage of the Wyton Site could be obtained either by the drone avoiding direct flight over the site, flying at a greater height, or, even, the use of cameras on the ground around the perimeter. As I have noted (see [73] above), the civil law may provide remedies for someone who complains that s/he is effectively being placed under surveillance by drone use, but adequate remedies are unlikely to be found in the law of trespass.

(4) Turning to the harassment claim, the position is straightforward. There is no evidence that anyone was harassed by Mr Curtin's flight of the drone on 21 June 2022. It cannot therefore form any part of the alleged course of conduct involving harassment.

(5) Finally, considering whether the Claimants' evidence shows that, unless restrained, Mr Curtin is likely to use the drone to harass in the future, I am not persuaded on the evidence that the Claimants can demonstrate a credible threat that he will. I have accepted Mr Curtin's evidence that he flies the drone at 50 metres. Flown at that height, there is no credible basis to contend that future flights of the drone are likely to amount the harassment of any of the employees. There is no evidence that Mr Curtin is carrying out surveillance of individual employees, for example to be able to identify them. I appreciate that several witnesses expressed the fear that this was one of the objectives of the drone flights. But these are their subjective fears; they are not objectively substantiated on the evidence.

11 July 2022

275. The Claimants allege that Mr Curtin (and others) caused a public nuisance by obstructing the highway for a vehicle driven by Ms Read that had left the Wyton Site. Specifically, it is alleged that Mr Curtin stepped in front of and walked in front of the vehicle causing the vehicle to slow.

276. The incident is captured on CCTV. In her witness statement, Ms Read described the incident as follows:

> "On 11 July 2022 at 15.04, [Mr Curtin] walked in front of my car as I was driving along the main carriageway of the Highway… The incident happening as I was leaving the Wyton Site for the day; I left a few minutes later than everyone else on this day. I saw [Mr Curtin] walk across the Highway to the tent, and linger about, I had a feeling as I drove towards him that he was going to step out in front of me. [Mr Curtin], as I approached him in my car, he then walked in front of my car, causing me to slow down to avoid hitting him. He looked at me, and it felt like he was goading me – as if he was thinking 'I can do what I want away from the Access Road'. I found [Mr Curtin's] conduct very intimidating and I was fearful, as I did not know what he was planning to do."

277. Ms Read was not called to give evidence, and her evidence has been relied upon as hearsay by the Claimants. It is perhaps unfortunate that her evidence on this incident could not be explored and tested in cross-examination, particularly having regard to what can be seen of the incident from the CCTV recording. What that footage shows is little more than Mr Curtin crossing the B1090 road some 100 yards from the entrance to the Wyton Site.

278. Mr Curtin was cross-examined by Ms Bolton. She put to him that he had deliberately walked out in front of Ms Read's car because she had come from the Wyton Site. Mr Curtin disagreed, and maintained that he was simply crossing the road.

279. My conclusions in relation to this incident are as follows:

(1) In the CCTV footage, Mr Curtin can be seen to be crossing the road. There is nothing more to this incident than that. It caused Ms Read slightly to slow her vehicle. She did not stop, and she was caused no obstruction. There was no obstruction of the carriageway. There was no public nuisance

(2) I cannot accept Ms Read's evidence in relation to this incident. Having reviewed the footage – as apparently Ms Read also did when making her statement – I conclude that an element of paranoia must have contributed to Ms Read's perception of this incident. Like some other witnesses, Ms Read is clearly fearful of what Mr Curtin *might* do, rather than rationally assessing what he has *actually* done. There was nothing remotely intimidating in Mr Curtin's action of crossing the road. Objectively, there was nothing in the incident that should have caused her any fear.

(3) The inclusion of this incident in the Claimants' claim against Mr Curtin is remarkable. The evidence simply does not demonstrate, even arguably, any wrongdoing by Mr Curtin. Based on the evidence available to the Claimants, this allegation should not have been pleaded or pursued.

(2) Unpleaded allegations against Mr Curtin

280. There are three further incidents of alleged harassment that were raised in the Claimants' evidence and pursued in cross-examination with Mr Curtin that did not form part of the Claimants' pleaded case against him. I raised the lack of pleaded allegations with Ms Bolton during Mr Curtin's cross-examination. I expressed the provisional view that, if they were to be relied upon as part of the course of conduct alleged to amount to harassment against Mr Curtin, then they ought to be pleaded. Ms Bolton did not return to the issue until addressing the issue in her closing submissions. No application to amend was made by the Claimants.

281. In her closing submissions, Ms Bolton said that it was "*regrettable*" that the details of these three incidents had not been pleaded, they had only come to light when draft witness statements were received. The Claimants' position – as advanced in their closing submissions – is that "*whilst no 'claim' is brought in relation to these incidents, it is submitted that they are important incidents that should inform the Court's view of the strength of the pleaded harassment claim against Mr Curtin, and the likelihood of further acts of harassment occurring*".

282. I will return below to how I intend to deal with these unpleaded allegations after summarising them and the evidence that has been presented during the trial.

7 September 2021

283. This was an incident concerning Mr Manning. In his witness statement, Mr Manning said this:

> "… on 7 September 2021, [Mr Curtin] approached me at the Gate and said he had some personal details I would not want anyone else to see, which [Mr Curtin] had been given by a member of staff or security who passed it to [Mr Curtin] through the car window. He would not tell me what the details were or what he would do with them, but said that he could contact me at any time and that I would

> find out what he had at some point. I reported this incident to the police, and I felt really shaken up by it. Later that day, he approached me again, when I was by the perimeter fence. He said he would pass a piece of paper that was in his pocket with personal details of mine. I asked him to show the piece of paper. He looked through his pockets and said he thought it was in a folder. I walked away".

284. Mr Curtin did ask Mr Manning some questions about this incident when he was cross-examined. Mr Manning could recall few details. Mr Curtin suggested to Mr Manning that he had told him on this occasion that he had been given Mr Manning's telephone number by another security officer. Mr Manning replied that Mr Curtin had not told him what the information was.

285. As this is not a pleaded allegation against Mr Curtin said to form part of the alleged course of conduct involving harassment, I can deal with this shortly. Objectively judged, what Mr Curtin did (as described by Mr Manning) lacks the necessary qualities to amount to harassment. The incident has not been repeated, and therefore it sheds no light on whether, if the Claimants can prove a case of actual or threatened harassment against Mr Curtin, they can credibly suggest that this incident shows that there is need for an injunction to restrain future acts of harassment by Mr Curtin.

8 July 2022

286. The incident on 8 July 2022 concerned Mr Curtin and Employee V, a maintenance engineer at the Wyton Site. There was footage of the incident recorded by Mr Curtin. In his/her witness statement, Employee V stated that on 8 July 2022, s/he had been tasked with repairing a hole in the perimeter fence around the Wyton Site. As s/he was operating outside the perimeter, s/he was accompanied by a member of the First Claimant's security team. Mr Curtin followed Employee V, and the security officer, and Employee V alleged that Mr Curtin intimidated and harassed him/her whilst s/he undertook the repairs. Mr Curtin recorded the incident and livestreamed it to the Camp Beagle Instagram and Facebook pages. The video of the incident goes on for some 15-20 minutes, but the key parts, identified by Employee V in his/her witness statement, were the following:

(1) Mr Curtin said "*we are going to do our darndest to make sure some workers go to prison from here you deserve it you really do deserve it*". Employee F said that this upset him/her, because s/he had not done anything illegal.

(2) Mr Curtin said, "*how low can you go working here?*" Employee V regarded this as a "*psychological intimidation tactic*" as s/he was "*not working in a 'low job'*". Employee V felt that Mr Curtin was attempting to make him/her feel bad for what s/he did at the Wyton Site.

(3) Mr Curtin called Employee F a "*freak*". Employee V said that this upset him/her, as it portrayed him/her to be something that s/he was not.

(4) At one point during this incident, Employee V said that Mr Curtin was so close to him/her that he was nearly touching his/her face with his phone whilst livestreaming. Employee V said that s/he felt "*really threatened and uncomfortable*".

(5) Employee V said s/he felt "*constantly scared*" that Mr Curtin would pull down his/her mask and reveal his/her identity.

(6) Employee V felt that Mr Curtin's actions of being close to him/her, and abusing him/her for 15 to 20 minutes as s/he carried out his/her job was "*overwhelming*". S/he was "*very distressed*" after the incident and believed that it led to a deterioration in his/her mental health. "*I think this was a reaction to feeling so vulnerable (i.e. without a fence or car between me and [Mr Curtin]) and feeling degraded by not being able to retaliate or respond, as we have been advised by the police*".

287. In cross-examination, Employee V confirmed that s/he knew that Mr Curtin was livestreaming the encounter. In relation to the comment that s/he was a "*freak*", Employee V accepted that Mr Curtin had been reading out comments that had been received from people watching the livestream. Mr Curtin put to Employee V that the context of the encounter was him making a livestream during which he was offering a general commentary about the First Claimant. Employee V replied:

> "… you intensified your livestream to intimidate me. You got very close to me. I do agree you did not touch me, but at one point you became very close and you did everything possible to slow my work down."

288. In questioning, Employee V accepted that s/he had carried out research on Mr Curtin and this had coloured the impression s/he had of him. Employee V considered Mr Curtin to be one of the main leaders of the camp, who advised the other protestors on their tactics. S/he described the protestors as seeming to be very fanatical in their beliefs. Employee V said s/he had carried out internet research on the tactics used by protestors. This appears to have generated in Employee V a significant fear based not so much on what the protestors had actually done, but what Employee V believed they might be capable of doing.

289. This is not a pleaded allegation of harassment against Mr Curtin, so I intend to state my conclusions on this incident quite shortly.

290. It was clear from his/her evidence as a whole that Employee V had been significantly affected by the protests at the Wyton Site and not just this encounter with Mr Curtin. S/he was concerned that s/he might become a target away from the Wyton Site and expressed a fear, shared by several employees, at what the protestors might be capable of doing. I do not doubt that the particular encounter with Mr Curtin did upset him/her. I accept his/her evidence as to how s/he felt and how it affected him/her, but, in part, his/her sense of concern appears to have been elevated by his research on Mr Curtin rather than anything that Mr Curtin had actually done, whether during the incident or before.

291. Employee V appeared to me also to lack insight. S/he did not appreciate why protestors called the workers, generically, "*puppy killers*". S/he approached the issue simply on the basis that, as s/he personally had not been involved in the killing of any of the animals, it was wrong for the allegation to be made. That is to take literally the words used, and to fail to recognise that this was a protest message directed at the First Claimant's operation at the Wyton Site.

292. It is very important that Employee V was aware that Mr Curtin was livestreaming the encounter. To that extent it should have been immediately apparent to Employee V that this was not a normal conversation; there was an obvious element of performance by Mr Curtin that Employee V should have appreciated. I think it is likely that Employee V failed to appreciate this because of his/her elevated anxiety towards Mr Curtin and fears of what he might do. Whilst I recognise that, subjectively, Employee V did feel intimidated by the encounter, there was a significant element to which these fears were self-generated rather than being based on what Mr Curtin actually did or any threat that he realistically presented. Objectively judged, I am not persuaded that Mr Curtin's behaviour crossed the line between conduct that is unattractive, even unreasonable, and conduct which is oppressive and unacceptable.

293. Ms Bolton has relied upon this incident not as part of the alleged course of conduct involving harassment but as demonstrating Mr Curtin's propensity towards harassing behaviour, and therefore, supportive of the need for some form of injunctive relief. I will come on to consider the harassment claim advanced against Mr Curtin by the Claimants in due course, but I can reject now that this incident provides any evidence of "propensity". Far from demonstrating a tendency to act in a particular way – and compared to the repetitive incidents of obstructing the vehicles of employees leaving the Wyton Site in the 'ritual' – the incident with Employee V was a one off. It was the product of a particular set of circumstances, that had a unique dynamic. The only thing that really links it to the other activities about which the Claimants complain is that it could be said to be loosely part of the broader protest activities. But the issues raised in this incident are wholly different.

19 August 2022

294. This act of alleged harassment by Mr Curtin concerns an incident that took place on 19 August 2022 outside the Wyton Site, near to the notice board erected by the First Claimant. Mr Manning describes the event in his witness statement as follows:

> "… as I and another member of staff was [sic] putting the notice back up following it needing to be cleaned due to it being spray painted (and to put up new documents) on 19 August 2022 from 14.04 onwards [Mr Curtin] approached me and my colleague to film us, and came very close to me, almost touching me, multiple times. If someone came that close to me outside of work, I would tell them to get out of my personal space."

295. The incident is captured on CCTV. The footage does not support Mr Manning's description of Mr Curtin's physical proximity. Mr Manning must have misremembered how closely Mr Curtin came to him during this incident. From the video footage, there is nothing intimidating or harassing in Mr Curtin's physical closeness. I appreciate that, particularly given the long period over which Mr Manning has been dealing with Mr Curtin (and the other protestors), Mr Manning regards Mr Curtin as an irritant whose presence is not appreciated. But, judged objectively, Mr Curtin's behaviour on this occasion does not pass the threshold to amount to harassment under the law.

296. In cross-examination, Ms Bolton put to Mr Curtin that this incident was "*another example… of you targeting the staff as part of your actions to persuade the staff to leave MBR Acres*". Mr Curtin rejected that. I would simply note, by way of finding, that the incident does not remotely support the Claimants' characterisation of it.

297. As this is not a pleaded allegation against Mr Curtin said to form part of the alleged course of conduct involving harassment, I can deal with this shortly. Objectively judged, what Mr Curtin did (as described by Mr Manning and shown on the footage) lacks the necessary qualities to amount to harassment. The incident has not been repeated, and therefore it sheds no light on whether, if the Claimants can prove a case of actual or threatened harassment against Mr Curtin, they can credibly suggest that this incident shows that there is need for an injunction to restrain future acts of harassment by Mr Curtin.

(3) Conclusion on the claim of harassment against Mr Curtin

298. As noted above ([108]), the harassment claim brought against Mr Curtin is brought under s.1(1A) PfHA.

299. In the section above, I have stated my conclusions in respect of each of the acts alleged by the Claimants to constitute a course of conduct involving harassment of those in the Second Claimant class. I have not found that any of them, individually, were serious enough to amount to harassment applying the principles I have identified (see [99]-[108] above).

300. Nevertheless, I must step back and consider whether, taken together, these incidents do reach the required threshold of seriousness to amount to harassment. I am quite satisfied that they do not.

301. Although, in the pre-injunction phase, the repeated surrounding of vehicles of those entering and leaving the Wyton Site, has an element of repetition that might supply the necessary element of oppression, the same element of repetition meant that those in the vehicles should, objectively, quickly have become used to it. The 'ritual' did not change much. Although it was inconvenient, caused delay, and upset some employees, the 'ritual' was predictable and could not have failed to have been understood to be an expression of protest. Objectively, it was not targeted at any individual employee. Several witnesses were more concerned about what the protestors *might* do, rather than what they actually did.

302. As I am dealing with the claim made against Mr Curtin, it is necessary to concentrate on the evidence about what Mr Curtin did, not the actions of other protestors. At its height, the Claimants' evidence demonstrates that Mr Curtin participated in several 'rituals' and he expressed his protest message. It goes no further than that. Ms Bolton, in her final submissions, placed no reliance on the content of what Mr Curtin shouted at the employees.

303. I am not persuaded that this crosses the threshold between unattractive or unreasonable behaviour to that which is oppressive and unacceptable. In a democratic society, the Court must set this threshold with the requirements of Articles 10 and 11 clearly in mind. It would be a serious interference with these rights if those wishing to protest and express strongly held views could be silenced by actual or threatened proceedings for harassment based on subjective claims by individuals that they were caused distress or alarm. The context for alleged harassment will always be very important. In terms of whether the conduct supplies the necessary element of oppression to constitute harassment, there is a big difference between an employee of the First Claimant having to encounter, and withstand, a protest message with which s/he is confronted on his/her

journey to/from work and having the same protest message shouted through his/her letterbox at home at 3am.

304. My findings mean that the Claimants have failed to demonstrate the element of the tort required under s.1(1A)(a). In consequence, the claim in harassment brought against Mr Curtin will be dismissed.

305. In any event, I would also have found that the Claimants had failed to demonstrate the element of the tort required under s.1(1A)(c).

306. As part of the harassment claim against Mr Curtin, it is the Claimants' case that Mr Curtin's intention behind, or the underlying purpose of, the alleged acts of harassment of the First Claimant's employees (and others in the class of the Second Claimant) was to get them to sever their connection with the First Claimant (for employees to leave, for suppliers to cease business etc). Mr Curtin rejected this allegation on the several occasions when it was put to him during his long cross-examination.

307. I shall give one example of the answers he gave when this allegation was put to him, in the context of the unpleaded allegation of harassment of Mr Manning on 7 September 2021 (see [283]-[285] above):

> Q: … it was an attempt to intimidate [Mr Manning] because you want to persuade the officers, staff, workers of MBR not to work there, in pursuit of your goal to get MBR shut down?
>
> A: The case against me – you haven't spent millions of pounds to stop me trying to persuade people. I'm allowed to persuade people. It's a legal right for me to --- it's what protesting is, persuasion.
>
> Q: Your attempt to persuade Mr Curtin is done by intimidation?
>
> A: It's absolutely not my intention the way to close down MBR is to get Mr Manning to leave and then the maintenance man. That's not – that has never been the thrust of what's driven me behind my campaigning. It's going to be a lot more complicated than that to shut MBR down."

308. I accept Mr Curtin's evidence. I am not concerned with the evidence of what other protestors have done. Mr Curtin, in the protest methods he adopted, did not pursue the sort of crude intimidation of the First Claimant's staff that Ms Bolton ascribed to him. He was quite candid in accepting that he wished to see the First Claimant shut down, but he was equally clear about the ways in which that objective could be achieved.

K: The evidence at trial against "Persons Unknown"

(1) Trespass on the Wyton Site

309. It would be disproportionate to set out the evidence of all the incidents where "Persons Unknown" have trespassed on the First Claimant's land prior to the grant of the Interim Injunction. By dint of the fact that the First Claimant owns the Driveway at the Wyton Site and part of the Access Land, hundreds of people have potentially been guilty of trespass on this land. Basically, anyone who seeks to use the entry phone outside the

main gate could only do so by standing on the Driveway. Without a defence of implied licence, each and every person doing so would be a potential trespasser.

310. In addition, and during the currency of the proceedings, the understanding of where the public highway ended, and the First Claimant's land began significantly changed (see [22]-[23] above). This means that the number of unidentified individuals who arguably have trespassed on the First Claimant's land whilst protesting increases yet further. At the time of this alleged trespass, neither the individuals standing on the Access Land nor the Claimants would have been aware that this was an arguable trespass.

311. The incidents of more serious trespass – i.e. people accessing the Wyton Site by going beyond the entry gates or over the perimeter fence are very few. There were significant trespass incidents on 19-20 June 2022. On the first occasion, 25 people broke into the Wyton Site. On 20 June 2022, an unknown number of unidentified individuals broke into the Wyton Site and stole five dogs. There were several arrests.

312. Since the grant of the Interim Injunction, and specifically the imposition of the Exclusion Zone, the incidents of alleged trespass have significantly reduced (although not eliminated entirely). The Claimants' evidence shows that there have been isolated incidents of "Persons Unknown" entering the Exclusion Zone and/or trespassing on the First Claimant's land. For example, on 13 July 2022, 2 unidentified individuals chained themselves to the gate of the Wyton Site, delaying the departure of a van carrying dogs, and on 24 September 2022, 4 unidentified individuals glued themselves to the gate to the Wyton Site. They were removed by the police.

(2) Trespass by drone flying over the Wyton Site

313. I have dealt above with the specific allegations made against Mr Curtin relating to drone flying. The Claimants also maintain a claim, and seek a *contra mundum* injunction to prevent drone flying over the Wyton Site.

314. In the Claimants' pleaded case, the claim is advanced as follows

> "[Persons Unknown have]**,** without the licence or consent of the First Claimant, committed acts of trespass by flying drones:
>
> (1) directly over the Wyton Site; and/or
>
> (2) below 150 metres over the airspace of the Wyton Site; and/or
>
> (3) within 150 metres of the Wyton Site; and/or
>
> (4) below 50 metres over the airspace of the Wyton Site; and/or
>
> (5) within 50 metres of the Wyton Site; and/or
>
> (6) at a height that was not reasonable and interfered with the First Claimant's ordinary and quiet use of the Wyton Site.

315. Although this pleading is difficult to follow, the Claimants' position, at the end of the trial, was that they sought a *contra mundum* injunction to prohibit "*fly[ing] a drone or other unmanned aerial vehicle at a height of less than 100 meters over the Wyton Site*".

316. The claim in respect of alleged drone trespass can only be maintained in respect of direct *overflying.* The First Claimant has no arguable right, under the law of trespass, to prevent drones flying other than directly over the Wyton Site. For drones flown directly over the Wyton Site, the question is at what height does flying a drone represent a trespass on the land below (see [62]-[73] above).

317. The Claimants allege in the Particulars of Claim that "Persons Unknown" have flown a drone over the Wyton Site on 25 and 27 July 2021, 25 and 27 August 2021, 17 March 2022, 6 and 16 June 2022. Save for the incident on 27 July 2021, the allegation made in the Particulars of Claim is that the drone was flown "*at a height that was below 150m and/or 50m*". On 27 July 2021, the Claimants allege that the drone was flown "*at a height that was below 50m*". Again, for a sense of scale, the 'Walkie Talkie' building at 20 Fenchurch Street in London is 160m tall, with 38 floors. I have already summarised the Claimants' evidence about general drone usage (see [260] above).

318. In her witness statement of 19 March 2024, Ms Pressick provided some further evidence of drone use by "Persons Unknown":

> "Drones flown by the protestors are known to have crash landed on MBR's land on 5 occasions (10 May 2022, 12 May 2022, 3 July 2022, 3 February 2023, and 19 September 2023). This is indicative of drones being flown outside their operational parameters and/or by unsafe piloting. Where the drone has been recovered by the security team, it has been handed over to the police.
>
> I asked the security team to consider drone usage over a 5-month period, and this was closely monitored between 1 July and 30 November 2023. This is something that we had not done consistently previously. Staff tried to monitor use of the drone, noting days it was flown and the duration of the flight time over the Wyton Site. In that 5-month period, the security noted that at least 184 drone flights took place over the Wyton site, with an overall flight duration of at least 2,097 minutes (nearly 35 hours). I assume, but do not know, that the protestors filmed and recorded throughout each flight. During this period, there has been a notable increase in drone usage. There have been more drone flights, and the flight time appears to have increased over this period.
>
> In the period looked at in detail (1 July to 30 November 2023), the security team have tried to identify the protestors that fly the drone. Of the 89 flights noted by the security team, it has not been possible to identify a drone pilot in respect of 59 flights (this is equivalent to around 66% of the observed flights). Mr Curtin has been identified as the drone pilot on 18 occasions (or around 20% of the observed flights). The security team have identified a protestor known as [name redacted] as being the drone pilot on 12 occasions (or roughly 13.5% of the observed flights). It is generally understood from previous observations, and the footage uploaded to the Camp Beagle Facebook page, that Mr Curtin is the primary drone pilot…"

319. The evidence that Ms Pressick has included about Mr Curtin's drone flying I will not take into account in the claim against him. The opportunity to file further evidence was limited to the Claimants' claim for a *contra mundum* 'newcomer' injunction. It was not

an opportunity to supplement the evidence against Mr Curtin. The evidence against him was presented at the trial. Even had I taken this evidence into account, it would not have made any difference to my conclusions in relation to this aspect of the claim against Mr Curtin. He does not deny flying a drone. His evidence is that he flies it no lower than 50 metres. Ms Pressick's further evidence therefore takes the claim against him no further.

320. The evidence satisfies me that there is a risk that "Persons Unknown" may in the future fly drones over the Wyton Site. However, beyond the particular evidence of drone having crashed, the Claimants have failed to adduce reliable evidence as to the height at which any drone has been flown (or is likely in the future to be flown). Without that, it is impossible to conclude that there is a credible risk of trespass by drone flying.

(3) Threatened trespass at the B&K Site

321. In her witness statement, Ms Pressick included a section headed "*Protest activities at the B&K Hull Site*". She recognises, immediately, that the scale of protest activities has been much reduced at the B&K Site. Between June-July 2021, staff at the B&K Site received what Ms Pressick describes as "*threatening calls*" and there was a protest event held at the B&K Site on 15 August 2021 which was attended by some 40 people. The Claimants make no complaint about this demonstration. Much of Ms Pressick's evidence concerning the B&K Site was considered in the Interim Injunction Judgment (see [22]-[23]). At that stage, the evidence was being advanced in support of a claim for an interim injunction to restrain harassment. I refused to grant any injunction on that basis: [129(4)]. The Claimants have adduced no evidence that there has been any trespass at the B&K Site. Ms Pressick states in her evidence:

> "[The Third Claimant], its staff and myself apprehend that the protestors may focus, or refocus, on the B&K Site. Given that [the First and Third Claimants] are sister companies, there would be real benefit in the final injunction applying to both sites so that injunctive relief over the Wyton Site does not simply move the acts of unlawful protest over to the B&K Hull Site…
>
> [The Third Claimant] continues to receive nuisance calls. I understand from the staff on the switch board that sometimes the callers are silent and, on occasion, they express a negative view of the work that B&K does. It is therefore clear that the B&K Hull Site is still on the radar of animal rights protestors, and that it is reasonable for the Claimants to apprehend that acts of protest similar to those occurring at the Wyton Site may occur at the B&K Hull Site."

322. This evidence is very tenuous and involves a significant leap between the willingness of unidentified people to register displeasure with the activities of the Third Claimant in messages and calls and a real risk that, without an injunction, "Persons Unknown" will trespass upon the B&K Site. As I have noted, there is no evidence at anyone has trespassed at the B&K Site since the protests began in the summer of 2021. On the evidence, I am not satisfied that there is a credible threat of trespass at the B&K Site by "Persons Unknown".

(4) Interference with the right of access to the highway

323. Again, it would be disproportionate to identify all the occasions on which vehicles entering or leaving the Wyton Site had been obstructed prior to the grant of the Interim

Injunction. The 'ritual' was a regular and, at the height of the protests, almost daily occurrence. This inevitably meant that vehicles were obstructed getting from the Wyton Site to the highway.

324. On the evidence, I am satisfied that there is a real risk that "Persons Unknown" who are protesting about the activities of the First Claimant will engage in the obstruction of vehicles as they enter or leave the Wyton Site.

(5) Public nuisance by obstruction of the highway

325. Before the grant of the Interim Injunction, some large-scale demonstrations took place outside the Wyton Site. There were also some further isolated incidents of significant obstruction of the highway, primarily targeted at those going to or from the Wyton Site. The key events have been as follows:

(1) On 9 July 2021, a demonstration was attended by between 150-200 protestors. It lasted for nearly 2 hours.

(2) On 1 August 2021, there was another large-scale demonstration, numbering up to 260 protestors. The Claimants allege that the police struggled to contain the protestors and that reinforcements were required. Four protestors were arrested.

(3) On 13 August 2021, a convoy of staff cars was intercepted on the main carriageway around 70 metres from the entrance to the Wyton Site. It took 40 minutes for the vehicles to travel along the highway and to enter the Wyton Site.

(4) On 15 August 2021, approximately 250 people attended a large demonstration (see [192]-[198] above).

(5) On 1 July 2023, approximately 50 people attended the two-year anniversary of Camp Beagle. Ms Pressick described this as "*a relatively quiet event considering its significance*". Although she identified several alleged incidents of breach of the Interim Injunction (trespass and entry into the Exclusion Zone), there was no large scale obstruction of the highway.

326. There was also a significant protest event, on 20 November 2021, after the grant of the Interim Injunction. On that occasion, there was a significant obstruction of the highway. This incident was one of those included in the First Contempt Application, and it led subsequently to the variation of the Interim Injunction (see [39]-[40] above).

327. Whether any of these events amounted to a public nuisance is difficult to determine on the evidence. Perhaps because of their belief that any obstruction of the highway was a public nuisance, the Claimants have not provided evidence of the wider impact of the obstruction of the carriageway in each of the incidents I have identified above. On the evidence I have I can, I think, properly draw the inference that the incident on 15 August 2021, in terms of the length of the obstruction of the highway and its likely community impact, was a public nuisance. But the other incidents are not as clear cut, and, on the evidence, the Claimants have not proved that they were a public nuisance.

328. It is also important to note that in each of these incidents there was a significant police presence. In none of the incidents did the police seek to intervene or use their powers

to clear the obstruction of the highway. It appears to me that, in the incident on 15 August 2021, the police had closed the road. I am not criticising the decisions of the police in these incidents. It is an important part of policing demonstrations for police officers (both individual officers on the ground and senior officers in their strategic decision-making) to assess the extent to which the police need to use their undoubted powers to control what are essentially public order issues.

329. In summary, the evidence shows that this is some risk, perhaps diminished since the height of the demonstrations in 2021, that "Persons Unknown" will congregate in such numbers outside the Wyton Site that they cause a public nuisance. I will deal below whether the Court's response to that risk, in these proceedings, should be to grant any form of *contra mundum* order.

L: Evidence from the police

330. At an earlier stage of the proceedings, evidence was provided to the Court by a senior police officer, Superintendent Sissons, who was responsible for policing the protest activities at the Wyton Site. I set out this evidence in the Second Injunction Variation Judgment on 22 December 2022 [43]-[51] and Appendix.

331. Based in part on Superintendent Sissons evidence, I declined to vary the Interim Injunction:

> [76] … unless the Claimants can demonstrate a clear case for an injunction, in my judgment it is better to leave any alleged wrongdoing to be dealt with by the police. Officers on the ground are much better placed to make the difficult decisions as to the balancing of the competing rights (see Injunction Judgment [85] and [96]).
>
> [77] The evidence from Superintendent Sissons shows that this is precisely what the police are doing. There is no complaint from the Claimants that the police are failing in their duties or that the targeted measures taken by the police have been ineffective. Arrests are being made of some protestors, including it appears those engaged on protests at Impex, and several people have been charged. Appropriate use of bail conditions or, upon conviction, restraining orders will restrict further unlawful acts of individuals more effectively and on a targeted basis.
>
> [78] Arrests for offences under s.14 Public Order Act 1986 suggest that the police have already utilised their powers to impose conditions on public assemblies. I appreciate that the Claimants contend that, notwithstanding the efforts of the police, some people are continuing to break the law. The issue for the Claimants is that, before meaningful relief can be granted by way of civil injunction, it is necessary to identify the alleged wrongdoers so that they can be joined to the proceedings.

332. The Claimants' evidence at trial has not demonstrated that the police are failing to respond appropriately to any threats posed by the protestors. In my judgment, and as I have observed before, proportionate use, by police officers making decisions based on an assessment 'on-the-ground', of the powers available to them, adjudged to be necessary and targeted at particular individuals, is immeasurably more likely to strike the proper balance between the demonstrators' rights of freedom of

expression/assembly and the legitimate rights of others, than a Court attempting to frame a civil injunction prospectively against unknown "protestors".

M: *Wolverhampton* and its impact on this case

(1) Background

333. The context of the litigation that gave rise to the Supreme Court decision in ***Wolverhampton*** was a preponderance of cases in which Courts had granted injunctions against "Persons Unknown" (and in at least one case a *contra mundum* injunction) to restrain trespass on the land of local authorities by Gypsies and Travellers. The facts are set out in the first instance decision: ***LB Barking & Dagenham -v- Persons Unknown* [2021] EWHC 1201 (QB)**. Four issues of principle were resolved by me, the most significant being whether a "final injunction" against "Persons Unknown" could bind people who were not parties to the action at the date the injunction was granted (the so-called 'newcomers').

334. Based on established authorities, principally the decisions of the Supreme Court in ***Cameron -v- Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471** and the Court of Appeal in ***Canada Goose UK Retail Ltd -v- Persons Unknown* [2020] 1 WLR 2802**, I decided that it could not: [161]-[189]. I reached that conclusion based on the application of conventional principles of civil litigation and the established limits of those who were made subject to the Court's orders.

335. I also considered the question of whether *contra mundum* injunctions might provide an answer for restraining the actions of 'newcomers', but held that *contra mundum* orders were wholly exceptional and were reserved for cases (like those decided under the *Venables* jurisdiction) where the Court was effectively compelled to grant a *contra mundum* order to avoid a breach of s.6 Human Rights Act 1998: [224]-[238].

(2) The Court of Appeal decision

336. The Court of Appeal reversed my decision: [2023] QB 295. Disapproving the previous Court of Appeal decision in ***Canada Goose*** and applying ***South Cambridgeshire District Council -v- Gammell* [2006] 1 WLR 658**, the Court of Appeal held that that s.37 Senior Courts Act 1981 gave the court power to grant a final injunction that bound individuals who were not parties to the proceedings at the date when the injunction was granted. The Court held that there was no difference in jurisdictional terms between an interim and a final injunction, particularly in the context of those granted against "Persons Unknown". Where an injunction was granted, whether on an interim or a final basis, the court retained the right to supervise and enforce that injunction, including bringing before the court parties violating the injunction who thereby made themselves parties to the proceedings.

(3) The Supreme Court decision

337. Despite there being no defendants to appeal the Court of Appeal's decision, the Supreme Court nevertheless heard an appeal brought by the interveners.

338. The appeal from the Court of Appeal's decision was dismissed, but the Supreme Court disagreed with the Court of Appeal's reasoning. The Supreme Court held that the Court

had jurisdiction to grant a *contra mundum* injunction that restrained newcomers. The judgment concluded with this summary of the decision [238]:

> "(i) The court has jurisdiction (in the sense of power) to grant an injunction against 'newcomers', that is, persons who at the time of the grant of the injunction are neither defendants nor identifiable, and who are described in the order only as persons unknown. The injunction may be granted on an interim or final basis, necessarily on an application without notice.
>
> (ii) Such an injunction (a 'newcomer injunction') will be effective to bind anyone who has notice of it while it remains in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action. It is inherently an order with effect *contra mundum*, and is not to be justified on the basis that those who disobey it automatically become defendants.
>
> (iii) In deciding whether to grant a newcomer injunction and, if so, upon what terms, the court will be guided by principles of justice and equity and, in particular:
>
> (a) That equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue.
>
> (b) That equity looks to the substance rather than to the form.
>
> (c) That equity takes an essentially flexible approach to the formulation of a remedy.
>
> (d) That equity has not been constrained by hard rules or procedure in fashioning a remedy to suit new circumstances.
>
> (e) These principles may be discerned in action in the remarkable development of the injunction as a remedy during the last 50 years.
>
> (iv) In deciding whether to grant a newcomer injunction, the application of those principles in the context of trespass and breach of planning control by Travellers will be likely to require an applicant:
>
> (a) to demonstrate a compelling need for the protection of civil rights or the enforcement of public law not adequately met by any other remedies (including statutory remedies) available to the applicant.
>
> (b) to build into the application and into the order sought procedural protection for the rights (including Convention rights) of the newcomers affected by the order, sufficient to overcome the potential for injustice arising from the fact that, as against newcomers, the application will necessarily be made without notice to them. Those protections are likely to include advertisement of an intended application so as to alert potentially affected Travellers and bodies which may be able to represent their interests at the hearing of the application, full provision for liberty to persons affected to apply to vary or discharge the order without having to show a change of

circumstances, together with temporal and geographical limits on the scope of the order so as to ensure that it is proportional to the rights and interests sought to be protected.

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

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

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

(a) The *Gammell* principle disapproved as the basis for newcomer injunctions

339. As noted in paragraph (ii) of the Supreme Court's summary, the 'newcomer' injunction it recognised was a *contra mundum* order. In disagreement with the Court of Appeal, the Supreme Court disapproved of the previous basis upon which 'newcomer' injunctions had been granted using the principle from ***Gammell*** to treat 'newcomers', by their conduct, as having become defendants to the proceedings and bound to comply with the injunction: [127]-[132].

340. Ms Bolton submitted that the species of injunction newly sanctioned by the Supreme Court was "*analogous*" to a *contra mundum* injunction. Whilst the Supreme Court did use the word "*analogous*" in discussion of 'newcomer' injunctions ([132]), the new form of order that it ultimately approved is not analogous to a *contra mundum* order; it *is* a *contra mundum* order. That is plain from [238(ii)].

(b) The key features of, and justification for, a *contra mundum* 'newcomer' injunction

341. The Supreme Court identified the "*distinguishing features*" of a 'newcomer' injunction as follows [143]:

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

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

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

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

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

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

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

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

342. Paragraph (iii) has particular importance in relation to some of the torts that are relied upon in relation to protest cases; e.g. public nuisance arising from an obstruction of the highway, interference with the right of access to the highway and harassment.

343. The Supreme Court was also very clear that this new form of *contra mundum* 'newcomer' injunction – "*a novel exercise of an equitable discretionary power*" – was only likely to be justified in the following circumstances [167]:

"(i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other

statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries.

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

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

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

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

344. The Supreme Court described the need to demonstrate a "*compelling justification*" for the order sought as an "*overarching principle that must guide the court at all stages of its consideration*" of such orders: [188].

(c) Protest cases

345. Necessarily, the factors identified by the Supreme Court were directed at the particular issue of unlawful encampments of Gypsies and Travellers on local authority land. So far as their potential application of *contra mundum* 'newcomer' injunctions in protest cases, the Supreme Court said only this:

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

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

346. Whilst the matters addressed by the Supreme Court were specific to the particular context of Gypsies and Travellers' encampments (see [190]-[217]), what emerges is that, before *contra mundum* 'newcomer' injunctions are granted, the Court must consider "*whether the [applicant] has exhausted all reasonable alternatives to the grant of an injunction*". Of course, in the context of the problems of unlawful encampments of land, a local authority has a range of other options available to it – ranging from byelaws, public space protection orders to directions made under s.77 Criminal Justice and Public Order Act 1994.

347. Private litigants, such as the Claimants in this case, do not have access to similar powers. The fact that an applicant for a *contra mundum* 'newcomer' injunction can demonstrate infringements of the civil law does not mean that they can have immediate recourse to a *contra mundum* 'newcomer' injunction. Consideration of both whether the applicant has demonstrated a compelling justification for the remedy and whether it is just and convenient to grant such an order will require the Court to consider what other (and potentially better) solutions may be available, particularly in the context of protests.

348. In the context of protest cases, the Court is entitled to and must have regard to (a) the extensive powers the police have to deal with protest activities, including, from 28 June 2022, the new statutory offence of public nuisance in s.78 Police, Crime, Sentencing and Courts Act 2022 (see [81] above); and (in relation to potential exclusion zones) (b) the powers of local authorities to impose public space protection orders under the Anti-social Behaviour, Crime and Policing Act 2014 (see ***Wolverhampton*** [204]).

349. In ***Canada Goose -v- Persons Unknown*** **[2020] WLR 417**, a protest case, I said this:

> [100] The evidence in the current case shows that there have been few arrests by the police of demonstrators prior to the grant of the injunction. I was told at the hearing that the Claimants know of no prosecutions of any protestors. Evidence before Teare J suggested that the cost of policing the demonstrations was around £108,000. Of course, individuals and companies are entitled to pursue such private law remedies as are available to them and to seek interim injunctions where appropriate, but this case (and ***Ineos*** and ***Astellas*** – see [119] below) perhaps demonstrate the

difficulties and limits of trying to fashion civil injunctions into quasi-public order restrictions.

[101] When considering whether it is *necessary* to impose civil injunctions (even if they can be precisely defined and properly limited to prohibit only unlawful conduct) the Court must be entitled to look at the overall picture and the extent to which the law provides other remedies that may be equally if not more effective.

[102] The police play an essential and important role in striking the appropriate balance between facilitating lawful demonstration and preventing activities that are unlawful. Consistent with the proper respect for the Article 10/11 rights (see [99(viii)] above), it is only those engaged upon or intent on violence (or other criminal activity) who are liable to arrest and removal, leaving others to demonstrate peacefully. The police have available an extensive array of resources and powers to keep protests within lawful bounds, including:

i) their presence; often itself a deterrent to unlawful activities;

ii) the power of arrest, in particular for breach of the peace, harassment, public order offences (under Public Order Act 1986), obstruction of the highway (see [107] below), criminal damage, aggravated trespass (contrary to s.68 Criminal Justice and Public Order Act 1994) and assault;

iii) the use of dispersal powers under Part 3 of the Anti-social Behaviour Crime and Policing Act 2014;

iv) the imposition of conditions on public assembly under s.14 Public Order Act 1986; and/or

v) an application for a prohibition of trespassory assembly under s.14A Public Order Act 1986.

[103] Selected and proportionate use of these powers, adjudged to be necessary and targeted at particular individuals, by police officers making decisions based on an assessment 'on-the-ground', is immeasurably more likely to strike the proper balance between the demonstrators' rights of freedom of expression/assembly and the legitimate rights of others, than a Court attempting to frame a civil injunction prospectively against unknown "protestors".

[104] Parliament has also provided local authorities powers to make public space protection orders which can restrict the right to demonstrate. Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014 empowers local authorities to make such orders if the conditions in s.59 are met: see ***Dulgheriu -v- London Borough of Ealing*** **[2020] 1 WLR 609**.

350. The Court of Appeal in ***Canada Goose*** **[2020] 1 WLR 2802** [93] agreed:

"… Canada Goose's problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a

> continually fluctuating body of protestors. It wishes to use remedies in private litigation in effect to prevent what is sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protestors. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, ***Dulgheriu -v- Ealing London Borough Council*** **[2020] 1 WLR 609**. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it."

351. Although the Supreme Court in ***Wolverhampton*** disagreed with the Court of Appeal's decision in ***Canada Goose*** (see [133]-[138]), that was on the ground that Court of Appeal was wrong to find that a final injunction could not bind 'newcomers'. The Supreme Court did not specifically address – or contradict – the Court of Appeal's identification of the problems of attempting to use civil injunctions to control public protest. The decision found that *contra mundum* 'newcomer' injunctions can, as a matter of principle, be granted in protest cases, but says nothing (beyond what is noted in [235]-[236]) about the particular issues that arise in such cases, other than to acknowledge the different issues that will call for decision and that, with all *contra mundum* 'newcomer' injunctions, a compelling justification for the order must be demonstrated.

(d) The need to identify the prohibited acts clearly in the terms of any injunction

352. The Supreme Court set out the requirements of any *contra mundum* 'newcomer' injunction:

> [222] It is always important that an injunction spells out clearly and in everyday terms the full extent of the acts it prohibits, and this is particularly so where it is sought against persons unknown, including newcomers. The terms of the injunction – and therefore the prohibited acts – must correspond as closely as possible to the actual or threatened unlawful conduct. Further, the order should extend no further than the minimum necessary to achieve the purpose for which it was granted; and the terms of the order must be sufficiently clear and precise to enable persons affected by it to know what they must not do.
>
> [223] Further, if and in so far as the authority seeks to enjoin any conduct which is lawful viewed on its own, this must also be made absolutely clear, and the authority must be prepared to satisfy the court that there is no other more proportionate way of protecting its rights or those of others.
>
> [224] It follows but we would nevertheless emphasise that the prohibited acts should not be described in terms of a legal cause of action, such as trespass or nuisance, unless this is unavoidable. They should be defined, so far as

> possible, in non-technical and readily comprehensible language which a person served with or given notice of the order is capable of understanding without recourse to professional legal advisers.

(4) Other consequences of *contra mundum* litigation

353. There are further implications of the move to *contra mundum* orders. In despatching the ***Gammell*** principle as the jurisdictional basis to bind newcomers, the Supreme Court did away with the notion that the people bound by a 'newcomer' injunction are parties to the litigation. They are not bound as a party; they are bound because the injunction is framed as a prohibition generally on the identified act(s) that, subject to notice of the injunction, binds everyone: "*anyone who knowingly breaches the injunction is liable to be held in contempt, whether or not they have been served with the proceedings*": [132].

354. The Supreme Court did not really address the issue of service of a Claim Form in a wholly *contra mundum* claim (i.e. one in which there are no named defendants). All that was said was [56]:

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

355. In litigation brought solely *contra mundum* there can be no expectation or requirement to serve the Claim Form on the putative defendant. In *contra mundum* litigation, "*there is, in reality no defendant*": ***Wolverhampton*** [115]. There is therefore no one upon whom the Claim Form can be served. If, exceptionally, the Court is satisfied that it is appropriate to proceed to without a defendant, the Court can dispense with the service of the Claim Form under CPR 6.16. That was the course adopted in ***In the matter of the persons formerly known as Winch*** **[2021] EMLR 20** [31].

356. The absence of any defendant(s) also means that, whilst the Court must ensure that the terms of any *contra mundum* injunction are (a) clear as to what conduct is prohibited (see [352] above), and (b) compellingly shown to be necessary, there is now no need carefully to define the category of "Persons Unknown" who are to be defendants to the claim; there are no defendants in such a claim.

357. I note that the Supreme Court said the following about the description of those who are to be restrained by a *contra mundum* 'newcomer' injunction:

> [132] … Although the persons enjoined by a newcomer injunction should be described as precisely as may be possible in the circumstances, they potentially embrace the whole of humanity…
>
> [221] The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in ***Cameron*** **[2019] 1 WLR 1471**, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these

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

358. Of course, every case will have to be decided on its facts. In a case of unlawful encampment on land, it may very well be possible to identify, if not to name, (a) those currently on the land; (b) those immediately threatening to move onto the land; and (c) newcomers who might at some future point move onto the land. I read the Supreme Court's guidance as a reminder that the fact that the injunction sought includes a *contra mundum* 'newcomer' injunction against (c), does not relieve the local authority for taking such steps as are available to identify, and serve the Claim Form upon, those in categories (a) and (b) (if necessary, by an alternative service order).

359. But there can be no question of service of a Claim Form on those in category (c). These people cannot be identified. They cannot be served, not even under the terms of an alternative service order. As against them, the *contra mundum* 'newcomer' injunction is made, necessarily, without notice. For persons in category (c), the Supreme Court regarded their interests adequately safeguarded by their ability to apply to vary or discharge the order.

360. Ms Bolton had advanced, as an alternative to the *contra mundum* order, what might be regarded as the pre-***Wolverhampton*** form of "Persons Unknown" injunction. Reflecting the need to identify, clearly, the categories of "Persons Unknown" defendants (c.f. ***Canada Goose*** [82(4)]), the injunction sought restrain particular categories of defendants. Following ***Wolverhampton***, this is no longer necessary, nor appropriate for *contra mundum* 'newcomer' injunctions. Indeed, one benefit of the ***Wolverhampton*** decision is that the form of the injunction order, if granted, can be much simplified. The experience that I have gained in this case suggests that, if there is an opportunity to simplify injunction orders directed at those who are not parties to the proceedings, it should be grasped.

361. The form of the Interim Injunction Order that has been in force since 2 August 2022 lists a total of 33 Defendants, of which there are 10 separate categories of "Persons Unknown" (the various descriptions can be seen in Annex 1). It is not until page 4 of the 8-page document that a person reading it would get to the actual terms of the injunction. Even then, s/he would have to refer back to the defined categories of "Persons Unknown" to understand (a) whether s/he now fell (or, if s/he did an act prohibited by the injunction, would fall) within this category; and, if so (b) what s/he was therefore prohibited from doing. During these proceedings, I have become increasingly concerned that the Interim Injunction Order in this case has become an impenetrable legal thicket, likely to be beyond the comprehension of most ordinary people. That was an unavoidable product of the complicated legal basis on which "Persons Unknown" injunctions were granted. Courts should always strive to ensure that its orders are clear, but in a case concerning protest, it is especially important to avoid uncertainty as to what is and is not permitted. Such uncertainty is likely to chill lawful exercise of important rights under Articles 10 and 11.

362. Now that the Supreme Court has despatched the legal thicket, in favour of *contra mundum* 'newcomer' injunctions, all of these historic complications can (and in my view should) be swept away. I would also suggest, and it will be the practice I shall adopt in this case, that the *contra mundum* 'newcomer' injunction should be contained in a separate order from any injunction made against parties to the litigation. In that way, the terms of the *contra mundum* 'newcomer' injunction can state, clearly and simply, what acts the Court is prohibiting by *anyone*. It is particularly important that injunctions that place limits on a citizen's right to demonstrate must be spelled out in clear and readily comprehensible terms so that there is no inadvertent chilling effect.

(5) *Contra mundum* injunctions as a form of legislation?

363. In ***LB Barking & Dagenham*** (the first instance decision in ***Wolverhampton***), I had expressed the concern that, by granting *contra mundum* injunctions, the Court risked moving from its constitutionally legitimate role of resolving disputes raised by the parties before it, to an arguably constitutionally illegitimate role of using injunctive powers effectively to legislate to prohibit behaviour generally [260]:

> "If these established principles and the limits they impose on civil litigation are not observed, the Court risks moving from its proper role in adjudicating upon disputes between parties into, effectively, legislating to prohibit behaviour generally by use of a combination of injunctions and the Court's powers of enforcement. There may be good arguments - and Mr Anderson QC's submissions made points that could have been made by all of the Cohort Claimants - as to why such behaviour ought to be prohibited, but it is not the job of the Court, through civil injunctions granted *contra mundum*, to venture into that territory. Stepping back, the injunction that Wolverhampton was granted, with a power of arrest attached, effectively achieved the criminalisation of trespass on the 60 or so sites covered by the injunction. In a democracy, legislation is the exclusive province of elected representatives. A court operating in an adversarial system of civil litigation simply does not have procedures that are well-suited or designed to prohibit, by injunction, conduct generally…"

364. The view the Court of Appeal took as to the availability of "Persons Unknown" injunctions meant that the point did not arise.

365. The appellants in the Supreme Court did argue that *contra mundum* orders were objectionable on the ground that they were, effectively, a form of legislation (see [154]). The Supreme Court rejected the argument:

> [169] We have already mentioned the objection that an injunction of this type looks more like a species of local law than an in personam remedy between civil litigants. It is said that the courts have neither the skills, the capacity for consultation nor the democratic credentials for making what is in substance legislation binding everyone. In other words, the courts are acting outside their proper constitutional role and are making what are, in effect, local laws. The more appropriate response, it is argued, is for local authorities to use their powers to make byelaws or to exercise their other statutory powers to intervene.
>
> [170] We do not accept that the granting of injunctions of this kind is constitutionally improper. In so far as the local authorities are seeking to

> prevent the commission of civil wrongs such as trespass, they are entitled to apply to the civil courts for any relief allowed by law. In particular, they are entitled to invoke the equitable jurisdiction of the court so as to obtain an injunction against potential trespassers. For the reasons we have explained, courts have jurisdiction to make such orders against persons who are not parties to the action, i.e. newcomers. In so far as the local authorities are seeking to prevent breaches of public law, including planning law and the law relating to highways, they are empowered to seek injunctions by statutory provisions such as those mentioned in para 45 above. They can accordingly invoke the equitable jurisdiction of the court, which extends, as we have explained, to the granting of newcomer injunctions. The possibility of an alternative non-judicial remedy does not deprive the courts of jurisdiction.
>
> [171] Although we reject the constitutional objection, we accept that the availability of non-judicial remedies, such as the making of byelaws and the exercise of other statutory powers, may bear on questions (i) and (v) in para 167 above: that is to say, whether there is a compelling need for an injunction, and whether it is, on the facts, just and convenient to grant one…

366. I note that in ***Valero Ltd -v- Persons Unknown*** **[2024] EWHC 124 (KB)** [57]**,** Ritchie J described *contra mundum* injunctions as "*a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future*".

367. As a first instance Judge, my obligation is clear. I must faithfully follow and apply the law as declared by the Supreme Court. But I remain troubled by the Courts seeking to set the boundaries upon lawful protest by *contra mundum* injunctions. I remain concerned that, constitutionally, the prohibition of conduct by citizens generally, with the threat of punishment (including imprisonment) for contravention, ought to be a matter for Parliament.

368. Prior to ***Wolverhampton***, the grant of *contra mundum* injunctions was limited to exceptional cases where the court was "*driven in each case to make the order by a perception that the risk to the claimants' Convention rights placed it under a positive duty to act*": ***Wolverhampton*** [110]. As that duty was imposed by Parliament, by s.6 Human Rights Act 1998, there could be no suggestion that by granting the order, the Court was arrogating to itself a power of legislation that was exclusively the province of Parliament.

369. As recognised by Richie J in ***Valero***, the reality of the imposition of *contra mundum* injunction, with the threat of sanctions including fines and imprisonment for breach, is that it is akin to the creation of a criminal offence. It is a prohibition on conduct generally that has been imposed by a Court, not by the democratic process in Parliament.

370. Further, a *contra mundum* injunction is a prohibition, the alleged breach of which has none of the safeguards that are present in the criminal justice process. If a protestor is alleged to have broken the criminal law, unless exceptionally the prosecution is brought privately, it falls to the Crown Prosecution Service to decide whether to institute criminal proceedings against the protestor and to decide what charge(s) s/he should face. That involves the independent assessment of the evidence and an independent

decision whether it is in the public interest to prosecute. Those important safeguards – in addition to the safeguards in the substantive criminal law – ensure that in our society proper respect is afforded to protest rights under Article 10/11. Even if a private prosecution were brought in a protest case, the Director of Public Prosecutions has the power to take over and discontinue the prosecution.

371. In protest cases, there are additional reasons to be concerned at the risk of abuse. The Court may well grant the injunction (and its enforcement) to a private individual, often the very person against whom the protest is directed.

372. These concerns are not speculative. As the experience in this case has demonstrated, the risks of abuse are real. In the Second Contempt Application, the Claimants actively sought the imposition of a sanction on Ms McGivern, a solicitor, as a "Person Unknown", for behaviour that was either not a civil wrong at all, or a breach of the civil law that was utterly trivial. Yet, because of the terms of the Interim Injunction Order, and the imposition of the Exclusion Zone, the Claimants were able to pursue contempt application against her leading to a 2-day hearing. In the contempt application against Mr Curtin – the Third Contempt Application – the Claimants brought an application that sought to punish Mr Curtin for lending his footwear to a person in a dinosaur costume whom Mr Curtin was alleged to have encouraged to enter the Exclusion Zone. Such a claim would be laughable, if it did not have such serious implications. Apart from Ground 2, the other grounds advanced against Mr Curtin were trivial. None of actions alleged against Mr Curtin amounted to civil wrongs.

373. Had the Crown Prosecution Service been responsible for deciding whether to bring criminal proceedings against Ms McGivern or Mr Curtin for causing or authorising a person in a dinosaur costume to enter the Exclusion Zone, I am confident that a decision would have been made that it was not in the public interest to prosecute. The Claimants, however, are not subject to any analogous requirement to consider whether it is necessary or proportionate to bring a contempt application. On two separate occasions, therefore, they have shown themselves incapable of exercising any sense of proportionality in launching and pursuing the contempt applications in respect of alleged breaches of the Interim Injunction. As a result of the Second Contempt Application, the Court imposed the Contempt Application Permission Requirement (see [49] above) to protect against the abuse of using the Interim Injunction as a weapon.

374. All but one of the allegations brought in the Third Contempt Application against Mr Curtin were trivial. This immediately raises the question as to why the Claimants would pursue trivial breaches of the Interim Injunction. As the Claimants have not had an opportunity to address this specific issue, I shall leave its final resolution, if necessary, to the hearing at which this judgment will be handed down and the Court makes all consequential orders.

M: The relief sought by the Claimants

(1) Against Mr Curtin

375. The Claimants do not seek damages against Mr Curtin.

376. The terms of the final injunction order sought by the Claimants against Mr Curtin are set out in Annex 2 to the judgment.

(2) *Contra mundum*

377. The terms of the *contra mundum* 'newcomer' injunction sought by the Claimants are set out in Annex 3 to the judgment.

O: Decision

378. In this final section of the judgment, I will set out my decision. The final form of the orders that will be made consequent upon the judgment will be finalised at the hearing at which the judgment is handed down. As the only represented parties, I invite the Claimants' team to provide the first draft. The orders that the Court ultimately makes will be posted on the Judiciary website: www.judiciary.uk.

(1) The claim against Mr Curtin

379. Based on my factual findings, the First Claimant is entitled to judgment against Mr Curtin in respect of its claims against him for (1) trespass on the physical land at the Wyton Site; and (2) interference with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site.

380. The First Claimant's claims against Mr Curtin for public nuisance, harassment and trespass by drone flying are dismissed. The claims of the remaining Claimants against Mr Curtin will be dismissed.

381. Consequent upon the judgment that the First Claimant has been granted, I am satisfied that it is necessary that an injunction should be granted to restrain Mr Curtin from (a) any physical trespass on the land owned by the First Claimant at the Wyton Site; and (b) any direct and deliberate obstruction of vehicles entering or leaving the Wyton Site. The injunction will not include any restrictions in relation to the B&K Site.

382. I have considered carefully whether to continue the prohibition on Mr Curtin's entering the Exclusion Zone. I have concluded that I should not. The Exclusion Zone was a temporary expedient to resolve the flashpoint of vehicles being surrounded. The objectionable, and unlawful, conduct is obstructing vehicles entering or leaving the Wyton Site. The injunction should target that behaviour directly. Continuation of the Exclusion Zone would subject Mr Curtin to restrictions on activities that are not unlawful, for example if Mr Curtin wanted simply to stand on that part of the grass verge that is presently within the Exclusion Zone. The Claimants have not demonstrated that such a restriction is the only way of protecting their legitimate interests. Mr Curtin should not be exposed to the risk of proceedings for contempt by doing acts that are not themselves a civil wrong.

383. The restriction on obstructing vehicles will be drafted in a way that is clear and specific. It will not include the word "*approach*" or the concept of "*slowing*" a vehicle. Approaching a vehicle in a way that is not an obstruction of that vehicle is not an act that the First Claimant is entitled to restrain. The incident on 11 July 2022 (see [275]-[279] above) demonstrates the risks that an injunction framed in these terms risks capturing behaviour that the Court never intended to restrain. Mr Curtin, and the Claimants, now know what acts amount to obstructing a vehicle.

384. The words "*direct and deliberate*" will be included in the injunction to ensure that indirect or inadvertent obstruction is not caught. A disproportionate amount of time was spent at the time considering the extent to which Mr Curtin's simply standing at the side of the Access Road obstructed the view of the driver of a vehicle leaving the Wyton Site, and therefore amounted to an obstruction of the "*free passage*" of the vehicle. As I have held (see [80] above), the First Claimant's common law right of access to the highway is not unqualified. If Mr Curtin simply walks across the Access Road, to get from one side of the entrance of the Wyton Site to the other, he does not interfere with the First Claimant's right of access to the highway if a vehicle attempting to enter or leave the Wyton Site momentarily has to give way to Mr Curtin. Deliberately standing in front of a vehicle to prevent it entering or leaving the Wyton Site is different, and obviously so. The injunction will prohibit the latter, but not the former. An injunction framed in these terms will also enable Mr Curtin to invite drivers of vehicles to stop, to speak to them and to offer them leaflets about the protest.

385. As a result, the injunction granted against Mr Curtin will consist of Paragraph (1)(a) of the Claimants' draft (in Annex 2) together with a new paragraph (2) which will prohibit Mr Curtin from directly and deliberately obstructing vehicles entering or leaving the public highway outside the Wyton Site.

(2) *Contra mundum* claim

386. Based on my factual findings, I am satisfied that the First Claimant has proved that persons who cannot be identified threaten to (a) trespass upon the First Claimant's land at the Wyton Site; and/or (b) interfere with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site.

387. The First Claimant has failed to prove that persons who cannot be identified threaten to fly drones over the Wyton Site at a height that amounts to trespass upon the First Claimant's land. In any event, the First Claimant has not made out a compelling case for the grant of a *contra mundum* injunction or that such an order would be just and convenient. The Claimants have adduced no evidence as to the height at which flying a drone interferes with its user of the First Claimant's land. 100 meters (and indeed the other heights that have variously been proposed by the Claimants) are simply arbitrary. The Claimants have been forced to choose a height (albeit without supporting evidence) because they are seeking to rely upon trespass. In reality the Claimants want to prohibit all drone flying over the Wyton Site (at whatever height) because it is not the trespass that it represents but the filming opportunity that it provides. As I have explained, there is a palpable disconnect between the tort relied upon and the wrong that that the Claimants are seeking to address.

388. I am satisfied that there is a compelling need, convincingly demonstrated by the First Claimant's evidence of repeated infringements of its civil rights, for the Court to grant a *contra mundum* injunction to restrain future acts by protestors of (a) trespass at the Wyton Site; and (b) interference with the right of access from the Wyton Site to/from the public highway caused by the obstruction of vehicles entering or leaving the Wyton Site.

389. I considered carefully whether it was just and convenient to grant an injunction *contra mundum* to restrain future trespass. On the one hand, the First Claimant is particularly

vulnerable to deliberate acts of trespass by protestors targeted against it because of the nature of its business. Leaving the First Claimant to pursue ad hoc civil remedies against individual trespassers would be likely to provide inadequate protection for its civil rights. On the other hand, I have real concerns that this form of order is potentially open to abuse by the First Claimant. It threatens to expose people who do nothing more than step momentarily on the First Claimant's land at the Wyton Site to the threat of proceedings for contempt of court. However, I have decided that these risks are adequately mitigated by the following factors:

(1) First, a contempt application would only be successful if the First Claimant demonstrates that the alleged trespasser had notice of the terms of the *contra mundum* injunction. It is quite clear from the Supreme Court's decision in ***Wolverhampton*** that notice is an essential pre-requisite of liability for breach of the new *contra mundum* 'newcomer' injunction that it has sanctioned. (I say nothing about what, if any, notice is required for the sort of *contra mundum* injunction made under the *Venables* jurisdiction, which appear to me to raise very different questions, and upon which I have received no submissions).

(2) Second, the First Claimant is subject and will remain subject to the Contempt Application Permission Requirement that was imposed on 2 August 2022 (see [49] above). This will mean that the First Claimant will have to make an application to the Court for permission to bring a contempt application alleging breach of the *contra mundum* order. The evidence in support of the application for permission would need to demonstrate that the proposed contempt application (a) is one that has a real prospect of success; (b) is not one that relies upon wholly technical or insubstantial breaches; and (c) is supported by evidence that the respondent had actual knowledge of the terms of the injunction before being alleged to have breached it. Ms Bolton accepted that the continuation of the Contempt Application Permission Requirement was appropriate if the Court were prepared to grant a *contra mundum* injunction. The *contra mundum* order will record, again, the Contempt Application Permission Requirement, and what the First Claimant must demonstrate in order to be granted permission.

390. Based on my experience in this case, and my concerns about potential abuse of such injunctions (see [370]-[374] above), it is my very clear view that all *contra mundum* 'newcomer' injunctions, particularly those in protest cases, should include a requirement that the Court's permission be obtained before a contempt application can be instituted. This would reduce the risks of a *contra mundum* injunction being used as a weapon against perceived adversaries for trivial infringements.

391. The decision in relation to granting a *contra mundum* injunction to restrain interference with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site is more straightforward. If the injunction focuses, as it should, on direct and deliberate obstruction, then unlike trespass, this is unlikely to be an unintentional act or one committed by inadvertence. On the contrary, people who attend the Wyton Site to protest will quickly come to understand that the Court has prohibited direct and deliberate obstruction of vehicles entering or leaving the Wyton Site.

392. The inclusion of the words "*direct and deliberate*" is also required in the *contra mundum* injunction, for the same reasons as they are needed in the injunction against Mr Curtin (see [384] above). There is a further important reason why these words are required in the *contra mundum* order. They will ensure that if a group of protestors lawfully processed along the B1090, and past the entrance of the Wyton Site, for the time they were passing the entrance they would probably prevent a vehicle leaving or entering the Wyton Site. It would be a serious interference to the right of lawful protest, for the *contra mundum* injunction (by an unintended side wind) to prohibit such a procession. This is to be contrasted with a group of protestors assembling outside the Wyton Site (as has happened in the past) which deliberately and directly obstructs vehicles attempting to leave or enter the Wyton Site. This conduct the injunction intends to prevent.

393. Although the First Claimant has demonstrated that there is a continuing risk that large scale demonstrations may be of such a size and duration that they may amount to a public nuisance, it has not demonstrated a compelling case that a *contra mundum* injunction is needed to tackle this risk or that it is just and convenient to make an order in these terms.

394. First, a public nuisance on this scale is primarily a matter for the police, who have ample powers to deal with both obstruction of the highway and public nuisance. I am satisfied that the police are using their powers appropriately and, in doing so, are setting the right balance between the legitimate interests of the First Claimant and the rights of protestors.

395. Second, whether the obstruction of a highway amounts to a public nuisance is entirely dependent upon a factual assessment of what happened on a particular occasion. It clearly does not fit into the category identified by the Supreme Court in ***Wolverhampton*** [143(iv)]. It is virtually impossible to fashion an injunction to restrain public nuisance that complies with the requirements reiterated by the Supreme Court (see [352] above). There is an obvious risk that granting an injunction that was targeted at prohibiting public nuisance would in fact chill perfectly lawful protest activity.

396. The First Claimant has not demonstrated that there is a compelling need for an Exclusion Zone to be imposed *contra mundum*. Even if such an order was directed specifically at protestors, it would still be very problematic. As I have already noted in the context of Mr Curtin's claim, the Exclusion Zone was a temporary expedient granted as an interim measure. It has largely had the desired effect of removing the main flashpoint in the demonstrations. I understand, therefore, why the First Claimant wishes to see it maintained. However, the central objection to this being continued *contra mundum* is that it restrains acts that are not even arguably unlawful. When it is remembered that the Court is going to prohibit obstruction of vehicles entering or leaving the Wyton Site, it is also difficult to argue that this further restriction is necessary. For that part of the Exclusion Zone that is part of the highway, it is, in my judgment, for the police to deal with obstructions of the highway that are anything more than transitory. There may be scope for an Exclusion Zone to be imposed in protest cases (c.f. those imposed around abortion clinics), but that is best done by a Public Spaces Protection Order, not a civil injunction.

397. For vehicles that are leaving or entering the Wyton Site via the public highway, obstruction of those vehicles will be prohibited. That aspect of the "*flashpoint*" will

continue to be restrained. I accept that the Claimants have provided evidence of at least one occasion where there has been significant surrounding, obstruction and delay of vehicles further down the B1090 highway. However, none of the Claimants has demonstrated a legal entitlement to restrain that activity. Save in the most extreme cases, it is unlikely to amount to a public nuisance, and I have explained above why I am not prepared to grant a *contra mundum* injunction to restrain public nuisance. For understandable reasons, the Claimants did not pursue a harassment claim against "Persons Unknown". It suffers from the same problem as public nuisance; the tort is so fact sensitive as to whether the threshold has been crossed into unlawful behaviour as to make it almost impossible to fashion a *contra mundum* injunction in acceptable terms. In my judgment, these are simply the inevitable limits of what can be achieved in attempting to control public order issues by civil injunction.

398. For these reasons, I shall grant to the First Claimant a more limited form of *contra mundum* injunction than that sought by the Claimants. It will restrain future acts by protestors of (a) trespass at the Wyton Site; and (b) interference with the right of access from the Wyton Site to/from the public highway caused by obstructing of vehicles entering or leaving the Wyton Site. Given that *contra mundum* 'newcomer' injunctions remain relatively uncharted waters, I am going to provide that the injunction shall last initially for a period of 2 years, at which point the Court will consider whether it should be renewed, discharged, or potentially extended.

399. Turning to paragraphs 3-5 of the Claimants' proposed order.

(1) It is very important to ensure that those affected by the order are made aware of their right to apply to the Court to vary or discharge it. Anyone affected by the order, which would embrace anyone who is protesting at the Wyton Site, or is intending to do so, is entitled to apply to the Court or vary or discharge the order. For that purpose, they must have an immediately available and effective method of being provided with all of the evidence that was relied upon by the Claimants to obtain the *contra mundum* order.

(2) It is not appropriate to provide for any sort of alternative service of the injunction order. It is for the First Claimant to decide how best to give notice of the injunction to those who need to be aware of its terms. In terms of any subsequent enforcement action, the burden will fall on the First Claimant to demonstrate that the terms of the injunction have come sufficiently to the attention of the person against whom the First Claimant wants to bring contempt proceedings. The effect of paragraphs 3-5 of the Claimants' proposed order would be that, once the relevant steps were completed, the whole world would be deemed to have received notice of the injunction. That would be a palpable fiction. It could even embrace people who are not yet born. Subject to proof of breach of the injunction, it would deliver, practically, a strict liability regime. That is not what remotely what the Supreme Court envisaged, and it is not fair.

(3) Mr Curtin's penalty in the Third Contempt Application

400. When deciding the appropriate penalty for contempt of court, the Court assesses the contemnor's culpability and the harm caused by the breach. The concept of harm, in contempt cases, includes not only direct harm caused to those who the injunction was

designed to protect, but also the harm to the administration of justice by the contemnor's disobedience to an order of the Court.

401. As to Mr Curtin's culpability, I have already found that, in his admitted breach of the Interim Injunction that formed Ground 2, he did not deliberately flout the Court's order; he got partly carried away by his emotions. I accept that, when the breach was committed, he was engaged on protest activities reflecting his sincerely held beliefs. Overall, I assess his culpability as low.

402. As to harm, the breach was in respect of a protective order that was designed to prevent the sort of behaviour in which Mr Curtin engaged. However, against that, the van was only fleetingly obstructed as it attempted to leave the Wyton Site. The incident had none of the significantly aggravating factors that had led to the imposition of the Interim injunction. Overall, this was not a serious breach of the injunction, and it has no other aggravating features. I assess the harm to be low.

403. Mr Curtin accepted the breach represented by Ground 2 at the substantive hearing. By analogy with criminal proceedings, it is fair to reflect the equivalent of a guilty plea with a 10% reduction in the sentence.

404. I am quite satisfied that seriousness of Mr Curtin's breach of the Interim Injunction is not so serious that only a custodial sentence is appropriate. I indicated as much at the conclusion of the hearing on 23 June 2023. I am satisfied that, reflecting upon the culpability and harm, it is appropriate to deal with this breach by way of a fine. In terms of mitigation, this is the first breach of the Interim Injunction and there has been no repetition since the incident almost 3 years ago. I also accept Mr Curtin's evidence that he has always tried to abide by the terms of the Court's order.

405. I have considered the sentencing guidelines for the less serious public order offences as a useful cross reference. On the Sentencing Council Guidelines for disorderly behaviour, in breach of s.5 Public Order Act 1986, Mr Curtin's conduct would appear to fall into category 2B, which gives a starting point of a Band A fine, with a range from discharge to a Band B fine. A Band A fine, is between 25-75% of the defendant's weekly wage, with a Band B fine range of 75-125% of weekly wage. I have also reminded myself of Superintendent Sissons' evidence of penalties that have been imposed on protestors following conviction in the Magistrates' Court. Although not a precise analogue, in my judgment it would be wrong if the penalty I imposed were to be out of all proportion to the penalties that have been imposed by the Magistrates' Court for offences arising out of similar protest activities.

406. Of course, when sentencing for contempt, there is an important element – usually absent from most criminal sentencing – that the conduct is a breach of a court's order. A breach of a protective order is a further aggravating factor.

407. In my judgment, the appropriate penalty for Mr Curtin's breach of the Interim Injunction under Ground 2 would have been a fine of £100. I will reduce that to £90 to reflect his admission of liability at the substantive hearing. When the judgment is handed down, I will invite submissions as the time Mr Curtin might need to pay this sum.

Annex 1: **Full list of Defendants to the claim**

(1) FREE THE MBR BEAGLES (formerly Stop Animal Cruelty Huntingdon) (an unincorporated association by its representative Mel Broughton on behalf of the members of Free the MBR Beagles who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd)

(2) CAMP BEAGLE (an unincorporated association by its representative Bethany Mayflower on behalf of the members of Camp Beagle who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd)

(3) MEL BROUGHTON

(4) RONAN FALSEY

(5) BETHANY MAYFLOWER (also known as Bethany May and/or Alexandra Taylor)

(6) SCOTT PATERSON

(7) HELEN DURANT

(8) BERNADETTE GREEN

(9) SAM MORLEY

(10) PERSON(S) UNKNOWN (who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Ltd, and the officers and employees of third party suppliers and service providers to MBR Acres Ltd)

(11) JOHN CURTIN

(12) MICHAEL MAHER (also known as John Thibeault)

(13) SAMMI LAIDLAW

(14) PAULINE HODSON

(15) PERSON(S) UNKNOWN (who are entering or remaining without the consent of the First Claimant on the land and in buildings outlined in red on the plan at Annex 1 of the Amended Claim Form, that land known as MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(16) PERSON(S) UNKNOWN (who are interfering with the rights of way enjoyed by the First Claimant over the access road on the land shown in purple at Annex 3 of the Amended Claim Form and enjoyed by the Second Claimant as an implied or express licensee of the First Claimant)

(17) PERSON(S) UNKNOWN (who are obstructing vehicles of the Second Claimant entering or exiting the access road shown in purple Annex 3 of the Amended Claim Form and/or entering the First Claimant's land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(18) LOU MARLEY (also known as Louise Yvonne Firth)

(19) LUCY WINDLER (also known as Lucy Lukins)

(20) LISA JAFFRAY

(21) JOANNE SHAW

(22) AMANDA JAMES

(23) VICTORIA ASPLIN

(24) AMANDEEP SINGH

(25) PERSON UNKNOWN 70

(26) PERSON UNKNOWN 74

(27) [Not used]

(28) PERSON(S) UNKNOWN (who are, without the consent of the First Claimant, entering or remaining on land and in buildings outlined in red on the plans at Annex 1 to the Amended Claim Form, those being land and buildings owned by the First Claimant, at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(29) PERSON(S) UNKNOWN (who are interfering, without lawful excuse, with the First Claimant's staff and Second Claimants' right to pass and repass with or without vehicles, materials and equipment along the Highway known as the B1090)

(30) PERSON(S) UNKNOWN (who are obstructing vehicles exiting the First Claimant's land at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT and accessing the Highway known as the B1090)

(31) PERSON(S) UNKNOWN (who are protesting outside the premises of the First Claimant and/or against the First Claimant's lawful business activities and pursuing a course of conduct causing alarm and/or distress to the Second Claimant and/or the staff of the First Claimant for the purpose of convincing the Second Claimant and/or the staff of the First Claimant not to: (a) work for the First Claimant; and/or (b) provide services to the First Claimant; and/or (c) supply goods to the First Claimant; and/or (d) to stop the First Claimants' lawful business activities at MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(32) PERSON(S) UNKNOWN (who are photographing and/or videoing/recording the First Claimant's staff and members of the Second Claimant and/or their vehicles and vehicle registration numbers as they enter and exit and/or work on the First Claimant's land outlined in red at Annex 1 to the Amended Claim Form for the purpose of causing alarm and/or distress by threatening to use and/or in fact using the images and/or recordings to identify members of the Second Claimant, follow the Second Claimant or ascertain the home addresses of the Second Claimant for the purpose of convincing the Second Claimant not to: (a) work for the First Claimant; and/or (b) not to provide services to the First Claimant; and/or (c) not to supply goods to the First Claimant)

(33) PERSON(S) UNKNOWN (who are, without the consent of the First Claimant, trespassing on the First Claimant's land by flying drones over the First Claimant's land and buildings outlined in red on the plans at Annex 1 to the Amended Claim Form, that being land and buildings owned by MBR Acres Ltd, Wyton, Huntingdon PE28 2DT)

(34) LAUREN GARDNER

(35) LOUISE BOYLE

(36) PERSON(S) UNKNOWN (who are, without the consent of the First Claimant, entering or remaining on the land shaded in orange on the plans at Annex 1 to the re-re-re-Amended Claim Form – which land measures 2.85 metres from the boundary outlined in red on the plans at Annex 1 to the re-re-re-Amended Claim Form, that boundary marking those land and buildings owned by the First Claimant, at MBR Acres Limited, Wyton, Huntingdon PE28 2DT, and only where that boundary runs adjacent to the Highway known as the B1090)

Annex 2: The relief sought by the Claimants against Mr Curtin

In the draft order provided to the Court as part of their closing submissions, the Claimants seek the following by way of injunction against Mr Curtin:

> "The Eleventh Defendant, Mr John Curtin **MUST NOT** whether by himself or by instructing or encouraging any other person, group, or organisation do the same:
>
> (1) Enter the following land:
>
> (a) The First Claimant's Land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 ('the Wyton Site');
>
> (b) The Third Claimant's premises known as B&K Universal Limited, Field Station, Grimston, Aldbrough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 ('the Hull Site');
>
> (2) Enter into or remain upon or park any vehicle or place any other item (including, but not limited to, banners) in the area marked with black hatch lines on the plan at Annexes 1 and 2 [which includes all the land up to the midpoint of the highway that is adjacent to the Claimants (sic) property at the Wyton Site]. Save that nothing in this prohibition shall prevent the Defendant from Accessing the highway whilst in a vehicle, for the purpose of passing along the highway only and without stopping in the area marked with black hatching, save for when they are stopped by traffic congestion or any traffic management arranged by or on behalf of the Highways Authority, or to prevent a collision or road accident.
>
> (3) Approach and/or obstruct the path of any vehicle directly entering or exiting the area marked in black hatching (save that for the avoidance of doubt it will not be a breach of this Injunction Order where a vehicle is obstructed as a result of an emergency)
>
> (4) Approach, slow down, or obstruct any vehicle which is travelling to or from the First Claimant's Land along the B1090 Abbots Ripton Road, or within 1 mile in either direction of the First Claimant's Land at the Wyton Site;
>
> (5) Fly a drone or other unmanned aerial vehicle over the Wyton Site as marked on the Plan at Annex 1 [at a height below 50 metres, 100 meters, 150 metres]
>
> (6) Record or use other surveillance equipment (including drones, camera phones and CCTV) to record individual staff members at the Wyton Site, or when staff are carrying out work on the permitter fence of the Wyton Site. Save that nothing shall prohibit the filming of activities at the gates of the Wyton Site other than the filming of staff cars."

Annex 3: The relief sought by the Claimants *contra mundum*

In the draft order provided to the Court as part of their closing submissions, the Claimants seek the following by way of *contra mundum* injunction:

> "UNTIL AND SUBJECT TO ANY FURTHER ORDER OF THE COURT OR UNTIL AND INCLUDING [date – 3 years from the date of grant] (WHICHEVER IS SOONER) IT IS ORDERED THAT:
>
> 1. Any person with notice of this Order **MUST NOT**
>
> (1) Enter the following land:
>
> (a) The First Claimant's land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 ('the Wyton Site');
>
> (b) The Third Claimant's land known as B&K Universal Limited, Field Station, Grimston, Aldbrough, Hull, East Yorkshire HU11 4QE as set out in Annex 2 ('the Hull Site');
>
> (2) approach, slow down or otherwise obstruct any vehicle entering or exiting the Wyton Site
>
> (3) during the course of protesting against the First Claimant's business activities, enter into, remain upon or park any vehicle or place any other item (including, but not limited to, banners) in the area marked with black hatching on the plan at Annexe 1 ("the Exclusion Zone"). For the avoidance of doubt, the Exclusion Zone extends to 20 metres on both sides of the gate to the Wyton Site, measured from the centre of the gate, and extends from the boundary of the Wyton Site up to the midpoint of the B1090 Sawtry Way that runs adjacent to the Wyton Site. Nothing in this prohibition shall prevent any person from accessing the areas of the Exclusion Zone comprising adopted highway in a manner unconnected with protesting and for the purpose of passing and re-passing along the highway, or for any purpose incidental thereto and otherwise permitted by law;
>
> (4) during the course of protesting against the First Claimant's business activities, approach, slow down or otherwise obstruct any vehicle that is entering or exiting the Exclusion Zone;
>
> (5) during the course of protesting against the First Claimant's business activities, approach, slow down or otherwise obstruct any vehicle that is travelling to or from the Wyton Site and is within a one-mile radius of the Wyton Site;
>
> (6) fly a drone or other unmanned aerial vehicle at a height of less than 100 meters over the Wyton Site.

FURTHER APPILICATIONS ABOUT THIS ORDER

2. Any person affected by the injunction in paragraph 1 above may make an application to vary or discharge the injunction to a High Court Judge on not less than 48 hours' notice to the Claimants.

SERVICE OF THIS ORDER

3. A copy of this Order will be placed on the Judiciary Website.

4. Pursuant to CPR 6.15 and CPR 6.27, the Claimants are permitted to serve this Order endorsed with a penal notice as follows (with the following to be treated conjunctively)

   (1) by uploading a copy to the dedicated share file website at https://apps.fliplet.com/mbr-injunctionwebapp/

   (2) by affixing copies (as opposed to originals) to the notice board opposite the Wyton Site. A covering letter shall accompany the Order explaining that copies of all documents in the Claim, including the evidence in support of the Claim and the skeleton argument and note of the hearing at which this Order was made, can be accessed at the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/. The cover letter will also include an email address and telephone number at which the Claimants' solicitors can be contacted, and advise that hard copy documents can be provided upon request;

   (3) by affixing in a prominent position around the perimeter of the Wyton Site signs advising that an injunction that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/ and a QR code through which the designated share file website may also be accessed;

   (4) by affixing in a prominent position at the Hull Site signs advising that an injunction. that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/ and a QR code through which the designated share file website may also be accessed;

   (5) by positioning four signs adjacent to toe main carriageway of the public highway known as the B1090 Sawtry Way within a one-mile radius of the Wyton Site. Those signs shall advise that an injunction that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/ and a QR code through which the designated share file website may also be accessed.

5. The deemed date of service of this Order shall be one working day after service is completed in accordance with all of the steps set out in paragraph 4 above.

ANNUAL REVIEW

6. The Claimants shall, by 4.30pm on [date – 12 months from the grant of this Order] make an Application to the Court (accompanied by any evidence in support) and seek the listing of a review hearing at which the continuation of the injunction in paragraph 1 above will be considered. The Claimants must by the same date serve that Application and any evidence in support on Persons Unknown in accordance with paragraph 4 above…"

Neutral Citation Number: [2024] EWHC 2254 (KB)

Case No: QB-2022-001236

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 September 2024

Before :

HHJ Emma Kelly sitting as a Judge of the High Court

- -

Between :

NORTH WARWICKSHIRE BOROUGH COUNCIL	**Claimant**
- and –	
THE DEFENDANTS LISTED AT SCHEDULE A TO THIS JUDGMENT	**Defendants**

- -
- -

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

Ms Alison Lee (8th Defendant), **Ms Joanna Hindley** (78th Defendant) and **Ms Chloe Naldrett** (115th Defendant) in person and who participated in the hearing.

Mr Timothy Hewes (4th Defendant), **Mr Stephen Pritchard** (9th Defendant), **Mr Paul Raithby** (11th Defendant), **Mr Marcus Bailie** (25th Defendant), **Mr David Robert Barkshire** (32nd Defendant), **Ms Molly Berry** (33rd Defendant), **Ms Kate Bramfitt** (37th Defendant), **Ms Zoe Cohen** (49th Defendant), **Ms Ruth Jarman** (84th Defendant), **Mr Charles Laurie** (91st Defendant), **Ms Victoria Lindsell** (93rd Defendant), **Mr Christian Murray-Leslie** (113th Defendant), **Ms Stephanie Pride** (125th Defendant), **Ms Vivienne Shah** (135th Defendant), **Ms Sarah Webb** (150th Defendant) in person but who observed the hearing only.

Ms Caroline Cattermole (46th Defendant), **Ms Diana Martin** (98th Defendant), **Mr Nicolas Onley** (121st Defendant) and **Mr Daniel Shaw** (137th Defendant) in person by remote link but who observed the hearing only.

Hearing dates: 11-12 June 2024.
Judgment handed down: 6 September 2024

- -

APPROVED JUDGMENT

HHJ Emma Kelly:

Introduction

1. This is a claim for an injunction to restrict protests inside and in the locality of an inland oil terminal known as Kingsbury Oil Terminal ("the Terminal") in Kingsbury, Warwickshire. The claim is brought by North Warwickshire Borough Council ("the Council"). The Terminal is situated within the geographical area for which the Council has responsibility.

2. The claim arises from protest activities undertaken at and around the Terminal by individuals associated with the action group known as Just Stop Oil. Just Stop Oil is a civil resistance group whose aims are to end all new licensing and consents for the exploration, development and production of fossil fuels in the United Kingdom. The named defendants are individuals said to have engaged in protest activities at the Terminal. The Council also pursues four categories of persons unknown defendants.

Background

3. From around 31 March 2022 to 10 April 2022 there were a series of protests at the Terminal by individuals associated with Just Stop Oil. I shall address the details of those protests in due course but they included both trespass onto the Terminal site and protests on land adjacent to the Terminal, including on the public highway.

4. In response to the protests, on 13 April 2022 the Council issued an application for a without notice interim injunction and power of arrest against 18 named defendants who had been arrested at a protest at the Terminal and a further unnamed defendant defined as "Persons Unknown who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels, in the locality of the site known as Kingsbury Oil Terminal, Tamworth, B78 2HA."

5. By order dated 14 April 2022 Sweeting J granted a without notice interim injunction. In summary, the order prohibited any protest against the production or use of fossil fuels at the Terminal within an area demarcated on a plan attached to the injunction or within a 'buffer zone' of five metres of those boundaries. The order further prohibited certain types of conduct in connection with any such protest taking place anywhere within the wider 'locality' of the Terminal. The prohibited conduct was detailed in eleven sub-paragraphs and included activities such as obstructing the entrance of the Terminal, climbing onto or otherwise damaging or interfering with vehicles or objects, damaging pipes and equipment, and tunnelling under land. A power of arrest was attached to the order.

6. Following the grant of the interim order, there was further protest activity at the Terminal and the police exercised the power of arrest against various individuals said to fall within the definition of the persons unknown defendant. Again, I will revert to the detail of those ongoing protests in due course.

7. On 5 May 2022 Sweeting J heard the on notice return date of the interim injunction and an application by a Mr Jake Handling (73rd defendant and a protestor arrested for alleged breach of the interim order) and a Ms Jessica Branch (claiming to be an interested party) to discharge the interim injunction. The Council sought continuation of the interim injunction to trial but no longer required a five metre buffer zone around the perimeter of the Terminal. Sweeting J continued the interim injunction in an amended form and the power of arrest until the hearing of the claim. He gave reasons for his decision in a judgment handed down on 14 July 2023: [2023] EWHC 1719 (KB). The terms of the amended interim injunction are as follows:

> "The Defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):
>
> (a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels, at Kingsbury Oil Terminal (the "Terminal"), taking place within the areas the boundaries of which are edged in red on the Map attached to this Order at Schedule 1.
>
> (b) in connection with any such protest anywhere in the locality of the Terminal perform any of the following acts:
>
> (i) entering or attempting to enter the Terminal
>
> (ii) congregating or encouraging or arranging for another person to congregate at any entrance to the Terminal
>
> (iii) obstructing any entrance to the Terminal
>
> (iv) climbing on to or otherwise damaging or interfering with any vehicle, or any object on land (including buildings, structures, caravans, trees and rocks)
>
> (v) damaging any land including (but not limited to) roads, buildings, structures or trees on that land, or any pipes or equipment serving the Terminal on or beneath that land
>
> (vi) affixing themselves to any other person or object or land (including roads, structures, buildings, caravans, trees or rocks)
>
> (vii) erecting any structure
>
> (viii) abandoning any vehicle which blocks any road or impedes the passage any other vehicle on a road or access to the Terminal
>
> (ix) digging any holes in or tunnelling under (or using or occupying existing tunnels under) land, including roads;

> (x) abseiling from bridges or from any other building, structure or tree on land
>
> or
>
> (xi) instructing, assisting, or encouraging any other person to do any act prohibited by paragraphs (b)(i)-(x) of this Order."

8. Protest activity continued. Between April 2022 and September 2022 the police exercised the power of arrest attached to the interim order on a large number of occasions. In that period findings of contempt were made against some 72 individuals, including some who were found to have breached the injunction on two, three or four occasions.

9. By order dated 31 March 2023 Sweeting J granted the Council's application to add a further 139 named defendants to the claim, being individuals who had been arrested at or in the locality of the Terminal in relation to protest activity after the interim injunction was granted and whose identities were now known. Case management directions were given to trial. The trial of the claim was due to take place in July 2023 but was adjourned on several occasions to await the decision of the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47 ("*Wolverhampton*").

10. By order dated 6 December 2023 Soole J extended the time for any defendant, or person who wished to be heard at the final hearing, to file and serve an acknowledgment of service to 4pm on 27 December 2023. His order provided that any defendant or person failing to comply with the same would not be permitted to defend or take any further role in these proceedings without further order of the court. No defendant or any other person filed an acknowledgment of service whether by 27 December 2023 or otherwise.

11. As the claim has progressed, a number of the defendants offered undertakings that were acceptable to the Council. At a hearing before Mould J on 22 May 2024, the Court accepted those undertakings and the interim injunction and power of arrest were discharged against those defendants. A further defendant, Mr Alex White (152nd defendant) was not able to attend the hearing on 22 May to proffer his undertaking but did so on 11 June 2024 and the interim relief against him was similarly discharged. A number of other defendants offered undertakings but the Council declined to accept them, largely on the basis that such individuals had been arrested at the Terminal after the interim injunction was granted on 14 April 2022 and the lack of ability to attach a power of arrest to an undertaking troubled the Council. As a result of the various undertakings, the number of defendants against whom the claim proceeds has reduced. Schedule A to this judgment sets out the defendants against whom there remains a live claim.

12. On the first day of the trial on 11 June 2024, a number of unrepresented defendants attended the hearing. Of those attending, the majority simply wanted to observe the proceedings. However three defendants, Ms Alison Lee (8th defendant), Ms Joanna Hindley (78th defendant) and Ms Chloe Naldrett (115th

defendant) wished to address the court. I explained the effect of the order of Soole J and indicated that any defendant wishing to apply to participate in the hearing would be required to file an application for relief from sanctions. Each of the three defendants filed written applications for relief from sanctions, which I heard on the afternoon of the first day of trial. The three defendants did not seek to cross-examine the Council's witnesses or call any evidence of their own. They simply wanted a short opportunity to address the court by way of closing submissions. I granted each of their applications for relief from sanctions limited to permitting each to address the court in closing for 10 minutes on condition of serving a short document setting out the bullet point issues they wished to cover. Each defendant complied with those directions.

13. At the start of the trial, the Council applied to amend the definition of the persons unknown defendant to address concerns expressed by Sweeting J in his judgment on the interim order that the current definition did not provide sufficient particularity as to the conduct alleged to be unlawful. The Council's primary position was that, following the decision of the Supreme Court in *Wolverhampton*, there was no longer a need to amend the definition. If however the Court disagreed, the Council sought to amend the definition to include particulars of conduct in four new categories of persons unknown. For the reasons given in an ex tempore judgment on 11 June 2024, I concluded that the definition remained inadequate but granted permission for the Council to amend the claim to include what have become defendants 19A, 19B, 19C and 19D. The detail of those descriptions appears in Schedule A to this judgment.

The evidence

14. The factual evidence relied on by the Council was unchallenged. The only witness to give oral evidence was Mr Steven Maxey, the Council's Chief Executive. Mr Maxey adopted the contents of five witness statements he had made during the course of the proceedings and dated 13 April 2022, 3 May 2022, 18 January 2024, 20 February 2024 and 5 June 2024.

15. In addition, the Council relied on written evidence from the following individuals who were not called to give oral evidence:

    i) Mr David Smith, Temporary Assistant Chief Constable for Warwickshire Police, dated 10 April 2022.

    ii) Mr Jeff Morris, Delivery Lead for Warwickshire County Council County Highway Services, dated 12 April 2022.

    iii) Mr Stephen Brown, Distribution Operations Manager for Shell International Petroleum Company Limited, dated 13 April 2022.

16. The Council concluded it was not proportionate to call the aforementioned three witnesses in circumstances where no defendant had elected to acknowledge service and defend the claim. Mr Smith's witness statement has been prepared in a form that complies with s.9 of the Criminal Justice Act 1967 rather than containing a statement of truth in the wording required by Civil Procedure Rule Practice Direction 22 para. 2.2. Mr Smith exhibits to his statement a number of

statements from various police officers involved in policing protests at the Terminal in April 2022. Those statements are also in s.9 form and have signed declarations as to the truth of the contents of the statements. The lack of statements of truth in a CPR PD 22 compliant form does not, in my judgment, detract from the cogency of the written evidence in light of the otherwise formal manner in which the statements have been prepared with signed declarations of truth.

17. The Council's evidence provides a detailed picture of the Terminal and protest activity that has occurred both within and in the locality of the Terminal. The salient points of the evidence are set out below.

The Terminal

18. The Terminal is a series of inland oil terminals with 50 storage tanks and storage capacity for around 405 million litres of flammable liquids. It comprises four separate but neighbouring oil terminal sites which are located on the edge of the village of Kingsbury. The sites comprising the Terminal are operated by Shell UK Ltd, United Kingdom Oil Pipelines Ltd, Warwickshire Oil Storage Ltd and Valero Energy Ltd. Those companies have formed the Kingsbury Common User Group which enables the management of specific shared assets such as fire-fighting systems and allows operators to discuss common issues.

19. The Terminal is an 'Upper Tier' site for the purposes of the Control of Major Accident Hazards Regulations 2015 ("COMAHR") by virtue of the large quantities of dangerous substances that are present on site. It is said to be one of the largest oil terminals in the country.

20. The Terminal is a multi-fuel site, storing and distributing petrol and diesel (both standard and V-power), heating oils and aviation fuel. Most of the fuel, save for additives or biofuels which are imported by road, is fed into the Terminal by pipeline from the United Kingdom Oil Pipeline system. The products are then distributed from the Terminal using road tankers. Hundreds of vehicles enter and exit the Terminal each day. The Terminal is described as a critically important supply point for the Midlands. In addition to distributing fuel to petrol station forecourts, it supplies major airports in the region including Birmingham International and East Midlands airports.

21. There are various security measures at the Terminal. For example, the part of the Terminal operated by Shell UK Ltd is surrounded by six foot high palisade fencing or six foot high chain link fencing. Pedestrian access is via turn-style gates and vehicular access via locked gates. Only visitors or employees with a designated pass can gain access. All vehicles entering the site have to be registered on Shell UK Ltd's internal system and have vehicle and driver accreditations. There is a 24 hour, 7 day a week security presence with high-definition CCTV and security guards working day and night. Operational plans for the Terminal include a requirement that "all controlled items (mobile phones, cigarettes, lighters, paging units, matches etc) should be handed over at the Terminal Control Room…due to potential presence of explosive atmospheres."

The surrounding area

22. The Terminal lies to the east of the village of Kingsbury and to the south-west of the smaller village of Piccadilly. The villages of Kingsbury and Piccadilly have approximately 8000 residents with some of the residential areas being no more than a few hundred metres from the Terminal. A railway line abuts parts of the Terminal on the Kingsbury side of the site and other nearby land is used by the Ministry of Defence as rifle ranges. The area is well connected to the motorway network with a junction of the M42 being nearby.

23. Kingsbury lies on the River Tame which has a catchment area spanning Birmingham, Solihull, Sandwell, Walsall, Tamworth, Nuneaton and Hinckley. Locally there are 8 sites of special scientific interest, 7 local nature reserves and 27 non-statutory sites of local importance.

The protest activity

24. On 31 March 2022 to 1 April 2022 around 40 protestors attended the Terminal in possession of glue and devices to lock themselves onto objects. Some of the protestors stopped and then climbed onto oil tankers which were trying to access or egress the Terminal. Other protestors glued themselves to the road and sat in the roadway to the main entrance to the Terminal. The police stopped a Ford Transit van which contained a large quantity of timber, climbing ropes, food stuffs and devices for locking on. The occupants of the van freely admitted that the contents of the van were for building a tree house and encampment. Distribution operations at the Terminal were suspended and the police made 42 arrests.

25. At around 1930 hrs on 2 April 2022 approximately 40 protestors attended the Terminal and blocked the main entrance to the Terminal. Some glued themselves to the carriageway and others appeared to be using a long tube to chain themselves together. Others climbed on top of oil tankers. The activity continued throughout the night and into 3 April. Operations at the Terminal were suspended. It partially reopened at 1730hrs with protesters remaining on site until midnight. The police made various arrests throughout the day and, taken with the arrests of the previous day, the total number of arrests increased to 68.

26. At around 0730 hrs on 5 April 2022 around 20 protesters attended the Terminal and again blocked the main entrance, locking onto each other and gluing themselves to the carriageway. Two others climbed on top of an oil tanker holding a ‘save the oil’ sign. Their presence prevented the tanker from moving. Operations at the Terminal were again suspended, only resuming at around 1100hrs. However, at around 1130 hrs a second group of protesters targeted motorway junctions 9 and 10 of the M42, climbing onto oil tankers servicing the Terminal as those vehicles moved slowly off the slip roads. Operations at the Terminal were again suspended and traffic built up onto the motorway. The protesters were removed and the roads reopened at 1430hrs.

27. At around 0030 hrs on 7 April 2022 protesters approached the main entrance to the Terminal and attempted to glue themselves to the carriageway. As the police

were attending to those individuals, another group of around 40 protesters approached the rear of the Terminal across fields. They sawed through an exterior gate and scaled a fence to gain access to the Terminal. Once within the perimeter fencing, the protesters dispersed to a number of different locations. Some climbed on top of three large fuel storage tanks containing unleaded petrol, diesel and fuel additives. Two others entered insecure cabs of fuel tankers and secured themselves inside using a lock on device. Others climbed on top of two fuel tankers, onto the floating roof of a large fuel storage tank and into a half-constructed fuel storage tank. The protestors used a variety of lock on devices to secure themselves to those structures. A complex police operation was initiated, utilising a variety of specialist teams, who worked alongside staff from the Terminal and fire service. The Terminal was not cleared of protesters until approximately 1700 hrs.

28. On 9 April 2022 further protest activity took place. At around 1050 hrs four protesters arrived at the main entrance to the Terminal and attempted to glue themselves to the carriageway. A short time later another protester was arrested trying to abseil from a road bridge over Trinity Road to the north of the Terminal. At around 1530 hrs a caravan was deposited at the side of the road on Piccadilly Way to the south of the Terminal. Some 20 protesters glued themselves to the sides and top of the caravan. It was later discovered that occupants within the caravan were attempting to dig, via a false caravan floor, a tunnel under the road. The police entered the caravan at around 0200 hrs on 10 April 2022 and the six occupants were arrested. Activity continued into 10 April with protestors scaling oil tankers and gluing themselves to the carriageway.

29. Between the 31 March and 10 April 2022 the police made approximately 180 arrests at or in the locality of the Terminal in relation to protest related activity. A common feature of many of the arrests is that the detainees were passively resistant, going limp and thus requiring the police officers to carry the individual into custody. Much of the protest activity was publicised on Just Stop Oil's website, which included videos and photographs of the protest activity. A video clip featuring an individual identified as John 'aka' Sean Jordan shows Mr Jordan on top of the caravan stating "…I am here with Just Stop Oil, we are currently on the tenth day of our campaign having started on 1st April…" The protests commonly featured orange Just Stop Oil livery on placards or banners and protestors wearing orange high-viz vests. On 12 April 2022 Just Stop Oil published a press release on their website stating: "We find ourselves, as others have done through history, having to do what is unpopular, to break the law to prevent a much greater harm taking place … While Just Stop Oil supporters have their liberty the disruption will continue."

30. Following the granting of the without notice interim injunction on 14 April 2022 the protest activity at the Terminal reduced but did not cease. Between the 14 April and 14 September 2022 there were a further 14 protests resulting in over 120 arrests. The Council brought successful contempt applications against 72 protestors for 109 separate breaches of the interim injunction. In the various contempt proceedings, none of those arrested sought to challenge the claimant's

factual case that the protests were in relation to the production and/or use of fossil fuels.

31. At just before 0800 hrs on 26 April 2022 16 individuals gathered on a grass verge outside the main entrance to the Terminal. A peaceful protest, with various signs and banners, lasted for approximately two hours. By around 1000 hrs a number of the protesters spread out across the carriageway and sat down obstructing access to and egress from the Terminal. The protestors were arrested for breaching the interim injunction.

32. At just after 1600 hrs on 27 April 2022 a group of 10 individuals gathered on a grass verge to the side of the main entrance to the Terminal to protest against the production and use of fossil fuels. The protest was peaceful but inside the five metre buffer zone imposed by the original without notice injunction. The protesters were arrested and successful contempt proceedings followed.

33. At around 1135 hrs on 28 April 2022 a group of eight protesters, including some of those arrested on 27 April, engaged in a further peaceful protest adjacent to the external fencing to the terminal within the five metre buffer zone. The protesters were arrested

34. At approximately 1400 hrs on 4 May 2022 a group of 11 protestors attended the Terminal. They stood on a grass verge to the side of the entrance to the Terminal with placards and banners before moving to walking across the road outside the Terminal. The protest was peaceful but again inside the buffer zone. Some of those attending the protest on 4 May 2022 did so in defiance of a court order requiring them to attend court that day to face contempt proceedings in respect of events on 27 April. The protesters on 4 May 2022 were arrested and successful contempt proceedings followed.

35. At around 1400 hrs on 12 May 2022 a group of eight protestors attended the Terminal. A number of group sat down in the middle of the access road to the Terminal entrance blocking access.

36. On 24 August 2022 three protesters occupied a tunnel that had been dug alongside and under Piccadilly Way, some 400 metres from the Terminal. The incident was publicised by Just Stop Oil on its social media platforms, which posted details of the protestors' support of Just Stop Oil's aims together with video footage and video stills taken inside the tunnel. Contempt proceedings against two of the protesters failed for want of service of the interim injunction and the proceedings against the third succeeded only in respect of his occupation of the tunnel for a limited period of time following service of the order after entry into the tunnel. The existence of the tunnel and its occupation in conjunction with a protest in the locality of the Terminal nonetheless occurred.

37. At approximately 1130 hrs on 14 September 2022, 51 protesters were arrested in connection with a protest on the private access road to the entrance to the Terminal. The protest was peaceful but its location blocked access and egress to the Terminal with many of the protestors sitting across the carriageway. Some held Just Stop Oil banners and others wore orange high viz vests featuring the Just Stop Oil logo.

38. There have been no protests at the Terminal since September 2022. Mr Maxey's evidence is however that the Council has since been targeted by protestors associated with Just Stop Oil.

    i) In August and September 2023 various councillors received emails from named defendants including Sarah Webb, Catherine Rennie-Nash, Bill White, Karen Wildin and Clare Walters. Each defendant was critical of the Council's action in pursuing this claim.

    ii) On 21 September 2023 protestors attended the Council's offices with banners and positioned themselves near to one of the entrances.

    iii) On 27 September 2023 protestors interrupted a Council meeting, refused the Mayor's request for order and refused to leave the Council chamber causing the meeting to be suspended. The matter was only resolved following intervention by the police.

    iv) Mr Maxey subsequently met with some of the protestors to hear their complaints. He states that the protestors informed him that they took the view that the Council should not have obtained the interim injunction as it was preventing their protests from causing the disruption which they thought was necessary given their concerns about climate change.

The impact of the protest activity

39. The protests caused significant disruption to the operation of the Terminal, at times causing operations to be suspended. The disruption impacted on the companies operating from the Terminal, individual staff members working at the Terminal and others, such as tanker drivers, who were required to visit the Terminal as part of their work.

40. There is also evidence of the protests causing more widespread harm and risk of harm. Mr Smith, Temporary Assistant Chief Constable for Warwickshire Police, provides evidence as to the impact of the protests on police resources. He describes the policing operation as being one of the most significant he has experienced in his career. Large numbers of officers were deployed from across the force to the Terminal day and night. This caused non-emergency policing services to be reduced and, although core policing services were maintained, the protests impacted on the quality and level of policing available during that period. Officers who would otherwise have been policing communities, roads or supporting victims of crime were taken away from those duties to police the protests. The scale and sophistication of the protests meant that Warwickshire Police had to bring in additional police officers from other regional forces, in addition to specialist policing teams such as the working at heights teams and protest removal teams. Mr Smith reports this coming at significant additional financial cost to the police force.

41. The protests had an impact on the local community and beyond. A number of public highways around the Terminal had to be closed causing inconvenience to members of the public. The protest activity extended to disruption on the M42 motorway. Mr Smith considers that the significant police presence during the

protests created a level of fear and anxiety in the local community. He acknowledged the community had been disturbed by the large policing operation which had extended into unsociable hours and occasioned regular essential overnight use of the noisy police helicopter. The impact of the protests extended beyond the immediate community and across the wider West Midlands region, with fuel shortages occurring at some petrol station forecourts.

42. The protests also impacted Warwickshire County Council. Mr Morris, of County Highways Service, explains that the digging of the tunnel under the road on 9 and 10 April 2022 resulted in County Highways Engineers attending out of hours, a manual operative attending from Balfour Beatty, the emergency closing of the road and remedial works being required. He understands the cost to the taxpayer of his department's involvement to be in the region of £3189.95.

43. A number of the Council's witnesses comment on their concerns for public safety should protest activity at the Terminal cause a fire or explosion. Mr Smith considers the same would likely have catastrophic implications for the local community including the risk of widespread pollution to the ground, waterways and air. He notes that the protesters had no regard to the extremely hazardous nature of the site or for the safety of either themselves or others when using mobile phones at the Terminal, scaling and locking themselves onto very volatile fuel storage tanks, tunnelling in close proximity to high-pressure fuel pipelines and causing the forced stopping and scaling of fuel tankers on the public highway. Mr Smith states that such actions not only cause unacceptable levels of risk to the protestors themselves but also to the public and members of the emergency services attending any incidents.

The parties' positions

44. The Council seeks a final injunction in broadly the same terms as the interim order as amended at the hearing on 5 May 2022. The Council has set out the detail of its position in its skeleton argument of 5 June 2024 and in closing submissions. I shall return to the detail of those submissions in due course.

45. No defendant has filed an acknowledgment of service, defence or any witness evidence in response to the claim. Three of the defendants only have made closing submissions, each opposing the granting of an injunction notwithstanding that none of them have filed an acknowledgment of service or defence. Each of the three defendants stated that they had no intention of breaking any injunction in respect the Terminal in the future.

46. Ms Lee (8th defendant) submitted that no injunction is required in circumstances where, the since the making of the interim injunction, wider powers now exist under the criminal law providing a deterrent to protestors, as well as making it easier for the police to act in the event of a protest. She referred to the increased maximum sentence for the offence of wilful obstruction of the highway, increased in May 2022 to a 6-month term of imprisonment by virtue of the Police, Crime, Sentencing and Courts Act 2022. She also relied on a variety of new offences under the Public Order Act 2023, which introduced offences relating to protest activity of 'locking on', tunnelling, obstructing major transport works and interfering with major infrastructure. Ms Lee submitted that

the threat to the Terminal no longer exists as Just Stop Oil's tactics have changed and they have since turned their attention to more 'media friendly' protests. She argued that the proposed injunction is not a deterrent and amounts to an unlawful restriction of the rights of environmental defenders to protest.

47. Ms Hindley (78th defendant) told the court of her stress and worry since being named as a defendant following her arrest on three occasions in connection with the protests at the Terminal in 2022. She does not believe an injunction is proportionate and expressed concern that the Council is passing on the cost of the litigation to local residents. Ms Hindley submitted that the court should take into account what she described as malice and racism that she said prioritised local interests over the environmental devastation of the livelihoods of vulnerable brown and black people across the world.

48. Ms Naldrett (115th defendant) told the court that she was dismayed to discover that the conclusion of the contempt proceedings did not absolve those involved from remaining as named defendants to the claim for an injunction. She told the court she had no intention of returning to the Terminal and risking triggering her suspended sentence. She submitted that the claim for an injunction was not a good use of the court's time and that no injunction was required in light of the increased criminal powers under the Public Order Act 2023. She asked the court to prioritise the rights of ordinary people over those of oil companies.

The issues

49. It is useful at this juncture to summarise the key issues that require determination:

    (1) Does the Council have the standing to bring these proceedings and, if so, can it establish the causes of action relied upon?

    (2) Do the facts of this case justify restriction of the Article 10 and 11 rights of the protesters and, if so, to what extent?

    (3) If it is appropriate to grant relief to restrict protest activity, is it appropriate to grant injunctive relief against (a) the named defendants and/or (b) 'newcomer' persons unknown taking into account the requirements outlined in *Wolverhampton*?

    (4) If an injunction is to be granted, what are the appropriate terms thereof, and should a power of arrest be attached?

The Legal Framework

Standing of a local authority to bring proceedings and the underlying causes of action

50. The Council seeks to rely on a number of statutory provisions as bases for bringing the claim for injunctive relief. The principal power relied on is s.222(1) of the Local Government Act 1972 which states:

> "(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 …"

51. Whether it is 'expedient' for the purposes of s.222 to bring legal proceedings is for the local authority to decide subject to such decision being compatible with usual principles of judicial review. In *Stoke on Trent Council v B & Q Ltd* [1984] 1 Ch 1 Lawton LJ at 23A held as follows:

> "…[The local authority] must safeguard their resources and avoid the waste of their ratepayers money. It is in everyone's interest, and particular so in urban areas, that a local authority should do what it can within its powers to establish and maintain an ambiance of a law abiding community; and what should be done for this purpose is for the local authority to decide."

52. The Council puts its case on the basis that that the granting of an injunction "is appropriate and expedient for the promotion or protection of the interests of the inhabitants of their area, and in the exercise of the Court's discretion, that the defendants be restrained, by way of injunction, from committing tortious and criminal acts and, in particular acts amounting to a public nuisance and to breaches of the criminal law that the criminal law is unable to prevent." [Para. 56 of the Council's skeleton argument dated 5 June 2024.]

53. Subject to meeting the 'expediency' requirement, s.222 empowers local authorities to bring actions for injunctive relief to restrain public nuisance and criminal offending. In *Nottingham City Council v Zain* [2001] EWCA Civ 1248 the local authority sought to restrain a defendant alleged to have been involved in drug dealing on the grounds that his actions constituted a public nuisance. Schiemann LJ, at para. 8-13, held:

> "8. … The following passage from the judgement of Romer L.J. in *Attorney-General v PYA Quarries Ltd.[1957] Q.B. 169* at 184 has generally been accepted as authoritative.
>
> > "I do not propose to attempt a more precise definition of a public nuisance than those which emerge from the textbooks and authorities to which I have referred. It is, however, clear, in my opinion, that any nuisance is "public" which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects. The sphere of the nuisance may be described generally as "the neighbourhood"; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is

> sufficient to show that a representative cross-section of the class has been so affected for an injunction to issue."

> 9. Not everyone however is entitled to sue in respect of a public nuisance. Private individuals can only do so if they have been caused special damage. Traditionally the action has been brought by the Attorney General, either of his own motion, or, as was the situation in the *PYA* case, on the relation of someone else such as a local authority. In *Solihull Council v Maxfern Ltd* [1977] 127, Oliver J. considered the history of the legislative predecessors of s.222 and concluded that the effect of section 222 is to enable a local authority, if it thinks it expedient for the promotion or protection of the interests of the inhabitants of their area, to do that which previously it could not do, namely, to sue in its own name without invoking the assistance of the Attorney General, to prevent a public nuisance. I recognise that in that case the Local Authority was not suing in nuisance but rather was enforcing the criminal law in an area for which it had been given express responsibility, namely the enforcement of the Sunday trading provisions of the Shops Act 1950 . Nonetheless I respectfully agree with Oliver J.'s conclusion in relation to suing in nuisance…
>
> 13. …In my judgement 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 has never attracted adverse judicial comment. I consider that an authority would not be acting beyond its powers if it spent time and money in trying to persuade those who were creating a public nuisance to desist. Thus in my judgement the County Council in *PYA* was not acting beyond its powers in seeking the 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 public nuisance."

54. Keene LJ, agreeing with the judgment of Schiemann LJ, added the following observations at para. 27:

> "… Where a local authority seeks an injunction in its own name to restrain a use or activity which is a breach of the criminal law but not a public nuisance, it may have to demonstrate that it has some particular responsibility for enforcement of that branch of the law. But where it seeks by injunction to restrain a public nuisance, it may do so in its own name so long as it "considers it expedient for the promotion or protection of the interests of the inhabitants" of its area (section 222(1)). That is so even though it is seeking to prevent a

> breach of the criminal law, public nuisance being a criminal offence…"

55. As Sweeting J observed when considering the application for an interim injunction in this case ([2023] EWHC 1719 (KB) at para. 78), the terms of an injunction can extend to prohibiting lawful as well as unlawful conduct.

> "78. The purpose of the injunction was to prohibit conduct which if unchecked would amount to, or lead to, a public nuisance. It was the threat of significant harm, constituting a public nuisance, which led the Council to act and to seek restrictions which it regarded as necessary to afford effective protection to the public. Whilst the terms of an injunction should in so far as possible prohibit unlawful behaviour it is not the law that an injunction may only prohibit a tortious act; even lawful conduct may be prohibited if there is no other proportionate means of protecting rights. In the context of a threatened public nuisance of this nature and the form that protest had taken is not at all clear how injunctive relief could otherwise be framed effectively."

56. Sweeting J, at para. 81 of his judgment, noted that the previous common law criminal offence of public nuisance has been abolished and replaced by a statutory offence of public nuisance under s.78 of the Police, Crime, Sentencing and Courts Act 2022 in the following terms:

> "78 Intentionally or recklessly causing public nuisance
>
> (1) A person commits an offence if—
>
> (a) the person—
>
> (i) does an act, or
>
> (ii) omits to do an act that they are required to do by any enactment or rule of law,
>
> (b) the person's act or omission—
>
> (i) creates a risk of, or causes, serious harm to the public or a section of the public, or
>
> (ii) obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and
>
> (c) the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence.
>
> (2) In subsection (1)(b)(i) "serious harm" means—
>
> (a) death, personal injury or disease,

> (b) loss of, or damage to, property, or
>
> (c) serious distress, serious annoyance, serious inconvenience or serious loss of amenity.
>
> (3) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for the act or omission mentioned in paragraph (a) of that subsection.
>
> (4) A person guilty of an offence under subsection (1) is liable—
>
> (a) on summary conviction, to imprisonment for a term not exceeding [the general limit in a magistrates' court] , to a fine or to both;
>
> (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both.
>
> (5) In relation to an offence committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (increase in magistrates' court power to impose imprisonment) the reference in subsection (4)(a) to [the general limit in a magistrates' court]1 is to be read as a reference to 6 months.
>
> (6) The common law offence of public nuisance is abolished.
>
> …
>
> (8) This section does not affect—
>
> (a) the liability of any person for an offence other than the common law offence of public nuisance,
>
> (b) the civil liability of any person for the tort of public nuisance, or
>
> (c) the ability to take any action under any enactment against a person for any act or omission within subsection (1).”

57. In addition to s.222, the Council also relies on powers under the Localism Act 2011 and under the Highways Act 1980.

i) Section 1(1) of the Localism Act 2011 confers on a local authority the “power to do anything that individuals [of full capacity] may generally do.” By section 1(5): “the generality of the power conferred by subsection (1) (“the general power”) is not limited by the existence of any other power the authority which (to any extent) overlaps the general power.”

ii) By section 130(2) of the Highways Act 1980 “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." By section 130(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."

58. The court has the ability to attach a power of arrest to an injunction in the circumstances provided by section 27 of the Police and Justice Act 2006:

> "(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…
>
> (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."

The applicability of the Human Rights Act 1998

59. The Council accepts that this claim engages s.12 of the Human Rights Act 1998 and Articles 10 and 11 of the European Convention on Human Rights.

60. Article 10, freedom of expression, provides:

> "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...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

61. Article 11, freedom of assembly and association, provides:

> "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…"

62. The engagement of Article 10 requires consideration of s.12 of the Human Rights Act 1998. The relevant parts of that Act are as follows:

> "12.— Freedom of expression.
>
> (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
>
> (2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—
>
> (a) that the applicant has taken all practicable steps to notify the respondent; or
>
> (b) that there are compelling reasons why the respondent should not be notified.
>
> …
>
> (4) The court must have particular regard to the importance of the Convention right to freedom of expression …"

63. Articles 10 and 11 are qualified rights and thus can be restricted in the circumstances set out in paragraph 2 of each article. The approach to determining a whether a restriction of those rights is lawful was considered by Warby J (as he then was) in *Birmingham City Council v Afsar and others* [2019] EWHC 3217 (QB) in the context of a claim for injunctive relief by a local education authority to prevent protest activity within an exclusion zone around a school. At para. 102 Warby J held as follows:

> "102. The jurisprudence shows that Article 10 protects speech which causes irritation or annoyance, and information or ideas that "offend, shock or disturb" can fall within its scope: see, eg, *Sánchez v Spain* (2012) 54 EHRR 24 [53], *Couderc v France* [2016] EMLR 19 [88]. … Article 11 "protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote*": Lashmankin* [145]. But the rights engaged in this case have outer limits. … Article 11(1) does not protect violent or disorderly protest; the primary right is one of "peaceful" assembly. Further,

> whilst the right to education is unqualified, the rights guaranteed by Articles 8, 9, 10 and 11 are all qualified. Paragraph (2) of each Article makes clear that interference with the primary right may be legitimate if (but only if) two conditions are satisfied. It must be not only in accordance with or prescribed by law (a matter I have dealt with above) but also "necessary in a democratic society" in pursuit of one or more legitimate aims. Paragraph (2) of each Article identifies "the interests of … public safety ……or the protection of the rights and freedoms of others." Another legitimate aim identified in each Article is "the prevention of public disorder" or, in the case of Article 9(2), "the protection of public order", which would appear to be synonymous."

64. The application of Articles 10 and 11 in relation to criminal proceedings brought for wilful obstruction of the highway arising from protest activity was considered by the Supreme Court in *DPP v Ziegler* [2021] UKSC 23. At para. 16 the Supreme Court adopted the explanation given by the Divisional Court in the same case as to the enquiry that needs to be undertaken under the Human Rights Act 1998.

> "63…It requires consideration of the following questions:
>
> (1) Is what the defendant did in exercise of one of the rights in articles 10 or 11 ?
>
> (2) If so, is there an interference by a public authority with that right?
>
> (3) If there is an interference, is it 'prescribed by law'?
>
> (4) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of article 10 or article 11, for example the protection of the rights of others?
>
> (5) If so, is the interference 'necessary in a democratic society' to achieve that legitimate aim?
>
> 64. That last question will in turn require consideration of the well-known set of sub-questions which arise in order to assess whether an interference is proportionate:
>
> (1) Is the aim sufficiently important to justify interference with a fundamental right?
>
> (2) Is there a rational connection between the means chosen and the aim in view?
>
> (3) Are there less restrictive alternative means available to achieve that aim?
>
> (4) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

65. The Council accepts that when determining whether a restriction on any Article 10 or 11 right is justified, "it is not enough to assert that the decision was taken was a reasonable one" and "a close and penetrating examination of the factual justification for the restriction is needed." [*R (Gaunt) v Office of Communications (Liberty Intervening)* [2011] EWCA Civ 692 at para. 33.]

Injunctions against persons unknown

66. During the period in which the final hearing in this matter was adjourned, the Supreme Court handed down judgment in *Wolverhampton.* That case concerned applications for injunctions to prevent travellers from establishing unauthorised encampments in local authority areas. The Supreme Court reviewed the development of the law in relation to injunctions against 'newcomer' persons unknown, namely persons who, at the time of the grant of the injunction, are not identifiable and who cannot be shown to have committed any conduct which is sought to be prohibited or indeed to have any intention to do so in the future. At para. 167 the Supreme Court held:

> "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. 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."

67. The Supreme Court recognised, at para 171, 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…" When considering question (i), namely whether there is a compelling need for the remedy, the Supreme Court considered the availability of alternative powers available to the local authority by means such as public spaces protection orders, criminal offences and byelaws. [Paras. 204-216 of the judgment.]

68. At para. 235 of the judgment, the Supreme Court recognised the relevance of newcomer injunctions to protestor cases and noted:

> "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."

Discussion

Does the Council have standing to bring proceedings for injunctive relief and, if so, can it establish the causes of action relied upon?

69. The effect of decisions such as *Nottingham City Council v Zain* is that it is settled law that a local authority can rely on s.222 of the Local Government Act 1972 to bring proceedings to restrain actual or threatened public nuisance or

breach of the criminal law where the local authority considers "it expedient for the promotion or protection of the interests of the inhabitants of the area."

70. The Council argues that it is expedient to bring these proceedings for the promotion and protection of the interests of the inhabitants of North Warwickshire when one takes into account the desirability of establishing and maintaining a law-abiding community; the need to protect inhabitants and visitors of North Warwickshire from serious threats to their safety, health, property and peaceful existence; the need to ensure that businesses of North Warwickshire can go about their lawful operations without disruption, and the need to protect emergency service staff and resources.

71. When considering whether it is expedient to act under s.222, the Council has to take into account any particular responsibilities it has. In this case, s.17 of the Crime and Disorder Act 1998 imposes a duty on the Council "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 (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and …(c) re-offending in its area…" The Council also has the ability as a non-highway authority council under s.130(2) of the Highways Act 1980 to "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…"

72. The Council relies on underlying causes of action in public nuisance and breach or threatened breach of the criminal law. This is not one of those claims, as discussed by Keene LJ at para. 27 of *Zain*, where the injunction is brought to restrain only breaches of the criminal law such that a local authority may have to demonstrate it has some particular responsibility. As it happens, on the facts of this case, the Council does in any event have such a responsibility by virtue of s.17 of the Crime and Disorder Act 1998.

73. The Council's decision as to whether it was expedient to bring proceedings to promote or protect the interests of its inhabitants took into account multiple factors including the aforementioned statutory responsibilities, the high risks associated with storing very large volumes of flammable products at an 'Upper Tier' site adjacent to residential areas, and the significant scale and extent of disruption caused by protest activity occurring both inside and in the locality of the Terminal. In my judgment, those matters clearly justify the Council utilising its power under s.222.

74. The unchallenged evidence relied on by the Council establishes the commission of the tort of public nuisance and the threat of further such torts being committed. The actions of the protestors materially affected the reasonable comfort and convenience of those trying to go about their lives in North Warwickshire and the wider Midlands. Those affected included locals unable to use roads closed due to protest activity; businesses based at and those associated with the Terminal unable to operate fully due to operations at the Terminal being suspended; oil tanker drivers unable to go about their work when their vehicles were requisitioned by protestors; vehicle users finding they could not obtain fuel from forecourts suffering fuel shortages; local residents inconvenienced by the

scale and noise of required police operations, and individuals affected by the disruption to usual policing caused by additional police resources being diverted to policing the protests. Furthermore, the evidence demonstrates a risk of substantial public nuisance should an explosion or fire occur. The evidence of widespread use of mobile phones by the protesters in close proximity to highly flammable fuels, and the digging of tunnels without regard to the location of underground oil pipework, clearly creates a very significant risk to life, property and the environment. It was more by good luck rather than good judgement that the actions of some of the protesters did not result in a fire or explosion.

75. In light of my finding that the Council has established the commission of the tort of public nuisance, it is unnecessary to consider whether the same facts gave rise to any criminal offences that were in force at that time. The existence of the criminal law as a possible alternative remedy will however be relevant when considering whether it is appropriate for the court to exercise its discretion to grant injunctive relief.

The restriction of Article 10 and 11 rights

76. The Council accepts that the claim engages s.12 of the Human Rights Act 1998 given that the relief sought may affect the protestors' rights to freedom of expression. Some of the named defendants, and necessarily the persons unknown defendants, were neither present nor represented at the trial. By s.12(2) no relief is to be granted unless the court is satisfied that the Council has taken all practicable steps to notify the defendants. The question of service of the order of Soole J dated 6 December 2023 and of the Notice of Hearing was the subject of consideration at the start of the hearing on 11 June 2024. For the reasons given in an ex tempore judgment that day, and as embodied in my order of 12 June 2024, I was satisfied that proper notice had been given to the defendants that have chosen not to acknowledge or defend the claim or attend the trial.

77. It is not in dispute that Articles 10 and 11 are engaged. The issue is whether it is appropriate to interfere with those qualified rights. The Council encourages the court to adopt the approach adopted by Sweeting J at para. 133-136 of his judgment granting the interim injunction in this case. Whilst many of the considerations will be the same, in my judgment it is important to reconsider the appropriate framework of questions posed by the Supreme Court in *Ziegler* afresh, having now heard the evidence and the submissions of the three defendants.

78. The answers to the first four questions posed at para. 63 of *Ziegler* can be answered in fairly short order.

(1) The protesters actions in gathering with others to protest against the granting of licences for the production and use of fossil fuels was an exercise of their Article 10 and 11 rights.

(2) The Council's seeking of an injunction to restrict the rights to protest clearly interferes with the protestors' Article 10 and 11 rights as it would prevent much of the activity that has previously occurred.

(3) The interference is however prescribed by law in that the court has a discretion to grant an injunction under s.37 of the Senior Courts Act 1981 and the Council has the standing to bring a claim for injunctive relief pursuant to s.222 of the Local Government Act 1972.

(4) The interference is in pursuit of a legitimate aim namely the prevention of disorder or crime, the protection of health and the protection of rights of others.

79. The more complex question is that posed at para. 63(5) of *Ziegler* namely whether the interference is 'necessary in a democratic society' to achieve that legitimate aim? That involves consideration of the four further questions identified by the Supreme Court in para. 64(1) – (4).

80. The Council's primary concern is to protect the local community and environment from the risks associated with extreme forms of protesting in close proximity to highly flammable fuels. Given the potential ramifications of any fire or explosion at or in the locality of the Terminal, the stated aims to prevent crime and disorder, protect the health of the community and the rights of others are sufficiently important to justify interference with the Article 10 and 11 rights. The Council can therefore satisfy the question posed by para. 64(1).

81. The terms of the proposed injunction seek to prohibit protests inside the Terminal (ie on private land to which the defendants have no right to enter anyway) and to restrict certain specified acts in the locality of the Terminal. The Council does not seek to prohibit all protest activity in the locality of the Terminal but only more extreme form of protest activity, such as blocking entrances, climbing on structures, locking on, digging or tunnelling and abseiling. For the purposes of the question posed by para. 64(2), there is thus a rational connection between the terms of the injunction sought and the aims of preventing crime and disorder and protecting the health of the community and rights of others.

82. It is then necessary to consider whether there are less restrictive means available to achieve the Council's aims. (Para. 64(3) of *Ziegler*.) The defendants' submissions to the effect that an injunction is unnecessary in light of expanded criminal law powers can be viewed as a request that the court adopt a less restrictive approach and allow the position to be governed by existing laws.

83. The main alternative remedies to be considered as potential means of achieving the Council's aims are (a) a Public Spaces Protection Order ('PSPO'), (b) byelaws and (c) the existing criminal law. The evidence of Mr Maxey (witness statement 5 June 2024 at paras. 7-9) sets out his views on the suitability of a PSPO and byelaws. Mr Smith (witness statement 10 April 2022 at page 4) comments on the attempted use of criminal law to control the protest activity.

84. The Supreme Court in *Wolverhampton* (at para. 204) discussed the availability of PSPOs in the context of considering whether there was a compelling justification for a newcomer injunction against persons unknown. It was noted that a PSPO is directed at behaviour and activities carried on or in a public place which have a detrimental effect on the quality of life of those in the area. A

number of the disadvantages of a PSPO identified by Mr Maxey are valid concerns. The level of protection provided by a PSPO is restricted by virtue of the Council not having jurisdiction to impose such an order on private land. Any order could not therefore extend to the Terminal itself and would be limited to any public land adjacent thereto. The evidence in this case is that some of the protest activity, including some of the more extreme activity in locking onto fuel tanks, occurred inside the perimeter fencing. A PSPO would not therefore address the aim of protecting the local community from the health implications of a fire or explosion caused by a protest within the Terminal. Furthermore, the maximum sanction for breach of a PSPO is a level 3 fine (up to £1000) giving rise to concern that such an order would not have the same deterrent effect as an injunction, breach of which gives rise to a maximum penalty for contempt of two years' imprisonment. Additionally, breach of a PSPO is not an arrestable offence meaning that the police would not be able to remove with immediate effect a protester whose actions were putting at risk the local community. That limits the utility of a PSPO. In my judgement, a PSPO is not a viable less restrictive means of achieving the Council's aims.

85. Byelaws suffer many of the same shortfalls as seen with PSPOs. Breach of a byelaw gives rise to a maximum fine of £500 and is not an arrestable offence. The Council cannot unilaterally make a byelaw and the process requires assessment, consultation, application and approval of the scheme by the Secretary of State and further consultation. It is not therefore an agile solution either in terms of speed of implementation or in terms of the ability to vary the byelaw should circumstances change. It is not therefore a viable less restrictive means of achieving the Council's aims.

86. Since the making of the interim order by Sweeting J in May 2022, the range and seriousness of criminal offences relevant to protest activity have increased. From 12 May 2022, the sentence for the offence of wilful obstruction of the highway has increased from a fine to a maximum of 6 months' imprisonment. (s.80 of the Police, Crime, Sentencing and Courts Act 2022 amending s.137 of the Highways Act 1980.) The Public Order Act 2023 ("the 2023 Act") introduced a range of new offences with effect from 3 May 2023. Those offences include an offence of locking on (s.1), being equipped for locking on (s.2), causing serious disruption by tunnelling (s.3), causing serious disruption by being present in a tunnel (s.4), being equipped for tunnelling (s.5) and interfering with the use or operation of key national infrastructure including downstream oil infrastructure (s.7). There are differing maximum sentences for each of those offences but, other than the 'being equipped' offences which attract fines, the remainder can attract sentences of imprisonment. Section 10 and 11 of the 2023 Act extend police powers of stop and search to a number of the offences. The prosecution can apply for a serious disruption prevention order (s.20) subject to various conditions being met. Those conditions include a requirement that a defendant has committed another protest -related offence or a protest -related breach of an injunction within the five years ending on the day of conviction for the current offence. Certain individuals, such as the chief constable, can apply for a serious disruption prevention order on application (s.21). A local authority such as the Council does not however have standing to make such an application.

87. Ms Lee's submission is that the enhanced criminal powers provide a deterrent to protesters and give increased powers of arrest to the police such that an injunction is no longer required. The Council does not accept the increased criminal powers obviate the need for an injunction. Mr Manning submits that the object of the proceedings is defeated if the local community has to wait until criminal offences occur before action is taken. He submits that the evidence from the police suggests that the criminal justice system is not well equipped to prevent protesters returning to the site because individuals arrested are not typically remanded in custody and offences take time to progress through the criminal courts. It is said that it can also be a matter of circumstance whether an individual protester is prosecuted as that is subject to the view taken by the prosecuting authorities rather than the Council. Mr Manning submits that there is no evidence of the deterrent effect of the increased criminal penalties and new offences in circumstances where public nuisance was already a common law offence in 2022 and did not deter the protestors from acting. In short, the Council submits that the criminal law does not provide a systematic means of protecting the local area from the harm that the authorities are concerned about.

88. It is not helpful that the police evidence relied on by the Council has not been updated to reflect any effects of the introduction of new criminal offences and increased sentencing powers. However, the existence of relevant criminal offences does not, of itself, mean it is inappropriate to grant an injunction to restrain public nuisance nor, particularly in cases where a local authority has a particular responsibility for enforcement, to restrain breaches of acts which would amount to other criminal offences. Indeed, in *Zain,* serious criminal offences existed in respect of the alleged illegal drug activity but it was nonetheless appropriate to grant injunctive relief. The criminal justice system does not, in my judgment, achieve the Council's aims in as comprehensive a manner as injunctive relief could. Firstly, I am not persuaded that new criminal offences and increased sentencing powers have the same deterrent effect as an injunction and power of arrest. The common law offence of public nuisance existed when the protests occurred in 2022 and, as a common law offence, technically had a maximum sentence of life imprisonment. That did nothing to deter the protesters. The increased sentence for wilful obstruction of the highway and many of the offences under the 2023 Act have lower maximum sentences than the 2 years' maximum imprisonment for contempt of court. Secondly, the mechanism by which a protester is brought before the civil courts following arrest is expeditious in that it requires production before a court within 24 hours. It therefore provides both a significant deterrent to a would-be unlawful protester who risks immediate incarceration, and immediate respite to the local community. Thirdly, an injunction hands control of the pursuit of contempt proceedings against protestors to the local authority. By contrast, with criminal proceedings it is for the criminal prosecuting authority to determine whether to pursue a matter. The Council is likely better placed to assess whether contempt proceedings further the Council's aims in preventing crime and disorder in its area and protecting the health of its residents. Moreover, the Council has a positive duty under s.17 of the Crime and Disorder Act 1998 to exercise its 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 (including anti-social and other behaviour adversely

affecting the local environment) and to prevent re-offending. Permitting the Council rather than prosecuting authorities to take action to prevent unlawful protest activity is consistent with the Council's obligation to do all it reasonably can to prevent crime and disorder. Fourthly, an injunction is designed to be preventative in nature as opposed to the criminal law which reacts to events that have already occurred. In seeking to prevent crime and disorder and protecting the health and rights of others, it is little comfort that the criminal law will swing into action only after the damage has been done. I do not therefore conclude that reliance on the existing criminal law is an adequate less restrictive means of achieving the Council's aims.

89. The final question in determining whether an interference with a qualified convention right is proportionate requires consideration of whether there is a fair balance between the rights of the individual and the general interest of the community, including the rights of others. (Para. 64(4) of *Ziegler*.) The proposed injunction does not prohibit all protests in the locality of the Terminal but only those which involve more extreme forms of protest activity which put the community at risk. By permitting some protest activity, the proposed injunction strikes a fair balance between the rights of the protestors and the general interest of the local community.

Is it appropriate to grant injunctive relief against the named defendants?

90. In *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303 the Court of Appeal guidance at para. 82(1) was to the effect that if an individual is "known and has been identified, they must be joined as individual defendants to the proceedings." The decision in *Wolverhampton* does not affect that proposition. Of named defendants appearing at Schedule A to the judgment, those numbered up to and including the 17th defendant were the original named defendants to the claim having been arrested at or in the locality of the Terminal in relation to protest activity taking place between 31 March and 10 April 2022. The defendants numbered 20th onwards were added as named defendants following their arrest at or in the locality of the Terminal in relation to protest activity after the initial interim injunction was granted on 14 April 2022.

91. Mr Maxey recognises in his evidence that "the Council has no means of knowing definitively whether every one of the named defendants has continued to be involved in this type of protesting, as we do not have access to the records of the criminal courts or the police national computer…It seems to me that the only realistic course that the Council can therefore take is to proceed on the basis that the defendants may well still participate in such conduct." [Para. 16(iii) of his statement of 5 June 2024.]

92. In my judgment it is appropriate to grant injunctive relief in principle against each of the named defendants appearing in in Schedule A. None of the defendants have filed a defence and thus have not sought to challenge the claimant's case that each defendant has been arrested for relevant protest activity at the Terminal and is affiliated with Just Stop Oil and its aims. Indeed, when making their submissions the 8th, 78th and 115th defendants did not seek to dispute their involvement in protest activity at the Terminal nor seek to disavow their support of the aims of Just Stop Oil. Whilst there has been no

protest activity at the Terminal since September 2022, the evidence establishes that Just Stop Oil has continued in disruptive protest activity in other locations. [Para. 8(c) of the statement of Mr Maxey dated 18 January 2024.] In her submissions, the 8th defendant acknowledged an ongoing intention of Just Stop Oil to protest but with a focus on more 'media friendly' opportunities. By that she was referring to protest activity that prompts maximum media attention. The opportunity for headline-making is only too obvious if a fire or explosion occurred at the Terminal. The behaviour of a number of the defendants during the various contempt proceedings also evidences the defendants' collective intention to cause disruption in aid of their cause. Such conduct included many defendants refusing to accept the jurisdiction of the court and some variously telling the court they would not attend future hearings if bailed, refusing to come out of cells to attend court, climbing on dock furniture, gluing body parts to the dock, and removing their clothes when in the dock. There is a clearly a risk that unless restrained the named defendants may engage in future protest activity at or in the locality of the Terminal that endangers the local community.

Is it appropriate to grant injunctive relief against 'newcomer' persons unknown taking into account the requirements outlined in *Wolverhampton*?

93. Any newcomer injunction is a form of without notice injunction and, as recognised by the Supreme Court in *Wolverhampton* at para. 167, only likely to be justified as "a novel exercise of discretionary power" if certain conditions are met.

Compelling need not adequately met by any other measures

94. There is however a compelling need for injunctive relief to protect the inhabitants of North Warwickshire and those who work in or travel through or otherwise visit the area from the more extreme types of protest activity at and in the locality of the Terminal that amount to public nuisance and/or criminal offences. For the reasons discussed in paragraphs 82 to 88 of this judgment, the required protection cannot be met by other measures available to the Council. The ongoing nature of Just Stop Oil's protest activity is such that there is a real risk of future incidences of public nuisance occurring and/or of criminal offences being committed at or in the locality of the Terminal.

Procedural protections

95. Any newcomer injunction must ensure that there are sufficient procedural protections to safeguard the newcomers against draconian nature of a without notice order. The persons unknown defendants have been given notice of this claim, the interim injunctions and the progression of the proceedings to the trial dates by various methods of alternative service. Those steps have included physical signage at the Terminal, use of the Council's website and social media accounts, and direct communications with Just Stop Oil through their email addresses and social media accounts. Persons unknown have therefore already had ample opportunity to participate in these proceedings but have elected not to. Any final injunction against newcomers can also be the subject of stringent alternative service provisions to ensure persons potentially affected are given full information as to the terms and scope of the order, any power of arrest and

the trial papers before the court. The Council has provided details of the steps it proposes to take to publicise an order, power of arrest and documents contained in the trial bundles. Those steps involve making use of signage along the boundary of and at the entrances to the Terminal, posting documents on its website, publicising through the Council's social media, asking local police to publicise through their social media and communicating directly with Just Stop Oil through known email addresses and social media. Such an approach will ensure effective notice can be given to newcomers. Mindful of its obligations to ensure procedural fairness, the Council concedes that any order should have a generous liberty to apply provision enabling any person served with the order or affected by it to apply to the court to vary or discharge the order on 48 hours' notice to the Council. This will ensure any newcomer has the ability to raise any objection even though they have not participated in the trial.

Disclosure duty

96. The Council acknowledges its obligation to comply with its disclosure duty on seeking a remedy against newcomer persons unknown. The Council's skeleton argument, at paragraphs 68 to 73, addresses the Council's duty and considers what arguments defendants might wish to pursue. It has also ensured that the court has before it the interim injunction judgment of Sweeting J at [2023] EWHC 1719 (KB) which discusses the arguments raised by the 73rd defendant and Ms Hardy at the interim hearing. Mr Manning's closing submissions included taking the court through the various new criminal offences introduced by the 2023 Act, and the increased sentencing powers for wilful obstruction of the highway, to ensure full consideration could be given to possible less restrictive alternative measures. I am therefore persuaded that the Council is both alive to its disclosure duty and has complied with the same in putting its case and counter-arguments as fairly as possible.

Territorial and temporal limits

97. The terms of the draft order limit the geographical scope of the injunction to two areas. The first area is defined in paragraph 1 of the draft order as covering the Terminal itself. That area is privately owned land upon which the defendants have no right to access without the permission of the land owner. The land is identifiable in the draft order by reference to boundaries edged in red on a colour plan attached to the order. The plan is drawn to a scale of 1:5000. The geographical limit is thus clear to see. The second area is defined in paragraph 2 of the draft order as being "anywhere in the locality of the Terminal…" The Council acknowledges that the term "locality" is a flexible concept but submits it is one which has the necessary clarity having been endorsed as appropriate for use in injunctive orders by the Court of Appeal in *Manchester City Council v Lawler* [1998] 31 HLR 119. Butler-Sloss LJ (as she then was) noted that "in the locality" was a term adopted by parliament and considered it would be "a question of fact for the judge whether the place in which the conduct occurred was or was not within the locality." I considered the construction of the term in contempt proceedings within this claim (*NWBC v Aylett, Goode & Jordan* [2022] EWHC 2458 (KB) at para. 94-100). I maintain my conclusion that the expression is not unreasonably vague such that it may be susceptible to more than one interpretation. It is an expression adopted by parliament and endorsed

for use in injunctions by the Court of Appeal. Furthermore, a defendant facing contempt proceedings has the additional procedural safeguard arising from the requirement on the Council to establish to the criminal standard of proof that a given place is ”within the locality.”

98. Any newcomer injunction must also be subject to strict temporal limits. The Council seeks an injunction for a period of three years from trial with annual hearings to review its operation. The interim injunction has itself been in force for over two years, which is longer than anticipated when the claim was first issued. In the context of gypsy or traveller newcomer injunctions, the Supreme Court in *Wolverhampton* (at para. 225) took the view that such injunctions “ought to come to an end (subject to any order of the judge), by effluxion of time in all cases after no more than one year unless an application is made for their renewal.” Slightly different considerations apply where an injunction limits only certain types of protest behaviour as the consequences of an order are less draconian than for a gypsy or traveller being deprived of somewhere to site the vehicle in which they live. In *Valero Energy Ltd & others v Persons Unknown* [2024] EWHC 134 (KB) (“*Valero Energy*”) Ritchie J granted a newcomer injunction against protestors for a period of five years subject to annual reviews. The claimants in *Valero* owned or had a right to possession of eight oil refinery or oil terminal sites in England and Wales which had been targeted by protest groups including Just Stop Oil. Whilst an annual review is essential to ensure ongoing consideration of the appropriateness of an injunction remaining in force, a term of three years is within appropriate temporal limits. The sustained duration of protest activity between March and September 2022 and the regular ongoing protest activity of Just Stop Oil at other locations demonstrates the need for the term of any order to extend to three years.

Just and convenient

99. The Council seek to protect their inhabitants from unlawful activity in the form of public nuisance and/or the commission of criminal offences. The highly flammable nature of the products stored on and transported to and from the Terminal means that some of the protest activity seen at this location has risked fire or explosion. The balance of convenience falls in favour of granting injunctive relief to protect the local population whilst still permitting the defendants to engage in protest activity in the locality of the Terminal.

100. The terms of the final injunction in *Valero Energy* already provides some protection to the local community as it covers part of the Terminal that is within the control of one of the four operators of the Terminal. I do not take the view that the *Valero Energy* order renders it inappropriate to grant the Council relief. Firstly, the Council does not hold the benefit of that order and would not be able to enforce it. Secondly, the claimants to the *Valero Energy* claim are not local authorities and thus could not rely on s. 27 of the Police and Justice Act 2006 so as to seek a power of arrest. Thirdly, the order does not cover the Terminal as a whole nor the locality of the Terminal.

101. I am therefore persuaded it is appropriate for the court to exercise its discretion to grant injunctive relief against the newcomer defendants.

The terms of the injunction and whether a power of arrest should be attached.

102. For the reasons aforementioned, it is appropriate for an injunction to be granted against all the defendants listed in schedule A for a term of three years from the trial with annual review hearings. The substance of the draft order will be adopted but the court will hear submissions on the detail of the required order after the judgment has been handed down.

103. The Council seeks that a power of arrest be attached to the injunction pursuant to s.27 of the Police and Justice Act 2006. The application of s.27 to the facts of this case was considered by Sweeting J when granting the interim injunction: [2023] EWHC 1719 (KB) at paras. 108 to 115. That analysis is still applicable following the hearing of the evidence. The decision in *Wolverhampton* does not undermine the ability of the court to attach a power of arrest to an injunction against persons unknown. The substance of the injunction will prohibit conduct which is capable of causing nuisance or annoyance to the inhabitants of the Council's area. It remains the case that there is a significant risk of harm for the purposes of s.27(3)(b) given the extreme forms of protest seen at the Terminal, the ongoing protest activity of Just Stop Oil generally and the implications of a fire or explosion at the Terminal. I am therefore satisfied that the Council meets the threshold test imposed by s.27(2) and (3). Whether to then attach a power of arrest becomes an exercise of discretion. As was the position at the interim stage of this case, there remain cogent reasons why a power of arrest is appropriate, indeed an imperative. Firstly, a power of arrest will enable the police to immediately remove a protestor from the scene and thereby reduce or extinguish the risk to others. Secondly, a power of arrest ensures that the Council can take effective enforcement action. A protestor would be arrested, detained, identified and brought before a court within 24 hours. Without such a power, the Council would find it impossible or at least extremely difficult in many cases to ascertain the names and addresses of the perpetrators so as to bring a paper contempt application. That in turn would diminish the desired deterrent effect of the injunction. A power of arrest will therefore be attached to the order.

Required form of order

104. I will hear submissions on the detail of the required order on the handing down of judgment but make the following provisional comments on the latest version of the draft order as supplied by the Council at trial:

i) The description of the protests covered should be extended to mirror the definition adopted in the description of defendants 19A to 19D, namely a protest "against the production of fossil fuels and/or the use of fossil fuels and/or the grant of licences to extract fossil fuels."

ii) The order will cover the Terminal and the locality of the Terminal.

iii) The order will prohibit all protest activity within the Terminal itself but, in respect of the locality of the Terminal, the prohibited activity will be limited to defined actions as particularised in draft paragraph 1(b)(i) to (xi).

iv) The alternative service provisions in Schedule 3 in respect of the persons unknown defendants and those defendants for whom the Council has no contact details requires amendment to ensure that (a) it is clear that all alternative service steps must be undertaken, (b) the relevant documents are publicised widely including signposting from the Council's website landing page and (c) there is no ambiguity as to the size and number of physical signs that will be required.

v) Further case management directions need to be made in respect of the first review hearing.

HHJ Emma Kelly

SCHEDULE A

SCHEDULE OF DEFENDANTS

(2) THOMAS BARBER
(3) MICHELLE CADET-ROSE
(4) TIMOTHY HEWES
(5) JOHN HOWLETT
(6) JOHN JORDAN
(7) CARMEN LEAN
(8) ALYSON LEE
(9) AMY PRITCHARD
(10) STEPHEN PRITCHARD
(11) PAUL RAITHBY
(14) JOHN SMITH
(15) BEN TAYLOR
(17) ANTHONY WHITEHOUSE
(19A) PERSONS UNKNOWN WHO, OR WHO INTEND TO, PARTICIPATE IN PROTESTS WITHIN THE SITE KNOWN AS KINGSBURY OIL TERMINAL, TAMWORTH B78 2HA (THE "TERMINAL") AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS, AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS;
(19B) PERSONS UNKNOWN WHO, OR WHO INTEND TO, PARTICIPATE IN PROTESTS IN THE LOCALITY OF THE TERMINAL, AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS, AND WHO, IN CONNECTION WITH ANY SUCH PROTEST, DO, OR INTEND TO DO, OR INSTRUCT ASSIST OR ENCOURAGE ANY OTHER PERSON TO DO, ANY OF THE FOLLOWING: (A) ENTER OR ATTEMPT TO ENTER THE TERMINAL; (B) CONGREGATE AT ANY ENTRANCE TO THE TERMINAL; (C) OBSTRUCT ANY ENTRANCE TO THE TERMINAL; (D) CLIMB ON TO OR OTHERWISE DAMAGE OR INTERFERE WITH ANY VEHICLE OR ANY OBJECT ON LAND (INCLUDING BUILDINGS, STRUCTURES, CARAVANS, TREES AND ROCKS);

(E) DAMAGE ANY LAND INCLUDING (BUT NOT LIMITED TO) ROADS, BUILDINGS, STRUCTURES OR TREES ON THAT LAND, OR ANY PIPES OR EQUIPMENT SERVING THE TERMINAL ON OR BENEATH THAT LAND; (F) AFFIX THEMSELVES TO ANY OTHER PERSON OR OBJECT OR LAND (INCLUDING ROADS, STRUCTURES, BUILDINGS, CARAVANS, TREES OR ROCKS); (G) ERECT ANY STRUCTURE; (H) ABANDON ANY VEHICLE WHICH BLOCKS ANY ROAD OR IMPEDES THE PASSAGE OF ANY OTHER VEHICLE ON A ROAD OR ACCESS TO THE TERMINAL; (I) DIG ANY HOLES IN OR TUNNEL UNDER (OR USE OR OCCUPY EXISTING HOLES IN OR TUNNELS UNDER) LAND, INCLUDING ROADS; OR (J) ABSEIL FROM BRIDGES OR FROM ANY OTHER BUILDING, STRUCTURE OR TREE ON LAND.
(19C) PERSONS UNKNOWN WHO, OR WHO INTEND TO, ORGANISE, PUBLICISE OR PROMOTE ANY PROTEST WITHIN THE TERMINAL AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS.
(19D) PERSONS UNKNOWN WHO, OR WHO INTEND TO, ORGANISE, PUBLICISE OR PROMOTE ANY PROTEST IN THE LOCALITY OF THE TERMINAL, AGAINST THE PRODUCTION OF FOSSIL FUELS AND/OR THE USE OF FOSSIL FUELS AND/OR THE GRANT OF LICENCES TO EXTRACT FOSSIL FUELS, AT WHICH PROTEST THEY INTEND OR FORESEE OR OUGHT TO FORESEE THAT ANY OF THE ACTS DESCRIBED AS PART OF THE DESCRIPTION OF DEFENDANT 19B WILL BE CARRIED OUT.
(20) JOHN JORDAN
(22) MARY ADAMS
(23) COLLIN ARIES
(24) STEPHANIE AYLETT
(25) MARCUS BAILIE
(28) PAUL BELL
(29) PAUL BELL
(30) SARAH BENN
(31) RYAN BENTLEY
(32) DAVID ROBERT BARKSHIRE
(33) MOLLY BERRY

(34) GILLIAN BIRD
(36) PAUL BOWERS
(37) KATE BRAMFITT
(38) SCOTT BREEN
(40) EMILY BROCKLEBANK
(42) TEZ BURNS
(43) GEORGE BURROW
(44) JADE CALLAND
(46) CAROLINE CATTERMOLE
(48) MICHELLE CHARLESWORTH
(49) ZOE COHEN
(50) JONATHAN COLEMAN
(53) JEANINIE DONALD-MCKIM
(55) JANINE EAGLING
(56) STEPHEN EECKELAERS
(58) HOLLY JUNE EXLEY
(59) CAMERON FORD
(60) WILLIAM THOMAS GARRATT-WRIGHT
(61) ELIZABETH GARRATT-WRIGHT
(62) ALASDAIR GIBSON
(64) STEPHEN GINGELL
(65) CALLUM GOODE
(68) JOANNE GROUNDS
(69) ALAN GUTHRIE
(70) DAVID GWYNE
(71) SCOTT HADFIELD
(72) SUSAN HAMPTON
(73) JAKE HANDLING
(75) GWEN HARRISON
(76) DIANA HEKT
(77) ELI HILL
(78) JOANNA HINDLEY
(79) ANNA HOLLAND
(81) JOE HOWLETT

(82) ERIC HOYLAND
(83) REUBEN JAMES
(84) RUTH JARMAN
(85) STEPHEN JARVIS
(86) SAMUEL JOHNSON
(87) INEZ JONES
(88) CHARLOTTE KIRIN
(90) JERRARD MARK LATIMER
(91) CHARLES LAURIE
(92) PETER LAY
(93) VICTORIA LINDSELL
(94) EL LITTEN
(97) DAVID MANN
(98) DIANA MARTIN
(99) LARCH MAXEY
(100) ELIDH MCFADDEN
(101) LOUIS MCKECHNIE
(102) JULIA MERCER
(103) CRAIG MILLER
(104) SIMON MILNER-EDWARDS
(105) BARRY MITCHELL
(106) DARCY MITCHELL
(107) ERIC MOORE
(108) PETER MORGAN
(109) RICHARD MORGAN
(110) ORLA MURPHY
(111) JOANNE MURPHY
(112) GILBERT MURRAY
(113) CHRISTIAN MURRAY-LESLIE
(114) RAJAN NAIDU
(115) CHLOE NALDRETT
(117) DAVID NIXON
(118) THERESA NORTON
(119) RYAN O TOOLE

(120) GEORGE OAKENFOLD
(121) NICOLAS ONLAY
(122) EDWARD OSBOURNE
(123) RICHARD PAINTER
(124) DAVID POWTER
(125) STEPHANIE PRIDE
(127) SIMON REDING
(128) MARGARET REID
(129) CATHERINE RENNIE-NASH
(130) ISABEL ROCK
(131) CATERINE SCOTHORNE
(133) GREGORY SCULTHORPE
(135) VIVIENNE SHAH
(136) SHEILA SHATFORD
(137) DANIEL SHAW
(138) PAUL SHEEKY
(139) SUSAN SIDEY
(141) JOSHUA SMITH
(142) KAI SPRINGORUM
(145) HANNAH TORRANCE BRIGHT
(146) JANE TOUIL
(150) SARAH WEBB
(151) IAN WEBB
(153) WILLIAM WHITE
(155) LUCIA WHITTAKER-DE-ABREU
(156) EDRED WHITTINGHAM
(157) CAREN WILDEN
(158) MEREDITH WILLIAMS

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Cases Nos: QB-2021-003841
QB-2021-004122
KB-2022-003542

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 January 2025

Before :

THE HONOURABLE MR JUSTICE MORRIS

- -

Between :

TRANSPORT FOR LONDON	**Claimant**
- and -	
(1) PERSONS UNKNOWN **(2) MR ALEXANDER RODGER AND 137 OTHERS**	**Defendants**
(The "TfL IB Claims")	
And between :	
TRANSPORT FOR LONDON	**Claimant**
- and -	
(1) PERSONS UNKNOWN **(2) MS ALYSON LEE AND 167 OTHERS**	**Defendants**
(The "TfL JSO Claim")	

- -
- -

Andrew Fraser-Urquhart KC and Charles Forrest (instructed by **TfL**) for the **Claimant**
Stephen Simblet KC (instructed by **Good Law Practice, Solicitors**) for 37 Named Defendants in the TfL IB Claims and 14 Named Defendants in the TfL JSO Claim

Indigo Rumbelow (Named Defendant 114 in the TfL IB Claims and Named Defendant 50 in the TfL JSO Claim) and **Matthew Parry** (Named Defendant 143 in the TfL JSO Claim) attended and made representations

No attendance or representation for the **other Defendants**

Hearing dates: 13 and 20 May 2024
Further written submissions: 21 and 30 May 2024 and 1 June 2024

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Morris :

Introduction

1. In this judgment I consider a number of matters arising from two final injunctions made, on 3 May 2023 and on 8 June 2023 respectively ("the Final Injunctions"), in two sets of proceedings brought by Transport for London ("TfL") against Persons Unknown and certain named defendants. I refer to the two sets of proceedings as the "TfL IB Claims" and the "TfL JSO Claim" (and together as "the Claims").

2. Each of the final injunctions prevents the blocking, for the purpose of protests, principally under the banners "Insulate Britain" ("IB") and "Just Stop Oil" ("JSO"), of certain roads or locations of strategic importance in and around London, forming part of the TfL Strategic Network, (referred to as the GLA Roads) and for which TfL is the highway and traffic authority.

3. In the TfL IB Claims (claim nos QB-2021-003841 and QB-2021-004122), following a trial on 29 to 30 March 2023, I granted the final injunction on 3 May 2023 following my judgment of the same date [2023] EWHC 1038 (KB) ("the IB Judgment"). In the TfL JSO Claim (KB-2022-003542), after a trial on 4 May 2023, the final injunction was made by Eyre J on 8 June 2023 following his judgment of 26 May 2023 at [2023] EWHC 1201 (KB) ("the JSO Judgment").

4. In each case, there was an order for a final injunction ("the Final Injunction Order"). The final injunction was granted against a substantial number of Named Defendants and also against a defined class of persons unknown ("Persons Unknown"); and the final injunction was for a maximum period of 5 years from 3 May 2023. Importantly for present purposes, the Final Injunction Order further provided that there should be, every 12 months and for as long as it was in force, "a hearing to review this Final Injunction Order.". That review hearing took place in May of last year, with further written submissions in June. This is my judgment pursuant to that review hearing and represents the position as at the end of May. There will be a further review in May 2025. The Final Injunction Order also provided for any defendant, or other person affected, with liberty to apply to vary or discharge it.

5. In addition to the Final Injunction Order, in each case there was a separate judgment order ("the IB Judgment Order" and the "JSO Judgment Order"), which formally allowed the TfL claims, made an award of costs against certain of the Defendants (paragraph 5) and granted permission to discontinue against a small number of Named Defendants. The detailed provisions of paragraph 5 of the JSO Judgment Order are considered in paragraph 72 below.

6. Some of the Named Defendants gave undertakings to the Court ("the Undertakings") in lieu, and in terms similar to those, of the injunctions. They were not made subject to the final injunctions nor were costs ordered against them. However these Defendants nevertheless remained listed at defendants to the Claim as a whole, in order to enable enforcement of the Undertakings.

7. In the TfL IB Claims, there are 129 Named Defendants subject to the Final Injunction. Three Named Defendants gave an undertaking in lieu. In the TfL JSO Claims, there

are 9 Named Defendants subject to the Final Injunction and a further 157 Named Defendants gave an undertaking in lieu.

The issues in summary

8. In principle the following matters fall for determination.

9. First, in respect of the TfL IB Claims and the TfL JSO Claim, there is the review of the final injunction; in particular this raises the issue of whether there are any grounds for discharging or varying the terms of the Final Injunctions.

10. Secondly, in the TfL IB Claims, there is an application, made by application notice dated 27 July 2023, by Ms Giovanna Lewis, (Named Defendant 128) on behalf of herself and 113 further Named Defendants that, in their cases, the Court should accept undertakings in place of the final injunction and that they should be discharged as Named Defendants to the proceedings ("the Lewis Application"). (The Lewis Applicants are listed in Annex A hereto). The Lewis Application was supported by a witness statement from Ms Lewis herself ("Ms Lewis's statement"), in which she attached undertakings signed by all of those 114 Named Defendants ("the Lewis Applicants"). In the course of the hearing, this matter became largely resolved.

11. Thirdly, by the Lewis Application, the Lewis Applicants further applied for the order for costs made against them in the TfL IB Claims at paragraph 5 of the IB Judgment Order to be set aside and for there to be no order as to costs. I refer to this as the "Costs Issue".

The parties before me

12. TfL as the highway and traffic authority has a duty as a landowner, and is entitled to take steps, to prevent trespass and nuisance to the use of, and access, to GLA Roads. In both cases, the Claimant, TfL, appeared by Mr Fraser-Urquhart KC and Mr Forrest of counsel.

13. The defendants are those who have engaged in protests under the banner of IB and JSO. TfL gave notices of this review hearing to all current Named Defendants by post and email between 8 and 10 April 2024; and on 3 May 2024 by sending notice to IB and JSO email addresses and placing a notice on the TfL and GLA websites.

14. In the TfL IB Claims, 37 Named Defendants were represented by Mr Stephen Simblet KC instructed by solicitors Good Law Practice. Some of those Named Defendants attended the court hearing. Ms Lewis is one of those 37 Named Defendants, and the remaining 36 Named Defendants are also party to the Lewis Application. The further 77 Lewis Applicants were not represented by Mr Simblet. However, since their application was made on their behalf by Ms Lewis, I proceeded on the assumption that they supported the case advanced by Mr Simblet, on behalf of his clients, in relation to the Lewis Application. Further it was common ground that Mr Simblet properly advanced arguments on behalf of the Persons Unknown who are subject to the Final Injunction.

15. In the TfL JSO Claims, 14 Named Defendants are represented by Mr Simblet. Moreover Mr Matthew Parry, Named Defendant 143 (who gave an undertaking before Eyre J) appeared before me in person and addressed the Court.

16. Since the hearing and in October, Ms Lewis gave notice that the Good Law Practice are no longer acting for her and for the others it had represented and that they were all now acting in person. (Those Named Defendants who were represented by Good Law Practice until October 2024 are listed at Annex B hereto.)

17. Finally, Indigo Rumbelow, Named Defendant 114 in the TfL IB Claims and Named Defendant 50 in the TfL JSO Claim, appeared before me in person and addressed the Court in relation to both claims. Following the hearing, she provided further written submissions to support her case, including new material.

18. In addition, a number of the Lewis Applicants actually attended the hearing and were represented by Mr Simblet. No other Named Defendant in either the TfL IB Claims or the TfL JSO Claim appeared or made any further representations.

The factual background and the procedural history

19. The factual background and procedural history to the two sets of proceedings are set out in detail in the IB Judgment and the JSO Judgment. I do not repeat this for present purposes. What follows is a summary of the salient features of the cases.

20. The nature of the Insulate Britain and Just Stop Oil movements (and the overlap between the two) and the protests at roads are explained at paragraphs 2, 19 to 22, 24 to 27 29 and 42 of the IB Judgment and paragraphs 4 and 5 and 58 to 61 of the JSO Judgment. 65 of the Named Defendants in the TfL IB Claims are also Named Defendants in the TfL JSO Claim. In respect of Named Defendants in the JSO Claims who are also subject to the IB Final Injunction, then the JSO Final Injunction only applies to them in respect of 6 additional specific roads and junctions, which are not covered by the IB Final Injunction. (A number of the Lewis Applicants are subject to the JSO Final Injunction and have not, to date, given an undertaking in respect of those 6 additional roads).

21. In both sets of proceedings, TfL obtained interim injunctions, initially made urgently without notice, in October and November 2021, and in October 2022 (in terms similar to the Final Injunctions). Thereafter there were numerous on-notice hearings at which the interim injunctions were extended: see, for example, IB Judgment paragraphs 6 and 28 (and *TfL v Lee* [2022] EWHC 3102 (KB) per Freedman J and *TfL v Lee* [2023] EWHC 402 (KB) per Cavanagh J.)

22. As regards IB, whilst protests under its banner continued to October 2022, in January 2023 IB made a public statement that it would continue with its protests. IB had repeatedly made un-retracted statements that its protests would continue: see IB Judgment paragraphs 20, 24 and 25. (Ms Rumbelow's submission that IB had given up, certainly by December 2022 is not borne out by the evidence).

23. JSO protests started in March or April 2022 and continued: IB Judgment paragraph 27. At paragraphs 5, 6, 16 and 53 v) of the JSO Judgment, Eyre J explained the more recently developed practice of "slow marches", the height of activity ending around

December 2022 and that there had been no renunciation of previous forms of disruption. Both Final Injunction Orders expressly exclude such "slow marches" from the prohibited activity. During 2023 slow marching was the principal tactic.

24. As regards service of the proceedings on the Named Defendants in both Claims, I address this in detail under Issue 3 at paragraphs 77 to 83 below. I set out relevant events since the grant of the Final Injunctions in paragraphs 33 to 41 below.

Other proceedings: National Highways Limited ("NHL") and others

25. Since September 2021, the IB, JSO and Extinction Rebellion protests have given rise to a substantial amount of litigation, both in criminal and in civil courts. There have been multiple prosecutions for various criminal offences and at least 15 civil claims for injunctions brought not only by TfL, but also by National Highways Limited ("NHL"), HS2 Limited, the Secretary of State for Transport, energy companies, and local authorities. In particular the NHL claims (relating to the M25) are explained in paragraph 30 of the IB Judgment and in paragraphs 3 and 18(a) of the JSO Judgment. There have been committal proceedings arising out of breach of injunctions and appeals. The TfL claims and the NHL claims are factually and legally closely aligned and include many of the same individuals as named defendants: see paragraphs 4 and 30 of the IB Judgment and the judgment of Cotter J (on first review) dated 5 May 2023 in *NHL v Persons Unknown* [2023] EWHC 1073 at paragraphs 7 to 59. (Solely for ease of reference in this judgment, I refer to this judgment of Cotter J as "the *NHL Judgment*"). Unlike the position of the Final Injunctions, the NHL injunction was for a limited period of one year and has been subsequently renewed, first, by the *NHL Judgment*, and then, more recently, by Collins Rice J on 26 April 2024.

The basis for the making of the Final Injunctions

26. The underlying basis for the making of the Final Injunctions is set out in the IB Judgment and in the JSO Judgment respectively.

The IB Judgment

27. In relation to the IB Final Injunction, as against Named Defendants, the legal principles are set out at paragraphs 32 to 38 of the IB Judgment and their application to the facts of the case at paragraphs 40 to 46. In particular the issue of proportionality arising under Articles 10 and 11 ECHR ("question (5)") is addressed at paragraph 45. At paragraph 45(3) (set out in full in paragraph 60 below) I found that there were "no less restrictive or alternative means to achieve [the] aims" of protecting the rights of others, including lawful highway users and preventing disorder on the IB Roads.

28. As regards Persons Unknown, the legal principles relating to the grant of a final injunction based on the Court of Appeal decision in *Barking and Dagenham LBC v Persons Unknown* [2022] EWCA Civ 12 are set out at paragraphs 48 and 49 (in particular, at paragraph 49(7), the need for a fixed end point for review and for a period review). The guidelines in the earlier case of *Canada Goose* were applied to the facts at paragraph 50, leading to the conclusion that the final injunction against Persons Unknown should be granted (paragraph 51).

29. At paragraph 52, I explained the underlying basis for the 5 year time limit for the Final Injunction and the need for a yearly review, not least because of the potential implications of the then pending Supreme Court judgment in *Barking and Dagenham.* Reference was also made to the liberty to apply for any Defendant to vary or discharge *the injunction* (incorporated at paragraph 12 of the Final Injunction Order). At paragraph 56, in the context of issues as to alternative service, I referred to the observation of Cavanagh J that by that stage (i.e. the date of his order) it was "vanishingly unlikely" that anyone minded to take part in a protest was unaware that injunctions had been granted by the courts.

The JSO Judgment

30. In relation to the JSO Final Injunction, the legal principles were set out at paragraphs 19 to 25 of the JSO Judgment and paragraph 26 addressed the specific position of Persons Unknown. As regards their application to the facts of the case, Eyre J addressed the likelihood of the Named Defendants and Persons Unknown acting in breach of TfL's rights and whether that breach would cause grave and irreparable harm (paragraphs 29 to 41). In particular, as at that time, Eyre J considered that there was a strong probability that, in the absence of an injunction, some at least would resume the blocking of roads. In his view, it was highly likely that there would be resumption of blocking of roads (paragraph 30). There had been no assertion that blocking of roads would not resume and JSO was committed to a campaign of civil disobedience; there was also the increase in slow march protests (paragraph 31). None of those individuals making representations to the Court had disavowed the objectives and tactics of the JSO campaign nor said that the objectives had been achieved such that protest action was no longer needed. (paragraph 32).

31. Eyre J then addressed the position under Articles 10 and 11 ECHR at paragraphs 42 to 52. At paragraph 50, he concluded that there was no less restrictive or intrusive way in which to protect the rights of TfL and others using the roads, expressly citing paragraph 45(3) of the IB Judgment. At paragraphs 52 to 54 he addressed the balance between the Defendants' Convention rights and the rights of others, listing the factors against, and for, the granting of the injunction. At paragraph 53 v) he observed that the injunction does not prohibit all protest - protest at other locations and slow marching even at the specified location are not prohibited. Further, it was just and convenient to grant the final injunction against Persons Unknown (paragraph 56, referring to paragraphs 47 to 51 of the IB Judgment).

32. Finally, as regards undertakings, in the IB Judgment the Court accepted undertakings in lieu of an injunction in the case of three Named Defendants: see paragraph 14. In the JSO Judgment, the vast majority of Named Defendants gave undertakings in lieu. The circumstances in which these came to be offered, and accepted, are set out at paragraphs 10 to 13, 27, 32, 34 and 62 of the JSO Judgment.

Events since the Final Injunctions in May and June 2023

Further protests

33. In his detailed witness statement for the review hearing, Carl Eddleston, director of Network Management and Resilience at TfL, gave evidence relating to matters since the granting of the Final Injunctions. This included both statements by IB and

particularly by JSO and those acting under their banner, indicating an intention to continue taking disruptive protest action of civil resistance and the actual protests that have taken place since then. Since the Final Injunctions in May and June 2023 (and since the coming into force of section 7 Public Order Act 2023 ("the 2023 Act")), there have been a substantial number of JSO protests, largely in the form of slow marches. Two of those protests involved blocking and sitting down in a road. There have also been other types of protest, including spraying orange paint and at high profile sporting events. Mr Eddleston identified over 100 such protests between the beginning of May and December 2023. According to JSO, 670 of its supporters had been arrested for protests since 30 October 2023, mostly under section 7 of the 2023 Act, for slow marching.

Legal developments

The Supreme Court decision in the Wolverhampton case

34. There have been two principal developments in the law. First, and importantly, since the Final Injunctions, on 29 November 2023 the Supreme Court handed down judgment in *Wolverhampton CC v London Gypsies and Travellers & Ors* [2023] UKSC 47; [2024] 2 WLR 45 (on appeal from the *Barking and Dagenham case)* (as referred to at paragraphs 49 and 52 IB Judgment). (Indeed this was one of the reasons for setting the annual review hearing in the TfL IB Claims: see paragraph 52 IB Judgment).

35. In summary, the Supreme Court reviewed the law in relation to injunctions against "newcomer" persons unknown, in the specific context of local authority proceedings concerning unlawful traveller activity. The Supreme Court held that in principle there is no obstacle to granting such injunctions on a without notice basis, regardless of whether in form interim or final, but that they are only likely to be justified if certain conditions are met: see §167. The first of those conditions is that "there is a compelling need for the protection of civil rights. which is not adequately met by any other measures available to the applicant local authorities (including the making of bylaws)": §167(i). Secondly, there is to be 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. That would 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; and for generous provision for liberty to apply to vary or set aside. Thirdly, claimants must be seen and trusted to comply with the most stringent form of disclosure duty on making an application and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief. Fourthly, the injunctions must be constrained by both territorial and temporal limitations. Fifthly on the particular facts it must be just and convenient that such an injunction be granted. Two further particular points emerge from the *Wolverhampton* case at §221 and §225. I address these at paragraphs 52 and 54 below, respectively.

The Criminal Law

36. Secondly, there have been legislative changes in relation to relevant criminal law.

37. First, as a result of the Police Crime Sentencing and Courts Act 2022 ("the 2022 Act") there were modifications to the law relating to the criminal offences of public nuisance and of wilful obstruction of the highway. In the case of *public nuisance*, the 2022 Act replaced the previous common law offence with a statutory offence; the main effect of that change being that, where tried on indictment, the previous maximum sentence of an unlimited term of imprisonment was reduced to a maximum term of 10 years. That change came into force on 28 June 2022. (Between June 2022 and February 2023, the maximum term of imprisonment, on summary conviction, was 12 months rather than 6 months). In the case of *obstruction of the highway*, a summary only offence, as a result of the 2022 Act the sentencing powers were increased to include, for the first time, a sentence of imprisonment up to 6 months, as well as an unlimited fine (rather than a limited fine). This change came into force on 12 May 2022.

38. Secondly, the Public Order Act 2023 (the 2023 Act) enacted, inter alia, two new offences; section 1 introduced the summary only offence of "locking on", punishable with imprisonment up to 6 months and/or an unlimited fine. Section 7 introduced the offence, triable either way, of interference with use or operation of key national infrastructure, punishable on summary conviction as in the case of section 1, and, on conviction on indictment, with imprisonment up to 12 months and/or an unlimited fine. It is common ground that protests on the GLA roads prohibited by the Final Injunctions would constitute the commission of the section 7 offence. These offences came into force on 3 and 2 May 2023, respectively. Sections 18 and 19 of the 2023 Act (not yet in force) make provision for the Secretary of State to bring civil proceedings, including for an injunction, if he/she reasonably believes that someone is carrying out, or is likely to carry out, activities related to protest, and those activities are causing/likely to cause, inter alia, serious disruption to key national infrastructure or a serious adverse effect on public safety. Moreover, section 18(6) provides that this does not prejudice the right of anyone else (e.g. TfL or NHL) to bring civil proceedings in relation to the same activities, and prior to bringing proceedings the Secretary of State must consult any persons he/she thinks appropriate, having regard to anyone else who could bring proceedings in relation to the same activities. This preserves the ability of TfL and NHL to bring proceedings for injunctions of the kind granted in the present cases. Thus, the 2023 Act itself contemplates that, notwithstanding the existence of the new criminal offences, the Secretary of State and other private parties may still need to seek the assistance of the courts through civil injunctions of the kind in the present case.

Further injunction cases

39. As regards other cases where injunctions have been granted, in May 2023 the High Court extended an interim injunction granted to Shell against JSO protestors. In July 2023, the Court extended an interim injunction granted to North Warwickshire, against, amongst others, JSO protestors. On 31 August 2023 Julian Knowles J granted a final injunction to Esso Petroleum prohibiting unlawful JSO protests intended to impede an oil pipeline construction project. On 26 January 2024, Ritchie J granted an injunction to Valero Energy for five years against named defendants and persons unknown to prevent trespass on oil refinery and terminal sites, in relation to protests by JSO, IB and Extinction Rebellion and others: *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB).

40. Moreover following the hearing in this case, there have been three further relevant judgments. First, on 24 May 2024 Ritchie J handed down judgment in *High Speed Two (HS2) Limited and others v Persons Unknown* [2024] EWHC 1277 (KB) concerning the renewal of the interim injunction, made against both named defendants and persons unknown, previously granted to prohibit unlawful interference with the construction of the HS2 railway. Ritchie J renewed the injunction in respect of part of the route, but did not renew in respect of phase 2 of the route, given that phase 2 had since been cancelled. He considered arguments of change of circumstances and non-disclosure. In doing so, he took into account the new 2023 Act offences. Whilst he appeared at points in this judgment to rely on these new offences as a material change of circumstances (§§39, 44, 55), it is clear that the effective reason for non-renewal in relation to phase 2 only was the fact that phase 2 had been cancelled (whilst phase 1 remained in place): see judgment §§ 39, 44-46, 51 and 55. Further and in any event, in the judgment there was no analysis of how the new offences might deter protests of the kind that were in issue in that case and no reference to the approach to criminal offences in paragraph 45(3) IB Judgment and paragraph 50 JSO Judgment. On analysis and as a matter of logic, the deterrent effect of the existence of new criminal offences cannot have been considered a reason to discharge the injunctions to the extent that he did; first because he renewed the injunction in respect of the phase 1 route (despite the equal application of those offences to future protests on that part of the route) and secondly because the major transport works/key national infrastructure which would notionally be protected by section 7 of the 2023 Act, did not, and would not, exist and had been cancelled. By definition there could be no such protests at such locations.

41. On 25 July 2024 Ritchie J gave judgment in *Drax Power Limited v Persons Unknown* [2024] EWHC 2224 (KB) and on 6 September 2024 HH Judge Emma Kelly (sitting as a High Court Judge) gave judgment in *North Warwickshire Borough Council v Barber and others* [2024] EWHC (KB) for a final injunction in respect of disruption by JSO protesters at an oil terminal. In both cases the court addressed the recent amendments to the law including those to the 2022 Act and the 2023 Act. In the *Drax* case, Ritchie J considered (at §28) that section 7 of the 2023 Act does not provide the prospective protection that the injunctions had provided. In the *North Warwickshire* case HH Judge Kelly considered (at §§86 to 88), in the context of "less restrictive means" the increase in range and seriousness of criminal offences since May 2022. She concluded that the existence of relevant criminal offences does not of itself mean it is inappropriate to grant an injunction. The criminal justice system did not achieve the claimant's aims in as comprehensive a manner as injunctive relief could. At §88 she gave four detailed reasons for that conclusion. First, the new criminal offences and increased sentencing powers did not have the same deterrent effect. Secondly, the mechanism by which a protest is brought before civil courts following arrest is expeditious and therefore provides a significant deterrent. Thirdly, an injunction hands control of the pursuit of contempt proceedings against protesters to the claimant authority (rather than to the discretion of a criminal prosecution authority), Fourthly, an injunction is designed to be preventative in nature as opposed to the criminal law which reacts to events that have already occurred.

The issues in summary

42. As indicated above, there were initially three issues as follows:

(1) Review of injunctions

On review of the Final Injunctions, should the Court maintain the Final Injunctions in their present form, or should the Court discharge them or vary their terms?

(2) Undertakings in lieu

Should the Court accept from a number of Named Defendants in the TfL IB Claims an undertaking and if so, on what terms, and thereby release them from the Final Injunction?

(3) Costs

If and in so far as the Court accepts an undertaking from a Named Defendant in the TfL IB Claims, should the order for costs made against that Defendant by paragraph 5 of the IB Judgment Order be discharged/set aside?

As regards issue (2), the undertakings offered by the Lewis Applicants are acceptable to TfL and to the Court. Accordingly, in the case of these Named Defendants those undertakings are given to the Court and the Final Injunction as against them will be discharged. However, contrary to their application, and as in the case of others who earlier gave undertakings, these Named Defendants will remain as defendants to the IB Claim: see IB Judgment, paragraph 14. This is appropriate in the event that TfL considers it necessary to seek to enforce the undertakings.

Issue (1): The review of the Final Injunctions

The Parties' submissions

TFL's submissions

43. TFL submitted that, on review, the question is whether there is any good reason to go back on the carefully considered judgments of the court that five years was an appropriate period for the specific type of protest on specific roads. The question is not whether the Final Injunctions were rightly made at the time that they were made. This is not an appeal and the Final Injunctions were made on the basis that they are justified for 5 years. The answer to that question is No. There is no reason why the Final Injunctions should not be maintained in the same terms. Rather, the case for the injunctions is even stronger.

44. The test on review is to be found in the *Wolverhampton* case at §225. There were three reasons why the Final Injunctions should be maintained. First, they had been effective in deterring this particular type of protest on these particular strategic roads. Secondly, there had been no material changes in the circumstances in fact or in law since the final injunctions. Thirdly, if the Final Injunctions were removed there was a very real risk that the protesters would continue, by way of sitting down on roads.

Mr Simblet's submissions

45. Mr Simblet made two overriding submissions, which he said informed both Issue (1) and Issue (3).

46. First, he submitted that TfL's real aim in bringing these proceedings was to obtain an injunction against Persons Unknown (i.e "contra mundum"). Persons Unknown are identified as the first defendant. The inclusion of Named Defendants was thought, at the time, to be necessary because of the then state of the case law and in fact added nothing to the proceedings or their effectiveness. TfL sought an injunction not just against Named Defendants but also obtained a final injunction against Persons Unknown. The presence or absence of the Named Defendants made, and makes, no difference to the TfL's desire to litigate these proceedings and obtain the order they obtained. There had been no need for an injunction against them. Costs would still have been incurred in the proceedings brought against Persons Unknown and the presence of Named Defendants did not add to the costs. In that context the fact that those he represented did not acknowledge service or file defence had in fact made little or no difference to TfL's desire to pursue these proceedings through the courts and obtain the order which it had obtained.

47. Secondly, objection was taken to the way in which the Named Defendants were selected. Many of them had not been to London to protest (nor, in some cases, ever set foot in London). A substantial number of the Named Defendants had not obstructed any London road but were names which had been passed to TfL from other injunction proceedings (mainly NHL proceedings). There is no evidence that these Named Defendants had protested at London roads or, in some cases, on any roads. Ms Lewis in her witness statement made the same point. Many of the Named Defendants had been included merely because their names had been provided to TfL by NHL.

48. As regards Issue (1) specifically, Mr Simblet submitted that the question, on review, is whether the Final Injunction is still and/or remains necessary and that, in the light of current circumstances, there was no longer any need for the Final Injunctions (and those who have given or offered undertakings should be released). First, there had been a material non-disclosure at the time of the Final Injunctions, in that the Courts were not aware of the increase in the penalty for the criminal offence of wilfully obstructing the highway brought about by the 2022 Act and believed that committing that offence was likely to result only in a small fine. Secondly, there had been a material change in the law since May 2023, namely the enactment of offences under sections 1 and 7 of the 2023 Act, pursuant to which the conduct prohibited by the Final Injunctions now amounts to criminal offences and those offences were a sufficient deterrent to road blocking protests. They are a much speedier and immediate method of enforcement than committal proceedings for breach of a civil injunction. These offences are alternative means as contemplated by the Supreme Court in §167(i) of the *Wolverhampton* case. There was no longer a compelling need for the protection of civil rights. He referred to two recent cases of protestors who had engaged in slow marches being prosecuted under section 7. Section 18 of the 2023 Act had not been brought into force and, in any event, did not answer the question whether a civil injunction was necessary.

Mr Parry's submissions

49. Mr Parry supported Mr Simblet's submission as to how the Named Defendants came to be selected. He submitted that by a defendant's name featuring in one set of proceedings that defendant becomes a target for other proceedings. It was unreasonable for TfL and the Court to assume that if you protest at one road junction, that you will protest at another. He further submitted that the Final Injunction in the TfL JSO Claim should be discharged and that, as result, he (and others) should be released from the undertaking which each gave. The injunctions had been successful and the cumulative effect of injunctions in many cases and general threat of injunctions in many cases was stifling the wider right to protest. The injunction encouraged business as usual and there was no time to lose in the fight against climate change.

Ms Rumbelow's submissions

50. Ms Rumbelow submitted, first, that IB had stated back in December 2022 that they would no longer carry on with their protests. Secondly, given the existence of criminal offences, injunctions are an unjust double punishment. Injunctions are anti-democratic. The courts should rely on the criminal law. She suggested that in 2021 the Secretary of State had said, in a Government website, that measures under the 2023 Act would be a better solution than an NHL injunction over the entire strategic road network. Since May 2022 the penalty for obstructing the highway had been increased to include the possibility of a prison sentence and increased fine. She referred to section 7 of the 2023 Act and the fact that certain protestors engaging in slow marches had been prosecuted under this section. The situation had now changed immeasurably. There was no longer any need to rely on a civil injunction. The Court should be slow to rely on the continued occurrence of slow marches as evidence of the lack of deterrence provided by section 7. The police were initially using section 12 of the 2023 Act and this was not a deterrent. The maximum penalty under section 7 is 6 months' imprisonment. They started using section 7 offence only later. In any event, in the light of the recent decision in *R (NCCL) v Secretary of State for the Home Department* [2024] EWHC 1181 (Admin), the legality of the law banning slow marching (section 7) is now open to question.

Discussion

51. In the following paragraphs, I address these various points.

(1) The "contra mundum" argument

52. I do not accept Mr Simblet's submission that there was no need for TfL to sue the Named Defendants or any of them and that the only purpose of the proceedings was to obtain an injunction against Persons Unknown. Suing the Named Defendants was not a matter of choice, as is clear from §221 of *Wolverhampton*, where the Supreme Court emphasised the obligation to identify, by name, persons to whom the order is directed.

> "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." (emphasis added)

The addition of Persons Unknown to the order required, and requires, additional justification – as §221 states: see the IB Judgment, paragraphs 58 and 59; JSO Judgment, paragraph 56; and *Wolverhampton* §167.

(2) Why each Named Defendant is a party

53. In so far as it was contended that there was, and is, no adequate justification for including a particular Named Defendant in the proceedings and in the Final Injunctions, at the time of the making of the Final Injunctions, the Court was satisfied that they were properly made in respect of those Named Defendants and there was no evidence of any change of circumstances since the Final Injunctions were made. In the course of the hearing, Mr Fraser-Urquhart explained, in respect of each of the Claims, how the Named Defendants came to be joined as a party. In summary, each Named Defendant in the TfL IB Claims was so named *only* where there was evidence that that Named Defendant had not only previously participated in a road or similar protest, but where he or she had also previously been arrested by the police on a previous protest. In the TfL JSO Claim, there were three stages of identifying the Named Defendants. First, there were those individuals who were a Named Defendant in the TfL IB Claims and had also self-identified on the JSO website as having been protesting. Secondly, there were those who were a Named Defendant in the TfL IB Claims and who had been named in relation to an injunction in respect of earlier JSO protests at Thurrock oil terminal; and thirdly, there were those individuals whom the Metropolitan Police had disclosed as having been arrested at JSO protests and who were subsequently added as a Named Defendant. It was on this basis that the Court accepted that the necessary degree of risk of the Named Defendants taking part in IB and JSO protests on GLA roads was established. The fact that someone had been previously arrested was evidence that that person was to be considered a person who may present a real risk of engaging in road block protests. It is not the case that a Named Defendant had been included simply because he or she had been named in previous unrelated protest proceedings. In my judgment, the complaints now made about not taking part in road protest, or not living, in London do not provide any reason for the Final Injunctions not to continue in their present form. Whilst it may well be that merely being subject to prior injunctions relating to a different location is

not enough to establish a risk of unlawful protest at the location in question, the added factor of having been previous arrested for protest at sites covered by those injunctions makes it prima facie appear that there is a sufficient risk of engaging in unlawful protest at the present location (see JSO Judgment paragraph 37).

(3) Review

54. At §225 of the *Wolverhampton* case, the Supreme Court stated the approach on review, namely that such review:

> "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."

The obligation to make full disclosure applies to all parties. In the present case, whilst I have heard oral submissions, no Named Defendant has put forward any evidence to support their case (other than Ms Lewis's statement). I must consider whether any reasons or grounds for discharge of the Final Injunctions emerged and whether there was a proper justification for the continuance of the Final Injunctions.

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

56. I accept Mr Fraser-Urquhart's submissions (at paragraph 44 above). The Final Injunctions have been effective in deterring the particular type of protest. They do not, and are not intended to, prevent all protest. They remain the only lawful way of preventing the detrimental effects of such conduct, for the reasons given in the IB Judgment at paragraphs 26, 43, 45(1) and (3) and the JSO Judgment at paragraphs 40 to 41, 50, 52 iv) and 53**.** A number of protestors have accepted that similar injunctions have changed their behaviour: see, e.g, the *NHL Judgment* §§70, 89 to 95, 101. Secondly, the JSO continued to express its desire and willingness to continue to protest by whatever means (lawful or unlawful). Further neither the *Wolverhampton* case nor the 2023 Act constituted a relevant change in circumstances (see further paragraphs 59 to 67 below). Each of the requirements in respect of an injunction against Persons Unknown now set out at *Wolverhampton* §167 are met.

57. Thirdly, there remained a real risk that, absent the Final Injunctions, protest in the form of blocking the roads would promptly resume (in place of, or alongside, the permitted "slow marches"). The fact that the JSO protests since May 2023 had taken the form of slow marching did not obviate the risk of road blocking protests resuming, if the Final Injunctions were to be discharged. As at 26 May 2023, Eyre J was satisfied that there was a real and imminent risk that, in the absence of an injunction, there would be protest taking the form of blocking roads at the identified locations (for reasons set out at paragraphs 30 to 32 the JSO Judgment). In my judgment, the

position remained the same as at the end of May last year. Since the Final Injunctions, slow march protests, which are not caught by their terms, continued and increased. By contrast, there were no instances of road blocking. There had been no committals arising from the Final Injunctions, because, by and large, there had been no protests of this sort. The clear inference is that this was because the Final Injunctions have been effective. It appears that the primary focus of the protesters still remained "obstruction of roads", which was at that time effected by slow marching. The fact that sitting down is prohibited led to the adoption of the slow marching technique as the primary means of protest. In these circumstances, there was a real risk that, if the Final Injunctions were discharged, sitting down protests on the roads would resume.

(4) The position under the criminal law and material non-disclosure

58. The factual position relating to relevant offences under the 2022 Act and the 2023 Act is set out in paragraphs 37 and 38 above.

59. First, Mr Simblet had submitted that, at the time of the grant of the Final Injunctions, there had been a material non-disclosure of the changes to the law relating to the offence of obstructing the highway brought about by the 2022 Act. The basis of this submission was as follows.

60. At paragraph 45(3) of the IB Judgment I said:

> "There are no less restrictive or alternative means to achieve these aims than a final injunction in the form sought. Damages would not prevent any further protests, for the reasons given in paragraph 43 above. Prosecutions for offences involved in protests can only be brought after the event and in any case are not a sufficient deterrent because IB (and JSO) protesters have said they protest in full knowledge of and regardless of this risk and many have returned to the roads multiple times having been arrested, bailed, prosecuted, and convicted. Other traditional security methods such as guarding or fencing of IB Roads are wholly impractical for resource and logistical reasons. Recent changes to the law in the form of the Policing, Crime, Sentencing and Courts Act 2022, which came into force **in May and June 2022**, have not changed the approach of protesters." (**emphasis** added)

(This analysis was adopted by Mr Justice Eyre at paragraph 50 of the JSO Judgment.)

61. It is common ground that the last sentence of paragraph 45(3) in turn was based on TfL's skeleton argument for the final hearing in the IB Claim. Mr Simblet submitted that, in the light, in particular, of observations made during the hearing before me, that the "recent changes in the law" brought about by the 2022 Act referred to in TfL's skeleton argument and, thus in paragraph 45(3) of the IB Judgment, can only have been a reference to the change to the law relating to *public nuisance*, and therefore, the increase in the sentences for offence of *obstruction of the highway* (in force from May 2022) had not been disclosed to the Court at the final hearing. This, he

submitted, was a material non-disclosure, which justified the discharge of the Final Injunctions.

62. However, paragraph 45(3) of the IB Judgment refers to changes in the law which came into force in *May 2022 and* in June 2022. Upon being pointed to this, Mr Simblet conceded that, given the differing dates of coming into force of the changes in respect of the two offences, it must have been the case that the Court *had been* referred to the change in the law relating to obstruction of the highway, as well as to that relating to public nuisance. On this basis, I am satisfied that there was no relevant non-disclosure at the time that the Final Injunctions were made, and the changes brought about by the 2022 Act do not amount to a material change of circumstances, for the purposes of this review.

63. As regards the 2023 Act, the two offences introduced by sections 1 and 7 respectively are new since the Final Injunctions were made. However in my judgment they do not represent a material change of circumstances which rendered the continuation of the Final Injunctions as no longer necessary.

64. First, the existence of criminal offences is a matter quite separate from a private law party, such as TfL, seeking to vindicate its civil rights. (For example, the fact that assault is a criminal offence does not mean that a victim does not have the civil law right to sue in tort). The rights and duties in civil law protect a different interest. There are no alternative remedies "available to the applicant" (i.e. in the present case, TfL): see *Wolverhampton* §167(i). Recourse to the *criminal* law is not available to TfL or, to any applicant in civil proceedings. TfL is seeking by these proceedings to enforce its civil rights in civil proceedings; criminal measures are not available to it.

65. Secondly, there is no reason to believe that section 7 of itself will stop or deter protests blocking roads. Strong evidence to support this was provided by the position in relation to slow marches. Both slow marches and road blocking protests are caught by the section 7 offence; but the former are not, and the latter are, covered by the Final Injunctions. Since the Final Injunctions, road blocking protests had ceased, but slow marches had continued and indeed increased, after section 7 came into force. Thus, it appears that section 7 had not deterred protest by slow marches. Slow marches are covered only by the criminal law and were happening. Road blocking protests are covered by the criminal law and by the Final Injunctions and were not happening.

66. In *Valero* (at §§51 and 66), Ritchie J was aware of the 2023 Act and the new offences, but did not conclude that there was no need for an injunction on the grounds that the new criminal law powers were sufficient. This conclusion is supported by *Drax Power* and, in particular, by the careful and detailed analysis of HH Judge Kelly in the *North Warwickshire* case at §§86 to 88. See paragraphs 39 and 41 above. Moreover the existence of sections 18 and 19 suggests that if Parliament thought that the new criminal offences were sufficient, it would not have provided for the express reservation of the civil rights of others to apply for an injunction.

67. Finally, in response to Ms Rumbelow's suggestion in her post-hearing submissions, the lawfulness of section 7 of the 2023 Act is not called into question by the recent decision in *R (NCCL) v SSHD*. That case dealt with different offences under different legislation (Public Order Act 1986) and the court's decision was based on lack of

consultation on the facts, and questions and principles of statutory construction arising from delegated legislation. That has no application to section 7.

Conclusion on Issue (1)

68. For these reasons I am satisfied that, on review and in principle, the Final Injunctions had been effective, that there had been no material change of circumstances and no other grounds for their discharge and there remained proper justification for them to continue.

Issues (2) and (3) IB case: the Lewis Application: substitution of undertakings and costs

Issue (2): substitution of undertakings

69. As explained in paragraph 42 above, Issue (2) was resolved in the course of the hearing. Issue (3) was disputed. Nevertheless, by way of background to Issue (3), I set out first the basis of the Lewis Application.

70. *Ms Lewis* in her witness statement dated 27 July 2023, made on behalf of all the Lewis Applicants, stated that they had not engaged in the case before 29 March 2023 because challenging an order would be very costly and almost certainly unsuccessful and they had been led to believe that if they did nothing to break the injunction there would be no repercussions. She stated that they had only recently learned, and too late for the March hearing, that an unrepresented person could attend the court hearing and speak for themselves. She further asserted that it is customary for a claimant to offer to a defendant the possibility of an undertaking not to breach the terms of the injunction. She complained that in the present case TfL had not offered such a course. Had they been so offered and been aware of the mounting potential costs claims against them, they would have considered giving such an undertaking. On 15 May 2023 when the IB Final Injunction Order was put on the TfL website, they noted that three defendants had given undertakings and no order for costs had been made against them. Moreover at the 4/5 May 2023 hearing in the TfL JSO Claim, TfL agreed to extend the offer of undertakings to all Named Defendants in that case. On that basis she asked that all the Named Defendants in the TfL IB Claims should be given the same opportunity to give an undertaking and "to be removed from the injunction and all its associated costs". She pointed out that the Named Defendants had already incurred significant penalties through the criminal courts, including fines, orders for costs and custodial sentences.

71. In response, *TfL* took a neutral position as to whether the Court should accept undertakings. Nevertheless the lack of opportunity to give an undertaking earlier was due to the historic lack of engagement with the Court processes on the part of the Named Defendants. Moreover, undertakings were not in the gift of TfL, and if it had made an offer, it would likely have been mistrusted or ignored by Named Defendants. TfL accepted that the undertakings now offered by each of the Lewis Applicants were satisfactory and all had been signed.

Issue (3): IB case: the Lewis Application: discharge of costs order

72. This concerns specifically the Lewis Application to discharge or set aside the order for costs made in paragraph 5 of the IB Judgment Order. Paragraph 5 provided that

"the Defendants" must pay the Claimant's costs, to be subject to detailed assessment "with the total amount to be divided equally amongst those Defendants to whom this paragraph applies". As a result of the definitions in the IB Judgment Order, "the Defendants" comprised the Named Defendants (with certain exclusions) *and* Persons Unknown. The Named Defendants excluded from the order for costs were the three who had given undertakings and those against whom proceedings had been discontinued (see IB Judgment, paragraphs 14 and 16). By contrast, in the JSO Judgment Order those excluded from the order for costs were Named Defendants who had given undertakings, Named Defendants against whom proceedings were discontinued *and* Persons Unknown. However in the IB Judgment Order, for whatever reason, Persons Unknown were not excluded and, in terms, were made subject to the order for costs.

The parties' submissions

73. *Mr Simblet submitted* as follows:

(1) As a matter of justice, the costs order made against the Named Defendants who had now given undertakings in lieu should be set aside. The Named Defendants were not made sufficiently aware of their potential liability to costs. There was no letter before action, no justification for obtaining the initial interim injunction on a without notice basis, and no sufficient notice was given (in the pleadings) of the fact that TfL were seeking final costs orders. Each Named Defendant might have been led to believe that they did not need to do anything further, once the "prospective only" interim injunctions had been obtained on the assumption that they had decided not, thereafter, to do any of the things prohibited. Further, as part of its duty to assist the Court, TfL should have offered the Named Defendants, unrepresented as they were, the option of giving an undertaking in lieu of an injunction; and there was no reason to think that the Named Defendants would not give such an undertaking; and finally there was no justification for the Court making the final costs order and no reasons were given for that order. Moreover, the Named Defendants did not "cause" TfL's costs, since the main purpose of the proceedings was to obtain a final injunction against Persons Unknown (see paragraph 46 above). No Named Defendant chose to oppose the claim and the Court should not have made a costs order against unrepresented defendants who did nothing.

(2) As a matter of jurisdiction, the Court can now set aside the order for costs. The liberty to apply in paragraph 12 of the IB Final Injunction Order is to be read as applying also to the IB Judgment Order. There was no reason for two separate orders. It does not appear that TfL provided the draft orders to the Named Defendants in advance of the hearing in May 2023. Alternatively the Final Injunction Order should be amended under the slip rule in CPR Part 40.12.

(3) Even if the Court cannot now set aside the order for costs, TfL should exercise its discretion not to enforce the order and the Court can direct that the order for costs should not be enforced. TfL has taken no steps at all to enforce the order; it has not applied for detailed assessment of its costs, in breach of the time limit prescribed by CPR Part 47.7. Its reasons for not having done so do

not bear scrutiny. It was not right that an order for costs should just "hang around" without being pursued. Moreover the costs order is unenforceable because it is made against "the Defendants" which term includes not only the Named Defendants, but also Persons Unknown. For this further reason, the Court had power to, and should, direct that TfL is not permitted to bring such enforcement proceedings against any of the Named Defendants.

74. *Ms Rumbelow submitted* that the process was opaque and that Named Defendants were not aware of the risks of not engaging with the process. It was not true that she had not engaged. She had tried to raise funds. She felt that she had no route to justice. She asserted that legal aid had been refused. She had received papers, but they were too difficult to understand, even though she has a degree. Members of the public could not understand the details of where they can, and cannot, protest. The warnings on the interim injunctions related to the consequences of breach and carried the inference that if a Named Defendant obeyed the interim injunctions then they would avoid having to pay costs.

75. *TfL submitted* as follows:

(1) The matter of costs was settled and determined by the Court in the two Judgment Orders. The costs order in paragraph 5 of the IB Judgment Order is a final order. The Court had no jurisdiction to set aside it aside or vary it. The liberty to apply in the Final Injunction Order did not apply to the Judgment Order nor to the costs order within it. The costs order was only capable of change by way of appeal to the Court of Appeal. The review related to the Final Injunctions and not to the costs orders in the Judgment Orders.

(2) Even if the Court had power to vary or set aside paragraph 5, there was no reason to do so. It was reasonable for costs to be awarded against those Named Defendants. First, costs follow the event. The costs award was the result of the conscious non-engagement with the proceedings on the part of the Named Defendants and as a result TfL had not offered the option of an undertaking. (Had they engaged, then there would have been the opportunity to give undertakings in lieu at the time and to be excepted from the order for costs). All Named Defendants had had sufficient notice at all stages, both of the proceedings as a whole and of TfL's intention to seek an order for costs against them. Throughout the proceedings, TfL had gone to extraordinary and extreme efforts to ensure that all Named Defendants had been served with all relevant court documents; there was no evidence from any Named Defendant (either generally or before the Court) that he or she had not received or understood the material. Despite these extraordinary lengths, there had been no acknowledgements of service (which included the option of accepting the claim) and no defences. TfL relied on the analysis of Cotter J in the *NHL Judgment*. As regards the initial "without notice" injunctions, this was an appropriate course of action at the time. Protests were happening on a daily basis. The judges at the time were satisfied that proceeding without notice was appropriate; and there was thereafter opportunity to set aside the interim injunctions or at least to engage with the process.

(3) It was accepted that, on the strict construction of the wording of the Judgment Order, not only are Named Defendants liable to pay costs, but so are "Persons

> Unknown". However the intention was always to divide the total assessed costs between the Named Defendants only, with each being liable for an equal share of the total. In his witness statement of 15 May 2024, Mr Ameen explained that TfL had not as at that time proceeded to the detailed assessment of the costs and that the reason for that was that it was awaiting the resolution of the Lewis Application in relation to undertakings and in particular the costs aspects thereof. Nevertheless, Mr Fraser-Urquhart accepted in argument that TfL did not need to know how many Named Defendants would be liable for costs before proceeding to a detailed assessment of TfL's total costs.

Discussion and Analysis on Issue 3

76. Before addressing these submissions, I set out the position in relation to service of documents, the history relating to the giving of undertakings by certain defendants and the decision of Cotter J in the *NHL Judgment*.

The facts relating to service of court documents

77. In advance of the trial hearings in March and May 2023 Mr Ameen provided witness statements explaining all steps taken to serve the Named Defendants with all relevant court documentation and to notify them of hearings, including the trial hearings. At paragraph 12 of the IB Judgment I referred to this evidence, recording in particular that the evidence, draft final orders and skeleton argument had been sent to the Named Defendants between 28 February 2023 and 16 March 2023. At paragraph 13 I recorded that no defendant had acknowledged service or filed a defence, and that apart from four particular Named Defendants, no one had attended any hearing, or served any evidence or skeleton argument for the trial. At paragraph 17 I concluded that it was appropriate to hear the trial in the absence of the remaining 131 Named Defendants.

78. At paragraph 14 of the JSO Judgment, in respect of those Named Defendants who had not appeared or made representations, Eyre J reached the same conclusion. He was satisfied that TfL had complied with directions for service made earlier. At paragraphs 27 and 34, Eyre J commented on the significance of deliberate non-participation of those Named Defendants who had not chosen to engage with the Court or with TfL, which was to be taken as a choice not to challenge the case made against them.

79. In addition to the evidence referred to in paragraph 12 of the IB Judgment, in the course of this review hearing, Mr Ameen provided his further witness statement dated 15 May 2024 in which he explained and summarised what was served, on whom, when and by what means in the course of both Claims. In particular he addressed the issue of the extent to which the Named Defendants were notified of TfL's intention to seek an order for the costs of the Claims against each Defendant. The position is as follows.

80. Throughout the course, and at all the various stages of, both Claims, starting in October 2021 (following the first interim injunction of May J in the TfL IB Claims) and up to the period immediately leading up to the hearing before Eyre J in the TfL JSO Claim on 4 May 2023, relevant court documents were served on each Named Defendant by process servers physically handing over the documents or posting them

through the letterbox or affixing a package to the front door. Documents were also served to the email addresses of IB and JSO. In some cases, where a Named Defendant had positively indicated that he or she would accept electronic service, documents were emailed to that Defendant. In the TfL IB Claims, there were thirteen "rounds" of service. In the TfL JSO Claim, there were eight "rounds" of service. Amongst the documents so served on each Named Defendant were the claim form, response pack, particulars of claim, relevant application notices, witness statements, draft orders sought and court orders made from time to time. Details of service had already been provided in the earlier witness statements from Mr Ameen.

81. Amongst the documents served in each of the Claims, the following documents referred expressly to TfL's intention to seek an order for costs: first, the particulars of claim, and secondly, the draft judgment order and the TfL skeleton argument, for the final trial. (It is the case that the claim form itself did not quantify a claim for costs; at the end of the standard form claim form, the box for an amount for "legal representative's costs" was left blank.)

82. The particulars of claim in the TFL IB Claims were served in this way on all Named Defendants on dates between 25 October and 22 December 2021 (depending on when each Named Defendant became party to the claims). The particulars of claim in the TfL JSO Claim were served on all Named Defendants between 8 and 13 November 2022.

83. In the TfL IB Claims, the draft judgment order and the TfL skeleton for the final trial due to commence on 28 March 2023, were served on the Named Defendants either by 1st class post or by email on 15 and 16 March 2023. In the TfL JSO Claim, the TfL skeleton for the final trial due to commence on 4 May 2023, was served on the Named Defendants by email on 20 April 2023 and by 1st class post on 21 April 2023, together with a covering letter explaining how the Defendant could access an electronic version of the trial bundle. The draft judgment order was contained within that trial bundle. In the TfL JSO Claim at the trial written or oral submissions were made by or on behalf of about 57 Named Defendants: see JSO Judgment paragraph 10 to 13.

Undertakings

84. In his further witness statement, Mr Ameen also explained how it came about that undertakings were given and accepted in the case of certain Named Defendants. It appears that the possibility of giving an undertaking in lieu of a court injunction was first raised by three of the Named Defendants in the TfL IB Claims in the lead up to the trial on 29 March 2023. This led to these three individuals giving undertakings acceptable to TfL and the Court at or shortly following that trial. At no point prior to that had TfL itself raised the issue of undertakings with any Named Defendant. Following the giving of these three undertakings in the TfL IB Claims, the majority of the Named Defendants in the TfL JSO Claims ultimately offered undertakings which were acceptable to the Court; and so final injunctions were not made in their cases: see JSO Judgment paragraphs 10 to 13.

The NHL Judgment

85. On 24 April 2023 Cotter J heard the application of NHL to extend the final injunction relating to JSO protests on the M25, which had been granted, limited to a period of one year, on 9 May 2022. Ms Lewis and 6 others who are also Lewis Applicants, made written and/or oral submissions prior to, and at, that hearing. In advance of that hearing, on 15 March 2023 the claimant, NHL, had made an offer to the named defendants to accept an undertaking in lieu of an injunction. On 1 May 2023, following the hearing, Ms Lewis on behalf of herself and a further 104 Named Defendants (of whom 83 are Lewis Applicants) offered undertakings subject to being released from previous costs liabilities At §114 of his judgment, Cotter J observed that if the Court were to accept an undertaking, "that would not affect the existing rights/liabilities of the parties given the history to date e.g any liability for costs". Cotter J was prepared to accept the undertakings and that costs liability "going forward" would cease. At §119 he addressed the complaint by several defendants that they had not been offered the opportunity to give an undertaking at an earlier stage and, by most defendants, that a costs order would be unjust. He continued:

> "These matters highlight the importance in a case such as this of engagement/communication with the Claimant and the Court which may enable an understanding of a person's view about the order which is being sought against them (including whether they would agree not to repeat any relevant conduct)"

After setting out the Court's duties concerning the overriding objective in CPR 1, he continued:

> "<u>However it is very difficult to do any of these things if one party will not engage at all.</u> A Judge will take into account that a person does have legal representation and will explain matters accordingly (although no Judge can give legal advice to any party). In nearly 40 years of working in the civil courts I cannot remember an example of a party's position being improved by ignoring proceedings and/or not engaging with the Court. This case is a paradigm. <u>The failure to respond to the Claimant when served with proceedings, or at subsequent stages, or to file any documents with the court (such as a defence or evidence), or to appear at Court hearings has clearly not benefitted any of the Defendants at all. Many could have been spared stress and expense by engaging with the process, daunting though it may seem</u>. As I shall set out Mr Justice Bennathan stated (in the context of the Claimant's application for costs) if a defendant chooses not to provide any submissions to the court they cannot [not] properly complain at a later stage that their voices were not heard. (<u>emphasis</u> added – [ ] error in original)"

In the event, such undertakings were given by a number of named defendants.

86. At §§141 to 152, Cotter J went on to deal with costs substantively. Whilst the position there was complicated by the fact that the Court of Appeal had varied the original substantive decision of Bennathan J, in essence Cotter J refused to vary the

original costs order made by Bennathan J against certain defendants. He was not an appeal court and thus had no jurisdiction to vary the earlier determination, and commented that it was regrettable that defendants did not engage with the claimant or the Court (§150). For similar reasons he made an order in respect of past costs against the remaining defendants (§152). The fact that he had now accepted undertakings from these defendants was not a reason not to confirm (or make) orders for costs in respect of the past.

Analysis

87. First, regardless of whether TfL should have offered undertakings, I conclude that in any event on this review of the Final Injunctions, the Court had no jurisdiction to vary or discharge the costs order. The order for costs in the IB Judgment Order was a final order. The usual position in relation to the final order of a court is that the matter is res judicata and can only be revisited on appeal. That is the position in relation to the order for costs. By contrast, the position relating to the final injunction of the kind made in the present case is, rather unusually, somewhat different. It is not a final order in the traditional sense. Rather in the present case, the final injunction is an exceptional form of order, in proceedings which are not at an end until the injunction is discharged. It provides, and is required to provide, unusually, for a process of review - so it is hybrid. In substance it is neither an interim nor a final order, and to that end, consistently, each Final Injunction Order provides for liberty to apply. See *Wolverhampton* at §§137, 139, 142, 151, 167, 178, 232 and 234. However, the costs order is final and the remedy in relation to it was for the Named Defendants to appeal.

88. Secondly, even if the court had jurisdiction and/or the liberty to apply could be said to apply, additionally, to the Judgment Order, it was open to the Named Defendants to raise the issue of undertakings as an option. Many of the Named Defendants in the IB Claim had also been defendants in the NHL proceedings and as a result had been on notice about the possibility of undertakings, (as were the three Named Defendants who did give undertakings as explained in paragraph 14 of the IB Judgment). (At least two of them had been made subject to injunction in NHL proceedings). In fact of the 114 Lewis Applicants, it appears that 83 (including Ms Lewis herself) were also named defendants in the NHL proceedings, who, in those proceedings, were offered the opportunity to give an undertaking by letter dated 15 March 2023: see *NHL Judgment* §115.) I do not accept (as suggested by Ms Lewis in her witness statement) that it was not until shortly before 27 July 2023, or even not until 15 May 2023, that the Lewis Applicants were aware of the possibility of giving an undertaking in lieu. They, or many of them, will have received the offer of such an undertaking made by NHL on 15 March 2023, two weeks before the hearing of the IB Claim on 29 March 2023. They, or many of them, were certainly aware of the option of an undertaking by the date of the hearing before Cotter J on 24 April 2023 (i.e. after the 29 March 2023 hearing of the IB claim, but before the IB Judgment was handed down on 3 May 2023.)

89. Thirdly, none of the Lewis Applicants had engaged with the process of the litigation over several years. Despite assertions made by Mr Simblet on their behalf and by Ms Rumbelow, there was no witness statement evidence to suggest that any one or more Named Defendant did not know what was happening in the proceedings or did not understand the nature of the documents that they had received or had not received any or all of the relevant court documents. Ms Rumbelow said that "the legal papers may

as well have been in Greek and Latin", but she had had the opportunity to seek advice. There is no reason why the points now put forward in her submissions at, and following, the review hearing could not have been put forward at an earlier stage in the litigation. As explained in the *Wolverhampton* case at §221, at a review hearing, the duty to disclose by way of appropriate evidence applies to all parties, including the Named Defendants. I make full allowance for the fact that the Named Defendants are individuals who may not have an immediate understanding of the legal process nor ready access to legal advice. Nevertheless, a substantial number of the Named Defendants had, from 9 May 2024 at the latest, the benefit of legal representation by Good Law Practice and Mr Simblet. In such circumstances the absence of any such evidence is, in my judgment, significant.

90. On the other hand, there is the very substantial and detailed evidence from TfL witnesses as to the steps that they have taken throughout the proceedings to ensure that all Named Defendants have been served with all relevant documents.

91. In my judgment, the inability of the Named Defendants to offer undertakings at an earlier stage and thereby avoid an order for costs was brought about by their own conduct in not engaging. Had they engaged in advance of the hearing on 29 March 2023, there is every prospect that, like the others, the issue of an undertaking would have arisen and they would have had the opportunity to avoid an order for costs. Even if TfL could and should have done more early on, generally or in relation to the possibility of undertakings, by the time of the hearing on 29 March 2023, the Named Defendants had had plenty of notice of the proceedings, the trial date, and their potential liability to costs and thus could have found out about the option of giving an undertaking.

92. Moreover, the slip rule has no application. The order for costs was not made as a result of an accidental slip, omission or mistake. Despite Mr Simblet's complaints as to the process, the costs order in the IB Judgment Order was properly made; first, on the basis that the usual rule of costs following the event applies; and, secondly, in view of the lack of engagement by any of the Named Defendants, and in particular the Lewis Applicants, over a substantial period of time.

93. Fourthly, as regards enforcement of the costs order, TfL's initial explanation for not having proceeded to detailed assessment of those costs was, as accepted by Mr Fraser-Urquhart, not a satisfactory reason. It appears that TfL could have progressed matters. Nevertheless whether that delay should lead to non-enforcement is not a matter to be dealt with in this judgment. It might be relevant to the assessment process and thereafter enforcement. CPR 47.7 (and the sanction for delay in CPR 47.8) are not matters for this judgment.

94. Finally, as regards the fact that the order for costs is made against Persons Unknown as well as the Named Defendants, Mr Fraser-Urquhart accepted that this is the effect of the terms of the order as it is made. (There has been no application under the slip rule). This may prove to be a practical and technical difficulty, if and when TfL comes to seek to enforce any order for costs, following assessment. Whether it might impact upon TfL's decisions on enforcement is a matter for TfL. However, I did not hear full argument about the consequences of an order in this form. If and when there is a detailed assessment of the costs, TfL should, in the first place, explain to all

Named Defendants its position on the effect of the order having been made also against Persons Unknown.

95. For these reasons, in so far as it sought the discharge of paragraph 5 of the IB Judgment Order, the Lewis Application is dismissed.

Costs of this hearing and the Lewis Application

96. Finally, TfL sought an order for costs of the review hearing as against those Named Defendants who attended the review hearing and who either (1) sought to set aside the costs liability under the IB Judgment Order or (2) refused to offer an undertaking or offered one for the first time at or after the review hearing. I decline to make such an order. TfL was required, by the Final Injunction Orders, to attend the Court for a review hearing, and to that end, update the Court with all relevant developments since the Orders were made and to satisfy the Court that those Orders should continue. Further it is right that the Named Defendants should have been heard on such a review hearing. Many more defendants have now, albeit belatedly, engaged and it is only right that their position should have been heard by the Court. Whilst TfL relied on the fact that in the *NHL Judgment* (§§156 to 158) Cotter J made an order in favour of the claimant, in that case, Cotter J did not make an order for costs against those named defendants who had offered an undertaking even where they had opposed liability for past costs. For these reasons, there will no order for the costs of the review hearing, nor of the Lewis Application.

Conclusions

97. In the light of my conclusions at paragraphs 42, 68, 95 and 96 above, the position in summary is as follows. First, in respect of those Named Defendants who have not offered an undertaking and in respect of Persons Unknown, the Final Injunctions as made will continue in force for the remainder of the 5 year period, subject to yearly review. The next review will come up for consideration in May 2025. Secondly, in respect of those Named Defendants who have offered an undertaking in the terms agreed and accepted by TfL, the IB Final Injunction Order will be discharged. Those Named Defendants will remain parties to the TfL IB Claims. The fact and terms of the undertaking will be recorded in the orders of the Court to be made. Thirdly, the Lewis Application will be dismissed to the extent that it sought paragraph 5 of the IB Judgment Order to be set aside. Fourthly, there will be no order as to costs in respect of the review hearing and the Lewis Application.

98. Finally, I will hear from TfL and any Named Defendant as to the final form of the relevant orders, namely the orders in respect of the review hearing and revised forms of the IB Final Injunction Order.

Annex A
"The Lewis Applicants"
Named Defendants party to the application by Giovanna Lewis by application notice dated 27 July 2023 in the TfL IB Claims

Defendant No	Name
1	Alexander Rodger
2	Alyson Lee
3	Amy Pritchard
4	Ana Heyatawin
5	Andrew Worsley
6	Anne Taylor
7	Anthony Whitehouse
10	Ben Taylor
11	Benjamin Buse
12	Biff Whipster
13	Cameron Ford
14	Catherine Rennie-Nash
15	Catherine Eastburn
16	Christian Murray-Leslie
17	Christian Rowe
18	Cordelia Rowlatt
19	Daniel Sargison
20	Daniel Shaw
21	David Crawford
22	David Jones
23	David Nixon
24	David Squire
25	Diana Bligh
26	Diana Hekt
27	Diana Lewen Warner
28	Donald Bell
29	Edward Herbert
30	Elizabeth Rosser
31	Emily Brocklebank
32	Emma Joanne Smart
35	Gwen Harrison
36	Harry Barlow
37	Ian Bates
38	Iain Duncan Webb
39	James Bradbury
40	James Sarginson
41	James Thomas
42	Janet Brown
43	Janine Eagling
44	Jerrard Mark Latimer
45	Jessica Causby
46	Jonathan Coleman
47	Joseph Shepherd
48	Joshua Smith
49	Judith Bruce

50	Julia Mercer
52	Karen Matthews
57	Lucy Crawford
58	Mair Bain
59	Margaret Malowska
60	Marguerite Doubleday
61	Maria Lee
62	Martin Newell
63	Mary Adams
64	Matthew Lunnon
66	Meredith Williams
67	Michael Brown
68	Michael Wiley
69	Michelle Charlsworth
70	Natalie Morley
71	Nathaniel Squire
72	Nicholas Cooper
73	Nicholas Onley
74	Nicholas Till
76	Paul Cooper
78	Peter Blencowe
79	Peter Morgan
80	Phillipa Clarke
81	Priyadaka Conway
82	Richard Ramsden
83	Rob Stuart
84	Robin Collett
85	Roman Paluch-Machnik
86	Rosemary Webster
87	Rowan Tilly
88	Ruth Cook
89	Ruth Jarman
90	Sarah Hirons
93	Stefania Morosi
96	Stephen Pritchard
97	Sue Chambers
98	Sue Parfitt
99	Sue Spencer-Longhurst
100	Susan Hagley
101	Suzie Webb
105	Tim Speers
106	Tim William Hewes
109	Valerie Saunders
110	Venetia Carter
111	Victoria Anne Lindsell
113	Bethany Mogie
115	Adrian Temple-Brown
116	Ben Newman
117	Christopher Parish
118	Elizabeth Smail
119	Julian Maynard Smith
120	Rebecca Lockyer
121	Simon Milner-Edwards

122	Stephen Brett
123	Virginia Morris
124	Jan Goodey
125	Alex Gough
126	Gareth Richard Harper
127	Samuel Johnson
128	Giovanna Lewis
129	Susan Lyle
130	Darcy Mitchell
131	Morien Morgan
132	Lucia Whittaker De Abreu
133	Pam Williams
134	Molly Berry
136	Ellie Litten
137	George Burrow
138	Jonathan Herbert

Annex B
Named Defendants represented by Good Law Practice

(1) The TfL IB Claims

Named Defendant No	Name
2	Alyson Lee
7	Anthony Whitehouse
20	Daniel Shaw
21	David Crawford
22	David Jones
24	David Squire
26	Diana Hekt
27	Diana Warner
28	Donald Bell
39	James Bradbury
43	Janine Eagling
47	Joseph Shepherd
49	Judith Bruce
50	Julia Mercer
58	Mair Bain
61	Maria Lee
62	Martin Newell
64	Matthew Lunnon
66	Meredith Williams
69	Michelle Charlesworth
82	Richard Ramsden
86	Rosemary Webster
72	Nicholas Cooper
76	Paul Cooper
78	Peter Blencowe
99	Sue Spencer-Longhurst
100	Susan Hagley
113	Bethany Mogie
115	Adrian Temple-Brown
117	Christopher Parish
120	Rebecca Lockyer
121	Simon Milner-Edwards
123	Virginia Morris
125	Alex Gough
128	Giovanna Lewis
129	Susan Lyle
134	Molly Berry

(2) The TfL JSO Claim

Defendant No	Name
2	Alyson Lee
4	Anthony Whitehouse
14	Daniel Shaw
15	David Crawford

17	David Squire
18	Diana Hekt
23	Janine Eagling
27	Julia Mercer
33	Meredith Williams
34	Michelle Charlesworth
50	Bethany Mogie
53	Rebecca Lockyer
54	Simon Milner-Edwards
62	Molly Berry

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

Claim no: QB-2022-000904

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

Date: 26th January 2024

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

BETWEEN

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

Claimants

-and-

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

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

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

(3) MRS ALICE BRENCHER AND 16 OTHERS

Defendants

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

Hearing date: 17th January 2024

- -

Approved Judgment

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

Mr Justice Ritchie:

The Parties

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

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

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

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

The 8 Sites

4. The "8 Sites" are:
   4.1 the first Claimant's Pembroke oil refinery, Angle, Pembroke SA71 5SJ (shown outlined red on plan A in Schedule 1 to the Order made by Bourne J on 28.7.2023);
   4.2 the first Claimant's Pembroke oil refinery jetties at Angle, Pembroke SA71 5SJ (as shown outlined red on plan B in Schedule 1 to the Order made by Bourne J on 28.7.2023);
   4.3 the second Claimant's Manchester oil terminal at Churchill Way, Trafford Park, 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.

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

Identifying PUs

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

The terms of the injunction

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

The prohibitions must match the claim

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

Geographic boundaries

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

Temporal limits - duration

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

Service

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

The right to set aside or vary

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

Review

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

Conclusions

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

END

Neutral Citation Number: [2025] EWHC 207 (KB)

Case No: QB-2022-000904

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/02/2025

Before :

MRS JUSTICE HILL DBE

- -

Between :

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

- and -

Defendant

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

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

OVER AND ACROSS THE ROADS IN THE VICINITY OF THE 8 SITES

(3) MRS ALICE BRENCHER AND 16 OTHERS

- -
- -

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

Hearing date: 24 January 2025
- -

Approved Judgment

This judgment was handed down remotely at 12:00pm on 3rd February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill DBE:

Introduction

1. The Claimants are three companies who are part of a large petrochemical group called the Valero Group. They own or have a right to possession of a series of sites in England and Wales which include oil refineries and terminals, defined for the purposes of this litigation as the "8 Sites".

2. The Defendants are Persons Unknown connected with Just Stop Oil, Extinction Rebellion, Insulate Britain and Youth Climate Swarm (defined as the "4 Organisations") who (i) trespass or stay on the 8 Sites; (ii) block access to the 8 Sites or otherwise interfere with the access to the sites by the Claimants, their servants, agents, licensees or invitees; and (iii) who have been involved in suspected tortious behaviour or whom the Claimants fear will be involved in tortious behaviour at the 8 Sites and the relevant access roads.

3. On 26 January 2024, Ritchie J granted the Claimants a final injunction against the Defendants to last 5 years, for the detailed reasons he gave in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134.

4. Ritchie J's order, amended under the slip rule on 5 February 2024, made provision for the injunction to be reviewed once a year, no later than the anniversary of the 26 January 2024 order, or as close to that date as was convenient to the court.

5. By an application notice dated 21 November 2024, the Claimants sought a review hearing. The application was argued by the Claimants' counsel at a hearing before me on 24 January 2025. None of the Defendants attended or were represented at the hearing.

The factual background

6. Ritchie J set out the factual background in detail in his judgment at [1]-[45].

7. In summary, between 1 and 7 April 2022 a number of environmental activists undertook direct action at the Kingsbury Terminal (one of the 8 Sites: see Ritchie J's judgment at [4]) and on the adjoining access roads. This led to approximately 48 individuals being arrested by the Warwickshire Police at and around that site. Further protest activity took place at and around the Kingsbury Terminal between 9 and 15 April 2022, leading to around 38 arrests.

8. This conduct was part of a nationwide campaign. Similar direct action occurred at a number of other oil terminals and refineries as well as associated sites. These actions were combined with statements demonstrating a commitment to disrupt indefinitely the oil industry until the Defendants' demands were met.

9. As a result, injunctions were granted to a number of other entities involved in the energy industry. Since these injunctions have been granted, the direct action has largely ceased. Instead, environmental activists have turned their attention to other related targets which are not protected by injunctions.

10. The Claimants brought this claim to avoid the potentially very serious health and safety and environmental consequences of the Defendants' actions, as well as other serious consequences for the public. They relied on witness statements from, among others, David Blackhouse (European regional security manager for Valero International Security), David McLoughlin (a director employed by the Valero Group responsible for directing operations and logistics across all of the 8 Sites) and Emma Pinkerton (one of their solicitors). Ritchie J accepted all the evidence provided by the Claimants: see his judgment at [22], [25]-[44] and [46]-[37].

Service issues

11. The third witness statement of Jessica Hurle dated 29 February 2024 explained how Ritchie J's order had been served.

12. In respect of the First and Second Defendants and those named Defendants for whom the Claimants did not have a postal address, the order was served by the Claimants using the alternative methods set out in the order. In respect of those named Defendants for whom the Claimants did have a postal address, the order was served pursuant to the usual methods set out in CPR Part 6.

13. The First and Second Defendants were deemed served on 15 February 2024. Those named Defendants in respect of whom the Claimants did not have a postal address were deemed served on 9 February 2024. Those named Defendants in respect of whom the Claimants did have a postal address were served between 10 and 14 February 2024.

14. The sixth witness statement of Anthea Adair dated 15 January 2025 described how the documents relating to the review application (namely the application notice and supporting evidence and the hearing notice, together with a cover letter confirming where various documents could be found) were served.

15. In respect of the First and Second Defendants and those named Defendants for whom the Claimants did not have a postal address, these documents were served by the Claimants using the alternative methods set out in the order of Master Cook dated 7 June 2023. In respect of those named Defendants for whom the Claimants did have a postal address, they were served pursuant to the usual methods set out in CPR Part 6.

16. The First and Second Defendants were deemed served on 9 January 2025. Those named Defendants in respect of whom the Claimants did not have a postal address were deemed served on 7 January 2025. Those named Defendants in respect of whom the Claimants did have a postal address were served between 3 and 9 January 2025.

17. Ritchie J ordered that the hearing bundle for a review hearing must be served not less than 7 days before the review hearing. The order of Master Eastman sealed on 1 December 2023 provided alternative methods for serving the hearing bundles.

18. The hearing bundle for this review hearing was served and filed on 16 January 2025. There was a question mark over whether it had, in fact, been filed 2 minutes late. Out of an abundance of caution the Claimants filed an application for relief from sanctions dated 22 January 2025. This was supported by the seventh witness statement of Anthea Adair of the same date.

19. For the reasons given in an *ex tempore* judgment at the start of the hearing, to the extent that the Claimants required relief from sanctions I granted it. I did so, in summary, because, applying the well-known test in *Denton and ors v TH White Ltd and ors* [2014] EWCA Civ 906, [2014] WLR 3926 at [40], this was neither a serious nor significant failure; it occurred due to some technical issues with the uploading process due to the size of the bundle; and it had not caused any prejudice to the Defendants or impacted on the litigation.

The legal framework

20. In *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2024] 2 WLR 45 at [225] the Supreme Court observed that review hearings of this kind:

> "…will give all parties an opportunity to make full and complete disclosure to the court, supported by appropriate evidence, as to how effective the order has been: whether any reasons or grounds for its discharge have emerged; whether there is any proper justification for continuance; and whether and on what a basis a further order ought to be made."

21. In *HS2 v Persons Unknown* [2024] EWHC 1277 (KB), Ritchie J considered how the Court should approach its task at such a hearing:

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

22. In *Arla Foods v Persons Unknown* [2024] EWHC 1952 at [128], Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) described the annual review process as:

> "…allow[ing] a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate."

23. Earlier this year, in *Transport for London v Persons Unknown and Others* [2025] EWHC 55 (KB) ("*TfL*") at [54]-[57], Morris J took a similar approach. At [55], he observed that:

> "TfL has already provided detailed evidence at a full trial and the Court has, on two occasions, already made a full determination of the issue of risk and the balance of interests. In my judgment, in those circumstances there needed to be some material change in order to justify a conclusion that the Final Injunctions should not continue."

The evidence, submissions and decision

24. In support of the application the Claimants relied on the evidence filed to date, set out in some detail in Ritchie J's judgment, as well as updating evidence in the form of the sixth witness statement of Mr Blackhouse dated 20 November 2024 ("DB6") and the sixth witness statement of Ms Pinkerton dated 19 November 2024 ("EP6").

25. Ritchie J made the following finding as to the level of risk on the basis of the evidence available to him on 26 January 2024:

> "64. In my judgment the evidence shows that the Claimants have a good cause of action and fully justified fears that they face a high risk and an imminent threat that the remaining 17 named Defendants (who would not give undertakings) and/or that UPs [Unknown Persons] will commit the pleaded torts of trespass and nuisance at the 8 Sites in connection with the 4 Organisations".

26. He went on to find that the Defendants did not have a realistic defence to the claim; that the balance of convenience and justice weighed in favour of granting the final injunction to the Claimants; and that damages would not be an adequate remedy for the Claimants: [65]-[70].

27. He was also satisfied that the various procedural requirements set out in the case law were satisfied by the injunction proposed: [71]-[78].

28. I take these findings as my starting point, in accordance with the legal framework summarised above.

29. The updating evidence served in support of the review application, which I accept, makes clear that there exists a continued threat of trespass and nuisance at the 8 Sites.

30. Mr Blackhouse provided further evidence of the continuing threat, vulnerability and risks, in particular at paragraphs 4.1-5.4 of DB6. For example, he referred to the fact that from his regular meetings with the police and local resilience forums in the areas where the Claimants have assets, his understanding is that the threat remains the same. He also referred to information received from the National Police Coordination Centre to the effect that the threat level remains the same.

31. As Ms Pinkerton explained in paragraphs 5.1-5.7 of EP6, none of the Defendants have contacted the Claimants to say that they no longer intend to carry out direct action at the Sites. There have also been many instances of direct action by environmental activists, notably Just Stop Oil and Extinction Rebellion, across the country in relation to the energy industry. This included a nationwide campaign planned and orchestrated by Just Stop Oil to carry out direct action at airports in the summer of 2024. Statements have continued to be made about the need for direct action and related conduct in respect of fossil fuel extraction and production.

32. Ms Pinkerton highlighted that courts have continued to grant or renew injunctions on the basis of the same continuing threat: see, for example, *Shell v Persons Unknown* [2024] EWHC 3130 (KB) at [101]-[113], where on 5 December 2024 Dexter Dias J held that that there remained a real and imminent risk of direct action by the named Defendants and Persons Unknown in relation to Shell's Haven oil refinery and other sites.

33. In light of this evidence, I accept the Claimants' submission that nothing material has changed in the evidence since Ritchie J made his order. In particular, as explained above, there remains a continued threat of direct action at the 8 Sites. This is supported by the fact that, as far as the Claimants are aware, no injunction originally granted to an energy company as a result of the direct action in April 2022 has been discharged on the basis of a finding that the level of threat has diminished

34. The evidence suggests that direct action at the 8 Sites has diminished. However the courts have repeatedly held in this context that evidence of this kind is not evidence that the threat has dissipated; rather, it is evidence that the injunctions have had their intended effect: see, for example, Ritchie J's judgment in this case at [64] and *Shell* at [111]-[112].

35. There has been no material change in the case law since Ritchie J's judgment.

36. As to new legislation, Ritchie J considered the new offences in the Public Order Act 2023 before making the order: see his judgment at [66]. In any event, courts have repeatedly accepted that these offences do not materially alter the position or serve to diminish the threat of continued action: see, for example, *Drax Power Ltd v Persons Unknown* [2024] EWHC 2224 (KB), at [24] and [28] (Ritchie J); *North Warwickshire Borough Council v Persons Unknown* [2024] EWHC 2254 (KB) at [88] (HHJ Emma Kelly, sitting as a Judge of the High Court); and *TfL* at [37]-[38] and [58]–[67] (Morris J).

37. In accordance with her duty of disclosure Ms Holland KC drew my attention to the fact that in *Shell*, Dexter Dias J observed that the new legislation is a "material change". However, he went on to hold that it remains "evidentially unclear what material impact it has on deterring future protest and to what extent it operates on the minds of those who would protest against Shell"; and that the mere existence of the new offences in and of themselves could not affect the analysis on risk of continued threat: [132] and [140].

Conclusion

38. I have reviewed and used as my starting point the findings Ritchie J made and the evidence that was before him, as he made "a full determination of the issue of risk and the balance of interests" (*TfL* at [55]).

39. Having considered the updating evidence and more recent legal developments, I am satisfied that nothing material has changed. The risk still exists as before and the Claimants remain rightly and justifiably fearful of unlawful attacks. Procedural and legal rigour has been "observed and fulfilled" (*HS2* at [32]).

40. For all these reasons, I approve the draft order sought by the Claimants. Ritchie J's order will remain in effect, to be reviewed again in one year.

C. Other

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Claim No. QB-2021-003094

The Honourable Mr Justice Nicklin
19 February 2025

IN THE MATTER OF:

(1) MBR ACRES LIMITED
(2) DEMETRIS MARKOU
(for and on behalf of the officers and employees of MBR Acres Limited, and the officers and employees of third-party suppliers and service providers to MBR Acres Limited pursuant to CPR 19.8)
(3) B & K UNIVERSAL LIMITED
(4) SUSAN PRESSICK
(for and on behalf of the officers and employees of B & K Universal Limited, and the officers and employees of third-party suppliers and service providers to B & K Universal Limited pursuant to CPR 19.8)

Claimants

AND IN THE MATTER OF AN APPLICATION BY THE CLAIMANTS FOR A *CONTRA MUNDUM* INJUNCTION TO RESTRAIN CERTAIN ACTIVITIES AT THE WYTON SITE

ORDER

PENAL NOTICE: IMPORTANT

TAKE NOTICE: ALL PERSONS ARE BOUND BY THE PROHIBITION IN PARAGRAPH 1 OF THIS ORDER. IF YOU DISOBEY PARAGRAPH 1 OF THIS ORDER, YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT, A FINE OR YOUR ASSETS MAY BE SEIZED

C 1

UPON the Claimants' Claim seeking an injunction to restrain acts of trespass, public nuisance by obstruction of the highway and interference with the Claimants' common law right to access the highway

AND UPON hearing Caroline Bolton and Natalie Pratt of counsel on 24-28 April 2023, 2-5 May 2023, 9 May 2023, 11-12 May 2023, 15 May 2023, 17-19 May 2023, 22-23 May 2023, 23 June 2023, 26 March 2024 and 7 May 2024

AND UPON the Court handing down judgment on 19 February 2025 ([2025] EWHC 331 (KB))

UNTIL AND INCLUDING 19 FEBRUARY 2027, AND SUBJECT TO ANY FURTHER ORDER OF THE COURT, IT IS ORDERED THAT:

INJUNCTION

1. Any person with knowledge of this Order **must not**:

   (1) enter the First Claimant's land known as MBR Acres Limited, Wyton, Huntingdon PE28 2DT as marked on the plan at Annex 1 ("the Wyton Site"). For the avoidance of doubt, the Wyton Site includes the First Claimant's land situated directly in front of the gate to the Wyton Site, as marked on the ground with a yellow painted line; and/or

   (2) directly and deliberately obstruct vehicles entering or exiting the Wyton Site.

FURTHER APPLICATIONS ABOUT THIS ORDER

2. Any person affected by the injunction in paragraph 1 above may make an application to vary or discharge the injunction to a High Court Judge on not less than 48 hours' notice to the Claimants.

INTERPRETATION OF THIS ORDER

3. A person who is an individual and who is ordered not to do something must not do it by himself/herself or in any other way. He/she must not do the prohibited act through others acting on his/her behalf or on his/her instructions or with his/her encouragement.

4. A person who is not an individual and which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

5. It is a contempt of court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be imprisoned, fined or have their assets seized.

PUBLICATION OF THIS ORDER

6. A copy of this Order will be placed on the Judiciary website (www.judiciary.uk).

7. The Claimants must publicise this Order, including by taking the following specific steps:

   (1) by uploading a copy to the dedicated share file website at https://apps.fliplet.com/mbr-injunctionwebapp/

   (2) by affixing copies (as opposed to originals) to the notice board opposite the Wyton Site. A covering letter shall accompany the Order explaining that copies of all documents in the Claim, including the evidence in support of the Claim and the skeleton argument and note of the hearing at which this Order was made, can be accessed at the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/. The cover letter will also include an email address and telephone

number at which the Claimants' solicitors can be contacted, and advise that hard copy documents can be provided upon request;

(3) by affixing in prominent positions around the perimeter of the Wyton Site signs advising that an injunction that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/ and a QR code through which the designated share file website may also be accessed;

(4) by affixing in a prominent position at the Hull Site signs advising that an injunction. that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/ and a QR code through which the designated share file website may also be accessed;

(5) by positioning four signs adjacent to the main carriageway of the public highway known as the B1090 Sawtry Way within a one-mile radius of the Wyton Site. Those signs shall advise that an injunction that places restrictions on protest activity is in force in the area. The signs shall include a link to the designated share file website: https://apps.fliplet.com/mbr-injunctionwebapp/ and a QR code through which the designated share file website may also be accessed.

8. By 4.30pm on 19 March 2025, the Claimants must file a witness statement confirming the steps taken to publicise the injunction, including confirmation of compliance with Paragraph 4 above.

9. The Claimants must comply promptly, and in any event within 14 days, with any request for documents relating to the claim and the Order.

REVIEW OF THIS ORDER

10. This Order will expire at 00:01hrs on 20 February 2027. The Claimants may, if so advised, make an application to the Court to seek the continuation of this Order ("a Continuation Application").

11. Any Continuation Application and evidence in support must be filed, and a listing for the hearing of the Continuation Application (with a time estimate of 1 day) sought, by 4pm on 12 January 2027.

12. The Claimants shall, by 4pm on 12 January 2027, place a notification of any Continuation Application in a prominent position outside the Wyton Site, such notification to include a website address at which the Continuation Application and all evidence in support may be accessed.

13. Any person other than the Claimant who wishes to participate in the hearing of the Continuation Application must file and serve on the Claimants' legal representatives any evidence upon which they intend to rely at the hearing of the Continuation Application by 4pm on 26 January 2027.

CONTEMPT APPLICATIONS

14. Any contempt application against any person not being a named Defendant in these proceedings may only be brought with the permission of the Court.

15. Any application for permission under paragraph 14 above ("a Permission Application") must be made by Application Notice attaching the proposed contempt application and evidence in support. To obtain the Court's permission, the evidence in support of the Permission Application will need to show that the proposed contempt application:

    (1) has a real prospect of success;

    (2) does not rely on wholly technical or insubstantial breaches; and

    (3) is supported by evidence that the proposed respondent had actual knowledge of the terms of the injunction in paragraph 1 above before being alleged to have breached it.

16. The Court will normally, where possible, expect the Claimants to have notified the proposed respondent in writing of the allegation(s) that she/she has breached the injunction. Any response by the proposed respondent should be provided to the court with the Permission Application.

17. Unless the Court directs otherwise, any Permission Application will be dealt with on the papers.

NAME AND ADDRESS OF THE CLAIMANTS' LEGAL REPRESENTATIVES

18. The Claimants' solicitors are:

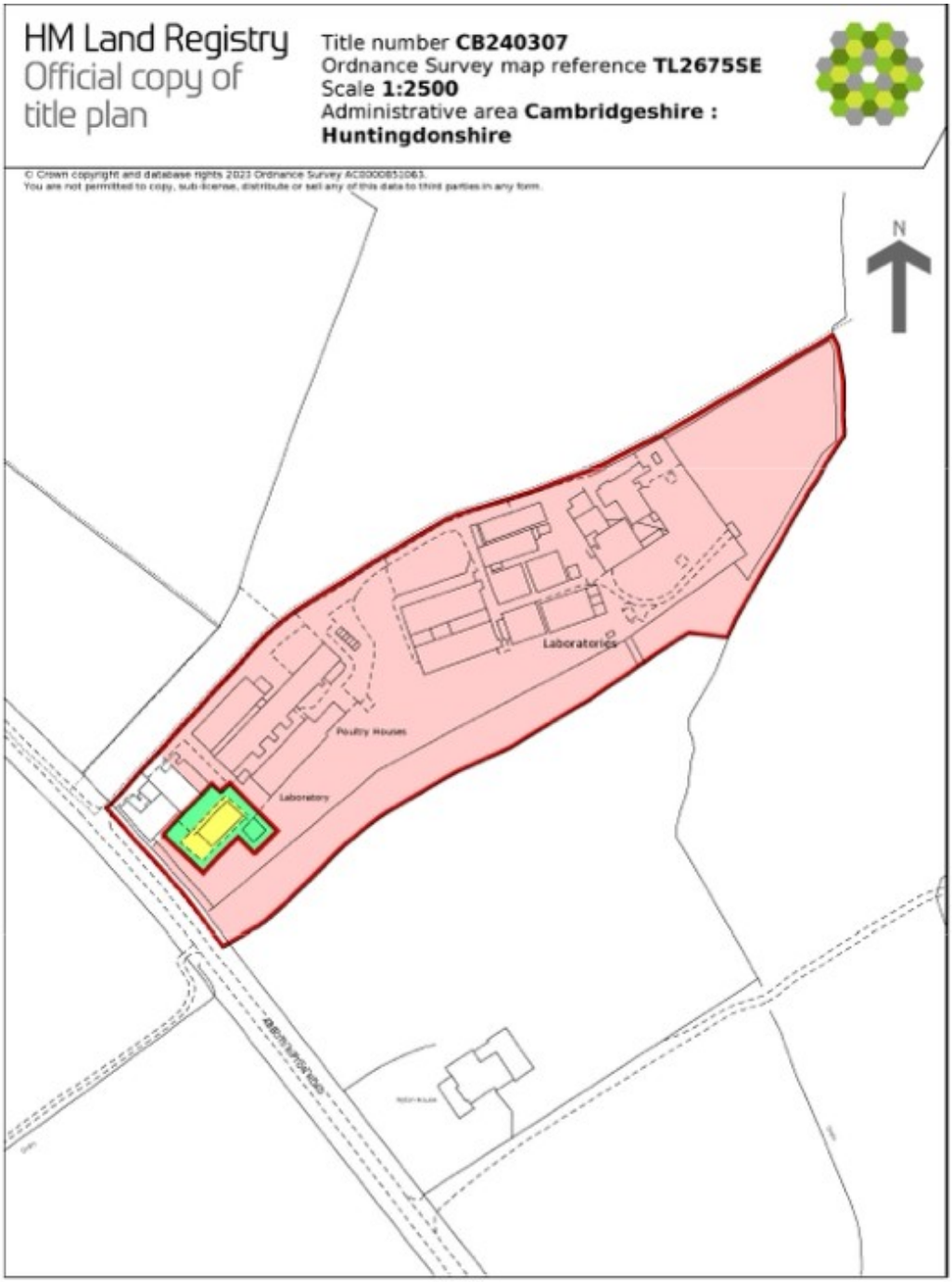
    Mills & Reeve LLP
    7th & 8th Floors
    24 King William Street
    London EC4R 9AT
    Contact: Simon Pedley
    Tel: 020 7648 9220
    mbr.injunction@mills-reeve.com

COMMUNICATIONS WITH THE COURT

19. All communications with the Court about this Order should be sent to Room E03, The Royal Courts of Justice, Strand, London, WC2A 2LL. The telephone number is 020 7947 6010. The offices are open between 10am and 4.30pm Monday to Friday. The email address is KBJudgesListingOffice@justice.gov.uk.

19 February 2025

ANNEX 1


HM Land Registry
Official copy of title plan
Title number CB240307
Ordnance Survey map reference TL2675SE
Scale 1:2500
Administrative area Cambridgeshire : Huntingdonshire
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Laboratories
Poultry House
Laboratory